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Biometrics for Offshore Visa Processing

Procedural Instruction

Document ID (PPN)	IIB-1486
TRIM record number	ADD2019/7379159
BCS Function	Intelligence, Identity and Biometric Management
Risk	Medium
Document owner	Assistant Secretary, Identity and Biometrics Capability Branch
Approval date	18 February 2020
Document Contact	Biometrics and Data Exchange Section s. 47E(d) @homeaffairs.gov.au

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1. Purpose

This instruction should be used by officers at overseas posts (and onshore processing centres) participating in the Offshore Biometrics Collection Program (the Program). The purpose of this instruction is to set out the legislative and policy framework and procedural guidelines for the collection and use of personal identifiers collected from offshore visa applicants.

2. Scope

For the current list of the designated countries and visa subclasses included in the Program, refer to the webpage: [Countries and visa subclasses included in the Biometrics Program](#).

This instruction provides guidance to departmental officers processing relevant visa applications from countries included in the Program.

The locations for the scheme are selected on the basis of:

- national security and fraud risks
- locations where the Government can share facilities with Migration 5 partners and
- broad geographic coverage of the scheme.

Some Refugee and Humanitarian visa applicants who are not in these designated countries may also come within the scope of the Program.

3. Procedural Instruction

3.1 Legislative History

Prior to the announcement made by the Government on 23 February 2010 to begin collecting personal identifiers from offshore visa applicants in designated countries, the department had already been collecting biometrics from immigration detainees and Protection visa applicants. The legislative framework for requiring the provision of personal identifiers from offshore visa applicants built on the legislative foundations that were already in place. It was possible to implement the Program through amendments to regulations [2.04](#) and [2.08AC](#).

On 1 July 2010, regulation [2.08AC](#) was amended by inserting the requirement that personal identifiers must be provided at a place specified by the Minister in an instrument in writing. In addition, fingerprints were prescribed as a personal identifier (in addition to facial photographs) that could be required from offshore visa applicants. Regulation [2.04](#) was also amended to enable personal identifiers to be required from all offshore visa applicants. Prior to that date the only visa applicants the provision enabled personal identifiers to be required from were applicants for [Class XA](#) Protection visas, [Class XB](#) Refugee and Humanitarian visas and [Class UJ](#) Temporary Safe Haven visas.

On 1 July 2011, regulation [2.04](#) was amended to bring it into line with regulation [2.08AC](#) by inserting the requirement that personal identifiers must be provided at a place specified by the Minister in an instrument in writing, and by prescribing fingerprints as a personal identifier (in addition to facial photographs) that could be required from offshore visa applicants. These amendments provided officers with the flexibility to use either [s40](#) or [s46](#) of the Act to require applicants to provide fingerprints and facial photographs at specified places.

On 1 January 2013, regulations [2.04](#) and [2.08AC](#) were further amended to enable an officer to require the provision of personal identifiers directly to an officer who is located outside Australia. These provisions were

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used in situations where it was difficult or impractical to specify places in an instrument in writing for the provision of personal identifiers.

On 16 February 2016 new legislation, the Migration Amendment (Strengthening Biometrics Integrity) Act 2015, came into effect, creating a broad discretionary power to collect biometrics for the purposes of the *Migration Act 1958* and *Migration Regulations 1994*. The new s257A provides a discretionary power for an officer to require a person to provide personal identifiers, thus enabling the provisions of s494A to s494C to be enlivened when a delegate makes such a requirement. This provides certainty around when a requirement can be taken to be received. Note: The s494A to s494C provisions will only be enlivened if the requirement is made by a delegate and not by an officer.

Additionally, the flexibility of s257A, the amendments to regulation 2.04 and repeal of regulation 2.08AC mean that it is no longer necessary to prescribe places in an instrument in writing for the provision of personal identifiers.

Amendments to s261(AL) and s261(AM) also allow collection of any of the personal identifiers defined in s5A(1) from *minors and incapable persons*, other than those in immigration detention. This has permitted broadening of the offshore collection policy to collect fingerprints from minors aged five years and above.

3.1.1. Collection of personal identifiers provided voluntarily

No legislative framework is required for the collection of personal identifiers provided voluntarily by visa applicants. However, under policy, the same parameters that apply when a delegate or officer requires the provision of personal identifiers under the Act also apply to the voluntary provision of personal identifiers. For example, collection must not be carried out in a cruel, inhumane or degrading manner.

3.1.2. Legislative powers

General power to collect personal identifiers in the Migration Act

Section 4 of the Act provides the object of the Act. In particular, s4(3) provides that, to advance its object the Act requires persons, whether citizens or non-citizens, entering Australia to identify themselves so that the Commonwealth government knows who is entering Australia as a non-citizen.

Sections 5A and 5B

Regardless of the circumstances in which personal identifiers are collected, it is important that s5A and s5B of the Act are clearly understood. In particular, s5A(1) defines personal identifiers and s5A(3) describes the purposes for which personal identifiers are obtained. Section 5B defines when a personal identifier is taken not to have been provided.

3.1.3. What is a personal identifier

Personal identifiers are defined in s5A(1) of the Act as any of the following (including any of the following in digital form):

- fingerprints or handprints of a person (including those taken using paper and ink or digital live scanning technologies)
- a measurement of a person's height and weight
- a photograph or other image of a person's face and shoulders
- an audio or a video recording of a person (other than a video recording under s261AJ of the Act)
- an iris scan
- a person's signature
- any other identifier prescribed by the Regulations, other than an identifier the obtaining of which would involve carrying out an intimate forensic procedure within the meaning of s23WA of the *Crimes Act 1914*.

3.1.4. Purpose of the collection of personal identifiers

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The purposes for which personal identifiers can be collected are set out in [s5A\(3\)](#) of the Act. These include:

- to assist in the identification of, and to authenticate the identity of, any person who can be required under the Act to provide a personal identifier
- to improve the integrity of entry programs, including passenger processing at Australia's border
- to improve the procedures for determining visa applications
- to combat document and identity fraud in immigration matters
- to inform the governments of foreign countries of the identity of non-citizens who are, or are to be, removed or deported from Australia.

The complete list of purposes is set out in [s5A\(3\)](#) itself and form 1243i (Your personal identifying information.)

Identifying information (which includes personal identifiers) can be disclosed only as permitted by [s336E](#) of the Act. Personal information can be disclosed only as permitted by the Privacy Act.

3.1.5. Personal identifier taken not to have been provided

Section 5B of the Act sets out when a person is taken not to have provided a personal identifier for the purposes of [s257A](#). These circumstances are if:

- the personal identifier that is provided is unusable
- or
- an authorised officer or an officer is not satisfied about the integrity or quality of the personal identifier that is provided, or about the procedure followed to obtain the personal identifier.

3.1.6. Summary of key s257A provisions

Overview of s257A

There are two powers in the Migration Act that allow authorised officers to require a person to provide personal identifiers, namely:

- [s257A](#) and
- [s261AA](#).

Section 261AA sets out provisions for conducting identification tests for immigration detainees and is not covered in this instruction - refer to [DM-3253: Detention Services Manual - Managing the administration of detention - Identification tests](#).

Section [257A](#) is a broad, discretionary power to collect one or more personal identifiers from non-citizens (and citizens at the border), for the purposes of the Act and the Regulations.

Section [257A](#) replaced seven personal identifier collection powers, (previously in [s40](#), [s46](#), [s166](#), [s170](#), [s175](#), [s188](#) and [s192](#)) with the exception of the power to require personal identifiers from immigration detainees, which is retained under [s261AA](#). Section 257A(2) provides that the purposes include, but are not limited to, the purposes provided for in [s5A\(3\)](#).

Section [257A](#) does not implement a de-facto universal biometric collection policy. Rather, the power is used in targeted circumstances, including suspected:

- identity fraud
- visa fraud and
- undeclared criminal history in Australia, or another country.

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3.1.7. Who may be required to provide personal identifiers

Section 257A enables the Minister or an officer to collect one or more personal identifiers from non-citizens (and citizens at the border) where a link to the purposes of the Migration Act or the regulations can be demonstrated.

All the circumstances for the collection of personal identifiers that the Act previously authorised continue to be authorised under the 16 February 2016 amendments to the Act. For example:

- visa application (non-citizens)
- granting a visa (non-citizens)
- entering and departing Australia (citizens and non-citizens) and
- to determine whether a non-citizen holds a valid visa (non-citizens).

Examples of circumstances where personal identifiers are authorised to be collected under s257A, which were not previously authorised under the Act, include:

- offshore after visa grant but prior to travel
- en route to Australia.

3.1.8. Which personal identifiers can be required

Under s257A the provision of personal identifiers may be required by a delegate or an officer, either orally or in writing. Under policy, personal identifiers should be required in writing using the letter templates available in IRIS and the Enterprise Correspondence System (ECS).

3.1.9. How personal identifiers required under s257A must be provided

Section 257A enables the Minister or an officer to require that personal identifiers be provided either through an identification test carried out by an authorised officer or an authorised system, or through another way specified by the Minister or officer. Under policy, visa applicants offshore can be required to provide personal identifiers:

- at an office of an agency contracted by the department, being an office with personal identifier collection capabilities (for example, at a visa application centre or biometrics collection centre operated by an SDP)
- at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia, being an office with personal identifier collection capabilities (for example where biometric collection takes place at post)
- at an office of Immigration in Australia, being an office with personal identifier collection capabilities (for example, at a State/Territory office, if the applicant has travelled to Australia on another visa before having provided their personal identifiers for the application being processed outside Australia)
- directly to an officer (who may also be a delegate), who has a capability to collect personal identifiers (for example, to an officer operating a Mobile Biometric Collection Unit in the field) or
- in any other way specified (at present there are no additional ways in operation).

3.1.10. Multiple requirements for personal identifiers may be made

Section 257A(7) provides that a person may be required to provide one or more personal identifiers under s257A(1):

- more than once and
- whether or not the person has previously complied with a requirement under the Act or the Regulations to provide one or more personal identifiers.

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The purpose of s257A(7) is to allow a delegate or officer to request a personal identifier more than once. A person may have numerous interactions with the department at different points in time where the department would seek to authenticate their identity. This section provides a delegate or officer with a discretionary power to collect their personal identifiers at these points in time.

For example, a delegate or officer may need to collect a person's fingerprints at a visa application centre when making their visa application and again at interview.

3.1.11. Non-compliance with the requirement to provide personal identifiers

If a delegate or an officer requires a person to provide personal identifiers under s257A, non-compliance with that requirement may result in:

- visa refusal
- visa application invalidity
- refusal to enter Australia (that is, the person would be refused immigration clearance and returned to the destination they embarked from)
- delayed departure from Australia or
- detention.

In the offshore context, a requirement for a person to provide personal identifiers under s257A is a condition of grant under s40 and regulation 2.04. It follows that if a delegate or an officer has required a visa applicant to provide their personal identifiers, and the applicant does not comply with the requirement within a specified period or the requirement has not been withdrawn, the visa application must be refused under s65 of the Act because the grant of a visa is prevented under s40 (together with regulation 2.04) given the failure of the applicant to comply with a requirement made under s257A of the Act.

Failure to comply with this requirement means that the person is prevented from being granted a visa - refer to [Consequences of failing to provide personal identifiers](#).

Use of force is not authorised.

3.1.12. Requiring personal identifiers from minors

Section 257A does not place any limits on the collection of personal identifiers from minors. It enables the collection of fingerprints as well as photographs from children under 18 and does not require the presence of or consent of a parent, guardian or independent person.

However, this does not mean that universal biometric collection is in place for all minors. Under s257A, a delegate or an officer has the discretion to determine whether it is appropriate to collect fingerprints or other personal identifiers from a minor.

The Offshore Biometrics Collection Program has been implemented in locations where it is considered there is significant risk on the basis of national security, visa integrity and identity fraud. Therefore, under this policy, all persons in countries where the Program operates may be required to provide personal identifiers. All visa applicants aged five and over need to provide a facial image and fingerprints.

Collecting fingerprints from minors aged 10 and over enables matches with Australian law enforcement data holdings, while collecting fingerprints from minors aged five and over assists to identify minors known to international partners, such as the United Kingdom. Collecting fingerprints from minors five and over also protects them from people smugglers and traffickers in higher risk locations.

The department's policy for collection of personal identifiers is:

Age at time of collection	Onshore	Offshore
0-4 years	Nil	Photo
5-9 years	Photo	Photo and fingerprints
10 years and above	Photo and fingerprints	Photo and fingerprints

3.1.13. Presence of a parent or guardian, or other independent person

While the consent of a parent, guardian or independent person is not required to collect personal identifiers from a minor or incapable person under s257A, under policy, in the offshore context, a parent or guardian must be present for collection of personal identifiers from persons under 16 years of age.

3.1.14. Requiring personal identifiers from incapable persons

Section 257A also authorises the collection of personal identifiers from incapable persons.

Who is an 'incapable person'

An 'incapable person' is defined at s5(1) of the Act as a person who is incapable of understanding the general nature, effect of and purposes of a requirement to provide a personal identifier. The most obvious examples are a minor or a person who has an intellectual disability of sufficient degree.

When personal identifiers will be required from an incapable person

Personal identifiers other than a facial image must not be collected from an incapable person (other than a minor) unless in exceptional circumstances.

Exceptional circumstances in which other personal identifiers may be collected for an incapable person include:

- where there is an indication of trafficking or exploitation
- intelligence or risk profiling indicates higher risk or
- an alert match.

Presence of a parent or guardian, or other independent person

Under policy, in the offshore context, a parent or guardian must be present for collection of personal identifiers from incapable persons.

Information that must be provided to applicant when requiring personal identifiers

Under s258D(2) and regulation 3.21, before requiring the provision of personal identifiers under s257A, a person who is outside Australia at the time of making a visa application must be informed of certain matters refer to [Information to be given to visa applicants](#).

3.2 Exclusions from the Program

About the exclusion policy

Under the Program, applicants for visas in designated countries need to provide their personal identifiers unless excluded or exempt.

Applicants who are excluded from providing personal identifiers are applicants who do not come within the scope of the Program, as agreed by the Government.

3.2.1 Which visa applicants are excluded from the Program

Currently, applicants are excluded from needing to provide their personal identifiers if

- the applicant is an Australian permanent resident or New Zealand citizen - refer to [Australian permanent residents and New Zealand citizens](#)

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or

- the applicant is not in a designated country - refer to [Applicants not in a designated country](#)

or

- with several exceptions (such as certain Student visa applications) the applicant has lodged an electronic visa application and the application is one of a type, or equivalent to a type, which could have been lodged electronically prior to 23 March 2013 - refer to [Certain applicants who make electronic visa applications](#)

or

- with several exceptions (such as FA-600 (Visitor) Sponsored Family stream visa applications), the application must be made in Australia to be a valid application - refer to [Applications that must be made in Australia to be valid](#).

or

- the applicant is in Hong Kong when applying for a visa and is the holder of a certain passport - refer to [Certain applicants in Hong Kong](#).

3.2.2 Australian permanent residents and New Zealand citizens

Applicants who are Australian permanent residents or New Zealand citizens are excluded from having to provide personal identifiers when applying for a visa. This means that:

visa applicants who are Australian permanent residents do not need to provide personal identifiers
applicants for Return (Residence) (Class BB) visas do not need to provide personal identifiers
visa applicants who are New Zealand citizens do not need to provide personal identifiers.

3.2.3 Applicants not in a designated country

Overview

Applicants who are not “in” one of the designated countries do not need to provide their personal identifiers and should not be required to do so. The policy is broad and “in” is not limited to meaning “physically in” or “living in” a designated country when applying for a visa.

Applicants who usually reside in a designated country but who apply in another country where the Program has not been introduced are not excluded from the Program and an overseas post can use its discretion as to whether to require an applicant to provide their personal identifiers.

Due to operational arrangements in some locations, in some cases visa applicants might be in a designated country but need to lodge their application in a country that is not part of the Program. This does not affect the need for them to provide personal identifiers.

Scenarios

The following six scenarios may assist in determining whether visa applicants come within the scope of the Program. In each of the scenarios it is assumed that the applicant intends to lodge a paper-based visa application, as the situation for applicants lodging electronic visa applications will vary depending on location, citizenship and visa class - refer to [Certain applicants who make electronic visa applications](#).

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Scenario	Example
Applicant is in a designated country	Example: A person in Bangladesh intends to lodge a visa application. As the applicant is in one of the designated countries, they need to provide their personal identifiers. The citizenship of the person does not matter.
Applicant is in a designated country but needs to lodge their application in a country that is not part of the Program	Example: An applicant in France (which has a biometrics collection centre only arrangement) intends to lodge a visa application by mail or courier to London (processing post). They will be required by an officer in London to provide their personal identifiers at the biometrics collection centre in Paris.
Applicant is in a designated country but needs to travel to another designated country to provide their personal identifiers	Example: An applicant in Yemen (which does not have a visa application centre in country) intends to lodge a visa application by mail or courier to Dubai. They will need to provide their personal identifiers and will need to travel to another designated country to do so.
Applicant is in a country that is not part of the Program but needs to lodge their application in a designated country	Example: A person in Cyprus intends to lodge a visa application by mail or courier to Beirut. The applicant is excluded from the Program and does not need to provide their personal identifiers, on the basis of not being in a designated country.
Applicant is usually resident in a designated country but lodges their application in a country that is not part of the Program	Example: An applicant from Sri Lanka intends to lodge a visa application in person at an overseas post in a country where the biometrics collection Program has not been introduced. They are not excluded from needing to provide their personal identifiers and may be required to provide them. The overseas post can use its discretion as to whether they require an applicant's personal identifiers.

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Scenario	Example
Applicant is from a designated country but has been residing long-term in a country that is not part of the Program	Example: A person who previously lived in Zimbabwe is currently working and living in the United Kingdom and intends to lodge a visa application in London. The applicant is excluded from the Program and does not need to provide their personal identifiers because when they applied they were not in a designated country.

3.2.4 Certain applicants who make electronic visa applications

Electronic visa applications

A person is excluded from the Program and does not need to provide their personal identifiers as part of the application process if:

- they are eligible to make, and have lodged, an electronic visa application and
- the application is one of a type, or equivalent to a type, which could have been lodged electronically prior to 23 March 2013.

Prior to 23 March 2013 visa applicants who had access to electronic lodgement were considered to be low risk. From 23 March 2013, electronic visa lodgement options began to be significantly expanded. As the policy intention is that personal identifiers continue to be collected from visa applicants who would have fallen within the original scope of the Program, some applicants for electronic visas who lodge their applications on or after 23 March 2013 will need to provide their personal identifiers. It is expected that over time the method of lodgement will play a decreasing role in determining which applicants will need to provide their personal identifiers.

This exclusion applies only to relevant **electronic** applications. It does not exclude the person in relation to other visa applications for which they would normally be required under policy to provide personal identifiers.

If a person is eligible to make an electronic visa application, but chooses not to lodge electronically, they are lodging a non-electronic (paper-based) visa application and are **not** excluded.

There are several exceptions to this exclusion. Certain Student and Visitor visa applicants have been included in the Program in order to address known risks in specific caseloads.

APEC Business Travel Card applicants

Applicants for an Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC) are taken to be applicants for electronic visas, and so are excluded from the Program. For further information about the ABTC, refer to [VM-1712 - Applications for certain visitor visas - The APEC Business Travel Card Scheme](#).

3.2.5 Applications that must, or can be made in Australia to be valid

In the main, persons who must apply in Australia (either in person, by mail, by courier or by fax) in order for the visa application to be valid are excluded from needing to provide their personal identifiers when making their visa application. (Regulations Schedule 1 specifies where an application must be made.)

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Applications that currently must be lodged in Australia or can be lodged in Australia include Skilled visa applications, Parent visa applications and applicants that have approval to lodge a Sponsored Parent (Temporary) (Subclass 870).

FA-600 (Visitor) Sponsored Family stream visa applicants are an exception to this exclusion. Although they must lodge their applications in Australia, they have been included in the Program since 6 May 2015, in order to address known risks in that caseload.

Refugee and Humanitarian visa applicants who have been proposed in accordance with approved form 681 must lodge their applications in Australia. However, Refugee and Humanitarian visa applicants are an exception to this exclusion and in some cases may be required to provide their personal identifiers.

As the Program expands, it is likely that exclusion on the basis of having to apply for a visa in Australia will become obsolete.

3.2.6 Certain applicants in Hong Kong

Although Hong Kong is a designated country in the Program, currently collection of personal identifiers in Hong Kong is limited to visa applicants other than those holding one of the following passports:

- Hong Kong Special Administrative Region
- Macau Special Administrative Region
- British National Overseas
- Peoples Republic of China
- Taiwan

It is expected that, as the Program expands, exclusion on this basis will become obsolete.

3.3 Exemptions from the Program

About the exemption policy

Under the Program, applicants for visas in designated countries need to provide their personal identifiers unless excluded or exempt.

Applicants who are exempt from providing personal identifiers are applicants who, but for the exemption, would come within the scope of the Program.

If an applicant is exempt, they do not need to provide personal identifiers and they are not to be required by a delegate or an officer to provide them. This is not a withdrawal of the requirement, as the requirement can be withdrawn only if the applicant has been first required by a delegate or an officer to provide personal identifiers - refer to [Withdrawing the requirement to provide personal identifiers](#).

3.3.1 The exemption categories

Applicants who fall within one of the following categories:

- do not need to provide their personal identifiers and
- are not to be required to provide personal identifiers.

Under policy, “family members” and “immediate family members” are taken to mean those included in the definitions of “member of the family unit” and “member of the immediate family” in regulations 1.12 and 1.12AA respectively, but some flexibility can be applied.

Full exemptions

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1. Sovereigns, Heads of State and their family members

- Sovereigns and Heads of State (recognised by the Australian Government) and their family members, whether travelling officially or privately.

Not exempt:

- Ex-Heads of State and their families.
- Domestic workers employed by applicants who come within this category.

2. Heads of Government, Government Ministers and their immediate family members

- Heads of Government (recognised by the Australian Government) and their immediate family members (whether travelling officially or privately), and serving Government Ministers and their immediate family members (when travelling officially).

Not exempt:

- Ministers of state or provincial governments.

Note: If not provided with the application, decision makers may request a formal letter from either the Ministry/Department of Foreign Affairs of the host government or the Minister's department to verify the applicant's position.

3. Diplomatic, consular or international representatives and their dependants; and diplomatic couriers

Applicants who are eligible for a [TF-995](#) Diplomatic (Temporary) visa because the Foreign Minister has recommended in writing to the Minister that the visa be granted to the applicant on the basis of the applicant being:

- a diplomatic or consular representative or
- an international representative.

This includes dependants who also hold TF-995 visas and are accompanying the applicant. Diplomatic couriers are also exempt.

Not exempt:

- Persons who have been appointed as honorary consuls.

Note: The usual definition of "member of the family unit" does not apply to the TF-995 Diplomatic (Temporary) visa. The only requirement is that the Foreign Minister has recommended visa grant to a person accompanying the primary applicant.

4. Government officials acting as a representative of a foreign government

Officials of foreign governments (recognised by the Australian Government) when travelling to Australia in the course of acting as a representative of a foreign government.

This exemption can apply to TU-500 Defence student visa applicants (refer to the regulation 1.04B definition of **Defence student**) who are being sponsored in their official capacity and representing their foreign government in their studies, subject to the discretion referred to below.

The exemption is subject to an officer's discretion to still require the provision of biometrics from particular officials or particular cohorts of officials on a case-by-case basis.

Not exempt:

- Accompanying family members (unless nil visa application charge arrangements have also been extended to them – refer to the Note below).
- Local government officials representing their state, province or other local political entity.

Note: This exemption generally applies to those [FA-600](#) Visitors

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5. Officials of international inter-governmental organisations travelling on official business

Officials of Commonwealth and other international inter-governmental organisations (recognised by the Australian Government) when travelling to Australia in their official capacity on the official business of their organisations.

The exemption is subject to an officer's discretion to still require the provision of biometrics from particular officials or particular cohorts of officials on a case-by-case basis.

Not exempt:

- Accompanying family members.
- Officials of international non-governmental organisations, agencies or companies.

6. Special purpose visa (SPV) holders

Persons who hold a special purpose visa (SPV). SPV holders include:

- members of the Royal Family and the Royal party
- guests of Government
- Status of Forces Agreement (SOFA) forces members, SOFA forces civilian component members, Asia-Pacific forces members, Commonwealth forces members, foreign armed forces dependants, and foreign naval forces members
- airline positioning crew members and airline crew members and
- transit passengers

because those classes of person are defined in regulation [1.03](#).

Note: SPV holders cannot be required to provide personal identifiers as part of an application as there is no visa application process for an SPV. A person holds an SPV by operation of law when they hold a prescribed status.

Partial exemptions

7. Minors under five

Minors under five are not to have their fingerprints collected, but do need to provide their facial photograph - refer to [Minors and incapable persons](#).

8. Incapable persons

Incapable persons (as defined in s5(1) of the Act) are not to have their fingerprints collected - refer to [Minors and incapable persons](#).

9. Physically incapacitated persons

Conditions that may result in applicants being unable to provide some or all fingerprints include:

- amputation (fingers, hands, or arms)
- paralysis
- burn injuries
- permanent abnormality of the finger
- severe arthritis
- worn finger pads in elderly applicants.

Not exempt:

- Applicants with temporary injuries or medical conditions, including finger cuts and boils.

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Note: Applicants who are unable to provide ten fingerprints need to provide as many as they physically can. If they are unable to provide any fingerprints, a facial photograph should still be collected.

3.3.2 Exemption discretion

About the discretion

In addition to the above defined exemption categories, officers have the discretion to exempt a particular applicant from the requirement to provide personal identifiers in exceptional circumstances. Officers should exercise this discretion flexibly, taking into account the circumstances of a particular applicant.

Exceptional circumstances would usually come under one of two broad categories:

- emergency or compassionate situations or
- compelling national interest.

Under policy, officers at the following levels may exercise this discretion:

- A-based officers at overseas posts
- managers at APS5 level and above in onshore processing centres

Emergency or compassionate situations

Emergency or compassionate situations include:

- emergency or compassionate personal circumstances;
- difficulties faced by certain Refugee and Humanitarian or similar visa applicants and
- in-country crisis situations.

Emergency or compassionate personal circumstances

Emergency or compassionate personal circumstances include the death of an applicant's family member in Australia, or where an applicant needs to travel urgently to visit an Australian resident or Australian citizen family member who has a serious life threatening illness. (Leaving an application until the last minute does not constitute an emergency situation.)

It is expected that an exemption on these grounds would only be granted in a very limited number of circumstances. Before granting an exemption, officers should consider facilitating a priority biometrics collection appointment at a visa application centre if possible.

Certain Refugee and Humanitarian or similar visa applicants

If, under policy, an officer would usually require a Refugee and Humanitarian or similar visa applicant to provide personal identifiers, an exemption may be considered if it would be unreasonably difficult for the applicant to access a biometrics collection facility.

Factors that should be taken into consideration include:

- current residential address of the applicant
- distance they would be required to travel to attend a visa application centre or biometrics collection centre
- risk to the personal safety of the applicant if they were required to travel to attend a visa application centre or biometrics collection centre

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- whether the applicant is in a refugee camp or similar
- whether there are any identity or bona-fide concerns in relation to the applicant
- whether the applicant will be interviewed or otherwise contacted by the department
- whether an overseas officer is able to, or is intending to, visit the location of the applicant to collect personal identifiers.

In-country crisis situations

If an in-country crisis situation arises, it may result in the suspension of biometric data collection at any affected visa application centre. Situations include natural disasters, civil unrest or war that temporarily prevents visa applicants from travelling. The PMO should liaise with the Regional Director in the first instance to decide if suspension is appropriate. The Regional Director should then liaise with the Assistant Secretary, Identity and Biometrics Capability Branch, to make a decision.

Compelling national interest

Compelling circumstances affecting the interests of Australia

If satisfied that there are compelling circumstances affecting the interests of Australia, managers may exercise their discretion exempting an applicant for a specific visa from needing to provide their personal identifiers, despite the applicant not being excluded or exempt under usual policy. If an applicant has been exempted for a specific visa application, this does not mean that they will be exempt when they next apply.

There may be compelling circumstances affecting the interests of Australia if:

- Australia's trade or business opportunities would be adversely affected if the person is not granted the visa or
- Australia's relationship with a foreign government would be damaged if the person is not granted the visa or
- Australia would miss out on a significant benefit that the person could contribute to Australia's business, economic, cultural or other development (for example, a special skill that is highly sought after in Australia) if the person was not granted the visa.

If other agencies at an overseas post or the host government have made representations seeking an exemption for certain persons from needing to provide their personal identifiers, these should be requested in writing and retained on file.

Compelling circumstances affecting the interests of Australia would not include circumstances if the applicant merely claims that, if granted the visa, they would:

- work and pay taxes in Australia
- pay fees to an education provider or
- spend money in Australia.

Exercising this discretion requires:

- deciding whether there are compelling circumstances affecting the interests of Australia in the particular case and, if so
- deciding whether those circumstances justify an exemption from the applicant having to provide their personal identifiers.

International events

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In some cases it may be decided that it is in the national interest for attendees (of a sufficient level) at international events hosted and held in Australia to be provided with an exemption.

In order for attendees to be exempted, the appropriate business area (such as the section responsible for the International Event Coordination Network (IECN)) will need to put a case in writing (in advance of the event being held) to the Assistant Secretary, Identity and Biometrics Capability Branch for approval.

If approval is given, it will be communicated to relevant overseas posts that attendees (of a sufficient level) will be exempt from needing to provide their personal identifiers for visa applications associated with their attendance at the event.

3.3.3 Record keeping for exemptions

Officers are to clearly record in IRIS or ICSE:

- the reasons why an applicant is exempt and
- if the exemption discretion is exercised, the name and position of the officer who exercised the discretion.

To enable onshore reporting on exemptions, it is important that officers record the relevant exemption information code in IRIS or ICSE.

The information codes in IRIS and ICSE are:

IRIS	ICSE	Description
E1	E01	Sovereigns, Heads of State and their family members
E2	E02	Heads of Government, Government Ministers and their immediate family members
E3	E03	Diplomatic, consular or international representatives and their dependants; and diplomatic couriers
E4	E04	Government officials acting as a representative of a foreign government
E5	E05	Officials of international inter-governmental organisations travelling on official business
E6	E06	Special purpose visa (SPV) holders
E7	E07	Minors below the minimum age (under five)
E8	E08	Incapable persons
E9	E09	Physically incapacitated persons

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W1	E10	DIBP discretion: Emergency or compassionate situations
W2	E11	DIBP discretion: Compelling national interest.

ICSE codes E10 and E11 are not available in IRIS. Please continue to use the following:

W1 DIBP discretion: Emergency or compassionate situations

W2 DIBP discretion: Compelling national interest.

3.4 Minors and incapable persons

3.4.1 Minors

Minors and the Program

Section 5(1) of the Act defines a 'minor' to be a person who is less than 18 years old. For the purposes of the Program and the provision of personal identifiers, minors are divided into two distinct groups:

- those who under five and
- those who are at least five.

Minors who are under five at time of collection need to provide a facial photograph.

Minors who are at least five at time of collection need to provide a facial photograph and fingerprints.

A parent or guardian should be present during the collection of any personal identifiers from a minor who is less than 16 years old.

If necessary a delegate or an officer can, in writing under s257A of the Act, require a minor to provide their personal identifiers - refer to [Requiring applicants to provide their personal identifiers](#). If a minor fails to provide their personal identifiers, the usual consequences apply – refer to [Consequences of failing to provide personal identifiers](#).

Minors under five

As part of the visa application process, minors who are under five only need to provide a facial photograph.

The best possible facial photograph should be taken. This may involve the applicant being held up by their parent or guardian and may not meet the otherwise strict guidelines regarding facial photographs.

To avoid adverse outcomes for a minor who is under five (particularly if the outcome would be one that is different to other family members included in the same application), if a photograph of the minor has been provided with the application it is open to officers to digitally scan the photograph provided with the application as an alternative to formally requiring the provision of a facial photograph. In such cases, officers must contact the Biometric Resolution Section to confirm arrangements for emailing the photograph in a format that will allow facial comparison checking to be undertaken.

Importantly, officers should ensure that SDP staff are trained to not collect fingerprints of minors who are under five.

Minors who are at least five

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Although still a **minor** as defined in s5(1) of the Act, visa applicants who are minors but at least five may be required to provide the same personal identifiers as adult visa applicants, which include fingerprints and facial photographs.

Doubts about the age of the minor

Information provided by an applicant at the time of application about their date of birth should be taken to be accurate unless there is substantial evidence to believe otherwise. For example, it may come to light at an interview that a birth date provided on an application form was incorrect and an applicant claiming to be under five is in fact older, or that an applicant believed to be at least five is under five.

If it is determined that an applicant is under five:

- if biometrics have not yet been collected - the application record in ICSE/IRIS should be updated and only a facial photograph required for collection
- if biometrics have already been collected - officers should refer to the IIB-1477 - Match Assess Decide document for further guidance.

If it is determined that the applicant is at least five:

- if biometrics have not yet been collected - the application record in ICSE/IRIS should be updated and both fingerprints and a facial photograph required for collection
- if biometrics have already been collected - officers should refer to the Match Assess Decide Standard Operating Procedures document for further guidance.

If an officer suspects that an applicant is claiming to be under five in order to avoid providing their fingerprints, there needs to be clear evidence that the applicant is at least five before requiring fingerprints to be provided.

3.4.2 Incapable persons

Section 5(1) defines **incapable person** as 'a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier.'

Persons who may be an 'incapable person' include (but are not limited to) persons who have an intellectual disability or medical condition (such as a person recovering from having a brain tumour removed) that impedes their ability to comprehend information.

If the parent or guardian of an incapable person refuses to let the incapable person provide a photograph, a delegate or an officer may require the incapable person to provide a facial photograph under s257A. Fingerprints should not be required to be provided, unless there are exceptional circumstances such as:

- there is an indication of trafficking or exploitation
- intelligence or risk profiling indicates higher risk or
- an alert match.

If an applicant who is an incapable person has provided a photograph with their application, it is open to officers to digitally scan the photograph provided with the application as an alternative to formally requiring the provision of a facial photograph. In such cases, officers must contact the Biometric Resolution Centre to confirm arrangements for emailing the photograph in a format that will allow facial comparison checking to be undertaken.

SDP staff should not make a determination as to whether an applicant is an incapable person. If SDP staff:

- believe that the visa applicant is an incapable person or
- have been made aware by a parent or guardian that a person has an intellectual disability

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The SDP is not to collect any personal identifiers and is to contact the relevant overseas post. An officer at the overseas post may wish to speak to the applicant or their parent or guardian at the SDP to find out more information. The officer is to decide whether the applicant meets the definition of 'incapable person' and advise the SDP how to proceed.

3.4.3 Presence of a parent or guardian for collection of personal identifiers

While there is no legislative requirement necessitating either the consent or the presence of a parent or guardian during the collection of personal identifiers from offshore visa applicants, under policy, a parent or guardian should be present for the collection of personal identifiers from minors who are less than 16 years old and from incapable persons.

SDP must be instructed not to collect personal identifiers from visa applicants in either circumstance without the presence of a parent or guardian.

3.5 Requiring applicants to provide their personal identifiers

3.5.1 Delegations

Section 257A(1) provides that the Minister or an officer may, in writing or orally, require a person to provide one or more personal identifiers for the purposes of the Act or regulations.

By instrument of delegation, the Minister has delegated the power to require a person to provide personal identifiers to:

- all Australian-based and locally engaged officers overseas and
- APS3, APS4, APS5, APS6, EL1, EL2 and SES Band 1 level officers

If requirement is made in writing by a delegate, this allows the deemed receipt provisions in s494A, s494B and s494C to be engaged, providing certainty around when a person can be taken to have received the requirement letter. It is therefore recommended that a requirement is issued in writing by a delegate, however a departmental officer who is not also a delegate is not prevented from issuing a requirement.

3.5.2 When to require the provision of personal identifiers

A delegate or officer should require a visa applicant who falls within the scope of the Program to provide personal identifiers under s257A if the visa applicant:

- has made a visa application directly with an overseas post in person, and that post does not have biometrics collection equipment

or

- has made a visa application directly with an overseas post by mail or by courier or other means

or

- has made a visa application that is processed in ICSE and does not receive an automated biometrics requirement letter

or

- has made a visa application at a visa application centre that is not also a biometrics collection centre

or

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- has refused to have their personal identifiers collected voluntarily when applying for a visa at a visa application centre or overseas post or when visited by an overseas officer using a mobile biometrics collection unit.

Personal identifiers must not be required from visa applicants who are excluded from the Program or exempt from having to provide personal identifiers - refer to:

[Exclusions from the Program and Exemption policy.](#)

If the applicant is under five at time of collection or is an incapable person, only a facial photograph may be required - refer to [Minors and incapable persons.](#)

Only the Minister, a delegate or an officer (which includes locally engaged employees but excludes SDP staff) may require an applicant to provide their personal identifiers.

Persons who may be connected with the visa application, but who are not visa applicants, for example sponsors, nominators or the visa applicant's relatives who are not included in the visa application, are not required to provide their personal identifiers.

3.5.3 Informing the applicant of the requirement to provide personal identifiers

It is policy that, if a delegate or an officer requires a visa applicant to provide personal identifiers under [s257A](#) of the Act, the delegate or officer must do so in writing by way of a letter addressed to the applicant. The letter must:

- identify the visa applicants to which the requirement to provide the personal identifiers under [s257A](#) of the Act applies

and

- describe the personal identifiers required, and for which applicants (for example, if the applicant is a minor who is under five, only a facial photograph may be required)

and

- state that failure to comply with the requirement within the specified period will mean that a decision may be made to refuse to grant the visa if the grant of the visa is prevented by s40 (that is, if a person has not complied with any requirement that is made under [s257A](#))

and

- provide details of how personal identifiers can be provided, for example,

at a visa application centre, biometrics collection centre, overseas post where personal identifiers can be collected or
directly to an overseas officer using a mobile biometrics collection unit

and

- specify the period (timeframe) in which personal identifiers must be provided, noting that the deemed receipt provisions in s494A, s494B and s494C of the Act are only engaged if the requirement is issued by a delegate.

Letters can be saved as pdf files and emailed to a visa applicant.

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Letter templates for the purpose of requiring an applicant to provide personal identifiers under s257A are available in IRIS and the ECS. These templates assume that the sender is a delegate, and would require editing to delete the deemed receipt provisions if the sender is an officer but not a delegate.

Note: Prior to 1 November 2010 application forms did not contain the declaration and consent relating to the disclosure of personal identifiers. Therefore, if requiring the provision of personal identifiers in relation to an application lodged before that date, each applicant should be asked to sign the relevant declaration separately. In practice, this should apply mainly to some Refugee and Humanitarian visa applicants.

3.5.4 Information to be given to visa applicants

Section 258D(2) and regulation 3.21 together state that if a person outside Australia at the time of making a visa application is required to provide their personal identifiers under s257A otherwise than by way of an identification test, the person must be informed of the following:

- the reason why a personal identifier is required to be provided
- how a personal identifier may be collected
- how any personal identifier that is collected may be used
- the circumstances in which a personal identifier may be disclosed to a third party
- that a personal identifier may be produced in evidence in a court or tribunal in relation to the person
- that the Privacy Act applies to a personal identifier, and that the person has a right to complain to the Australian Information Commissioner about the handling of personal information
- that the Freedom of Information Act gives a person access to certain information and documents in the possession of the Commonwealth Government and its agencies, and that the person has a right under that Act to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.

Regulations 3.21(3) and (4) allow the information to be given orally or in writing, and by persons other than an officer of the department. For example, SDP staff may provide this information to a visa applicant.

This information is included in departmental form 1243i (Your personal identifying information), which is available on the [departmental website](#).

This form must be provided to visa applicants at the time they are informed of the requirement to provide personal identifiers, and is sufficient to comply with the requirements of s258D(2) and regulation 3.21.

3.5.5 Specified period for complying with a requirement to provide personal identifiers

Neither the Act, nor the regulations specify a period (timeframe) in which personal identifiers must be provided.

This is because s56 (Further information may be sought) and s58 (Invitation to give further information or comments) of the Act and the associated timeframes for response under regulation 2.15 do not apply, because personal identifiers are **required**, not requested.

Under policy, the period to be given to visa applicants to comply with a requirement to provide their personal identifiers is:

- 14 calendar days (as a base) for temporary visa applications
- 28 calendar days (as a base) for permanent visa applications.

An exception to this is if the applicant is required to provide personal identifiers to an overseas officer visiting a location, such as a refugee camp, for a short period. The timeframe in which personal identifiers must be

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provided should be reasonable in the circumstances. In such situations, a period of 24 hours is considered to be reasonable.

Section 257A provides that the Minister (or a delegate) or an officer may, in writing or orally, require a person to provide one or more personal identifiers. However, the deemed receipt provisions in s494A, s494B and s494C of the Act are engaged only when the Minister or a delegate issues a written requirement to provide personal identifiers under s257A.

If a written requirement is made by an officer, who is not a delegate for the purposes of s257A, the deemed receipt provisions do not apply. For this reason, all officers in the department's overseas network and all officers from APS3 to SES Band 1 in the Immigration Programs Branch have been delegated with the power to require a person to provide personal identifiers under s257A.

Under policy, requirements should be issued in writing and expressly state that a delegate is exercising the power in s257A so that there is certainty about when the applicant can be taken to have received the document, thus enabling refusal of the visa application if an applicant does not comply with the requirement.

The table below shows the relevant compliance and notification periods where a written requirement has been issued under s257A by a delegate. These periods are after the date of the letter (where the count of days commences the day after the date of the letter) in accordance with s36(1) of the Acts Interpretation Act.

Method of sending letter	Specified period for compliance
Provided by hand - requiring provision of personal identifiers to an overseas officer visiting a location outside an overseas post	24 hours
Provided by hand, or sent by email or fax - requiring provision of personal identifiers at a specified place, such as a visa application centre	Temporary visas - 14 calendar days Permanent visas - 28 calendar days
By prepaid post from a place in Australia to an address in Australia	Temporary visas - 14 calendar days + 7 working days Permanent visas - 28 calendar days + 7 working days
By prepaid post in any other case	Temporary visas - 14 calendar days + 21 calendar days Permanent visas - 28 calendar days + 21 calendar days

If an applicant:

- has been required by the Minister or a delegate to provide their personal identifiers within the specified period but
- does not comply
- the visa application may be refused under s40(3). Under policy, the decision is made on the next calendar day. For further information, refer to [Consequences of failing to provide personal identifiers](#)

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Note: If the final day of the specified period in which the applicant must provide personal identifiers falls on a weekend or public holiday in the place where the personal identifiers are to be provided, s36(2) of the Acts Interpretation Act operates so that the person has until the next working day after that weekend or public holiday to provide their personal identifiers.

For further information about deemed receipt provisions, refer to [LS-1849: GenGuideA - All visas - Visa application procedures](#).

3.5.6 Extensions of time for compliance

Grounds for extension

If an applicant:

- has been required to provide their personal identifiers and
- has lodged a request for extension of the period in which they need to comply

A delegate or an officer is able to extend the period for compliance by writing to them if they meet one of the grounds for extensions. Extensions should be reasonable in the circumstances, for example, 24 hours if the initial period was 24 hours; otherwise, 7, 14, 21 or 28 days may be appropriate.

The grounds for extensions are (but not limited to):

- substantial distance for the applicant(s) to travel
- crossing country borders
- emergency or compassionate situations.

Decision on extension of time for a requirement made under s257A

A decision to approve or refuse a request by an applicant for an extension should be made within the period initially specified for compliance, because an applicant needs to know the outcome of their request before the expiry of the specified period.

However, a decision to **approve** a request for an extension can be made after the expiry of the period initially specified for compliance, provided a s65 delegate has not already made a decision in relation to the visa application. The operation of s40 that prevents the grant of a visa is not restricted by a specified timeframe.

An officer can use their discretion to provide an applicant with a reasonable (not endless) opportunity or opportunities to comply with a requirement made under [s257A](#).

Notification of extension decision and record keeping

Where appropriate, officers may initially provide oral advice to an applicant of the decision on the extension, and follow up with written advice.

Letter templates for the purpose of responding to a request for extension of the period in which to provide personal identifiers under [s257A](#) are available in IRIS and the ECS.

Officers should insert an IRIS or ICSE note if an extension of time is granted, specifying the agreed period for compliance.

3.5.7 Re-requiring the provision of personal identifiers

Under s5B of the Act a person is taken, for the purposes of [s257A](#), not to have provided a personal identifier if:

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- the personal identifier that is provided is unusable

or

- a delegate or an officer is not satisfied about the integrity or quality of the personal identifier that is provided, or about the procedure followed to obtain the personal identifier.

Section 257A(7) provides that a person may be required to provide one or more personal identifiers more than once, whether or not they have previously complied with a requirement under the Act or regulations to provide personal identifiers. This permits the re-requiring of personal identifiers for verification purposes at different points of the visa application assessment process.

Under policy, if the purpose for which the personal identifier is being re-required falls under s5B and, if more than one type of personal identifier was previously required, only the personal identifier/s that are unusable, lack integrity or lack quality should be required again.

Before re-requiring the provision of personal identifiers for any purpose, consideration should be given to the impact on applicants, including cost, travel distance and any other inconvenience.

3.6 Withdrawing the requirement to provide personal identifiers

3.6.1 Legal authority

Section 40(1) states that the regulations may provide that visas may only be granted in specified circumstances. Regulation 2.04(b) provides that, for s40(1), a visa may be granted to a person who has otherwise satisfied the relevant Schedule 2 criteria, and if the person has been required under s 257A to provide one or more personal identifiers:

- the person has complied with the requirement or
- the requirement has been withdrawn.

Where a delegate or an officer has required a person to provide personal identifiers, a delegate or officer may withdraw the requirement.

If a requirement has not yet been made, consideration can be given as to whether a person falls within any of the exemption categories - refer to [Exemption policy](#).

Under policy, any decision to withdraw the requirement to provide personal identifiers must be made by a delegate or officer at the following levels:

- Australian based officer overseas
- security cleared locally engaged officer overseas
- APS4, APS5, APS6, EL1, EL2 and SES Band 1 level officer in the Immigration Programs Branch.

3.6.2 Consideration of withdrawal

A delegate or officer at the appropriate level can consider withdrawing a requirement made under s257A(1) even if no request for withdrawal is made by a visa applicant. As regulation 2.04(b) does not prescribe any matters that a delegate or an officer must consider when deciding whether to withdraw a requirement made under s257A(1), it is for the delegate or officer to decide when to exercise the withdrawal power, taking into account the merits of a particular case and the following policy.

Grounds for withdrawal

Under policy, the three grounds for withdrawal are:

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- emergency and/or compassionate situations
- compelling circumstances affecting the interest of Australia
- operational reason to retract the requirement.

Operational reasons to retract the requirement made by a delegate or an officer under s257A(1)) to provide personal identifiers include situations where:

- the applicant is excluded or exempt from the Program under policy or
- a minor who is under five has been required to provide their fingerprints or
- the applicant is an incapable person or
- a requirement letter was otherwise sent to the applicant in error.

For further explanation of the other categories, refer to [Exemption discretion](#).

Requests by an applicant to withdraw the requirement to provide personal identifiers

As a matter of policy, requests to withdraw the requirement to provide personal identifiers must be made in writing (by letter, fax or email). If a request is received, a delegate or an officer may request further information from the applicant in order to ascertain the circumstances preventing the applicant from being able to comply with the requirement to provide personal identifiers.

Period within which withdrawal decision can be made

Under policy, a decision to withdraw a requirement made under s257A should not be made once the specified period in which an applicant was required to provide personal identifiers has expired. Therefore an applicant seeking withdrawal of a requirement made under s257A(1) should make their request before the specified period for compliance has expired. However, if a request for withdrawal is made by an applicant after the expiry of the specified period and a s65 delegate has not yet made a decision in relation to the visa application, the request can still be considered. Similarly, if there is an operational reason to retract the requirement, a delegate can make the decision to withdraw the requirement after the specified period for compliance has expired.

Combined visa applications

As each person included in a combined visa application is a visa applicant in their own right, if the same ground for withdrawal exists for each visa applicant, withdrawal of the requirement to provide personal identifiers will need to be considered for each applicant.

3.6.3 Notification of withdrawal decision and record keeping

If a delegate or an officer decides to withdraw the requirement without a request from an applicant (such as when there is an operational reason to retract the requirement), the applicant should be sent a letter advising of the withdrawal.

If:

- an applicant requests the withdrawal of the requirement and
- the delegate or an officer decides to withdraw the requirement
- the applicant should be sent a letter advising of the withdrawal. If a visa is ready for grant, advice of the withdrawal decision can be given at the same time as advice of the visa grant decision.

If:

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- an applicant requests the withdrawal of the requirement but
- the delegate or officer decides not to withdraw the requirement
- the applicant should be sent a letter advising of the decision not to withdraw the requirement.

Letter templates for the purpose of notifying of a withdrawal decision under regulation 2.04(b) are available in IRIS and the ECS.

Officers are to clearly record the following in IRIS or ICSE:

- when requests for withdrawal are received from applicants
- the withdrawal decision outcome and the reasons for it and
- when and how an applicant is notified of the outcome.

To enable reporting on withdrawals, it is important that officers record the relevant withdrawal information code in IRIS or ICSE.

The three information codes in both systems are:

W1: HA discretion: Emergency or compassionate situations

W2: HA discretion: Compelling national interest.

W3: HA discretion: Operational reason.

3.7 Consequences of failing to provide personal identifiers

Together, s40 of the Act and regulation 2.04 deal with circumstances in which a visa may be granted.

Briefly:

- s40(1) provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances (refer to regulation 2.04)
- those circumstances may include that the person has complied with a requirement to provide one or more personal identifiers made under s257A (s40(3))
- regulation 2.04 provides that a visa may be granted only if (among other things) the person has complied with a requirement made by a delegate or an officer under s257A to provide one or more personal identifiers
- the requirement in the dot point immediately above can be withdrawn (regulation 2.04(b)).

3.7.1 If an applicant does not provide their personal identifiers

When a visa applicant meets the criteria for the grant of a visa

The grant of a visa is not prevented by s40 of the Act, if an applicant who is outside Australia at the time of the application applies for a class of visa and:

- complies with a requirement to provide personal identifiers within the specified period or
- the requirement to provide personal identifiers is withdrawn.

When a visa applicant does not meet the criteria required for the grant of a visa

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If a delegate or an officer has required a visa applicant to provide their personal identifiers, and the applicant does not comply with the requirement within the specified period or the requirement has not been withdrawn, then the visa application must be refused under s65 of the Act because the grant of a visa is prevented under s40 (together with regulation 2.04) given the failure of the applicant to comply with a requirement made under s257A of the Act - refer to [Withdrawing the requirement to provide personal identifiers](#).

If an applicant is unable to provide their personal identifiers within that specified period they should contact the department to request an extension to that period before that period expires - refer to [Specified period for complying with a requirement to provide personal identifiers](#).

If the final day of the specified period falls on a weekend or public holiday, the applicant has until the next working day to provide their personal identifiers.

3.7.2 Notifying an applicant that their application has been refused

If the grant of a visa is prevented by s40 and a decision is made to refuse to grant the visa under s65, the usual procedures for notifying a person that their application has been refused are to be followed - refer to [LS-1818: Act - Code of procedure - Notification requirements](#).

Letter and decision record templates can be found in IRIS and ECS.

3.7.3 Review rights

No special review provisions apply to visas refused on the ground that an applicant did not comply with a requirement under s257A to provide personal identifiers.

A decision to refuse to grant a visa may be reviewable by the Administrative Appeals Tribunal (AAT) under s338 of the Act.

If a migration decision is reviewable by the Migration and Refugee Division of the AAT, decision makers should ensure that the notification letter directs the client to the AAT website (www.aat.gov.au). Links to relevant forms and publications on the merits review process will be available on that website.

If an applicant applies for review to the AAT, the AAT may invite the visa applicant to provide their personal identifiers. If an applicant complies with the AAT's request and provides their personal identifiers, it is open to the AAT to remit the matter to the department with a direction that the visa applicant satisfies s40(3) of the Act.

Refunds and record keeping

No special visa application charge refund provisions apply. To be eligible for a refund, an applicant must meet relevant criteria under Regulations Division 2.2A - refer to [FM-1209: Div2.2A - Visa application charge](#).

If a visa is refused, officers are to clearly record the following in IRIS or ICSE:

- the reasons for the visa refusal decision
- when and how an applicant is notified of the decision and
- if the decision was merits reviewable, confirmation that the applicant was directed to the AAT website for information on the merits review process (and actual webpage address if available).

3.8 Decision making after personal identifiers have been provided

3.8.1 Role of information obtained as a result of personal identifiers being collected

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Applications may be decided once all information, including any information received as a result of the department disclosing personal identifiers to other countries or organisations, has been taken into consideration. The power to grant or refuse to grant visa lies in s65 of the Act.

The legislative basis for refusing to grant the visa will depend on the grounds under s65 on which the decision maker is not satisfied. On 22 March 2014, a new provision was inserted into public interest criterion (PIC) 4020 (the integrity PIC) whereby a visa must not be granted unless the applicant satisfies the decision maker of their identity (PIC 4020(2A)). If, as a result of a biometrics match, a s65 delegate is not satisfied as to the identity of an applicant, the application may be refused under this provision.

For policy and procedure on the role of personal identifiers in the decision making process - refer to the 3.3 Decision Making - Match Assess Decide Standard Operating Procedures

For policy guidance on PIC 4020, refer to [VM-974: Sch4/4020 - The integrity PIC](#).

3.8.2 Overriding outstanding biometrics match results

Override policy

In limited circumstances, where personal identifiers have already been provided by an applicant, the need to wait for the biometrics match results can be overridden. This situation would usually arise where the circumstances of an applicant change to the point that they need to travel urgently.

Under policy, it is only CMOs/PMOs and Regional Directors at overseas posts and EL1 and EL2 program managers in onshore processing centres or higher level officers who may override unresolved biometrics match results.

Grounds for overriding

Grounds for overriding unresolved biometrics match results include:

- the need to travel urgently due to emergency or compassionate circumstances such as a death in the applicant's family in Australia, or where an Australian permanent resident or Australian citizen known to the applicant has a serious life threatening illness

or

- compelling circumstances affecting the interests of Australia

or

- circumstances where technical issues prevent the completion of the biometrics match process. This will be reported to post by the Biometric Resolution Centre by email within two Canberra working days. If there is a critical technical issue, posts may be provided with a blanket override. The decision for a blanket override will be made by the Assistant Secretary, Enterprise Biometrics Branch, and posts will be advised by email.

Applying for a visa at the last minute does not constitute emergency circumstances.

Criteria to be satisfied before overriding

If an applicant has lodged their application and provided their personal identifiers, the relevant officer (being also a s65 delegate) can grant a visa before biometrics match results have been received provided:

- they are satisfied that grounds for overriding exist
- the applicant is not subject to an unresolved external agency referral and

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- the applicant satisfies all relevant regulations Schedule 2 criteria for visa grant.

If the relevant officer exercises the override option, they are to make detailed case notes in IRIS or ICSE so that the evidence supporting the decision is clear and auditable.

If adverse information arises after visa grant

If adverse information about the visa holder's identity emerges after visa grant as a result of information provided by the Biometric Resolution Section, and that information would have changed the visa application outcome if it had been known, the relevant officer should:

- if the visa holder has not yet entered Australia, consider visa cancellation under s128 and the relevant s116 ground, add the person to the Central Movement Alert List (CMAL) and follow standard visa cancellation procedures or
- if the visa holder has entered Australia, refer the case to the Compliance manager in the relevant state/territory office in Australia and update CMAL accordingly

3.9 List of forms, letter templates and support material

Below is a table listing the forms, letter templates and support material for use under the Program, and where they can be located.

For letters that are only in TRIM, officers should copy and paste the templates into the letterhead of their own offices.

No.	Type	Name/Purpose	Location
1	Letter	Requirement to provide personal identifiers - s257A for the purpose of s40	IRIS and ECS
2	Form	Declaration and consent in relation to the disclosure of personal identifiers	TRIM
3	Form	Form 1243i (Your personal identifying information)	Departmental website
4	Letter	Response to request for extension of period in which to provide personal identifiers - s257A for the purpose of s40	IRIS and ECS
5	Letter	Notification of withdrawal decision - s40 and regulation 2.04(b)	IRIS and ECS
6	Letter	Notification of refused application - s40	IRIS and ECS
7	Decision record	Refusal of visa application - s40	IRIS and ECS

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No.	Type	Name/Purpose	Location
8	Support material - Standard operating procedures	IIB-1477 – Match Assess Decide IIB-1478 – Processing Biometrics using IRIS IIB-1480 – Processing Biometrics using ICSE	

4 Accountability and Responsibility

Role	Description
Assistant Secretary, Identity and Biometrics Capability Branch	Document Owner
Director, Biometrics and Data Exchange Section	Document Drafter

5 Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	1 January 2017	Director, Biometrics and Data Exchange Section	Amended to: - include guidance on consent and disclosure of personal identifiers - update wording to reflect changes to the Skilled Migration Temporary Activity visa framework from 19 November 2016, and - make other minor clarifications.
0.2	19 December 2019	Assistant Director, Biometrics and Data Exchange Section	Minor Amendments and change to new template

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
“the Act”		means the <i>Migration Act 1958</i>
“facial photograph”		means a photograph or other image of a person’s face and shoulders
“fingerprints”		means fingerprints of a person (including those taken using paper and ink or digital live scanning technologies)
“designated countries”		means countries currently selected for the Program
“overseas post”		means Australian overseas mission with an immigration presence
CMO	CMO	means Chief Migration Officer
PMO	PMO	means Principal Migration Officer
“the Program”		means the Offshore Biometrics Collection Program
“the Regulations”		means the <i>Migration Regulations 1994</i>
RD	RD	means Regional Director
SDP	SDP	means Service Delivery Partner
SMO	SMO	means Senior Migration Officer

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Attachment B – Assurance and Control Matrix

1.1. Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
Migration Amendment (Strengthening Biometrics Integrity) Act 2015	s257A	provides a discretionary power for an officer to require a person to provide personal identifiers, thus enabling the provisions of s494A to s494C to be enlivened when a delegate makes such a requirement	No	No
Migration Act 1958	s40(3)	Provides for circumstances for granting visas where a person has or has not complied with any requirement to provide one or more personal identifiers	No	No

1.2. Controls and Assurance

Related Policy	IIB-6206 – Enterprise Identity and Biometrics Program Policy Statement
Procedures / Supporting Materials	<u>Introduction to Biometric Acquisition and Enrolment Process</u> <u>Biometric Enrolment Training Material</u> IIB-1477 – Match Assess Decide IIB-1478 – Processing Biometrics using IRIS IIB-1480 – Processing Biometrics using ICSE
Training/Certification or Accreditation	Common Enrolment Platform (CEP) Training
Other required job role requirements	• CEP system access • ICSE • IRIS
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Biometrics and Data Exchange Section s. 47E(d) @homeaffairs.gov.au

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Escalation arrangements	Biometrics and Data Exchange Section s. 47E(d) @homeaffairs.gov.au
Recordkeeping (eg system based facilities to record decisions)	Officers are to clearly record in IRIS or ICSE: • the reasons why an applicant is exempt and • if the exemption discretion is exercised, the name and position of the officer who exercised the discretion. Refer to Section 3.3.3 of this document for further detail.
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	IIB-5144 – Enterprise Identity IIB-6453 – Department Image Quality Standard for Live Facial Capture
Job Vocational Framework Role	Program Implementation

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Attachment C – Consultation

1.1. Internal Consultation

- Identity and Biometrics Specialist Branch
- Identity and Biometrics Capability Branch
- Humanitarian Program Operations Branch
- Immigration Programs Division
- Commencement of Identity and Verification Centre
- Biometrics and Data Exchange Section
- IRIS Helpdesk
- ICSE Helpdesk

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