



OFFICIAL

Employer Compliance: Conducting Site Visits to Locate Evidential Material

Standard Operating Procedure

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1. Purpose

The purpose of this Standard Operating Procedure (SOP) is to:

- provide instruction on requirements when conducting site visits to locate evidential material related to an alleged contravention of a work-related provision of the *Migration Act 1958* (the Migration Act). (Reference: *Division 3 of Part 8E Investigation Powers Relating to Certain Offences and Provisions of the Migration Act*)
- outline tools and resources available to officers.

Note: This SOP must be read in conjunction with the [Employer Compliance – PI \(BE-6749\)](#) available on the Policy and Procedure Control Register (PPCR) and [EICOP SharePoint](#).

2. Scope

2.1. In scope

This SOP applies to Australian Border Force (ABF) Field Operations Officers conducting site visits for the purpose of locating evidential material. Officers are required to understand and comply with the instructions outlined in this SOP.

For the purpose of this SOP, the term “officer” refers to an ABF Field Operations officer unless otherwise stated.

2.2. Out of scope

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

This SOP does not provide instructions on investigating alleged work-related offences. Refer to the Investigations page on [EICOP SharePoint](#).

3. Introduction

Officers investigating an alleged contravention of a work-related provision of the Migration Act may choose to undertake a site visit for the specific purpose of locating evidential material an Authorised Officer (AO) reasonably suspects may be on any premises.

Subsection 487A(b) of the Migration Act defines evidential material in relation to a contravention of a work-related provision as:

- I. a thing with respect to which the provision has been contravened or is reasonably suspected of having been contravened; or
- II. a thing that it is reasonably suspected will afford evidence as to the contravention of the provision; or
- III. a thing that is reasonably suspected of being intended to be used for the purpose of contravening the provision.

4. Site Visit Objective

The objective of an employer compliance site visit is to search a premises and anything on the premises for evidential material the AO reasonably suspects may be on the premises.

Subsection 487D(2) of the Migration Act provides that an AO is not authorised to enter the premises unless the occupier of the premises has consented to entry and the AO has shown his or her identity card if required by the occupier, or under search warrant.

5. Delegation

The exercising of powers under *Division 3 of Part 8E Investigation Powers Relating to Certain Offences and Provisions* of the Migration Act, requires officers to be either delegated or an AO.

Under instrument *Australian Border Force (Secretary) No.1 of 2018* (ABF (S) No.1 of 2018), ABF Senior Border Force (APS5) or above level officers are delegated or AOs.

Refer to *ABF and Customs – Delegations and Authorisations* under the Delegations tab in LEGEND.

6. State of Mind Requirements

The exercise of some powers or performance of some functions related to site visits requires delegated officers or AOs to form a certain 'State of Mind'. Specific provisions of the Migration Act and state of mind requirements are outlined in the below table and relevant areas of this SOP.

AOs must ensure appropriate records are made with regard to the exercise of powers that require the AO to form a state of mind.

For more information, refer to 'State(s) of Mind' section of the [Field Operations: Powers under the Migration Act 1958 – SM \(BE-6800\)](#) available on the PPCR and [EICOP SharePoint](#).

Provision of the Migration Act	State of Mind Requirement
Subsection 487D(1)	Reasonably Suspects
Subsection 487F(1)	Reasonably Suspects
Subsection 487F(3)	Reasonably Believes
Paragraph 487G(2)(b)	Reasonably Believes
Paragraph 487G(2)(c)	Reasonably Believes
Subsection 487M(2)	Reasonably Believes
Paragraph 487Q(3)(b)	Reasonably Believes
Subsection 487S(2)	Reasonably Believes
Subsection 487S(5)	Reasonably Believes

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7. Identity (ID) Card

Under s 487ZG(1) of the Migration Act, the Secretary or ABF Commissioner must issue an ID card to an AO. The ID card must be carried at all times by that AO when exercising powers as an AO under Division 3 of Part 8E of the Migration Act.

For information about applying for an ID card, email the Field Operations and Sponsor Monitoring (FOSM) Governance and Coordination team [s.22\(1\)\(a\)\(ii\)@abf.gov.au](mailto:s.22(1)(a)(ii)@abf.gov.au).

Note: Only an AO holding a current ID card can lead a site visit. All other officers assisting are not known as AOs therefore do not need to carry their ID card with them during the conduct of the site visit.

8. Identifying Cases for a Site Visit

S. 47E(d)

9. Planning to Conduct a Site Visit

If consultation with the Field Operations Supervisor (APS6) or above has determined that a site visit (including the type) is the most appropriate course of action, the AO must commence planning to conduct their site visit.

The process for conducting site visits is based on the *ABF Operational Planning Framework* document available from the [Operational Planning Framework SharePoint](#).

Planning requires the AO to turn their mind to the following considerations and supporting documents

9.1. Considerations

S. 47E(d)

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9.1.1. Assistance required

Subsection 487H(1) of the Migration Act provides that an AO may be assisted by other persons when exercising powers or performing functions or duties under Division 3 of Part 8E, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the AO.

To determine the type of assistance that may be required when conducting a site visit, the AO must ensure their team includes appropriately trained/qualified officers to perform the following functions:

- Property officer (evidence officer or search coordinator)
- Photographer/videographer
- Digital forensics officer or other officer with appropriate experience to use electronic equipment (if applicable)
- Appropriate number of searchers commensurate to the size and type of search warrant operation
- Appropriate number of interviewing officers commensurate to the size and type of search warrant operation.

9.1.1.1. Powers of a person assisting the AO

Under s487H(2) and (4) of the Migration Act respectively, a person assisting the AO may enter the premises and exercise powers and perform functions and duties in relation to evidential material only in accordance with a direction (verbal or in writing) given by the AO.

Note: Under s487H(3) of the Migration Act, a power exercised or a function or duty performed by a person assisting the AO is taken for all purposes to have been exercised by the AO.

9.1.2. Operational safety and UoF

When considering operational safety and UoF for a site visit, the AO must refer to the [Operational Safety Order 2021](#) on the Home Affairs Intranet.

9.1.3. Work health and safety

Officers have duties and obligations under the *Work Health and Safety Act 2011*. Refer to the [Employer Compliance – PI \(BE-6749\)](#) available on the PPCR and [EICOP SharePoint](#).

9.1.4. Trespass

AOs and persons assisting must be aware of the laws relating to trespass.

Entering a property without the express or implied licence of the owner with the intention of carrying out an unauthorised purpose, for example taking photos or videos not authorised by the owner, would constitute trespass to land. All States and Territories have legislation that contains offences relating to trespass.

Where there is uncertainty, AOs and person's assisting should consult Legal Group.

9.1.5. Observers

Observers may be internal or external persons of the Department of Home Affairs (the Department) who have a business need to observe a site visit.

A Field Operation Supervisor (APS6) or above must provide approval for any observer to accompany the field team and observe the site visit. The approval, description of how approved observers will be managed and appropriate risk mitigation strategies must be outlined in the relevant operational plan and risk assessment.

Approved observers must not be involved and/or participate in the site visit (this means they are not performing any functions or exercising any powers under Part 8E of the Migration Act) and must obtain the occupier's informed consent to enter the premises. Observers must be made aware that informed consent in accordance with section 487D of the Migration Act does not apply to them.

Note: ABF Media Officers are not considered observers if they want to capture video, still or audio material.

9.1.6. Media presence

9.1.6.1. External media

The ABF Media and Communications section are responsible for coordinating all external media contact with and for the ABF.

If external media is interested in attending a site visit, they must be directed to the ABF Media and Communications Section. The ABF Media and Communications Section can be contacted by emailing [s.22\(1\)\(a\)\(ii\)@abf.gov.au](mailto:s.22(1)(a)(ii)@abf.gov.au) or phoning [s.22\(1\)\(a\)\(ii\)](tel:s.22(1)(a)(ii)).

Once approved by the ABF Media and Communications Section, further approval must be obtained from the relevant ABF Field Operations Superintendent so that legal risks and any risks to persons, property or to the potential success of the planned site visit can be considered.

External media attendance and a management process must be outlined in the relevant plan.

If external media are present at a site visit without prior approval/knowledge:

- Officers must not engage directly with members of the media and must direct any questions to the ABF Media and Communications Section.
- The AO leading the site visit must advise a Field Operation Supervisor (APS6) or above and the ABF Media and Communications Section of media presence.
- The AO leading the operation must assess the appropriateness of continuing the operation, having regard to Work Health and Safety considerations and privacy concerns.

9.1.6.2. Internal media

If ABF Media Officers wish to attend a site visit, approval must be sought from the relevant ABF Field Operations Superintendent so that legal risks and any risks to persons, property or the potential success of the planned site visit can be considered.

ABF media attendance and a management process must be outlined in the relevant plan.

9.1.6.3. Media entry to premises

If media (internal or external) attends a site visit, they must seek the occupier's consent prior to entering the premises. Officers should not become involved and must not suggest, in any way, that the media should or should not be allowed to enter.

9.2. Supporting documents

For each site visit, officers are required to complete a mandatory risk assessment (RA). The RA must be approved by the Field Operations Supervisor (APS6) or above as determined by the Risk Escalation Treatment Guide within the ABF Official Risk Register Template available on [EICOP SharePoint](#).

Depending on the complexity of the site visit, an appropriate plan must also be completed. Once complete, officers must seek to have this document approved by a Field Operations Supervisor (APS6) or above. For plan templates, refer to the ABF Operational Planning Framework available from the [Operational Planning Framework SharePoint](#).

Both the RA and plan must be saved in TRIM. All records must be saved in accordance with the [Records Management – PS \(TI-1094\)](#) and saved in TRIM or another electronic document and records management system compliant with the [Business Systems Development for Records Management Compliance – Policy Statement \(TI-6632\)](#).

10. Applying to Conduct a Site Visit

Once all planning elements have been completed including supporting documents, the AO must turn their mind to applying to conduct a site visit.

10.1. Entry by consent

If a decision is made to conduct a site visit where entry to the premises will be attempted to be made by consent, there is no legislatively prescribed application form. The operational policy requirement is that a Field Visit Application (FVA) online form within the Compliance, Case Management and Detention (CCMD) Portal must be completed.

Upon completion, the draft FVA must be submitted to a Field Operations Supervisor (APS6) or above for review.

10.1.1. Approval

After reviewing the FVA, and if they are satisfied, the Field Operations Supervisor (APS6) or above can approve the application. If they are not satisfied, they can send the application back to the applicant for re-work and re-submission.

10.2. Entry by search warrant

If a decision is made to conduct a site visit where entry to the premises will be by search warrant, the AO must complete an affidavit and a draft search warrant.

The affidavit and draft search warrant templates are available on [EICOP SharePoint](#).

Note: It is necessary to obtain a separate search warrant in relation to each set of premises. However, a single application or a single affidavit can seek warrants to search more than one set of premises, provided that does not cause confusion or ambiguity in the particular case.

Section 487ZC of the Migration Act provides the legislative requirements for:

- applying for a search warrant
- issuing a search warrant
- the content of a search warrant.

10.2.1. Affidavit and draft warrant review

Prior to submitting the affidavit and draft search warrant(s) to the issuing officer (IO), the AO must provide the affidavit and draft warrant to a Field Operations Inspector (EL1) or above for review.

After reviewing both documents, and if they are satisfied, the Field Operations Inspector (EL1) or above can provide approval to submit to the IO. If they are not satisfied, they can send the relevant document(s) back to the AO for re-work and re-submission.

Note: IO means a magistrate, or a Judge of the Federal Circuit and Family Court of Australia, or a Judge of the Federal Court.

10.2.2. Applying to the Issuing Officer

Under operational policy, each region is responsible for ensuring they have a process for contacting the relevant court to make appointments to submit affidavit and draft search warrant(s) to an IO. This means that if the intention is to execute a search warrant in NSW, the affidavit and draft search warrant(s) must be submitted to an IO in NSW.

10.3. CCMD Portal guidance

The proposed site visit (entry by consent/entry by search warrant) must be recorded in the CCMD Portal. Refer to 'CCMD s487ZC User Guides and Tutorials' available on [EICOP SharePoint](#) for instructions.

11. Conducting a Site Visit

11.1. Pre-site visit briefing

S. 47E(d)

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11.2. Gaining entry

Paragraph 487D(1)(a) of the Migration Act provides the legislative basis for gaining entry to a premises. To exercise this power lawfully, the AO must reasonably suspect that there may be evidential material on the premises.

However, subsection 487D(2) of the Migration Act specifies that the AO is not authorised to enter the premises unless:

- a) the occupier of the premises has consented to the entry and the AO has shown his or her identity card if required by the occupier; or
- b) the entry is made under a search warrant.

11.2.1. Entry by consent

Section 487L of the Migration Act sets out the meaning of 'consent' for the purposes of paragraph 487D(2)(a) of the Migration Act. The AO and persons assisting the AO must be aware of and comply with this provision when conducting entry by consent site visits.

Under s487L(1) of the Migration Act, before obtaining consent to enter the premises, the AO must inform the occupier that they may refuse consent to enter.

Consent has no effect unless the consent is voluntary (refer to subsection 487L(2) of the Migration Act).

Consent may be limited to a particular period (refer to subsection 487L(3) of the Migration Act).

Under s487L(5) of the Migration Act, the AO and any person assisting the AO must leave the premises if the consent is withdrawn. Consent may be withdrawn at any time during the site visit.

For more information on entry by consent, refer to section 5.2 (Gaining entry) of the [Field Operations: Non-warrant Operations – SOP \(BE-6743\)](#) available on the PPCR and [EICOP SharePoint](#).

11.2.1.1. UoF

When seeking to obtain consent to enter, the AO, or any person assisting the AO, are not permitted to use force against persons or things.

11.2.2. Entry by search warrant

When gaining entry to a premises by search warrant, the AO must be aware of and comply with the following provisions of the Migration Act.

11.2.2.1. Section 487M – Announcement before entry under search warrant

Before entering premises under a search warrant, the AO must:

- announce that he or she is authorised to enter the premises
- show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises
- give any person at the premises an opportunity to allow entry to the premises.

However, the AO is not required to comply with the above dot points if the AO reasonably believes that immediate entry to the premises is required to ensure the safety of a person or that the effective execution of the search warrant is not frustrated.

If the AO effects immediate entry to a premises and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the AO must show his or her identity card to the occupier or other person, as soon as practicable after entering the premises.

11.2.2.2. Section 487N – AO to be in possession of search warrant

The AO who is executing a search warrant must be in possession of the search warrant issued by the IO or a copy.

11.2.2.3. Section 487P – Details of search warrant etc. to be given to occupier

The AO must, as soon as practicable, make a copy of the search warrant available to the occupier or other person (which need not include the signature of the IO who issued it) and inform the occupier or other person of their rights and responsibilities under Subdivision D of the Migration Act.

11.2.2.4. Occupier's rights and responsibilities

To comply with section 487P of the Migration Act, the AO must provide the occupier with *Form 1564i: Section 487ZC search warrant powers – Information for occupiers*. This form is available via the forms tab in LEGEND and [EICOP SharePoint](#).

11.2.2.5. Section 487U – Occupier entitled to observe execution of the search warrant

AOs must be aware that the occupier, or another person who apparently represents the occupier, is entitled to observe the execution of the search warrant if the occupier or other person is present at the premises while the warrant is being executed.

The right to observe the execution of the search warrant ceases if the occupier or other person impedes that execution.

Note: The ability for the occupier to observe the execution of the warrant does not prevent the execution of the search warrant in 2 or more areas of the premises at the same time.

11.2.2.6. Section 487V – Occupier to provide AO with facilities and assistance

AOs must be aware that the occupier of premises to which a search warrant relates, or another person who apparently represents the occupier, must provide the AO executing the warrant and any person assisting the AO with all reasonable facilities and assistance for the effective exercise of their powers, and the effective performance of their functions and duties.

Under operational policy, the AO must inform the occupier that if they fail to provide the AO with reasonable facilities and assistance, they are committing an offence which carries a penalty of 30 penalty units.

11.2.2.7. UoF

Section 487J of the Migration Act provides power for an AO or a person assisting the AO to use force when conducting a search warrant site visit. The AO, or a person assisting the AO, **may** use force against **things** (for example, a door or a lock) as is **necessary** and **reasonable** in the circumstances to achieve the objective of locating evidential material.

Note: The AO or a person assisting the AO **cannot** use force against **persons**.

11.3. Searching for evidential material

Paragraph 487D(1)(b) of the Migration Act provides the power for an AO to search a premises. To exercise this power lawfully, the AO must reasonably suspect that there may be evidential material on the premises.

However, the AO is unable to exercise search powers unless they have gained lawful entry (by consent or by search warrant) to the premises.

11.3.1. Search powers

Section 487E of the Migration Act outlines the search powers an AO may exercise in relation to a premises to which they have gained lawful entry.

The AO must note that the power to search a premises and anything on the premises is restricted to

- Subsection 487E(a) entry gained by consent: the evidential material the AO reasonably suspects may be on the premises.
- Paragraph 487E(b)(i) entry gained by search warrant: the kind of evidential material specified in the warrant.

11.3.2. Conducting the search

After gaining lawful entry, the AO must direct officers assigned as searchers to commence their search.

Once an item of interest has been located, the searcher will request the presence of the photographer to take a still or moving image or recording of the item in situ. The searcher will bag and tag the item of interest and take it to the property officer.

Other search powers available to AOs whether entry is made either by consent or by search warrant include:

- Subsection 487E(c): power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material.
- Subsection 487E(d): power to make any still or moving image or any recording of the premises or evidential material.

Note: AOs and persons assisting AOs must be aware that any still or moving image or any recording of the premises or evidential material is considered evidence and must be retained and managed accordingly. Refer to **'Visual and Digital Evidence'** within the [Evidence Management – ABF Investigations – PI \(BE-2882\)](#) for additional information.

- Subsection 487E(e): power to take onto the premises such equipment and materials as the AO requires for the purpose of exercising powers in relation to the premises.
- Subsection 487E(f): powers set out in subsections 487F(1) and (2) and section 487G of the Migration Act. Refer to ['Powers relating to electronic equipment'](#).

11.4. Seizing evidential material

Paragraph 487E(b)(ii) of the Migration Act provides the AO power to seize evidential material of a kind specified in the warrant they find on the premises, but only if entry to the premises is by search warrant.

Evidential material cannot be seized if entry to the premises is made by consent. AOs can still exercise power under s487E(d) of the Migration Act and make any still or moving image or any recording of the evidential material.

Note: Some evidence may be subject to Diplomatic/Consular immunity or privilege. Refer to [Interaction with Diplomatic/Consular Personnel and Other Accredited Foreign Officials - PI \(BE-6910\)](#)

11.4.1. Recording the seizure of evidential material

The seizure of evidential material must be recorded in an Evidence Seizure Field (ESF) Book (Book 102). The ESF includes a seized property list (SPL) which must detail all evidential material seized during the execution of a search warrant.

Note: Only one appropriately trained officer must record the seizure of evidential material. This will ensure the security, preservation and accountability of the evidence until custody is transferred to another ABF officer (or another law enforcement agency), the evidence is entered into an evidence room facility or alternative approved storage location.

Refer to **'Evidence Location Slip and Evidence Seizure Field Book'** within the [Evidence Management – ABF Investigations – PI \(BE-2882\)](#) for additional information.

11.4.2. Evidential material not specified in the search warrant

Subsection 487G(2) of the Migration Act provides that where an AO enter a premises under a search warrant to search for evidential material, the AO may seize a thing that is not evidential material of a kind specified in the warrant if:

- a) in the course of searching for the kind of evidential material specified in the warrant, the AO finds the thing; and
- b) the AO reasonably believes that:
 - i. a related provision has been contravened with respect to the thing; or
 - ii. the thing is evidence of the contravention of a related provision; or
 - iii. the thing is intended to be used for the purpose of contravening a related provision; and
- c) the AO reasonably believes that it is necessary to seize the thing in order to prevent its concealment, loss or destruction.

11.4.3. Other Migration Act provisions relating to seizure

AOs must also be aware of the following provisions of the Migration Act relating to seizure.

11.4.3.1. Section 487W – Copies of seized things to be provided

This provision only applies if a search warrant is being executed and the AO seizes a document, film, computer file or other thing that can be readily copied or a storage device that contains information which can be readily copied.

Under s487W(2) of the Migration Act, the occupier of the premises, or another person who apparently represents the occupier and who is present when the search warrant is executed, may request the AO to give them a copy of the seized thing or information.

Under s487W(3) of the Migration Act, the AO must comply with the request as soon as practicable after the seizure.

Note: Under s487W(4) of the Migration Act, the AO is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

11.4.3.2. Section 487X – Receipts for seized things

An AO must provide a receipt to the occupier or other person for evidential material seized during the execution of a search warrant issued under sections 487ZC of the Migration Act. This is achieved by providing the occupier or other person with the **‘Owner/Representative’** carbon copy of the SPL.

11.4.3.3. Section 487Y – Return of seized things

Under s487Y(1) of the Migration Act, a Field Operations Senior Border Force officer (APS5) or above must take reasonable steps to return seized things when the earliest of the following happens:

- the reason for the thing's seizure no longer exists
- it is decided that the thing is not to be used in evidence
- a period of 60 days after the thing's seizure date.

Under s487Y(2) of the Migration Act, subsection 487Y(1) of the Migration Act is subject to any contrary order of a court and does not apply if the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

Under s487Y(3) of the Migration Act, a Field Operations Senior Border Force officer (APS5) or above is not required to return a thing following a period of 60 days after the thing's seizure date if:

- a) proceedings were instituted within the 60 days and have not been completed (including an appeal to a court in relation to those proceedings)
- b) the thing may continue to be retained because of an order under s487Z of the Migration Act
- c) the Commonwealth, the Secretary, the Australian Border Force Commissioner or an AO is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Under s487Y(4) of the Migration Act, a seized thing must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

11.4.3.4. Section 487Z – Issuing officer may permit a seized thing to be retained

Under s487Z(1) of the Migration Act, a Field Operations Senior Border Force officer (APS5) or above may apply to an IO for an order permitting the retention of a seized thing for a further period if:

- proceedings in respect of which the thing may afford evidence have not commenced within 60 days of the date of seizure; or
- a period previously specified in an order of an IO.

To apply, a Field Operations Senior Border Force officer (APS5) or above must consult with Migration and Citizenship (MC) Law by emailing ^{s. 22(1)(a)(ii)} @homeaffairs.gov.au to obtain an appropriate affidavit and draft order templates for completion and submitting to an IO. It is recommended to apply to the same IO who issued the search warrant (if available).

Under s487Z(2) of the Migration Act, before making the application, a Field Operations Senior Border Force officer (APS5) or above must take reasonable steps to identify person(s) interested in the retention of the seized thing(s) (for example, the occupier or other person who signed the SPL) and notify them of the proposed application if it is practicable to do so.

11.4.3.5. Section 487ZA – Disposal of seized things

A Field Operations Senior Border Force officer (APS5) or above may dispose of a seized thing if they have taken reasonable steps to return the thing to a person and they have been unable to locate the person or the person has refused to take possession of the thing.

A Field Operations Senior Border Force officer (APS5) or above may dispose of a seized thing in any manner that he or she thinks appropriate.

Refer to '**Disposal**' within the [Evidence Management – ABF Investigations – PI \(BE-2882\)](#) for additional information.

11.4.3.6. Section 487ZB – Compensation for acquisition of property

AOs must refer to MC Law by emailing ^{s. 22(1)(a)(ii)} @homeaffairs.gov.au for advice regarding compensation to a person.

11.5. Managing evidential material

AOs must ensure the management of evidential material located during a site visit is conducted in accordance with the:

- *Evidence Act 1995*
- [Australian Government Investigations S6706standard \(AGIS\) 2022](#)
- [Evidence Management – ABF Investigations – PI \(BE-2882\)](#)

- [Evidence Packaging Materials – ABF Investigations – SM \(BE-6706\).](#)

11.6. Powers relating to electronic equipment

Subsection 487F(1) of the Migration Act provides power to an AO to operate electronic equipment on the premises. The AO must reasonably suspect that the equipment or a disk, tape or other storage device on the premises can be used with or is associated with the equipment, contains evidential material referred to in paragraph 487E(a) or (b) of the Migration Act.

Subsection 487F(2) of the Migration Act provides power to an AO to:

- Seize the equipment or disk, tape or other storage device if entry to the premises is made under search warrant.
- Operate electronic equipment on the premises to put evidential material into documentary form and remove from the premises.
- Operate electronic equipment on the premises (provided written consent has been provided by the occupier) to transfer evidential material to a disk, tape or other storage device.

AOs must note that under:

- Subsection 487F(3), power under s487F(1) or (2) can only be exercised if the AO reasonably believes that operation of the equipment can be carried out without damaging the equipment.
- Subsection 487F(4), an AO may only seize equipment, a disk, tape or other storage devices if:
 - o it is not practicable to put the evidential material in documentary form or to transfer the evidential material, or
 - o possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

11.6.1. Section 487S – Expert assistance to operate electronic equipment

If an AO enters a premises by a search warrant issued under s487ZC of the Migration Act, under s487S(2), the AO may do whatever is necessary to secure any electronic equipment that is on premises if they reasonably believe that:

- there is on the premises evidential material of the kind specified in the search warrant
- evidential material may be accessible by operating the equipment
- expert assistance is required to operate the equipment
- evidential material may be destroyed, altered or otherwise interfered with, if they do not take action to secure the equipment.

The equipment may be secured by locking it up, placing a guard or any other means.

The AO must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the intention to secure the equipment and the fact that the equipment may be secured for up to 24 hours.

The equipment may be secured until the 24-hour period ends or the equipment has been operated by the expert.

11.6.1.1. Extension of the 24-hour period

Under s487S(5) of the Migration Act, the AO may apply to an IO for an extension of the 24-hour period if they reasonably believe that the equipment needs to be secured for longer than that period.

When applying, the AO must complete an affidavit and a draft extension order for submitting to an IO. It is recommended to apply to the same IO who issued the search warrant (if available).

Under s487S(6) of the Migration Act, before making the application, the AO must give notice to the occupier of the premises, or another person who apparently represents the occupier, of their intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

Under s487S(7) of the Migration Act, search warrants may be modified as necessary regarding the issue of an extension.

Under s487S(8) of the Migration Act, the 24-hour period may be extended more than once.

11.6.2. Section 487T – Compensation for damage to electronic equipment

AOs must refer to MC Law by emailing ^{s. 22(1)(a)(ii)} _____@homeaffairs.gov.au for advice regarding compensation for damage to electronic equipment if as a result of electronic equipment being operated:

- damage is caused to the equipment or the data recorded on the equipment
- programs associated with the use of the equipment or with the use of the data are damaged or corrupted,

and insufficient care was exercised:

- when selecting the person who was to operate the equipment
- by the person operating the equipment.

Note: In this section, damage, in relation to data, includes damage by erasure or addition of data.

11.7. Ask questions and request documents

Section 487K of the Migration Act provides power to the AO to ask questions and to seek the production of documents.

Note: This provision **does not provide power to interview persons.**

Note: AOs must be aware that they are required to provide persons with a copy of *Form 1442i Privacy Notice* prior to asking questions or seeking production of documents. Form 1442i is available via the FORMS tab in LEGEND in multiple languages.

11.7.1. Entry by consent

If entry is made to the premises by consent, the AO may ask the occupier to:

- answer any questions relating to the reasons for the AO entering the premises
- produce any document relating to the reasons for the AO entering the premises.

The AO must inform the occupier that they are under no obligation to answer any question and/or produce any document, however a record of their refusal to cooperate will be made.

11.7.2. Entry by search warrant

If entry is made to the premises by search warrant, the AO may require any person on the premises to:

- answer any questions relating to the reasons for the AO entering the premises
- produce any document relating to the reasons for the AO entering the premises.

The AO must inform any person that if they fail to answer questions and/or produce document(s) they are committing an offence that carries a penalty of 30 penalty units.

11.8. Material related to commission of criminal offences

The discovery of material relating to the alleged commission of criminal offences must be reported to the relevant law enforcement authority, such as state or federal police, as soon as practicable. These materials must not be handled or moved.

In cases where officers identify material that could relate to the commission of a criminal offence, they must make notes about the material to communicate to the relevant law enforcement authority including what was discovered and where/when it was discovered.

11.9. Completing execution of search warrants

11.9.1. After temporary cessation

Section 487Q of the Migration Act provides power to the AO to complete the execution of a search warrant which was temporarily ceased.

If the AO, and all persons assisting the AO who are executing a search warrant, temporarily cease its execution and leave the premises, they may return to complete the execution if the search warrant is still in force and the AO and persons assisting are absent from the premises:

- for not more than 1 hour
- if there is an emergency situation, for not more than 12 hours or such longer period as allowed by an IO
- for a longer period if the occupier of the premises consents in writing.

11.9.1.1. Application for extension in emergency situation

Subsection 487Q(3) of the Migration Act provides that the AO, or person assisting, may apply to an IO for an extension of the 12-hour period if there is an emergency situation and the AO or person assisting reasonably believe that the AO and the persons assisting will not be able to return to the premises within that period.

If it is practicable to do so, before making the application, the AO or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

Pursuant to section 487Q(5) of the Migration Act, the IO may extend the period during which the AO and persons assisting may be away from the premises if an application is made and the IO is satisfied by information on oath or affirmation, that there are exceptional circumstances that justify the extension, and the extension would not result in the period ending after the search warrant ceases to be in force.

11.9.1.2. Stopped by court order

Section 487R of the Migration Act provides power to the AO to complete the execution of a search warrant that has been stopped by an order of a court if the order is later revoked or reversed on appeal, and the warrant is still in force when the order is revoked or reversed.

12. Reviewing

12.1. After Action Review (AAR)

An AAR must be conducted as soon as practicable after the site visit has been concluded. The AO must determine if the AAR needs to be conducted while in the field immediately after the site visit, or on return to the office.

Documentation produced from the AAR must be saved in TRIM. The AO, in consultation with a Field Operation Supervisor (APS6) or above, is responsible for following up any issues raised during the AAR.

Templates and resources to assist in the AAR process can be found on the [ABF Operational Planning Framework SharePoint](#).

12.2. Reporting

12.2.1. Entry by consent

Following the conduct of a site visit where entry is made to the premises by consent, a detailed report must be prepared by the AO using the Field Visit Report (FVR) online form in the CCMD Portal. The report must:

- provide a detailed version of events that occurred during the conduct of the site visit, in particular noting any powers used and reasons for their use
- be completed for a site visit where entry by consent was not achieved or the premises was not visited
- be prepared and submitted to a Field Operation Supervisor (APS6) or above within 14 calendar days of the site visit being conducted
- be reviewed by a Field Operation Supervisor (APS6) or above within the 14 calendar day timeframe.

In exceptional circumstances, if the AO is unable to complete the FVR, another officer who assisted the AO on the site visit may complete the FVR.

12.2.1.1. Approval

After reviewing the FVR, and if they are satisfied, the Field Operations Supervisor (APS6) or above can proceed to approve the FVR. If they are not satisfied, they can send the FVR back to the applicant for re-work and re-submission.

12.2.2. Entry by search warrant

Following the conduct of a site visit where entry is made to the premises by search warrant, a detailed report on the search warrant execution must be prepared by the AO. There is no legislative basis or system based report template for this purpose, therefore the operational policy requirement is that each region is responsible for the creation of an appropriate report.

The report must:

- provide a detailed version of events that occurred during the conduct of the search warrant site visit, in particular noting any powers used, reasons for their use and how state of mind was formed/maintained
- be completed for a site visit where entry by search warrant was not achieved or the premises was not visited
- be prepared and submitted to a Field Operation Supervisor (APS6) or above within 14 calendar days of the site visit being conducted
- be reviewed by a Field Operation Supervisor (APS6) or above within the 14 calendar day timeframe.

In exceptional circumstances, if the AO is unable to complete the report, another officer who assisted the AO on the site visit may complete the report.

12.2.2.1. Approval

After reviewing the report, and if they are satisfied, the Field Operations Supervisor (APS6) or above can proceed to approve the report. If they are not satisfied, they can send the report back to the officer for re-work and re-submission.

The final approved report must be saved in TRIM and referenced in the relevant CCMD Field Action Comments field.

12.2.3. CCMD Portal guidance

Refer to 'CCMD s487ZC User Guides and Tutorials' available on [EICOP SharePoint](#) for instructions.

13. Record Keeping

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

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

13.1. ABF official notebooks

All officers are issued with and are required to maintain an ABF official notebook and/or diary, which is to be used to record events contemporaneously while undertaking any site visit.

Refer to [Official diaries and notebooks – PI \(BE-2978\)](#) on the PPCR.

14. Freedom of Information (FOI)

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

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

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

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

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

15. Privacy

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

The Privacy Act provides the legislative framework for the management of the collection, use and disclosure of both personal and sensitive information. The Department is bound by the Privacy Act. The Privacy Act establishes the *Australian Privacy Principles* (APPs), which regulate the collection, handling and protection of personal information, including sensitive information. All officers and contracted service providers dealing with these kinds of information must be aware of the Department's obligations under the APPs in the Privacy Act. The Privacy Act determines how officers must handle personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

APP 3 requires that the Department must only collect personal information (that is not sensitive information), where reasonably necessary, or directly related to, one or more of its functions or activities. The Department may only lawfully collect sensitive information where the above conditions are met and the individual concerned consents to the collection, or if an exception in APP 3.4 applies. Information about the Department's privacy policy and Form 1442i *Privacy Notice* is available on the Department's website at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>.

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

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

For further information, refer to:

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

16. Accountabilities and Responsibilities

Role	Description
Superintendent: Enforcement & Immigration Compliance Operational Policy section (Document Owner)	Accountable to Commander, Workforce Operational Policy and Practices Responsible for: • endorsing/approving Employer Compliance Standard Operating Procedures • verifying appropriate stakeholder consultation was undertaken during document drafting • directing regular evaluation of the document to ensure that it achieves the intended purpose

Role	Description
	monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect document content.
Field Operational Policy Team: Enforcement & Immigration Compliance Operational Policy section (Document Author)	Accountable to Superintendent, Enforcement and Immigration Compliance Operational Policy section. Responsible for: - drafting documents in compliance with the Policy and Procedure Control Framework (PPCF) - stakeholder consultation - addressing key requirements of the policy or procedure.
Field Operations Officers (APS4 to EL2): (Stakeholder)	Accountable to Commander Field Operations and Sponsor Monitoring Responsible for: - identifying the need for additions or amendments to the document and submitting the details to the Field Operational Policy team - ensuring attendance of subject matter experts (SME) at stakeholder consultation workshops - ensuring draft documents are reviewed and solution focussed feedback is provided within the specified timeframes - complying with the instructions outlined in this SOP.

17. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	15/07/2024	EICOP	Commence drafting
1	22/04/2025	EICOP	Approved by document owner
1.1	11/07/2025	EICOP	Update contact details for Migration and Citizenship Law section
1.2	14/10/2025	EICOP	Administrative Amendment - Update contact details for the FOSM Governance and Coordination team

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Authorised Officer	AO	Subsection 5(1) of the <i>Migration Act 1958</i> provides that an authorised officer when used in a provision of this Act, means an officer who has been authorised in writing by the Minister, the Secretary or Australian Border Force Commissioner for the purposes of that provision. Authorised officer authorisations are contained in the Delegations instruments, available on LEGEND.
Affidavit		A written legal statement made by a person that provides information to a court under oath or by affirmation for use as evidence in a court.
Compliance, Case Management and Detention Portal	CCMD portal	The CCMD portal is a departmental system used by staff from a range of business areas to record and manage all visa compliance, case management and detention client data and departmental decisions.
Evidential Material		Section 487A of the <i>Migration Act 1958</i> defines Evidential Material as: (a) in relation to a sponsorship-related offence or a work-related offence: - a thing with respect to which the offence has been committed or is reasonably suspected of having been committed; or - a thing that it is reasonably suspected will afford evidence as to the commission of the offence; or - a thing that is reasonably suspected of being intended to be used for the purpose of committing the offence; or (b) in relation to a contravention of a sponsorship-related provision or a work-related provision: - a thing with respect to which the provision has been contravened or is reasonably suspected of having been contravened; or - a thing that it is reasonably suspected will afford evidence as to the contravention of the provision; or - a thing that is reasonably suspected of being intended to be used for the purpose of contravening the provision.
Issuing Officer	IO	Section 487A of the <i>Migration Act 1958</i> defines an issuing officer as a magistrate or a Judge of the Federal Circuit Court and Family Court of Australia (Division 2) or a Judge of the Federal Court. A power conferred on an issuing officer under Division 3 of Part 8E of the <i>Migration Act</i> is in a personal capacity, and not as a court or a member of a court under s487ZH(1) of the <i>Migration Act</i> .

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Term	Acronym (if applicable)	Definition
Occupier		A person in possession of, or taking up a place in, an area encompassing a degree of control. Occupation does not require the control to be that of ownership. A caretaker, resident, manager, or other person in charge of the land or premise can be an occupier while the owner is not in occupation. The control necessarily includes the ability to exclude others. Occupation implies that the possession is current and is more than transitory. For vehicles or vessels, section 487A of the <i>Migration Act 1958</i> provides that 'occupier' means the person apparently in charge of the vehicle or vessel.
Premises		As defined in section 487A of the <i>Migration Act 1958</i>, premises includes a structure, building, vehicle, vessel, a place (whether or not enclosed or built on), or a part of one of those things.

Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

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

Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
The Migration Act	487D	Authorised officer may enter premises by consent or under a search warrant	Yes: AO	Australian Border Force (Secretary) No.1 of 2018 (ABF (S) No.1 of 2018)
The Migration Act	487E	Search powers of authorised officers	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487F	Powers relating to electronic equipment	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487G	Seizing evidence of the contravention of related provisions etc.	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487H	Persons assisting authorised officers	No	N/A
The Migration Act	487J	Use of force in executing a search warrant	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487K(1)&(2)	Authorised officer may ask questions and seek production of documents	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487L	Consent	No	N/A
The Migration Act	487M	Announcement before entry under search warrant	No	N/A
The Migration Act	487N	Authorised officer to be in possession of search warrant	No	N/A
The Migration Act	487P	Details of search warrant etc. to be given to occupier	No	N/A
The Migration Act	487Q(2),(3),(4)&(5)	Completing execution of search warrant after temporary cessation	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487R	Completing execution of search warrant stopped by court order	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487S(2),(3),(4),(5),(6)&(8)	Expert assistance to operate electronic equipment	Yes: AO	ABF (S) No.1 of 2018

Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
The Migration Act	487T	Compensation for damage to electronic equipment	No	N/A
The Migration Act	487U	Occupier entitled to observe execution of search warrant	No	N/A
The Migration Act	487V	Occupier to provide authorised officer with facilities and assistance	No	N/A
The Migration Act	487W	Copies of seized things to be provided	No	N/A
The Migration Act	487X	Receipts for seized things	No	N/A
The Migration Act	487Y	Return of seized things	Yes	ABF (S) No.1 of 2018
The Migration Act	487Z(1)&(2)	Issuing officer may permit a seized thing to be retained	Yes	ABF (S) No.1 of 2018
The Migration Act	487ZA	Disposal of seized things	Yes	ABF (S) No.1 of 2018
The Migration Act	487ZB	Compensation for acquisition of property	No	N/A
The Migration Act	487ZC(1)	Issue of search warrants	Yes: AO	ABF (S) No.1 of 2018
The Migration Act	487ZE	Authority of search warrant		N/A
The Migration Act	487ZG(1)	Identity cards	Yes	ABF (S) No.1 of 2018

1.2 Controls and Assurance

Related Policy	Business Systems Development for Records Management Compliance Policy Statement (TI-6632) Freedom of information – PS (SM-3357) Records Management – PS (TI-1094)
Procedures / Supporting Materials	Employer Compliance – PI (BE-6749) Field Operations: Powers under the Migration Act 1958 – SM (BE-6800) Field Operations: Non-warrant Operations – SOP (BE-6743) Evidence Management – ABF Investigations – PI (BE-2882) Evidence Packaging Materials – ABF Investigations – SM (BE-6706)
Training/Certification or Accreditation	Refer to Training in the Employer Compliance – PI (BE-6749)

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Other required job role requirements	Nil
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	Officers should seek assistance from a Field Operations Supervisor (APS6) or above in the first instance. Field Operational Policy (Connected Services Portal)
Escalation arrangements	Field Operational Policy (Connected Services Portal) s. 22(1)(a)(ii) @abf.gov.au
Recordkeeping (e.g. system based facilities to record decisions)	Total Records and Information Management (TRIM) (also known as Content Manager) Compliance Case Management and Detention (CCMD) Portal
Program or Framework (i.e. overarching Policy Framework or Business Program)	Nil
Job Family Framework Role	Field Operations Officer

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Attachment C – Consultation

1.1 Internal Consultation

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

1.2 External Consultation

- NIL



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Employer Compliance

Procedural Instruction

Document ID (PPN)	BE-6749
TRIM Record Number	s. 22(1)(a)(ii)
BCS Function	Border Enforcement
Document Owner	Commander, Field Operations and Sponsor Monitoring (FOSM)
Approval Date	30/09/2024
Document Contact	Field Operational Policy s. 22(1)(a)(ii) @abf.gov.au

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1. Purpose

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

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

2. Scope

2.1. In scope

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

For the purpose of this PI, the term:

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

2.2. Out of scope

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

3. Introduction

The employer compliance program supports government visa settings by:

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

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

4. Training

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

4.1. Section 487ZC search warrant

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

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

5. Operational Practices

5.1. ABF Operational Coordination and Planning

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

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

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

5.2. Operational Safety

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

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

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

5.3. Work Health and Safety

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

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

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

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

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

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

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

5.5. Interaction with Vulnerable Persons

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

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

5.5.1. Any Child Under 18

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

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

5.5.2. Human Trafficking, Slavery and Slavery-like Practices

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

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

6. Employer Compliance Activities

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

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

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

6.1. Authorised officers

In order to exercise powers related to employer compliance activities, officers may need to be an AO.

Officers must refer to the relevant instrument on LEGEND via the Delegations Tab to verify if they are an AO.

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

Officers can contact the FOSM Governance and Coordination team via email at s. 22(1)(a)(ii) [@abf.gov.au](mailto:abf.gov.au) to apply for an identity card.

6.2. Delegated officers

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

6.3. Employer awareness activities

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

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

6.4. Illegal worker warning notices

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

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

6.5. Notice issued under s487B of the Migration Act

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

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

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

6.6. Compliance notice

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

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

6.7. Infringement notice

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

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

6.8. Enforceable undertaking

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

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

6.9. Prohibition

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

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

6.10. Site Visits with informed consent

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

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

6.11. Section 487ZC search warrant

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

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

6.12. Civil and criminal penalties

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

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

6.12.1. Civil

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

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

6.12.2. Criminal

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

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

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

7. Recordkeeping

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

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

7.1. ABF official notebooks

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

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

8. Freedom of Information (FOI)

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

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

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

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

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

9. Privacy

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

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

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

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

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

For further information, refer to:

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

10. Accountabilities and Responsibilities

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

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11. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	11/04/2017	Field Operational Policy, ABF Governance	Transfer Employer Sanction PAMs into required PPCF format
0.2	06/06/2018	Legal Opinions Helpdesk	Legal comments and clearance
1.0	13/08/2018	Field Operational Policy, ABF Governance	Commander Endorsement
1.1	19/09/2018	Field Operational Policy, ABF Governance	Added Virtual Working Group to section 13.2
1.2	3/07/2020	Field Operational Policy	Removed Virtual Working Group section
2	13/10/2021	Field and Removals Operational Policy	Commander Endorsement
2.1	20/11/2023	EICOP	Commence mandatory PPCF three year review and Migration Amendment (Strengthening Employer Compliance) Act 2024 updates.
3	30/09/2024	EICOP	Approved by Commander Workforce Operational Policy & Practices
3.1	14/10/2025	EICOP	Administrative Amendment - Update contact details for the FOSM Governance and Coordination team

Attachment A – Definitions

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

Attachment B – Assurance and Control Matrix

1.1 Powers and obligations

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

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

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1.2 Controls and assurance

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

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Attachment C – Consultation

1.1 Internal consultation

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

1.2 External consultation

Nil



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Field Operations: Powers under the *Migration Act 1958*

Supporting Material

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1. Purpose

This Supporting Material (SM) provides officers with guidance on exercising powers related to field operations under the *Migration Act 1958* (the Migration Act).

Note: This SM must be read in conjunction with field operations operational policy documents available on the [Policy and Procedure Control Register](#) (PPCR) and [EICOP SharePoint](#):

For the purpose of this SM, the term “officer” refers to an Australian Border Force (ABF) Field Operations officer unless otherwise stated.

2. Introduction

Common law provides all persons with protection against:

- trespass
- assault
- invasion of privacy
- theft
- loss of freedom of movement.

The Migration Act provides officers with express powers, such as those to enter, search, seize or detain, that may override the common law protections if executed lawfully.

In using these powers, officers need to be aware of the scope of the power, when it is appropriate to use the power and the requirements for the use of the power.

Officers must understand the relevant migration law, and consider the policy requirements when using these powers.

3. Non Migration Act Powers

Officers should be aware they might have other powers available to them under other legislation (including but not limited to) the *Customs Act 1901* (the Customs Act), the *Criminal Code Act 1995* (the Criminal Code), *Fisheries Management Act 1991* (Fisheries Management Act) and *Torres Strait Fisheries Act 1984* (Torres Strait Fisheries Act), for example:

- section 210 of the Customs Act – Power of arrest
- subsection 147(1) of the Criminal Code – Causing harm to a Commonwealth public official
- subsection 147(2) of the Criminal Code – Threatening to cause harm to a Commonwealth public official
- subsection 149(1) of the Criminal Code – Obstruction of Commonwealth public officials
- subclause 8(1) of Schedule 1A of the Fisheries Management Act – Power to detain
- subclause 8(1) of Schedule 2 of the Torres Strait Fisheries Act – Power to detain.

4. Delegations and Authorisations

All delegations and authorisations referenced in this document are found on [LEGEND](#). Officers can access LEGEND through the [Home Affairs Intranet page](#) by searching for LEGEND or adding a

LEGEND link to their *Quick Links* bar. Once in LEGEND, click the *Delegations* box link. The Delegations page will have 3 options to choose from. Officers should select the *Australian Border Force (ABF) and Customs – Delegations and Authorisations* box link. This page has a table of contents, click the *ABF Broadbanded Delegations and Authorisations* link which will take officers to the delegations and authorisations instruments referenced in this document. The delegations and authorisations instruments relevant to officers are:

- Australian Border Force (Minister) Delegations and Authorisations 2018 (ABF (M) No.1 of 2018)
- ABF (S) No.1 of 2018.

5. Bridging E Visa

Bridging E Visa (BVE) 050 is intended to allow an unlawful non-citizen who is an eligible non-citizen to lawfully remain in Australia temporarily for a specific purpose.

Refer to [Bridging visas – Visa application and related procedures – PI \(VM-3142\)](#) and [PAM 3 – Compliance and Case Resolution Instructions – Programme visas – Bridging E visas - PI \(VM-1036\)](#) available on the PPCR.

6. Section 18 – Obtain Information and Documents about Unlawful Non-citizens

Section 18 of the Migration Act provides delegated officers with the power to require a person or entity, by issue of a notice in writing, to give information or produce documents (including making copies of documents) which are relevant to ascertain the identity or whereabouts of a person the Minister has reason to believe is an unlawful non-citizen (UNC).

6.1. Who can exercise

To lawfully issue a notice under s18, officers must be delegated. As per instrument ABF (M) No.1 of 2018, ABF Officers APS1 to SES3 are delegated to exercise power under s18. Section 18 requires officers to form a state of mind of reason to believe. To exercise this power, policy also requires delegated officers to have successfully completed at a minimum the state of mind course ABF-SOM.

Note: ABF-SOM is an on-line state of mind course which is part of the Border Force Officers (BFO) Foundations training available on OurPeople. It is a core module which must be completed by all designated BFOs.

6.2. Required state(s) of mind

The officer exercising the power must have reason to believe that the:

- person (or entity) is capable of providing information or documents, and
- information and/or documents requested is/are relevant to ascertaining the identity or whereabouts of another person, and
- other person is a UNC.

Refer to [State\(s\) of Mind](#) for further information.

6.3. Warrant requirements

A warrant is not required to exercise power under s18.

6.4. Recording use of power

Officers must record use of power under s18 by completing:

- a section 18 notice template which is available on [EICOP SharePoint](#). A copy of the completed notice must be saved in Total Records Information Management (TRIM) and referenced in the Compliance, Case Management and Detention (CCMD) Portal, or
- the pre-populated template in the CCMD Portal.

6.5. Ceasing / ending provision

There is no ceasing or ending provision associated with exercising this power.

6.6. Additional information

For additional information, refer to the Field Operations: Obtaining Information/ Documents using Section 18 of the Migration Act 1958 – SOP (BE-7124) available on the PPCR and [EICOP SharePoint](#).

7. Section 116 – Power to Cancel

Section 116 of the Act sets out certain situation-specific grounds for cancelling visas. Broadly, these grounds turn on the fact that either:

- the visa holder was never entitled to hold the visa or
- the visa holder is no longer entitled to hold the visa.

This cancellation power is either discretionary or mandatory (depending on the circumstances) and may be exercised only after certain legislated procedural requirements have been met.

Refer to [General visa cancellation powers \(s109, s116, s128, s134B and s140\) - PI \(VM-991\)](#) available on the PPCR.

8. Section 188 – Lawful Non-citizen to Give Evidence of Being So

Section 188 provides officers with the power to require a person whom the officer reasonably suspects is a non-citizen, to present evidence of being a lawful non-citizen (LNC) or evidence of their identity.

8.1. Who can exercise

An officer for the purposes of the Migration Act can exercise this power. It is not a delegated power. Section 188 requires officers to form a state of mind of reasonable suspicion. To exercise this power, policy requires officers to have successfully completed at a minimum the state of mind course ABF-SOM.

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Note: ABF-SOM is an on-line state of mind course which is part of the BFO Foundations training available on OurPeople. It is a core module which must be completed by all designated BFOs.

8.2. Required state(s) of mind

The officer exercising the power must know or reasonably suspect the person is a non-citizen.

Refer to [State\(s\) of Mind](#) for further information.

8.3. Warrant requirements

A warrant is not required to exercise power under s188.

8.4. Recording use of power

Officers must record use of power under s188 in their official notebooks or the Located Person Interview (LPI) form.

s. 47E(d)

8.5. Ceasing / ending provision

There is no ceasing or ending provision associated to exercising this power.

8.6. Additional information

When exercising this power, officers must inform the person they know or reasonably suspect them to be a non-citizen and state that under s188 of the Migration Act, they require them to provide evidence of their immigration status and/or identity.

Note: If not exercising power under s188, an officer can ask someone questions without requiring special authority, if the information sought is reasonably necessary for, or directly related to, the Department's function or activities. This is different to requiring a person to present evidence. The person can be asked the question, but they do not need to answer it.

9. Section 189 – Detention of Unlawful Non-citizens

Section 189(1) provides officers with the power to detain a UNC.

9.1. Who can exercise

There is no delegation associated with exercising this power. However, under policy only an ABF officer who has successfully completed the required training can exercise power under s189(1). Without the necessary training, an officer will not be in a position to ensure that they have the state of mind required under s189(1) to detain a person.

Refer to Training section of [Field Operations – PI \(BE-6712\)](#) available on the PPCR and [EICOP SharePoint](#).

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9.2. Required state(s) of mind

The officer exercising the power must know or reasonably suspect the person is a UNC. Knowledge and reasonable suspicion represent two different states of mind. Officers must continue to hold one of the above states of mind for the exercising of this power to remain lawful.

Refer to [State\(s\) of Mind](#) for further information.

9.3. Warrant requirements

A warrant is not required to exercise power under s189.

9.4. Recording use of power

Officers will generally record use of power in the LPI form available on [EICOP SharePoint](#).

s. 47E(d)

9.5. Ceasing / ending provision

The ability to lawfully exercise power under s189 ceases if the officer no longer holds the required state of mind.

9.6. Additional information

The exercise of this power is mandatory, as indicated by the use of the term must detain in section 189(1) of the Migration Act.

This power can be exercised by officers in a variety of contexts as long as the person is in the migration zone, other than an excised offshore place (for example, in the field, at an airport or seaport, a departmental office or in a prison).

Refer to the [Field Operations: Detaining Located Persons – SOP \(BE-6901\)](#) available on the PPCR and [EICOP SharePoint](#).

10. Section 192 – Detention of a Visa Holder Whose Visa is Liable to Cancellation

Section 192(1) provides officers with the power to detain a non-citizen who holds a visa that may be cancelled under specified subdivisions or provisions of the Migration Act.

10.1. Who can exercise

There is no delegation associated with exercising this power. However, only an ABF officer who has successfully completed the required training can exercise power under s192. Without the necessary training, an officer will not be in a position to ensure that they have the state of mind required under s192 to detain a person.

Refer to Training section of [Field Operations – PI \(BE-6712\)](#) available on the PPCR and [EICOP SharePoint](#).

10.2. Required state(s) of mind

The officer exercising the power must:

- know or reasonably suspect the non-citizen holds a visa that may be cancelled under Subdivision C, D, FA or G of Division 3 or sections 501, 501A, 501BA, and
- reasonably suspect that if an immigration cleared non-citizen is not detained, the non-citizen would:
 - o attempt to evade the officer and other officers; or
 - o otherwise not co-operate with officers in their inquiries about the non-citizen's visa and matters relating to the visa.

Knowledge and reasonable suspicion represent two different states of mind. Officers must continue to hold one of these states of mind, and the detention must not exceed the [four-hour time limit](#) for the exercising of this power to remain lawful.

Refer to [State\(s\) of Mind](#) for further information.

10.3. Warrant requirements

A warrant is not required to exercise power under s192.

10.4. Recording use of power

Officers must record use of power on a Located Person Interview (LPI) form. Officers must also complete *Section 192 detention acknowledgement (Form 1468)* and *Questioning detention s192 of the Migration Act 1958 (Form 1469)* available on LEGEND. Completed forms must be saved in TRIM.

10.5. Ceasing / ending provision

The ability to lawfully exercise power under s192 ceases in any of the following circumstances:

- the officer no longer holds the required state(s) of mind
- as soon as the officer becomes aware that the non-citizen's visa is not one that may be cancelled under subdivision C, D, FA or G of Division 3 or subsections 501, 501A, 501BA
- if the person's visa is cancelled and an officer forms the required state of mind in association with another Migration Act detention power (for example, section 189)
- when the [four-hour time limit](#) for section 192 detention has expired
- when it becomes apparent that an immigration cleared person is willing to cooperate and will not attempt to evade the officer (that is, is no longer covered by section 192(2)).

If an immigration cleared person is released from section 192 detention because an officer no longer holds a reasonable suspicion that they would be uncooperative or attempt to evade officers, and they continue to hold a visa that is subject to cancellation, they should be invited to attend an office or other appropriate place at a suitable time.

In all cases, it needs to be made clear to the person that they are no longer being detained under s192 of the Migration Act.

10.6. Additional information

The exercise of this power is discretionary, as indicated by the use of the term 'may detain' in section 192(1) of the Migration Act.

This power can be exercised by officers in a variety of contexts as long as the person is in the migration zone, other than an excised offshore place (for example, in the field, at an airport or seaport, a departmental office or in a prison).

Under legislation, an officer may detain a person under s192 on the basis that they know or reasonably suspect the person's visa may be cancelled under:

- section 109 (incorrect information)
 - o refer to [General visa cancellation referrals \(excludes 501\)](#) on the Home Affairs Intranet for referral information
- section 116 (general power to cancel)
 - o this cancellation power can be used by field officers
- section 134 (cancellation of business visas)
 - o cancellation of a visa under s134 is a complex process. In all cases, the Business Monitoring Unit must be contacted by emailing s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) to undertake the cancellation
- sections 501, 501A or 501BA (cancellation on character grounds)
 - o section 501 decision making is limited to the section 501 delegate role in the National Character Consideration Centre (NCCC). Contact the NCCC by emailing [s.22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) for further information.

Officers must ensure a person detained under s192 is provided with a *Section 192 detention acknowledgement (Form 1468)* available on LEGEND, to advise them about the purpose of the detention and the [four-hour time limit](#).

If the person requests to talk to a third party or requests medical attention or time to rest and recuperate, the officer:

- must explain that this means questioning will be delayed, and
- invite the detainee to sign a *section 192 detention acknowledgement (Form 1468)* as an acknowledgement that they have been advised of this fact.

If an interpreter is used, the interpreter must be asked to interpret the contents of the detention acknowledgement form for the non-citizen. Officers must make a note, including the TIS job number and ID number, that an interpreter was used to explain the detention acknowledgement form to the non-citizen.

10.7. Reasonable suspicion – non-cooperation with inquiries

An officer may reasonably suspect that a non-citizen would not cooperate with inquiries if, for example, they:

- have a history of being uncooperative
- were in the presence of another person who:
 - o was in a position of power over the non-citizen
 - o did not want the non-citizen to cooperate with inquiries in relation to their visa (for example, the other person frequently intervening either by words or actions to prevent inquiries).

10.8. Not immigration cleared

A person who held a visa when they entered Australia but failed to comply with the immigration clearance requirements will be subject to section 174 and their visa will cease. If the person has not been granted another visa, they will be unlawful and must be detained under s189 rather than section 192.

10.9. The four hour time limit for section 192

A person can be detained under s192 for no more than four hours in any 48-hour period. If a visa cancellation decision cannot be made within this time limit the person (visa holder) must be released.

A person may be detained more than once in a 48-hour period provided the total period of detention does not exceed the four-hour time limit.

10.9.1. Time not counted in the four hour period

Section 192(7) provides that the following times are not counted towards the four-hour time limit:

- if the detainee is detained at a place that is inappropriate for questioning, the time it reasonably takes to transport the detainee to an appropriate place for questioning
- the time that the detainee, or someone else on the detainee's behalf, may require in order to communicate with a legal practitioner, friend, relative, guardian, interpreter or consular representative from the detainee's country of citizenship
- the time it would take for the person (listed in the previous dot points, e.g. legal practitioner, friend, interpreter) to arrive at the place of questioning
- the time required to allow the detainee to receive medical attention, recover from intoxication or reasonable time to otherwise rest and recuperate.

10.10. Communicating with a third party

If the detainee has indicated that they wish to communicate with a third party (including legal practitioners) before continuing with an interview or responding to a Notice of Intention to Consider Cancellation, but that third party cannot be contacted, the four-hour limit may be suspended until such contact is made. Interviewing should not continue during this period.

It is open to a section 192 detainee to ask that the interview recommence without having contacted their solicitor or taken any other action permitted by section 192(7). Officers should take care not to place any pressure on the detainee to continue the interview and ensure that the detainee understands the options available to them.

10.11. Unreasonable requests for assistance

It may become clear that the detainee's request for a third party to attend the interview is unreasonable. For example, if the detainee continually delays the interview by requesting different legal practitioners who are unavailable, or makes unreasonable requests to have a third party attend the interview who is interstate or overseas.

In such instances, officers may consider carrying out the checks and enquiries that can reasonably be undertaken without the detainee's cooperation and decide whether to cancel the visa based on the available information. Officers must document in their official notebooks or the LPI any unreasonable requests and reasons for continuing with the detention for the purposes of interviewing.

11. Section 251 – Enter and Search

Section 251 of the Migration Act provides broad powers of entry, search and seizure to ABF officers via the issue and execution of a search warrant. The provisions of section 251 relevant to field operations are:

- section 251(4): the Secretary or ABF Commissioner can issue a search warrant in accordance with the prescribed form
- section 251(5): limits the period of time that a warrant can remain in force for up to three months
- section 251(6): outlines the circumstances and purpose under which a warrant holder may seek to exercise power to enter, search and seize
- section 251(7): provides officers power to stop any vessel or vehicle
- section 251(8): provides that an officer may use such reasonable force as is necessary for the exercise of powers under s251.

11.1. Who can exercise

As per instrument ABF (S) No.1 of 2018, ABF officers EL1 to SES3 can exercise power under s251(4). To exercise this power, policy also requires delegated officers to have also successfully completed Warrant Delegate Training.

There is no delegation associated with exercising power under s251(5).

There is no delegation associated with exercising power under s251(6). The power under s251(6) can be exercised by an officer for the purposes of the Migration Act. Under policy, only an officer (APS5 or above) who has successfully completed Warrant Holder Training will be issued with a section 251 search warrant, therefore can exercise power under s251(6). All other officers participating in the operation and undertaking activity such as entering, searching or seizing must do so under the direction of the Warrant Holder.

There is no delegation associated to exercising power under s251(7).

There is no delegation associated to exercising power under s251(8).

11.2. Required state(s) of mind

The officer exercising the power must have reasonable cause to believe there may be found at a specified location:

- a UNC, a remove or a deportee, and/or
- a person being the holder of a temporary visa with a work limitation condition attached, and/or
- documents exist as specified in paragraphs 251(6)(c) or (d).

Refer to [State\(s\) of Mind](#) for further information.

11.3. Warrant requirements

A warrant is required to exercise power under s251.

11.4. Recording use of power

Officers must record use of power under s251 in their official notebooks or the LPI form [s. 47E\(d\)](#)

11.5. Ceasing / ending provision

There is no ceasing / ending provision for subsections 251(4), 251(5), 251(7) and 251(8).

The ability to lawfully exercise power under s251(6) ceases if the officer no longer holds the required state(s) of mind and/or if the issued search warrant is no longer in force.

11.6. Additional information

Refer to the [Field Operations: Search Warrant Operations under Section 251 of the Migration Act 1958 – SOP \(BE-6742\)](#) on the PPCR and [EICOP SharePoint](#).

12. Section 252 – Search of Persons

Paragraph 252(1)(a) provides authorised officers (AO) power to search a detained person, and/or the person's clothing and/or any property under the immediate control of the person.

12.1. Who can exercise

As per instrument ABF (M) No.1 of 2018, ABF officers APS1 to SES3 who are AOs can exercise power under s252. Authorised officers must be of the same sex as the person being searched.

Refer to Training section of [Field Operations – PI \(BE-6712\)](#) available on the PPCR and [EICOP SharePoint](#).

12.2. Required state(s) of mind

There is no state of mind requirement to perform a search of a person, their clothing or property, however as the person being searched must be detained in Australia, AOs must be aware of any state of mind requirements associated with that detention.

To perform a lawful search, AOs must establish that one or both of the following purposes exist:

- to find out whether there is hidden on the person, in their clothing or in property under their immediate control, a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from immigration detention.

Examples of weapons may include, but are not limited to guns, replica guns, knives, machetes, clubs or ammunition.

Things capable of being used to inflict bodily injury may include pocketknives, razor blades, syringes, fireworks, disabling sprays, scissors and other cutting implements, and substances that might be used for the purpose of self-harm.

- to find out whether there is hidden on the person, in the clothing or in the property, a document or other thing that is, or may be, evidence for grounds for cancelling the person's visa.

12.3. Warrant requirements

A warrant is not required to exercise power under s252.

12.4. Recording use of power

AOs must record use of power under s252 in their official notebooks s. 47E(d)

12.5. Ceasing / ending provision

The ability to lawfully exercise power under s252 would cease when the:

- person is no longer detained
- search is complete
- purpose of the search is no longer one of the purposes listed in section 252(2).

12.6. Additional information

Section 252(3) provides AOs with the power to detain a person for the specific purpose of conducting a search under s252. It is expected that a person subjected to a search under s252(1) would already be detained under s189(1) or s192. It is not appropriate for AOs to use the power under s252(3) to satisfy the detention requirement under paragraph 252(1)(a).

A search of a person, their clothing or property under their immediate control cannot be conducted for any other purpose other than those provided for under s252 of the Migration Act. For example, a search cannot be conducted to:

- investigate the commission of an offence under the Migration Act
- locate a travel or identity document.

A pat down search is not a strip search and does not include body cavities, for example the mouth. It does not permit the removal of any clothing or require a person to remove any of his or her clothing. A person's clothing means the garments or apparel worn by the person.

The Migration Act does not expressly require the search of any property under the immediate control of the person to be conducted by an AO. However, under s252(4), only an AO may seize (take possession) and retain a weapon, document or other thing found in the course of a search under s252. Property may include but is not limited to:

- a handbag or carry bag
- unworn clothing
- personal adornments, for example watches and jewellery
- sporting equipment
- musical instruments.

If an AO of the same sex as the person to be searched is not available, any other person of the same sex as the person to be searched may conduct the search, but only if they:

- are requested to do so by an AO
- agree to conduct the search.

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In these circumstances, departmental policy is that an AO should ask one of the following persons to conduct the search:

- another departmental officer (even if they are not an AO)
- a police officer who is readily available or involved in the operation.

Searches are to be carried out away from the view of the general public and other persons who may be authorised to be within the vicinity of the place at which the search is to take place (for example, other departmental officers or police officers) but whose presence is not required for the purpose of the search.

12.7. Taking possession of, and retaining weapons, documents and other things

Section 252(4) allows an AO, who, in the course of a search, finds an item mentioned in subsection 252(2)(a) or (b) may:

- take possession of it
- retain it for as long as the officer thinks necessary for the purposes of the Migration Act (that is, to achieve the purpose for which the item was seized).

12.7.1. Taking possession of weapons

Planning and preparation for any field operation must include consideration of the possibility of a weapon being found. If there is any indication that a weapon might be found during a search of a person, local law enforcement officers must be invited to be part of the search team.

When taking possession of weapons, an AO must adopt a cautious approach consistent with WHS standards.

Police should be contacted immediately for assistance whenever an AO finds a dangerous weapon on a person, or in clothing the person is wearing. When waiting for police to attend, AOs should:

- make notes in their official notebook at the time the evidence is found and its location
- photograph or video the evidence in situ where appropriate, and
- ask for an acknowledgement by the owner/occupant in respect of the find and make appropriate notations in their official notebook.

If an AO takes possession of any weapon, they must, when safe to do so, give the person a *Form 41 Property Receipt*.

12.7.2. Taking possession of documents and other things

If the item is on the person, or in their clothing or in property in the immediate control of the person, the AO should remove it from the person, if it is safe to do so.

If it is not safe to take the item away from the person, all officers should immediately withdraw from the situation and contact the police. In doing so, the following should be taken into consideration:

- officer safety
- safety of the person
- safety of the general public in the vicinity
- containment of a violent situation, and
- de-escalation of the situation.

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If an AO seizes any document or other thing, they should, when safe to do so, give the person a *Form 41 Property Receipt*.

12.7.3. Retention of weapons and other things

If items have been retained by the police, only the relevant police organisation can make a decision about retaining or returning weapons in their possession.

If items have been taken under s252(4), an AO should retain such items only for as long as they think it is necessary for the purposes of the Migration Act. The AO should take steps to return items when the threat (if any) posed by the item no longer exists.

The return of items should be done in consultation with the person and take into account the contracted detention service provider's procedures for storing such items.

Depending on the nature of the item, the person may not be permitted to have the item in their possession or in storage in a detention facility. In these circumstances the person should be consulted regarding other options for the handling/storage of the item, such as authorising another person to receive the item.

When seized articles are returned to their owners, a *Form 41 Property Receipt* is to be completed and distributed in accordance with the instructions on the form.

12.8. Things of interest to other law enforcement agencies

During a section 252 search, documents or other things of interest to other law enforcement agencies might be found, (for example, narcotics, and/or plant/animal materials). AOs have no authority to seize such items.

Refer to *Material related to the commission of criminal offences* in the [Field Operations: Search Warrant Operations under Section 251 of the Migration Act 1958 – SOP \(BE-6742\)](#) on the PPCR and [EICOP SharePoint](#).

13. Section 254 – Removees and Deportees Held in Other Custody

Section 254 provides officers a discretionary power to provide a person a written notice advising them that they will be kept in immigration detention from the time that they are released from other custody.

13.1. Who can exercise

As per instrument ABF (S) No.1 of 2018, ABF officers APS1 to SES3 are delegated to exercise the power under s254(4).

13.2. Required state(s) of mind / lawful criteria

There is no state of mind requirement to exercise power under s254 of the Migration Act. However, the person to whom the notice is going to be issued must meet the definition of a *removee* or *deportee* under s5(1) of the Migration Act, and be held in custody in accordance with another Act.

13.3. Warrant requirements

A warrant is not required to exercise power under s254.

13.4. Recording use of power

Officers must record use of power under s254 by completing a section 254 notice template available on [EICOP SharePoint](#).

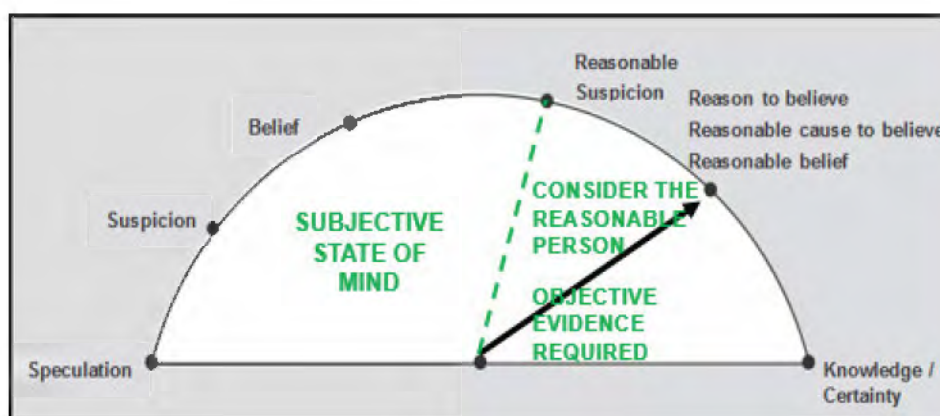
13.5. Ceasing / ending provision

There is no ceasing or ending provision associated with power under s254 of the Migration Act.

14. State(s) of Mind

14.1. State of mind spectrum

The state of mind spectrum consists of multiple levels (shown below), each of which has a legal definition that is used to guide operational application of the law.



Set out below are definitions for the states of mind that are specified in the Migration Act or have been referred in case law. They form the spectrum from the least satisfied measure (speculation) through to knowledge, which is defined as a state of mind where an officer's thoughts equal reality.

14.2. Speculation – idle wondering

Speculation is a state of mind where an officer wonders whether something is so. There is no positive feeling. They are simply asking the question. It is a suggestion that is fanciful, without any proper basis on material before the decision maker.

14.3. Irrationality (illogicality)

Making a finding or decision that no logical or rational decision-maker could have made. That is, an officer's finding or decision in the circumstances is not supported by the evidence or information available to them at the time. Just because someone else may not reach the same finding or decision does not mean that their finding or decision was irrational or illogical. Put simply, irrationality or illogicality will generally arise if it is not open to the officer, based on the materials or evidence before

them, to make a particular finding or decision. There is no rational or logical connection between the evidence or materials and the finding or decision made.

14.4. Suspicion

A suspicion is less than certainty, knowledge, or a belief but more than a speculation or an idle wondering. A suspicion has been described as a state of conjecture or surmise or a slight opinion but without sufficient evidence. An officer has a slight opinion about a certain state of affairs. They can have a suspicion even if they are wrong.

14.5. Belief

A belief is an inclination to accept rather than reject a proposition. It is less than knowledge (a person can believe something while having some doubt about it), but it is more than mere suspicion.

14.6. Reasonable suspicion

For a suspicion to be reasonable, it should be:

- a suspicion that a reasonable person has formed, having regard to all the circumstances
- based on an objective consideration of relevant and available material.

For an officer to form a reasonable suspicion, it is not necessary for them to establish certainty or even (reasonable) belief. The reasonableness of the suspicion will depend on the circumstances of the case. It will be judged on the facts that were known or reasonably capable of being known by the officer at the time.

It is irrelevant that the information relied upon may later be found to be incorrect. An officer's suspicion may be right, but then again, it may be wrong. In both cases it can still be held to be a reasonable suspicion, provided it is based on information, however slight, which could cause another person to reach the same suspicion.

There is an expectation that in order for the suspicion to be reasonable, all available means of gathering information are explored by the officer. Verbal statements from the person of interest are considered to be an information source.

The officer cannot disregard information that is contradictory to their formation of suspicion. They must consider and weigh all information that they have, or could reasonably be expected to attain, in relation to the person of interest.

Having ascertained information, the question is whether that information afforded reasonable grounds for the suspicion which the officer formed. In answering that question, regard must be had to the source of the information and its contents seen in the light of the whole of the surrounding circumstances.

Reasonable suspicion that a person is a UNC is the most common ground used for detaining a person under s189. It must be formed or held by the officer who detains a person under s189.

What constitutes sufficient enquiries for establishing reasonable suspicion that a person is a UNC will depend on the circumstances. For example, it may not be possible to make detailed enquiries during a field operation. In any event, officers should undertake any enquiries that are reasonably possible.

If an officer formed a suspicion that a person was a UNC based on checking one departmental system, but did not check another departmental system when it would have been reasonable to do so, they may not have carried out sufficient checks to hold a reasonable suspicion.

14.6.1. Special circumstances around reasonable suspicion

Non-compliance with immigration clearance or requirement to provide personal identifier (section 190)

Section 190 specifies certain circumstances where an officer will be taken to have a reasonable suspicion that a person in Australia is a UNC (and therefore must be detained under s189).

Section 190(1) provides that for the purposes of section 89, a reasonable suspicion will be held if the officer knows, or suspects on reasonable grounds, that the person was required to comply with section 166 and did one or more of the following:

- bypassed, attempted to bypass or appeared to bypass immigration clearance
- went to a clearance authority but was not able to present or provide, or otherwise did not present or provide, evidence required by section 166 to be presented or provided
- went to a clearance officer but was not able to comply with, or did not otherwise comply with, any requirement referred to in section 166 to provide one or more personal identifiers to the clearance officer.

Section 190(2) provides that for the purposes of section 189, a reasonable suspicion will be held if a person fails to provide a personal identifier under s257A of a type or types prescribed, and the prescribed circumstances exist.

Section 166 of the Migration Act requires all persons arriving in Australia to present or provide evidence (including personal identifiers), or information, of their identity and immigration status including passport, incoming passenger card and/or visa to a clearance authority.

Section 250 suspected offenders

Section 250(2) provides that for the purposes of section 189, a reasonable suspicion will be held if a person is a 'suspect' as defined in section 250(1). A suspect means a non-citizen who:

- travelled to, or was brought to, the migration zone
- is reasonably believed by an authorised officer to have been on board a vessel (not being an aircraft) when it was used in connection with the commission of an offence against an Australian law.

Most commonly, this applies to unauthorised maritime arrival crew but could also apply to illegal foreign fishers, people smugglers or traffickers.

Although a person may be reasonably suspected to be a UNC for the purposes of section 189, officers must turn their minds to whether the non-citizen may be taken to hold an enforcement visa by virtue of section 164B(1). This may be the case, for example, if the person is on a foreign vessel outside the migration zone and a fisheries officer requires the master of the vessel to bring or take the vessel into the migration zone, or exercises their power to bring the vessel into the migration zone.

14.7. Reasonable cause to believe

A reasonable cause to believe is a state of mind that must be based on objective criteria. That is, there must be facts and/or circumstances that would cause a reasonable person in the same position as the decision maker to hold that same belief.

Reasonable cause to believe is whether a reasonable person would have formed that belief, having regard to all the circumstances. It is not whether the officer exercising the power believed but whether it was, on the facts and circumstances.

Although the three states of mind – reasonable belief, reason to believe and reasonable cause to believe all have the same meaning, it is important to use the term referred to in the relevant part of the legislation when exercising a power under that legislation.

14.8. Knowledge (certainty)

This knowledge must be supported by evidence that can be viewed and interpreted by other people in the same way as you interpret it.

Knowledge is a state of mind, based on sufficient proof as to the existence of a state of affairs. In a detention context, knowledge is where an officer forms the state of mind that a person is a UNC.

An officer can have knowledge of something only if there is sufficient proof, based on the available evidence that points, without doubt, to a fact. For example, knowledge that a person may be a UNC may be established by proof that the person does not hold a visa that is in effect.

To establish knowledge that a person is a UNC, officers should ask themselves:

1. Is the person a non-citizen?
2. Does the person hold a visa?

Only when an officer can definitively answer yes to the first question and 'no' to the second can the officer 'know' that the person is a UNC.

As it is difficult to establish absolute knowledge, officers should instead consider detaining persons under s189 by relying on 'Reasonable Suspicion'.

14.9. What does 'reasonable' mean?

The term reasonable is used in many different ways. A definition which is most akin to the term reasonable in the context of reasonable suspicion and reasonable belief, is 'supported or justified by fact or circumstance.'

14.10. Definition of 'reasonable person'

A reasonable person:

- normally exercises due care while avoiding extremes of both audacity and caution
- has the attributes of being reasonably well educated, prudent and reasonably intelligent and is not expected to have specialist knowledge
- is in the position of the officer forming the state of mind, so is given attributes of that officer (for example, the training and experience).

A reasonable person is not the same as the 'average person' as the average person is not necessarily guaranteed always to be reasonable. The reasonable person will weigh all of the following factors before acting:

- all of the available facts and evidence
- the risk of any actions, and the likelihood of any actions causing harm
- any alternatives of lesser risk
- the costs of those alternatives.

Taking such actions requires the reasonable person to be appropriately informed, capable, aware of the law, fair-minded and objective in certain circumstances.

15. Recordkeeping

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

For more information on record keeping responsibilities, please view [policies on the PPCR](#), [guidance](#) on the Home Affairs Intranet, or contact the Records team by emailing 20110000@homeaffairs.gov.au.

16. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	02/03/2021	EICOP	Draft document created based on content taken from the Field Operations (Field Compliance) PI (BE-5351) during the mandatory 3 year PPCF review
1	7/10/2021	EICOP	Final document – endorsed by Superintendent
1.1	31/05/2023	EICOP	Update state of mind training requirement for sections 18 and 188
1.2	25/06/2024	EICOP	Commence mandatory 3 year PPCF review
2	15/08/24	EICOP	EICOP Superintendent Approved



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Field Operations: Non-Warrant Operations

Standard Operating Procedure

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1. Purpose

The purpose of this Standard Operating Procedure (SOP) is to:

- provide instruction on requirements when undertaking non-warrant field operations to ensure they are conducted in a lawful manner
- outline tools and resources available to officers.

Note: This SOP must be read in conjunction with the [Field Operations – PI \(BE-6712\)](#) available on the Policy and Procedure Control Register (PPCR) and [EICOP SharePoint](#).

2. Scope

This SOP applies to non-warrant field operations and the Field Operations Officers conducting them. Officers are required to understand and comply with the instructions outlined in this SOP.

For the purpose of this SOP, the term “officer” refers to an Australian Border Force (ABF) Field Operations officer unless otherwise stated.

3. Planning

The process for undertaking non-warrant field operations is based on the *ABF Operational Response Framework* contained in the *ABF Operational Planning Framework* document available from the [Operational Planning Framework SharePoint](#). Officers must apply these principles.

Planning requires officers to turn their minds to the logistical requirements of the non-warrant field operation, such as (but not limited to):

- considerations
- the reason for the visit
- supporting documents.

3.1. Considerations

When deciding whether to apply to conduct a non-warrant field operation, officers must consider if this is the most appropriate option.

If applicable, officers must also consider any assistance required to undertake the non-warrant operation, the laws of trespass, ways to minimise disruptions, the participation of approved observers, and internal or external media presence.

3.1.1. Appropriateness

Even though approval to conduct a non-warrant field operation as the best option may have already been provided, officers should continue to consider the necessity to conduct the operation or whether the reason for the visit could be achieved by other means.

3.1.2. Assistance required

The officer leading the operation may seek assistance necessary to conduct the non-warrant field operation. Assistance may be sought from agencies and persons including:

- other ABF or departmental officers
- Australian Federal Police

- State/Territory police services.

In determining what type of assistance may be required when conducting a non-warrant field operation, officers must consider:

- an appropriate size team, including an appropriate gender balance
- inclusion of officers who have a current and valid operational safety qualification
- inclusion of officers from external agencies.

3.1.3. Operational safety – Use of force (UoF)

When considering operational safety and UoF in a non-warrant field operation, officers must refer to the [Operational Safety Order](#) on Home Affairs Intranet or the [Operational Safety Capability SharePoint](#).

3.1.4. Trespass

When conducting a field operation, officers must be aware of the laws of trespass.

A trespass to property consists of any unjustifiable intrusion by one person onto premises in the possession of another person. Both of these elements must exist:

- The entry must be unjustified (for example, a search warrant or an invitation by the occupier to enter would be justification); and
- A trespass can only occur against an occupier.

This SOP provides guidance regarding gaining entry without a warrant.

3.1.5. Minimising disruptions

The conduct of any field operation should result in minimal disruption to the lives or business of the property's lawful occupant(s) if they are not a person of interest (POI).

3.1.6. Observers

Observers may be internal or external persons who have a business need to observe a non-warrant field operation.

A Field Operation Supervisor (APS6) or above must provide approval for any observer to accompany the field team and observe the non-warrant field operation. The approval, description of how approved observers will be managed and appropriate risk mitigation strategies must be outlined in the relevant operational plan and risk assessment.

Approved observers must not be involved and/or participate in the non-warrant field operation and must obtain the lawful occupant(s) informed consent to enter the location.

Note: ABF Media Officers are not considered observers if they want to capture video, still or audio material.

3.1.7. Media presence

3.1.7.1. External media

The ABF Media and Communications Section are responsible for coordinating all external media contact with and for the ABF.

If there is external media interest in attending a non-warrant field operation, they must be directed to the ABF Media and Communications Section. The ABF Media and Communications Section can be contacted by emailing [s. 22\(1\)\(a\)\(ii\)@abf.gov.au](#) or phoning [s. 22\(1\)\(a\)\(ii\)](#).

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Once approved by the ABF Media and Communications Section, further approval must be obtained from the relevant ABF Field Operations Superintendent so that legal risks and any risks to persons, property or to the potential success of the planned operation can be considered.

External media attendance and a management process must be outlined in the relevant plan.

If external media are present at a non-warrant operation without prior approval/knowledge:

- officers must not engage directly with members of the media and must direct any questions to the ABF Media and Communications Section
- the officer leading the operation must advise a Field Operation Supervisor (APS6) or above and the ABF Media and Communications Section of media presence
- the officer leading the operation must assess the appropriateness of continuing the operation, having regard to WHS considerations and privacy concerns.

3.1.7.2. Internal media

If ABF Media Officers wish to attend a non-warrant field operation, approval must be sought from the relevant ABF Field Operations Superintendent so that legal risks and any risks to persons, property or the potential success of the planned operation can be considered.

ABF media attendance and a management process must be outlined in the relevant plan.

3.1.7.3. Media entry to private premises

If media (internal or external) attends a non-warrant field operation, they must seek the lawful occupant's consent prior to entering the premises. Officers should not become involved and must not suggest, in any way, that the media should or should not be allowed to enter.

3.2. Reason for visit

Each non-warrant field operation must have a reason for the visit.

This could be for the purpose of, but is not limited to:

- conducting outreach visits to counsel persons regarding their rights and obligations or to provide assistance in resolving status issues
- locating suspected unlawful non-citizens (UNCs)
- locating persons whose visas may be liable for cancellation
- interviewing POIs
- interviewing a person they believe may have information regarding a POI
- interviewing a person for intelligence purposes
- conducting observations.

3.3. Supporting documents

For each non-warrant field operation, officers are required to complete a mandatory risk assessment (RA). The RA must be approved by the Field Operations Supervisor (APS6) or above as determined by the Risk Escalation Treatment Guide within the ABF Official Risk Register Template s. 22(1)(a)(ii).

Depending on the complexity of the non-warrant field operation, an appropriate plan must also be completed. Once complete, officers must seek to have this document approved by a Field Operations Supervisor (APS6) or above. For plan templates, please refer to the ABF Operational Planning Framework available from the [Operational Planning Framework SharePoint](#).

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Both the RA and plan must be saved in TRIM. All records must be saved in accordance with the [Records Management – PS \(TI-1094\)](#) and saved in TRIM or another electronic document and records management system compliant with the [Business Systems Development for Records Management Compliance – Policy Statement \(TI-6632\)](#).

If the decision is to include planning details in the FVA, refer to “[Details to be included in the FVA](#)”.

4. Applying

4.1. Application process

There is no legislatively prescribed form on which to apply to conduct a non-warrant field operation. However, under departmental procedures, an application to conduct a non-warrant field operation is completed on the FVA online form within the Compliance, Case Management and Detention (CCMD) Portal.

Upon completion, an officer (applicant) will submit the draft FVA to a Field Operation Supervisor (APS6) or above for review.

4.2. Details to be included in the Field Visit Application

A FVA includes:

- name of the applicant
- name of officer leading the operation if different to the applicant including a reason for the different officer name
- the type of non-warrant field operation (e.g. residential, business)
- the location of the visit
- the intended date and time of the visit
- reason for the visit
- TRIM references for supporting documents (Note: RA is mandatory)
- name of approving officer.

The applicant must record any operational planning details must be recorded in the “reason for the visit” field using the Command, Control and Coordination (C3) principles.

4.3. Approval

After reviewing the FVA, and if they are satisfied, the Field Operation Supervisor (APS6) or above can proceed to approve the application. If they are not satisfied, they can send the application back to the applicant for re-work and re-submission.

5. Conducting

5.1. Pre-Op briefing

The officer leading the operation must hold a Pre-Op briefing before every non-warrant field operation. This will usually be done in the office, however it can also take place in the field or another location if officers have to travel long distances to conduct the non-warrant field operation. The Pre-Op briefing must be given to all officers who are participating in the non-warrant field operation and they should take notes in their ABF official notebooks.

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It is the responsibility of the officer leading the non-warrant field operation to ensure any material handed out during the briefing/operation is returned.

Information provided in the Pre-Op briefing includes, but is not limited to:

- date, time and location of non-warrant field operation
- specific identifiers for the location (street address, building description, etc.)
- detailed information (including intelligence holdings) regarding POIs/ address(s) and travel related documentation
- risk identification and mitigation
- location of the closest emergency services and contact numbers
- assigned roles
- method of transport including details of vehicles being used
- rest stops to be used
- any external attendees (police, Ombudsman, Serco, etc.)
- joint operation information – who the lead for the operation is
- exit strategy
- equipment and dress requirements
- UoF details, including who the UoF officers are
- First Aid officer.

5.2. Gaining entry

Common law provides that unless there is lawful authority to enter, every entry onto private property or into a vessel or vehicle without the informed consent of the lawful occupant(s) may constitute a trespass.

At common law, a lawful occupant's informed consent to a person entering their property for a particular purpose(s) will constitute a lawful authority to enter. The person's presence on the property would not constitute trespass while they are engaged in the particular purpose(s).

For officers conducting operational activity on private property without a search warrant, their lawful presence on that property must be based on consent.

The long-established common law is that "local custom" can determine whether the occupier has given informed consent to enter, provided the local custom is reasonable. For example, in an Australian suburb there is probably implied consent to enter past the boundary to knock on the front door or to enter a shop displaying an open sign.

Informed consent must then be sought from the lawful occupier in order to gain further entry into the premises. It requires that the person giving informed consent understands what is being asked of them and the implications of providing or withholding consent.

In order to provide informed consent for the entry to a property, the lawful occupant(s) must be advised of:

- the purpose of the visit
- details as to who is/are the POI/s
- action that officers may undertake while they are on the premises
- the number of officers who are seeking to enter the property
- of any observers and their purpose for attending.

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In addition, the lawful occupant(s) must be advised that they have the right to:

- refuse to give informed consent for officers to enter the property
- request the officers to leave the property at any time.

Officers are to record these discussions in their ABF official notebooks.

Note: The lawful occupant should have the capacity to understand and communicate their informed consent. For example, issues that could affect an individual's capacity to consent may include age, mental/ physical impairment or limited understanding of English.

5.2.1. Identifying the lawful occupant(s)

Lawful occupant(s) may include:

- the owner of the property
- a person to whom the owner has given the right to live in the property
- a person to whom the owner has given the right to control the property.

In many tenancy or sublet situations, the owner will not have authority to give informed consent to enter as they are not the lawful occupant(s) at the time the officer(s) is (are) seeking to enter the property/premises.

Note: Officers do not have the power to request proof of occupancy, therefore must rely on their own judgement when identifying the lawful occupant(s).

5.2.1.1. For single dwellings

If there is more than one lawful occupant, officers need informed consent from all lawful occupants who are present.

5.2.1.2. For multi dwellings

If the premise consists of multiple private residences connected by common areas, including a common entry point, such as an apartment block, then informed consent to enter the common area of an apartment complex by one lawful occupant can be provided. However, that consent does not imply consent to enter individual apartments.

If any lawful occupiers of those premises revoke consent to common areas, officers must leave unless the lawful occupier of the individual apartment being visited has given informed consent. Officers must leave by the shortest reasonable route available.

Officers need to be satisfied that the person giving informed consent to the common areas is a lawful occupier and is not a visitor.

If informed consent to enter a common area is given by a lawful occupant other than the lawful occupant of the individual apartment being visited, officers must record this interaction in their ABF official notebooks. The notebook entry must include the name of the person granting entry, their address and the conversation held in order to obtain informed consent.

Once officers reach the door of the apartment of the person(s) they are seeking to visit, they need informed consent from all lawful occupiers present at that apartment before entering.

5.2.2. Initial entry

An officer's presence on private property is unlikely to be considered to be trespassing if the officer is:

- entering the property for the purpose of asking the lawful occupant(s) whether the officer can enter
- leaving the property after having been refused consent to enter the property, or if consent has been revoked while the officer is on the premises/property.

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When first approaching a property on a non-warrant field operation, it is allowable to enter a property to seek the informed consent of the lawful occupant(s) for the entry to and continued presence on the premises. Officers must leave the premises immediately, via the shortest reasonable route, if informed consent is not given or it is clear that they no longer have consent to remain on the property.

Wandering around or delaying entering or leaving a premise in order to engage in other activities (for example, looking through windows, checking mailboxes or conducting a rudimentary search) would be unreasonable and may constitute a trespass.

5.2.3. Withdrawal of consent

Informed consent to enter, or to remain on a property/premises, ceases if any the lawful occupant(s) withdraws or revokes their consent.

This may happen:

- explicitly, by the lawful occupant(s) asking the officer to leave the property/premises
- if there are multiple lawful occupants present and one of these lawful occupants asks the officer to leave the property/premises
- implicitly, by the lawful occupant or one of the lawful occupants indicating by their actions or gestures that the officer should leave the property/premises. For example, if the lawful occupant(s) waves their arm in a dismissive way and then shuts the door.

5.3. Search and seizure

An officer who enters a property/premises by informed consent has no lawful authority to conduct a search or to seize items unless informed consent is also provided by the lawful occupant(s) to do this, and they have legal capacity to give that consent.

If an officer sees things or documents in plain view that would justify the issue of a s251 search warrant, that information may be recorded and used to form the basis for a future s251 search warrant application.

5.3.1. Material related to the commission of criminal offences

If an officer sees material relating to the alleged commission of criminal offences, this must be reported to the relevant authorities as soon as practicable. These materials should not be handled or moved.

In cases where officers identify material that could relate to the commission of a criminal offence, they must make notes of the material to communicate to the relevant authorities, such as the police, being sure to include:

- what was discovered
- where/ when it was discovered.

5.3.1.1. Videoing or taking photos of material related to the commission of criminal offences

Officers must be aware that there is no legislative power to video or take photos of things. In cases where officers identify material that could relate to the commission of a criminal offence, they should:

- make notes of the material to communicate to others, such as the police
- inform any assisting police officers, if present
- seek informed consent from the lawful occupant(s) prior to any videoing or taking of photos
 - o if provided, any videoing or taking of photos is limited to the suspected material.

5.3.2. Material related to alleged contraventions or breaches of the Migration Act

If an officer sees material that may relate to other alleged contraventions or breaches of the Migration Act (such as evidence of worker exploitation), officers may seek consent from the lawful occupant(s) to take the material.

5.3.2.1. Documents related to non-compliance with visa conditions

If an officer sees documents relating to non-compliance with visa conditions (such as no work condition 8101), officers can ask the owner of the document for their consent to take the document or a copy.

Officers must record the request and the response of the person in their ABF official notebooks. Even where the document pertaining to the non-compliance of the visa condition cannot be obtained, visa cancellation may still commence provided that the outcomes of the field operation are properly recorded.

5.4. Conducting interviews of located persons

Refer to [Interviewing Located Persons – SOP \(BC-5436\)](#) on the PPCR for instructions on interviewing located persons and the use of the Located Person Interview (LPI) form.

5.5. Undertaking observations

s. 22(1)(a)(ii), s. 47E(d)

Officers must record observations in their ABF official notebook.

5.5.1. Observational activities and trespass

The same considerations regarding trespass apply to observational activities and non-warrant field operations. Officers should ensure that they do not inadvertently trespass on a property when conducting observations.

In addition, permission should be sought from the appropriate lawful occupier(s) if officers are required to enter or pass through another property in order to conduct an observation. For example, if officers are required to enter a neighbouring property in order to verify entry and exit points for a property of interest.

Entry to places or businesses that are normally open to the public is permissible.

6. Reviewing

6.1. After Action Review

An after action review (AAR) must be conducted as soon as practicable after the non-warrant field operation has been concluded. The officer leading the operation must determine if the AAR needs to be conducted while in the field immediately after the operation, or on return to the office.

Documentation produced from the AAR must be saved in TRIM. The officer leading the operation, in consultation with a Field Operation Supervisor (APS6) or above, is responsible for following up any issues raised during the AAR.

Templates and resources to assist in the AAR process can be found on the [Operational Planning Framework SharePoint](#).

6.2. Field Visit Report

Following the conduct of a non-warrant field operation, a detailed report must be prepared by the officer leading the operation using the Field Visit Report (FVR) online form in the CCMD Portal. The report must:

- provide a detailed version of events that occurred during the conduct of the non-warrant field operation, in particular noting any powers used and reasons for their use
- be completed for non-warrant field operations in cases where the location was not visited
- be prepared and submitted to a Field Operation Supervisor (APS6) or above within 14 calendar days of the non-warrant field operation being conducted
- be reviewed by the Field Operation Supervisor (APS6) or above within the 14 calendar day timeframe.

In exceptional circumstances, if the officer leading the operation is unable to complete the FVR, the note taker or a senior officer involved in the non-warrant operation may complete the FVR.

7. Recordkeeping

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

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

7.1. ABF official notebooks

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

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

8. Freedom of Information (FOI)

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

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

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

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

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

9. Privacy

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

The Privacy Act provides the legislative framework for the management of the collection, use and potential disclosure of both personal and sensitive information. The Department is bound by the Privacy Act. The Privacy Act establishes the *Australian Privacy Principles* (APPs), which regulate the collection, handling and protection of personal information, including sensitive information. All officers and contracted service providers dealing with these kinds of information must be aware of the Department's obligations under the APPs in the Privacy Act. The Privacy Act determines how officers must handle personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

APP 3 requires that the Department should only collect personal information where reasonably necessary for, directly related to, one or more of its functions. The Department may only collect sensitive information where the above conditions are met and the individual concerned consents to the collection. Information about the Department's privacy policy and the form *1442i Privacy Notice* is available on the Department's website at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>.

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

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

For further information, refer to:

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

10. Accountabilities and Responsibilities

Position	Description
Superintendent: Enforcement & Immigration Compliance Operational Policy section (Document Owner)	Accountable to Commander, Workforce Operational policy and Practices. Responsible for: • endorsing/approving Field Operations Standard Operating Procedures • verifying appropriate stakeholder consultation was undertaken during document drafting • directing regular evaluation of the document to ensure that it achieves the intended purpose • monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect document content.
Field Operational Policy Team: Enforcement & Immigration Compliance Operational Policy section (Document Author)	Accountable to Superintendent, Enforcement & Immigration Compliance Operational Policy section. Responsible for: • drafting documents in compliance with the Policy and Procedure Control Framework (PPCF) • stakeholder consultation • addressing key requirements of the policy or procedure.
Field Operations Officers (APS4 to EL2): (Stakeholder)	Accountable to Commander Field Operations & Sponsor Monitoring Responsible for: • identifying the need for additions or amendments to the document and submitting the details to the Field Operational Policy team • ensuring attendance of subject matter experts at stakeholder consultation workshops • ensuring draft documents are reviewed and solution focussed feedback is provided within the specified timeframes • complying with the instructions outlined in this SOP.

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11. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	01/02/2021	Field Operational Policy	Draft document created based on content taken from the Field Operations (Field Compliance) PI (BE-5351) during the mandatory 3 yr PPCF review
1	25/06/2021	Field Operational Policy	Final document – endorsed by Chief Superintendent.
1.1	13/09/2022	Field Operational Policy	Update to align with new C3 doctrine.
1.2	11/09/2023	EICOP	Mandatory 3 Year PPCF review commenced
2	28/05/2024	EICOP	Final – Superintendent Approved

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	As defined in section 4 of the <i>Australian Border Force Act 2015</i> , the Australian Border Force means that part of the Department known as the Australian Border Force. The Australian Border Force, an operationally independent body within the Department of Home Affairs, is Australia's frontline border law enforcement agency and customs service. The Australian Border Force delivers critical border protection and national security outcomes while facilitating the movement of people and goods across the border
<i>Australian Border Force Act 2015</i>	the ABF Act	The <i>Australian Border Force Act 2015</i> , amongst other things, establishes Australian Border Force within the Department, and an ABF Commissioner, who is to have the control of the operations of the ABF. It also contains secrecy and disclosure provisions applicable to entrusted persons.
Australian Federal Police	AFP	The statutory authority established under the <i>Australian Federal Police Act 1979</i> (the AFP Act) whose role is to enforce Commonwealth criminal law, contribute to combating complex transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas. Members of the AFP are conferred under s40B of the AFP Act.
Informed consent		Informed consent means that the information, proposal or procedure has been explained to the person in such a way that they are aware of the implications of providing or withholding consent (such as a service no longer being available), and how their personal information will be handled if consent is or is not provided. Consent must be obtained each time there is a material change in circumstances. It must be specific, current and able to be withdrawn at any time. To ensure a person has given informed consent, a person must be given a full and detailed explanation of what is and what is not going to happen, in the language they understand.
<i>Migration Act 1958</i>	the Migration Act	The primary Commonwealth legislation governing the entry into, and presence in, Australia of non-citizens, and the removal or deportation from Australia of non-citizens. The <i>Migration Act 1958</i> governs, amongst other things, the immigration detention of unlawful non-citizens. The <i>Migration Act 1958</i> must be complied with at all times in relation to the manner in which an unlawful non-citizen is taken into or being held in immigration detention.
<i>Migration Regulations 1994</i>	the Regulations	The Regulations consist of more specific rules relating to Australian migration law. For example, the Regulations set out the requirements that must be met in order for an applicant to be eligible for an Australian visa. The Regulations work in conjunction with the Migration Act.
Non-citizen		As defined under subsection 5(1) of the Migration Act, non-citizen is defined as a person who is not an Australian citizen.

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Non-warrant Field Operation		A non-warrant field operation is conducted when officers seek informed consent and cooperation from the lawful occupant(s) prior to entry.
Officer		As defined under subsection 5(1) of the Migration Act, officer is defined as: • an officer of the Department, other than an officer specified by the Minister in writing for the purposes of this paragraph; or • a person who is an officer for the purposes of the Customs Act, other than such an officer specified by the Minister in writing for the purposes of this paragraph; or • a person who is a protective service officer for the purposes of the <i>Australian Federal Police Act 1979</i> (AFP Act), other than such a person specified by the Minister in writing for the purposes of this paragraph; or • a member of the Australian Federal Police (AFP) or of the police force of a State or an internal Territory; or • a member of the police force of an external Territory; or • a person who is authorised in writing by the Minister to be an officer for the purposes of the Migration Act; or • any person who is included in a class of persons authorised in writing by the Minister to be officers for the purposes of the Migration Act, including a person who becomes a member of the class after the authorisation is given.
Unlawful non-citizen	UNC	As defined under subsection 5(1) and section 14 of the Migration Act, unlawful non-citizen is defined as: • a non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen. • to avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.

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Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Implementation of this SOP does not require any powers, delegations or authorisations.

1.2 Controls and Assurance

Related Policy	Operational Planning Framework Operational Safety Order Records Management – PS (TI-1094) Business Systems Development for Records Management Compliance – Policy Statement (TI-6632)
Procedures / Supporting Materials	Field Operations – PI (BE-6712) Interviewing Located Persons – SOP (BC-5436) Search Warrant Operations under Section 251 of the Migration Act 1958 – SOP (BE-6742) Official diaries and notebooks – PI (BE-2978)
Training/Certification or Accreditation	Refer to Training in the Field Operations – PI (BE-6712)
Other required job role requirements	Refer to Training in the Field Operations – PI (BE-6712)
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Officers should seek assistance from a Field Operations Supervisor (APS6) or above in the first instance. Field Operational Policy (Connected Services Portal)
Escalation arrangements	Field Operational Policy (Connected Services Portal) s. 22(1)(a)(ii) @abf.gov.au
Recordkeeping (eg system based facilities to record decisions)	Total Records and Information Management (TRIM) (also known as Content Manager) Compliance Case Management and Detention (CCMD) Portal
Program or Framework (i.e. overarching Policy Framework or Business Program)	NIL
Job Family Framework Role	Field Operations Officer

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Attachment C – Consultation

1.1 Internal Consultation

Branch	Section
ABF College	Advanced Capability Facility
ABF Workforce Capability	Enforcement & Immigration Compliance Management
Compliance and Community Protection Policy	Migrant Worker and Field Compliance Policy
Field Operations & Sponsor Monitoring	Field Operations WA/SA
	Field Operations QLD/NT
	Field Operations NSW
	Field Operations VIC/TAS
Legal Group	
Privacy, FOI & Records Management	Freedom of Information
	Privacy
	Records Management
Sub-capability Lead – Immigration Compliance and Field Operations	
Commander – Field Operations and Sponsor Monitoring	
Employee consultation as per clause 1.7 of the <i>Department of Home Affairs Workplace Determination 2019</i>	

1.2 External Consultation

Nil

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Field Operations

Procedural Instruction

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1. Purpose

Australian Border Force (ABF) officers are required to undertake enforcement actions in a professional, lawful and appropriate manner in complex and, at times, hazardous environments.

Enforcement actions are open to internal, external and public scrutiny.

Actions such as non-warrant entry by consent, search warrant execution and detention related decision-making are recognised as high risk for the ABF.

The purpose of this Procedural Instruction (PI) is to provide:

- an overview of legislation and operational policy that governs field operations
- training requirements
- an understanding of field operations and the principles underpinning them.

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

2. Scope

2.1. In scope

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

For the purpose of this PI, the term “officer” refers to an ABF officer undertaking field operations unless otherwise stated.

The [Field Operations Job Role Profile](#) provides a detailed summary of the standard duties, capabilities and requirements of a Field Operations Officer.

2.2. Out of scope

This PI does not provide instruction regarding:

- decisions made under the *Australian Border Force Act 2015* (the ABF Act) or the *Customs Act 1901* (the Customs Act).
- decisions made at the border.
- employer awareness or employer sanctions under the Migration Act. For information on these topics, refer to [Employer Compliance – PI \(BE-6749\)](#) available on the Policy and Procedure Control Register (PPCR).

3. Introduction

In the immigration context for this PI:

‘Compliance’ means that individuals and organisations fulfil their obligations under the legislative framework that comprises the Migration Act and the Migration Regulations.

‘Non-compliance’ refers to the failure of an individual or organisation, deliberately or accidentally, to comply with the Migration Act and/or the migration Regulations.

For a non-citizen to lawfully travel to, enter and remain in Australia, they must:

- have a visa that is in effect to travel to Australia (under s42 of the Migration Act)

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- travel to and enter Australia at a port, on a pre-cleared flight, or in another permitted or authorised way (under s43 of the Migration Act)
- be immigration cleared (under s166 of the Migration Act).

A non-citizen who enters and stays in Australia must comply with the Migration Act and the Regulations by:

- holding a visa that is in effect (refer to the definitions of lawful and unlawful non-citizens in sections 13 and 14 the Migration Act)
- abiding by the conditions (if any) of their visa
- not constituting a risk to the community
- dealing genuinely and truthfully with the Department
- departing as required as applicable.

A non-citizen who does not hold a visa that is in effect is an unlawful non-citizen (UNC) unless the Migration Act specifies otherwise. Further, a non-citizen who does not comply with these requirements may be subject to enforcement action, such as:

- visa cancellation
- immigration detention as a UNC
- removal from Australia as a UNC.

Where enforcement action is necessary, officers may exercise legislative powers that can enable them, in certain circumstances:

- to obtain information
- enter premises
- locate and detain certain persons
- cancel or grant visas
- seize documents and other items.

3.1. Field Operations

Field operations play a key role with Australian and international law enforcement partners in enforcing the law surrounding the Australian border, sharing information and intelligence and undertaking joint operations. Officers conduct a range of enforcement actions to help prevent and deter breaches of migration law and enforce compliance.

Field operations are part of the status resolution continuum and work in close collaboration with Status Resolution, Detention and Removals programs, and external partners.

Field operations involve officers leaving their workplace to conduct warrant or non-warrant operations to locate:

- UNCs and regularise their visa status or detain them
- lawful non-citizens (LNCs) allegedly in breach of visa work conditions

These operations may include (but are not limited to):

- managing prison visits and releases
- conducting observations
- counselling and educating persons regarding their visa rights, conditions and obligations

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- undertaking employer awareness activities
- undertaking worker exploitation, human trafficking, slavery and slavery-like practices prevention activities to raise awareness
- granting a Bridging E visa (BVE) or Bridging D visa (BVD)
- cancelling a visa or referring for consideration for cancellation
- questioning by consent for intelligence purposes.

Field operations range from routine visits by a single field team to joint operations involving other areas of the Department of Home Affairs (the Department), law enforcement officers (e.g. state/territory police), and other government agencies (e.g. Australian Taxation Office).

The objective of field operations is to respond appropriately to different levels of non-compliance with a mix of prevention, deterrence and enforcement action that seeks to:

- achieve a non-citizen's adherence to Australian entry and stay requirements
- identify, detect, and respond effectively to breaches of migration law by non-citizens
- maintain non-citizens and employers high levels of voluntary compliance with Australia's migration laws
- monitor and respond to human trafficking, slavery and slavery-like practices and report on such practices.

There are three main elements to undertaking field operations:

- preparation and planning
- execution and resolution
- post operation.

Different types of field operations require different levels of planning and risk management. Field operations must only be undertaken when sufficient planning has taken place to mitigate identified risks. Officers need to be clear regarding the objective of any operation and choose the appropriate enforcement action to most effectively meet that objective.

To ensure field operations are conducted in a lawful manner, officers must have an understanding/knowledge of the following:

- [Governance](#)
- [Training](#)
- [Operational Practices](#)
- [Migration Act Powers and State\(s\) of Mind](#)
- [Delegations and Authorisations](#)
- [Record Keeping](#)
- [Freedom of Information \(FOI\)](#)
- [Privacy](#).

When undertaking field operations, officers' actions are bound by various legal and procedural operational practices. These include:

- [ABF Operational Coordination and Planning](#)
- [Field Operations Priority Matrix](#)
- [Status Resolution System Control Framework](#)

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- [Operational Safety Order \(OSO\)](#)
- [Work Health and Safety](#)
- [Section 251 Search Warrant Field Operations](#)
- [Non-Warrant Field Operations](#)
- [Managing Non-citizens in Criminal Detention](#)
- [Interaction with Diplomatic/Consular Personnel and Other Accredited Foreign Officials](#)
- [Interaction with Vulnerable Persons.](#)

Although the planning and execution phases of activities will differ depending on the scale of the operation, the general principles remain the same.

4. Governance

Governance refers to the arrangements and practices that enable the ABF to set directions and manage operations to achieve its mission, deliver stated priorities and meet accountability obligations.

It is designed to support good decision-making at all levels. The following sections explore different policies and processes within the ABF in more detail.

4.1. Legal Authority

Officers must exercise powers reasonably and lawfully. All activities undertaken by the ABF must clearly demonstrate integrity. The ABF are accountable for their actions and decisions and must uphold and maintain the law in accordance with the relevant legislation.

Officers must ensure that they are:

- aware of relevant policy, procedure and training requirements
- familiar with the relevant legislation, powers and provisions applicable to the specific operational activity they are involved in
- delegated to exercise relevant powers.

4.2. Realising Our Full Potential

[Realising Our Full Potential 2020-2025](#) is the ABF's strategic plan. It builds on the ABFs considerable achievements and capabilities to respond to current and future challenges, and outlines improvements through three lines of effort: Leadership, Officer Capability and Operational Excellence.

Realising Our Full Potential aligns with the [Future Ready](#) document of the Department.

5. Training

To participate in field operations (section 251 Migration Act search warrant and non-warrant operations) and make decisions to detain (under s189 or s192 of the Migration Act), officers must have successfully completed one of the following training courses:

- The [Border Force Field Program](#).
- The Department's Certificate IV in Government (Statutory Compliance) specific to Field Compliance.
- 2017 Interim Field Compliance Officer training, including all components of the pre-requisite Status Resolution Essentials or Visa Compliance.

- Enforcement Operations Essentials (EOE).

Officers who have successfully completed the Immigration Field Course and Search Warrant Operations Course can participate in field operations but **cannot** make decisions to detain.

This training is developed by the ABF College and is adjusted periodically in line with evolving training needs and delivery methods.

For other requirements for a Field Operations Officer, refer to the [Field Operations Job Role Profile](#).

5.1. Officers in non-field roles or returning to field operations

Officers who have moved to non-field roles, and have successfully completed any of the above training courses, may continue to provide support or surge capability to field operations.

Officers who return to field operations after a period of absence of 3 years or more, and have successfully completed any of the above training courses, may be required to undertake parts of or the full Border Force Field Program.

A Field Operations Inspector (EL1) or above is responsible for determining officer participation in field operations on a case by case basis, ensuring associated risks, mitigations and the officer's experience are considered. A record of this decision must be saved in the relevant officer's TRIM file and provided to the ABF College if requested.

5.2. Training exemptions

Training exemptions do not apply to making decisions to detain under s189 and s192, or other requirements listed in the [Field Operations Job Role Profile](#). However, the following exemptions apply to the above training requirements.

5.2.1. Officers registered or undertaking training as part of the Border Force Field Program

Officers can participate in field operations (including employer awareness visits and field observations) if approved by the Field Operations Supervisor (APS6) or above as determined by the risk escalation/treatment guide. Refer to the Risk Escalation Treatment Guide ([ADD2019/3080006](#)).

When approving this activity, the Field Operations Supervisor (APS6) or above must take into account associated risks, mitigations, the officer's past experience and training, their current active field experience and what training the officer has successfully completed as part of their training requirements.

A record of this decision must be detailed in the Risk Assessment and saved in TRIM as part of the operational planning process.

5.2.2. Detain – controlled environment

An officer can detain under s189(1) or s192(1) in a controlled environment if they have successfully completed one of the following training courses:

- The [Field and Removals Foundation Course](#).
- Status Resolution Foundations Course, Determining Immigration Status Course and Enforcement Operations Essentials (Module Two: Legal Powers, Module Three: Field Operations and Module Six: Located Person Interview).

For the purposes of this section, a 'controlled environment' specifically refers to:

- Correctional facilities (prison/watch house)
- ABF or departmental interview rooms (including those located in an immigration detention centre)

- Courts of Law - holding areas or bail reception with holding areas (excludes any public areas of courts of law)
- State or Territory police stations
- State or Territory probation and parole offices.

5.2.3. Officers who completed other training

Officers who have successfully completed other training relevant to field operations, can participate in field operations. The Field Operations Inspector (EL1) or above is responsible for approving this activity on a case by case basis, ensuring the associated risks and mitigations are considered when determining what activity is permitted.

A record of this decision must be detailed in the Risk Assessment and saved in TRIM as part of the operational planning process.

5.3. Legacy training exemption

An Immigration Status Service (ISS) officer can detain under s189(1) if they have successfully completed Status Resolution Foundations Course, Determining Immigration Status Course and Enforcement Operations Essentials (Module Two: Legal Powers, Module Three: Field Operations and Module Six: Located Person Interview).

5.4. Section 251 Warrant Holder

In order to be a section 251 Warrant Holder, a Senior Border Force officer (APS 5) or above must have successfully completed one of the following:

- Border Force Field Program and received approval from a Field Operations Inspector (EL1) or above.
- Immigration Field Course and Search Warrant Operations Course (noting the warrant holder is unable to detain or cancel) and received approval from a Field Operations Inspector (EL1) or above.
- Previous s251 Warrant Holder training course (LMS: BF-OCR-CI-A-251WH).
- The Department's Certificate IV in Government (Statutory Compliance) specific to Field Compliance.

5.5. Section 251 Warrant Delegate

In order to make a decision on a Mandatory Control Point (MCP) 1 Application for Search Warrant, a Warrant Delegate (Field Operations Inspector (EL1) or above) must have successfully completed the section 251 Warrant Delegate Training course (LMS: LI-BF-I-C-1606-S251_SWD). There are no exemptions to the requirement for this training.

6. Operational Practices

6.1. ABF Operational Coordination and Planning

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

- Operational Prioritisation Framework
- Operational Planning, Tasking and Incident Coordination System
- Lessons Management Framework

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

Officers must refer to these resources when coordinating and planning field operations.

6.2. Field Operations Priority Matrix

Under the Field Operations Priority Matrix, resources should be allocated to higher priority cases, however officers and managers should also look for opportunities to maximise the use of resources and officer's experience by combining lower priority work in conjunction with high priority cases.

Officers must refer to the [Field Operations Priority Matrix](#) available on the Enforcement & Immigration Compliance Operational Policy (EICOP) SharePoint when determining which cases will be allocated resources.

6.3. Status Resolution System Control Framework

The Status Resolution System Control Framework provides officers with direction when applying coercive powers through the application of MCPs. The Status Resolution Control Framework ensures the transparency and auditability of conduct in relation to high-risk decisions and activities. This is further supported through the engagement of appropriate risk oversight and quality assurance (QA) mechanisms.

MCPs relevant to field operations are MCP1 (application for a search warrant), MCP2 (report on the use of a search warrant and MCP4 (detention note).

Please refer to [Status Resolution System Control Framework – PS \(BC-763\)](#) and [Status Resolution Systems Control Framework – Mandatory Control Points – SM \(BC-6186\)](#) on the PPCR for more information.

6.4. Operational Safety

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

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

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

6.5. Work Health and Safety

The Department has duties and obligations under the *Work Health and Safety Act 2011* (the WHS Act) and the *Work Health and Safety Regulations 2011*. Specifically the Department has the primary duty under the WHS Act to ensure, so far as is reasonably practicable, that workers (including but not

limited to staff, officers, contractors, volunteers etc.) and other persons (for example, visitors) are not exposed to health and safety risks arising from the business or undertaking.

To assist the Department with meeting these duties and obligations, work area management has specific responsibilities to assist with provision of safe workplaces, with all workers having a duty to take reasonable care for their own health and safety and to not adversely affect the health and safety of other persons. Workers must also comply with any reasonable instruction and cooperate with any reasonable policy or procedure relating to health and safety at the workplace

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

6.6. Section 251 Search Warrant Field Operations

An officer in possession of a valid section 251 search warrant can (to the extent of the scope of the warrant) enter and search premises without the consent of the lawful occupier of the property.

Please refer to [Search Warrant Operations under Section 251 of the Migration Act 1958 – SOP \(BE-6742\)](#) on the PPCR for more information.

6.7. Non-Warrant Field Operations

A non-warrant field operation is conducted when officers seek informed consent and cooperation from the occupier(s) prior to entry.

Please refer to [Non-Warrant Field Operations – SOP \(BE-6743\)](#) on the PPCR for more information.

6.8. Managing Non-citizens in Criminal Detention

Appropriate management of non-citizens in criminal detention is paramount to protecting and maintaining the integrity of Australia's borders.

Please refer to [Managing Non-citizens in Criminal Detention – SOP \(BE-6302\)](#) on the PPCR for more information.

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

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

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

6.10. Interaction with Vulnerable Persons

Officers must consider the management of vulnerable persons, their carers or family members, who may be present during a field operation.

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

6.10.1. Any Child Under 18

Officers must be mindful of the possibility of interaction with children under the age of 18 during the conduct of field operations.

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

6.10.2. Aboriginal and Torres Strait Islander Peoples

Officers must be mindful of the possibility of interaction with a person who claims to be an Aboriginal or Torres Strait Islander during the conduct of field operations.

Please refer to the [Interviewing Located Persons – SOP \(BE-5436\)](#) on the PPCR for further information.

6.10.3. Human Trafficking, Slavery and Slavery-like Practices

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

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

7. Migration Act Powers and State(s) of Mind

Officers have several powers under the Migration Act available to them for use during the planning and conduct of field operations.

Please refer to the [Powers under the Migration Act 1958 – SM \(BE-6800\)](#) on the PPCR for further information.

8. Delegations and Authorisations

Officers must ensure that they are delegated or authorised to exercise certain powers or carry out certain functions. The *ABF tab on LEGEND* contains current instruments of delegation and authorisation for officers.

Officers must understand:

- the legal and policy requirements for the exercise of the power or function (for example, the exercise of the power is within their job role and they have completed all pre-requisite training)
- the scope of an officer's delegated authority as a failure to act within scope can have serious consequences.
- that the exercise of a delegated power or function must be in the delegated officer's own right.

If there is an identified gap in delegations or authorisations, contact the Delegations Policy Section by emailing [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) to seek further advice and assistance.

Please refer to the ABF tab on LEGEND or [Delegations](#) on the Home Affairs Intranet for more information.

8.1. Delegated Powers Framework

The Delegated Powers Framework includes the following documents:

- The [Delegated Powers Framework – PS \(SM-5404\)](#) on the PPCR outlines the organisational approach to managing delegations, authorisations, and appointments
- The [Delegated Powers Framework – PI \(SM-5425\)](#) on the PPCR provides guidance to officers, stewards and policy owners:
 - o on their respective roles when developing and maintaining delegations, authorisations and appointments

- o to promote compliance with relevant legislation, legal principle, policy, and other PIs when exercising statutory powers.

Please refer to these documents for more information.

9. Recordkeeping

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

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

9.1. ABF official notebooks

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

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

10. Freedom of Information (FOI)

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

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

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

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

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

11. Privacy

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

The Privacy Act provides the legislative framework for the management of the collection, use and potential disclosure of both personal and sensitive information. The Department is bound by the Privacy Act. The Privacy Act establishes the *Australian Privacy Principles* (APPs), which regulate the collection, handling and protection of personal information, including sensitive information. All officers and contracted service providers dealing with these kinds of information, must be aware of the Department's obligations under the APPs in the Privacy Act. The Privacy Act determines how officers must handle personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

APP 3 requires that when the Department collects personal or sensitive information, it must be done in a lawful and fair means, and also is in relation to Departmental functions and activities. Information about the Department's privacy policy and the form *1442i Privacy Notice* is available on the

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Department's website at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>.

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

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

For further information, refer to:

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

12. Accountabilities and Responsibilities

Role	Description
Commander: ABF Workforce Capability Branch (Document Owner)	Responsible for: • endorsing/approving Field Operations Procedural Instructions • verifying appropriate stakeholder consultation was undertaken during document drafting.
Superintendent: Enforcement & Immigration Compliance Operational Policy section	Accountable to Commander, ABF Workforce Capability Branch Responsible for: • directing regular evaluation of the document to ensure that it achieves the intended purpose • determining whether the document requires editing or retirement • monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect document content.
Field Operational Policy Team: Enforcement & Immigration Compliance Operational Policy section (Document Author)	Accountable to Superintendent, Enforcement & Immigration Compliance Operational Policy section Responsible for: • drafting documents in compliance with the Policy and Procedure Control Framework (PPCF) • stakeholder consultation • using the approved/current PPCF templates • addressing key requirements of the policy or procedure.

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Superintendent: Advanced Capability Faculty (Stakeholder)	Accountable to Commander ABF College Responsible for: - notifying the document author of training changes which impact document content - providing training requirements subject matter expertise - acting as a key stakeholder during document development/review
Field Operations Officers (APS4 to EL2): (Stakeholder)	Accountable to Commander Field Operations & Sponsor Monitoring Responsible for: - identifying the need for additions or amendments to the document and submitting the details to the Field Operational Policy team - ensuring attendance of subject matter experts (SME) at stakeholder consultation workshops - ensuring draft documents are reviewed and solution focussed feedback is provided within the specified timeframes - complying with the instructions outlined in this PI.

13. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	02/03/2021	Field Operational Policy	Draft document created based on content taken from the Field Operations (Field Compliance) PI (BE-5351) during the mandatory 3 year PPCF review
1	25/06/2021	Field Operational Policy	Final document – endorsed by Chief Superintendent.
1.1	26/10/2021	Field Operational Policy	Update to training exemption – endorsed by Chief Superintendent
1.2	07/09/2022	Field Operational Policy	Update to section 5 regarding new Border Force Field program and two new subsections in section 6 regarding ATSI and Diplomat PI
1.3	15/03/2023	Enforcement and Immigration Compliance Operational Policy (EICOP)	New section insert with the release of the Managing Non-Citizens in Criminal Detention
1.4	21/07/2023	EICOP	New section inserted "Training in controlled environment"
1.5	14/08/2023	EICOP	Mandatory PPCF 3 Year Review
2	15/05/2024	EICOP	Approved by A/g Commander Workforce Operational Policy and Practices
2.1	07/07/2024	EICOP	Vulnerable Person update

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	As defined in section 4 of the <i>Australian Border Force Act 2015</i> , the Australian Border Force means that part of the Department known as the Australian Border Force. The Australian Border Force, an operationally independent body within the Department of Home Affairs, is Australia's frontline border law enforcement agency and customs service. The Australian Border Force delivers critical border protection and national security outcomes while facilitating the movement of people and goods across the border.
<i>Australian Border Force Act 2015</i>	the ABF Act	The Australian Border Force Act 2015 (Cth), amongst other things, establishes Australian Border Force within the Department, and an ABF Commissioner of the ABF, who is to have the control of the operations of the ABF. It also contains secrecy and disclosure provisions applicable to entrusted persons.
Australian Privacy Principles	APP	The Australian Privacy Principles, which are contained in the Schedule 1 to the <i>Privacy Act 1988</i> , outline how most Australian agencies and certain organisations (collectively called 'APP entities') must handle, use and manage personal information. They do not apply to state or territory government agencies. Source: https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles
Bridging Visa		A bridging visa is a temporary visa that allows a non-citizen to remain in Australia lawfully in certain circumstances while they do not hold a substantive visa. A delegate of the Minister may only grant a bridging visa to a non-citizen who is an 'eligible non-citizen' within the meaning of s72 of the Migration Act. There are seven classes of bridging visa; A, B, C, D, E, F and R. Bridging visas include specific conditions.
Detain		As defined in subsection 5(1) of the Migration Act, detain means: • take into immigration detention; or • keep, or cause to be kept, in immigration detention; and includes taking such action and using such force as is reasonably necessary to do so. Note: This definition extends to persons covered by residence determinations (see section 197AC of the Migration Act).
Detainee		As defined in subsection 5(1) of the Migration Act, a detainee means a person detained (in immigration detention). Note: This definition extends to persons covered by residence determination (see section 197AC of the Migration Act).
Immigration detention		As defined in part in subsection 5(1) of the Migration Act, immigration detention means: • Being in the company of, and restrained by: ○ an officer, or

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		- o in relation to a particular detainee – another person directed by the Secretary or ABF Commissioner to accompany and restrain the detainee; or • Being held by, or on behalf of, and restrained by: - o in detention centre established under this Act, or - o in a prison or remand centre of the Commonwealth, a State or a Territory, or - o in another place approved by the Minister in writing (i.e. in an appropriate alternative place of detention (APOD) for example, a motel or hospital). but does not include being restrained as described in subsection 245F(8A) of the Act, or being dealt with under paragraph 245F(9)(b) of the Act. Note 1: Subsection 198AD(11) provides that being dealt with under subsection 198AD(3) does not amount to immigration detention. Note 2: This definition extends to persons covered by residence determinations (see section 197AC).
Informed consent		Informed consent means that the information, proposal or procedure has been explained to the person in such a way that they are aware of the implications of providing or withholding consent (such as a service no longer being available) and how their personal information will be handled if consent is or is not provided. Consent must be obtained each time there is a material change in circumstances. It must be specific, current and able to be withdrawn at any time. To ensure a person has given informed consent, a person must be given a full and detailed explanation of what is and what is not going to happen, in the language they understand.
Lawful non-citizen	LNC	As defined in subsection 5 (1) and section 13 of the Migration Act, a lawful non-citizen is defined as: • A non-citizen in the migration zone who holds a visa that is in effect. • An allowed inhabitant of the Protected Zone who is in a protected area in connection with the performance of traditional activities.
LEGEND		The Department's online database of migration, citizenship and customs legislation, policy, guidelines and other related information.
Mandatory Control Point 1	MCP1	Relates to an application for search warrant.
Mandatory Control Point 2	MCP2	Report on the use of a search warrant.
Mandatory Control Point 4	MCP4	Detention note.
<i>Migration Act 1958</i>	the Migration Act	The primary Commonwealth legislation governing the entry into, and presence in, Australia of non-citizens, and the removal or deportation from Australia of non-citizens. The Migration Act 1958 governs, amongst other things, the immigration detention of unlawful non-citizens. The Migration Act 1958 must be complied with at all times in relation to the manner in which an unlawful non-citizen is taken into or being held in immigration detention.

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<i>Migration Regulations 1994</i>	the Migration Regulations	The Migration Regulations consist of more specific rules relating to Australian migration law. For example, the Regulations set out the requirements that must be met in order for an applicant to be eligible for an Australian visa. The Regulations work in conjunction with the Migration Act.
Migration zone		As defined in subsection 5(1) of the Migration Act, migration zone is defined as the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes: - land that is part of a State or Territory at mean low water; and - sea within the limits of both a State or a Territory and a port; and - 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.
Non-citizen		As defined in subsection 5(1) of the Migration Act, non-citizen is a person who is not an Australian citizen.
Officer		As defined in subsection 5(1) of the Migration Act, officer is defined as: - an officer of the Department, other than an officer specified by the Minister in writing for the purposes of this paragraph; or - a person who is an officer for the purposes of the Customs Act, other than such an officer specified by the Minister in writing for the purposes of this paragraph; or - a person who is a protective service officer for the purposes of the <i>Australian Federal Police Act 1979</i> (AFP Act), other than such a person specified by the Minister in writing for the purposes of this paragraph; or - a member of the Australian Federal Police (AFP) or of the police force of a State or an internal Territory; or - a member of the police force of an external Territory; or - a person who is authorised in writing by the Minister to be an officer for the purposes of the Migration Act; or any person who is included in a class of persons authorised in writing by the Minister to be officers for the purposes of the Migration Act, including a person who becomes a member of the class after the authorisation is given.
<i>Privacy Act 1988</i>	The Privacy Act	The Privacy Act 1988 includes the Australian Privacy Principles, which must be complied with when collecting, using, disclosing and storing personal information about an individual.
Unlawful non-citizen	UNC	As defined in subsection 5(1) and section 14 of the Migration Act, an unlawful non-citizen is defined as: a non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen.

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		to avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.
Worker		Under s7 of the WHS Act, a person is a worker if the person carries out work in any capacity for 'a person conducting a business or undertaking', including work as: an employee; or a) a contractor or subcontractor; or b) an employee of a contractor or subcontractor; or c) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or d) an outworker; or e) an apprentice or trainee; or f) a student gaining work experience; or g) a volunteer; or h) a person of a prescribed class.

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Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

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

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Migration Act 1958</i>	s189(1)	Detention of unlawful non-citizens in the migration zone	No	
<i>Migration Act 1958</i>	s192	Detention of visa holders whose visas liable to cancellation	No	
<i>Migration Act 1958</i>	s251(6)	Search warrant powers of entry, search and seize	No	

1.2 Controls and Assurance

Related Policy	ABF Enforcement Doctrine ABF Operational Planning Framework ABF Operational Priorities Event Categorisation and Reporting Framework Freedom of Information – PS (SM-3357) Operational Safety Order (2021) Realising Our Full Potential 2020-2025 Records Management – PS (TI-1094) Status Resolution System Control Framework – PS (BC-763) Work, health and safety governance arrangements – PS (HR-1230)
Procedures / Supporting Materials	Official diaries and notebooks – PI (BE-2978) Non-warrant Field Operations – SOP (BE-6743) Search Warrant Operations under Section 251 of the Migration Act 1958 – SOP (BE-6742)
Training/Certification or Accreditation	Refer to Training
Other required job role requirements	Refer to Training
Other support mechanisms (eg who can provide further	Officers should seek assistance from a Field Operations Supervisor (APS6) or above in the first instance.

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assistance in relation to any aspects of this instruction)	Field Operational Policy (Connected Services Portal)
Escalation arrangements	Field Operational Policy (Connected Services Portal) s. 22(1)(a)(ii) @abf.gov.au
Recordkeeping (eg system based facilities to record decisions)	Total Records and Information Management (TRIM) (also known as Content Manager) Compliance Case Management and Detention Portal (CCMD)
Program or Framework (i.e. overarching Policy Framework or Business Program)	Status Resolution System Control Framework – PS (BC-763) Status Resolution System Control Framework – Mandatory Control Points – SM (BC-6186)
Job Family Framework Role	Field Operations Officer

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Attachment C – Consultation

1.1 Internal Consultation

Branch	Section
ABF College	Compliance, Investigations & Trade Faculty
ABF Workforce Capability	Enforcement & Immigration Compliance Management
Compliance and Community Protection Policy	Migrant Worker & Field Compliance Policy
Field Operations & Sponsor Monitoring	Field Operations WA/SA
	Field Operations QLD/NT
	Field Operations NSW/ACT
	Field Operations VIC/TAS
Operational Readiness	Operational Safety Capability
Legal Group	
Legislation	Legislation Strategy & Coord (Delegations)
People Operations	Workforce Health & Safety
Privacy, FOI & Records Management	Freedom of Information
	Privacy & Information Disclosure
	Records Management
National Planning & Targeting	Annual Ops Planning & Capability
	National Planning
Status Resolution	Status Resolution Program Management & Capability
Capability Lead – Enforcement and Immigration Compliance	
Sub-capability Lead – Immigration Compliance and Field Operations	
Commander – Field Operations and Sponsor Monitoring	
Employee consultation as per clause 1.7 of the <i>Department of Home Affairs Workplace Determination 2019</i>	

1.2 External Consultation

Nil

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Field Operations: Search Warrant Operations under Section 251 of the *Migration Act 1958*

Standard Operating Procedure

Document ID (PPN)	BE-6742
TRIM record number	s. 22(1)(a)(ii)
BCS Function	Border Enforcement
Document owner	Superintendent, Enforcement & Immigration Compliance Operational Policy (EICOP) Section
Approval date	28/05/2024
Document Contact	Field Operational Policy s. 22(1)(a)(ii) @abf.gov.au

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1. Purpose

The purpose of this Standard Operating Procedure (SOP) is to:

- provide instruction on requirements when undertaking search warrant field operations under section 251 of the *Migration Act 1958* (the Migration Act) to ensure they are conducted in a lawful manner
- highlight tools and resources available to officers.

Note: This SOP must be read in conjunction with the [Field Operations – PI \(BE-6712\)](#) available on the Policy and Procedure Control Register (PPCR) and [EICOP SharePoint](#).

2. Scope

This SOP applies to section 251 search warrant field operations and the officers undertaking them. Officers are required to understand and comply with the directions and instructions outlined in this SOP.

For the purpose of this SOP, the term “officer” refers to an Australian Border Force (ABF) Field Operations officer unless otherwise stated and the term “search warrant” refers to a section 251 search warrant unless otherwise stated.

3. Planning

The process for undertaking search warrant field operations is based on the *ABF Operational Response Framework* contained in the *ABF Operational Planning Framework* document available from the [Operational Planning Framework SharePoint](#).

Planning requires officers to turn their minds to:

- considerations
- the objective of the operation
- if operational flexibility is required in order to achieve the objective
- supporting documents.

3.1. Considerations

When deciding whether to apply to conduct a search warrant field operation, officers must consider whether a search warrant field operation is the most appropriate option and if the pre-condition(s) for the application or execution of a search warrant exists.

If applicable to the search warrant field operation, officers must also consider any assistance required to undertake the operation, the participation of approved observers, internal or external media presence and ways to minimise disruptions.

3.1.1. Appropriateness

Even though approval to conduct a search warrant field operation as the best option may have already been provided, officers should continue to consider whether it's necessary to conduct the operation, or whether the objective could be achieved by other means.

3.1.2. Pre-condition(s)

The officer, when applying for a search warrant, must demonstrate they have a reasonable cause to believe (RCB) there may be found at the building, premises, vessel, vehicle or place:

- an unlawful non-citizen (UNC), a removee or a deportee (including unidentified cohorts of persons)
- a person to whom a temporary visa has been issued subject to a condition with respect to the work that is to be performed by that person
- any document, book or paper relating to the entry or proposed entry into Australia of a person in circumstances in which that person:
 - o would have become, or would have been, or would become, a prohibited immigrant, a prohibited non-citizen or an illegal entrant within the meaning of the Migration Act in operation between 1983 and 1989
 - o would have become, or would become, a UNC.
- any passport or document of identity, any ticket for the conveyance from a place within Australia to a place outside Australia, of a UNC, a removee or a deportee.

Note: Under Stream Two of the One Warrant One Objective (OWOO) model, officers will not have sufficient information to have RCB at the time of completing Mandatory Control Point (MCP) one. Refer to [Operational flexibility](#).

Power to search for and seize any document, book, paper, passport or document of identity referred to in this section is only available if it relates to entry to or departure from Australia. Documents such as drivers licences used to identify a person cannot be searched for or seized under the s251 power.

3.1.2.1. Meaning of 'may be found'

The phrase 'may be found' requires that the Warrant Holder and the Warrant Delegate must have RCB that the specified person(s) or item(s) may be found at the location intended to be searched (for example building, premises, vessel etc.). This recognises that it is not possible to know for certain that the person(s) or item(s) will be found, but that the officer must have RCB.

The phrase must be read together with the requirement that there is a RCB. This lifts the test from being one of a mere possibility that the person(s) or item(s) may be found, to one that requires some factual basis (for example, it is reasonable) to have the belief.

3.1.2.2. Reasonable cause to believe

A belief is the inclination to accept rather than reject a proposition, but it does not require absolute certainty of the facts. A belief requires more certainty of mind than the test for a suspicion (for example, as required for the use of the section 189 detention power).

In addition to forming a belief, the Migration Act further requires the belief to be based on a reasonable cause. As a guide, RCB can be established if a 'reasonable person' having access to the same information and insights would form the same belief.

This means the officer who is applying for (Warrant Applicant) or executing a search warrant (Warrant Holder) must be able to demonstrate that their belief is based on objective information or evidence, and that a reasonable person with the same level of training would be able to form or maintain the same state of mind.

3.1.2.3. Forming reasonable cause to believe

The officer applying for approval to use a search warrant must:

- ensure that sufficient and appropriate information gathering enquiries have been conducted

- examine the information gathered
- assess whether, based on the information available, a 'reasonable person' would have cause to believe that the person or documents may be found on the property or premises to be searched.

3.1.3. Trespass

When conducting a field operation, officers must be aware of the laws of trespass. This SOP provides guidance regarding gaining entry with a warrant and must be followed to protect officers personally, and the Department of Home Affairs (the Department), from legal action.

3.1.4. Minimising disruptions

The conduct of any field operation should result in minimal disruption to the lives, privacy or business of the property's occupants if they are not a person of interest (POI) and/or who may be vulnerable.

3.1.4.1. Times for executing

Subsection 251(6) provides an express power to execute a search warrant 'at any time of the day or night'. It is policy that unnecessary disturbance to businesses and residential addresses should be avoided.

Officers must provide reasons when execution of the warrant is requested at a time that may cause disturbance to others. These reasons must be recorded in the relevant plan.

3.1.4.2. Variation to the time of intended execution

It is recognised that sometimes the intention may be to execute a search warrant at the time specified on the application, but for operational reasons the Warrant Holder is not able to execute the warrant at that time. If this occurs, the Warrant Holder must obtain verbal approval from a Field Operation Supervisor (APS6) or above to vary the execution time of the warrant. Both officers must record reasons for the variation of the warrant execution time and the verbal approval in their official notebook and document later in the MCP2.

3.1.5. Observers

Observers may be internal or external persons who have a business need to observe a warrant field operation.

A Field Operation Supervisor (APS6) or above must provide approval for any observer to accompany the field team and observe the search warrant field operation. The approval, description of how approved observers will be managed and appropriate risk mitigation strategies must be outlined in the relevant operational plan and risk assessment.

Approved observers must not be involved and/or participate in the warrant field operation and must obtain the occupant(s) informed consent to enter the warrant location.

Note: ABF Media officers are not considered observers if they want to capture video, still or audio material.

3.1.6. Media

3.1.6.1. External media

The ABF Media and Communications Section are responsible for coordinating all external media contact with and for the ABF.

If there is external media interest in attending a search warrant field operation, they must be directed to the ABF Media and Communications Section. The ABF Media and Communications Section can be contacted by emailing s. 22(1)(a)(ii) @abf.gov.au or phoning s. 22(1)(a)(ii).

Once approved by the ABF Media and Communications Section, further approval must be obtained from the relevant ABF Field Operations Superintendent so that legal risks and any risks to persons, property or to the potential success of the planned operation can be considered.

External media attendance and a management process must be outlined in the relevant plan.

If external media are present at a warrant operation without prior approval/knowledge:

- officers must not engage directly with members of the media and must direct any questions to the ABF Media and Communications Section
- the Warrant Holder must advise a Field Operation Supervisor (APS6) or above and the ABF Media and Communications Section of media presence
- the Warrant Holder must assess the appropriateness of continuing the operation having regard to Workplace, Health and Safety (WHS) considerations and privacy concerns of those involved in the operation.

3.1.6.2. Internal Media

If ABF Media officers wish to attend a search warrant operation, approval must be sought from the relevant ABF Field Operations Superintendent so that legal risks and any risks to persons, property or to the potential success of the planned operation can be considered.

ABF Media attendance and a management process must be outlined in the relevant plan.

3.1.6.3. Media entry to private premises

If media (internal or external) attends a warrant operation, they must not enter premises under the authority of the search warrant. The media must seek the occupant's consent prior to entering the premises. Officers should not become involved and must not suggest, in any way, that the media should or should not be allowed to enter.

3.1.7. Assistance required

Subsection 251(6) allows Warrant Holders to seek any assistance they deem is necessary to enter and search the building, premises, vessel, vehicle or place.

Assistance may be sought from agencies and persons including:

- other ABF or departmental officers
- Australian Federal Police (AFP)
- State/Territory police
- landlords
- locksmiths.

In determining what type of assistance may be required when conducting a search warrant field operation, officers must consider the following:

- an appropriate size team, including gender balance
- inclusion of officers who have a current and valid operational safety qualifications
- inclusion of officers from external agencies.

3.1.8. Operational Safety – Use of Force (UoF)

When considering operational safety and UoF in a search warrant field operation, officers must refer to the [Operational Safety Order](#) on Home Affairs Intranet or the [Operational Safety Capability SharePoint](#).

3.1.9. Joint agency operations

The ABF may be called upon to participate in, or may call upon other agencies to participate in, joint agency operations. Joint agency operations may take several forms, including:

- an operation conducted under the authority of a search warrant
- an operation conducted under the authority or powers of another agency
- an operation with each participating agency using their own powers.

Joint operations provide the ABF with the opportunity to work cooperatively with other agencies that are targeting a similar cohort, even if for different reasons, in circumstances where participation would help the ABF achieve departmental priorities and goals.

Depending on the nature of the joint operation, it is preferable that officers act under the authority of a search warrant. If a search warrant has not been sought, then a Field Visit Application (FVA) must be completed. Refer to the [Field Operations Non-Warrant – SOP \(BE-6743\)](#) on the PPCR.

3.2. Objective

Each search warrant field operation must have an associated objective. The objective sets out what the search warrant field operation is seeking to achieve.

This can be to locate:

- a specified POI
- a specified cohort of POIs
- a specified document(s) of interest (DOI)
- both the POI(s) and the specified DOI(s).

When applying for a search warrant, officers must outline the objective in a statement recorded in the application for a search warrant (MCP1).

3.3. Operational flexibility

Officers must consider if flexibility is required in order to achieve the search warrant field operation objective. This is achieved by referring to the following OWOO model to determine the appropriate flexibility option.

3.3.1. One Warrant One Objective model

There are two streams in the OWOO model:

- Stream One – Visiting an additional location. Where RCB that POI(s) or specified DOI(s) may be found at the target location **has been established** at the time of applying for a search warrant. However, it is likely/possible that an **additional location may need to be visited** to achieve the search warrant field operation objective.
- Stream Two – RCB that POI(s) or specified DOI(s) may be found at the target location **has not been established** at the time of applying for a search warrant. However, it is anticipated that RCB **may be established in the field** to allow a search of the target location to proceed. The search warrant will not be able to be lawfully executed unless the Warrant Holder has RCB at the time of the execution.

Both streams maintain the operational flexibility provided under the Migration Act by enabling additional locations to be visited if this will contribute to achieving the search warrant field operation objective.

Note: A search warrant with Stream One flexibility is often referred to as a 'Stream One warrant' and a search warrant with Stream Two flexibility is often referred to as a 'Stream Two warrant'. The correct terminology is 'A search warrant with Stream One or Two flexibility'.

3.4. Supporting documents

For each search warrant operation, officers are required to complete a mandatory risk assessment (RA). The RA must be approved by the Field Operations Supervisor (APS6) or above as determined by the Risk Escalation Treatment Guide tab within the ABF Official Risk Register Template ([ADD2019/3080006](#)). Refer to [Operational planning and risk assessments in the field](#) for information on undertaking risk assessments while in the field.

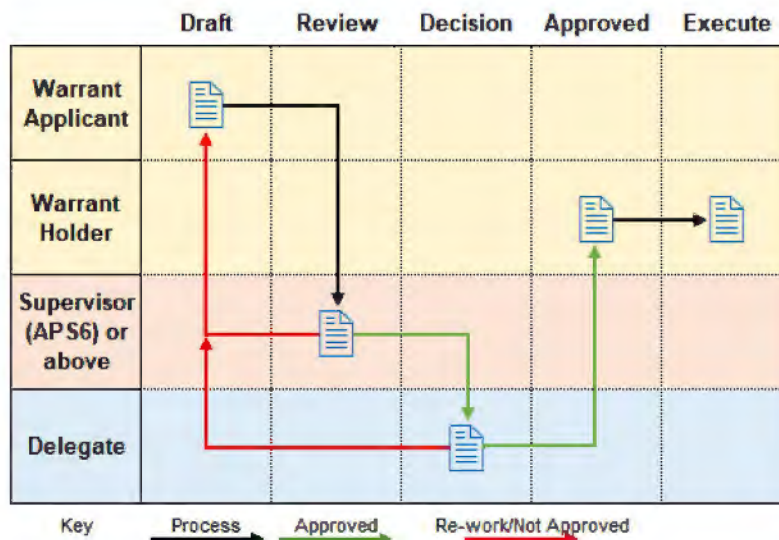
Depending on the complexity of the search warrant field operation, an appropriate plan must also be completed. Once complete, officers must seek to have this document approved by a Field Operation Supervisor (APS6) or above. For plan templates, please refer to the ABF Operational Planning Framework available from the [Operational Planning Framework SharePoint](#).

Both the RA and plan must be saved in TRIM.

4. Applying

4.1. Application process

After an officer has formed RCB (unless the application contains Stream Two flexibility) and the Field Operation Supervisor (APS6) or above has determined that a warrant operation is the appropriate course of action, the officer leading the operation must apply for a search warrant. The following diagram demonstrates the application process.



There is no legislatively prescribed form for the application of a search warrant. However, under departmental procedures, an application for a search warrant is completed on the MCP1 online form within the Compliance, Case Management and Detention (CCMD) Portal.

Upon completion, the Warrant Applicant will submit the draft MCP1 to a Field Operation Supervisor (APS6) or above for review.

After review by the Field Operation Supervisor (APS6) or above, the MCP1 will be submitted to the Warrant Delegate.

If approved, the Warrant Delegate will issue a search warrant to the Warrant Holder.

Note: In cases where additional locations were visited, a separate MCP1 (for each additional location) must be completed within a separate Field Action in the same Job within the CCMD Portal.

4.2. Details to be included in the MCP1

The MCP1 must include, but is not limited to:

- the name of the Warrant Holder
- details of POI(s) and DOI(s)
- if needed, details relating to flexibility requirements and statements
- an outline of the objective
- the location to be searched
- dates and times proposed for execution
- a summary of information relevant to the case, the results of enquiries and the Warrant Applicant's RCB establishment
- TRIM references to supporting documents.

4.2.1. Search warrant field operations which require OWO Stream One flexibility

An MCP1 for a search warrant field operation which requires Stream One flexibility must additionally include:

- a statement that the application includes Stream One flexibility

- detail pertaining to the possibility of having to visit an additional location and how this will contribute to achieving the objective of the search warrant field operation
- a statement that the Warrant Applicant is seeking the warrant be issued to include the ability to search additional location(s), subject to the Warrant Holder:
 - o contacting a Field Operation Supervisor (APS6) or above to discuss operational planning aspects of visiting an additional location and seek their approval
 - o contacting the Warrant Delegate to discuss the establishment of RCB that the person(s) and/or item(s) that are the objective of the search warrant field operation may be found at the additional location and seek their approval.

Note: It is not required that details of an additional location are included in the MCP1 (even if known), however, they can be included as long as it is clear that the additional location is not the target location.

4.2.2. Search warrant field operations which require OWOO Stream Two flexibility

An MCP1 for a search warrant field operation which requires Stream Two flexibility must additionally include:

- a statement that the application includes Stream Two flexibility
- a statement that RCB the targeted person(s) and/or item(s) may be found at the target location **has not yet been established**. However, the Warrant Applicant is seeking that the warrant be issued, subject to the Warrant Holder contacting the Warrant Delegate from the field to discuss the establishment of RCB, prior to proceeding to execute the search warrant at the target location
- details of analysis work conducted in an attempt to establish RCB for the target location and what evidence or information is necessary to be obtained in the field to establish RCB
- if applicable, a statement that the Warrant Applicant is seeking the warrant be issued to include the ability to search additional location(s), subject to the Warrant Holder:
 - o contacting a Field Operation Supervisor (APS6) or above to discuss Operational Planning aspects of visiting an additional location and seek their approval
 - o contacting the Warrant Delegate to discuss the establishment of RCB that the person(s) and/or item(s) that are the objective of the field operation may be found at the additional location and seek their approval.

4.3. Issuing a search warrant

4.3.1. Persons delegated to issue

Subsection 251(4) provides that the Secretary or ABF Commissioner may issue a search warrant to an officer (the Warrant Holder) in the prescribed form. This power has been delegated to certain classification levels as specified in the relevant instrument of delegation for that officer.

For details of the delegation, refer to *LEGEND>Delegations>ABF Delegations*.

For Warrant Delegate training requirements, refer to the Training section of the [Field Operations – PI \(BE-6712\)](#) on the PPCR or [EICOP SharePoint](#).

4.3.2. Use of the prescribed form

A search warrant must be in accordance with prescribed Form 2 – see subregulation 5.32(2) of the *Migration Regulations 1994* (the Migration Regulations). This form must not be amended.

Each search warrant form:

- is to be printed on the sequentially numbered Commonwealth letterhead provided by EICOP, and
- must be signed by the delegate.

For additional letterheads, officers should contact the Field Operational Policy Helpdesk via the [Connected Services Portal](#).

4.3.3. Deciding to issue a search warrant

Once a Warrant Delegate has received an MCP 1 from a Field Operation Supervisor (APS6) or above via the CCMD Portal, they are required to assess the application, make a decision and record their reasoning in the MCP1.

Prior to issuing a search warrant, the Warrant Delegate must have RCB that there may be found at the target address/place:

- a) *an unlawful non-citizen, a removee or a deportee*
- b) *a person to whom a temporary visa has been issued subject to a condition with respect to the work that is to be performed by that person*
- c) *any document, book or paper relating to the entry or proposed entry into Australia of a person in circumstances in which that person:*
 - I. *would have become a prohibited immigrant within the meaning of this Act as in force from time to time before the commencement of the Migration Amendment Act 1983*
 - II. *would have become a prohibited non-citizen within the meaning of this Act as in force from time to time after the commencement of the Migration Amendment Act 1983 but before the commencement of section 4 of the Migration Legislation Amendment Act 1989*
 - III. *would have been an illegal entrant within the meaning of the Act as in force from time to time after the commencement of section 4 of the Migration Legislation Amendment Act 1989 but before 1 September 1994*
 - IV. *would have become, or would become, an unlawful non-citizen*
- d) *any passport or document of identity of, or any ticket for the conveyance from a place within Australia to a place outside Australia of, an unlawful non-citizen, a removee or a deportee.*

If the information in the MCP1 is insufficient for the Warrant Delegate to form RCB, the Warrant Delegate must return the MCP1 to the officer who applied for the search warrant for rework.

The above does not apply to MCP1s containing Stream Two flexibility. In deciding to issue the search warrant, the Warrant Delegate is agreeing that the Warrant Holder will contact them to discuss the establishment of RCB from the field.

In cases where MCP1s contain multiple elements for inclusion under scope (for example, a targeted person and documents), and the Warrant Delegate only forms RCB with regard to one element, the Warrant Delegate can decide to issue the warrant on the provision that the Warrant Holder will contact them from the field to discuss the establishment of other elements under scope.

The Warrant Delegate must document in their decision record that the warrant was issued to include only one element under scope and further RCB discussions may occur with the Warrant Holder from the field with regard to other elements under scope.

Note: There may also be circumstances that justify the use of more than one warrant for a field operation. For example, large or complex jobs across multiple or large sites which require more than one person to execute a warrant.

4.3.4. Persons to whom a search warrant can be issued

A Warrant Delegate must only issue search warrants to an appropriately trained officer. This officer will be in charge of the search warrant field operation and known as the Warrant Holder. Other officers assisting a Warrant Holder do not require a separate search warrant.

Under policy, only Field Operations Senior Border Force (APS5) officers or above can be a Warrant Holder. For Warrant Holder training requirements, refer to the Training section of the [Field Operations – PI \(BE-6712\)](#) on the PPCR or [EICOP SharePoint](#).

In some cases, a Warrant Delegate may issue a search warrant to a non-departmental officer. This person must be an 'officer' as defined under of s5(1) of the Migration Act.

While this non-departmental officer will have the legislative authority afforded under s251, it may be necessary to collaborate with officers with regard to operational logistics. Collaboration between officers assisting the non-departmental Warrant Holder must be planned and recorded in the relevant plan.

Warrant Delegates must only issue a search warrant to a non-departmental officer if written approval has been provided via email by a Chief Superintendent or above. This approval must be recorded in TRIM and referenced as a supporting document in the MCP1.

The search warrant can be used only for the purposes provided for under the Migration Act and within the scope of the MCP1. For example, it cannot be used to investigate the alleged commission of criminal offences.

To allow independent scrutiny of the MCP1 and enhance independence between the issue and execution of the search warrant, Warrant Delegates must not issue a search warrant to themselves or take any part in a search warrant field operation for which they have issued the warrant.

4.3.5. Validity of an issued search warrant

Although subsection 251(5) limits the period for which a search warrant can be issued for a period not exceeding three months, policy provides that search warrants be issued for a maximum period of seven (7) calendar days. This period:

- commences on the date that the search warrant is issued. **Note:** in CCMD the 'Date issued' and 'valid from' must be the same date. Refer to 'Issuing a warrant in CCMD' of the [Section 251 Search Warrant Accountability – SOP \(BE-5227\)](#) on the PPCR or [EICOP SharePoint](#)
- caters for the planning of most search warrant field operations
- reduces the likelihood that the circumstances leading to RCB will have ceased to exist at the time of executing the search warrant.

Note: In exceptional circumstances, such as search warrant field operations conducted in remote rural locations, the validity period can be extended up to 14 calendar days.

4.3.6. Revocation of an issued search warrant

In cases where, after issuing a search warrant, the Warrant Delegate becomes aware of information that may diminish RCB, the warrant must be revoked and the search warrant register updated.

Refer to the Revoked warrants and Recording a revoked warrant in CCMD parts of the [Section 251 Search Warrant Accountability – SOP \(BE-5227\)](#) on the PPCR or [EICOP SharePoint](#).

The Warrant Delegate must immediately notify the Warrant Holder that the warrant has been revoked. This is to be recorded in both officer's ABF official notebook and recorded in the MCP2 Report on the Use of Search Warrant.

4.3.7. Warrant limitations

A search warrant does not permit:

- Any activity not included within the scope of the MCP1.
- The seizure of documents or materials that relate to or may support the cancellation of a person's visa on the basis that they have been working in breach of their visa conditions (for example, employment records or pay cheques). Although officers cannot seize the documents or materials, grounds to cancelling a visa can still be considered on information sighted during a search warrant.
- The gathering of evidence regarding employers of illegal workers.
- The seizure of material relating to the commission of criminal offences.

To illustrate one of the limitations of warrant powers, a search warrant should not be used to enter and search an education provider's premises to establish compliance with student visa conditions. Officers should obtain a section 268CE Migration Act monitoring warrant for this purpose.

4.3.8. Search warrant accountability

Search warrants are accountable documents and must be handled and stored correctly.

Refer to the [Section 251 Search Warrant Accountability – SOP \(BE-5227\)](#) on the PPCR or [EICOP SharePoint](#) for information on:

- recording the issuance of a search warrant in CCMD Portal
- recording the revocation of an issued search warrant in CCMD Portal
- maintaining a search warrant register
- handling and storage procedures.

5. Conducting

5.1. Pre-operation briefing

The Warrant Holder must hold a pre-operation briefing before every search warrant field operation. This will usually be done in the office, however it can also take place in the field or another location if officers have to travel long-distance to conduct the search warrant field operation. The pre-operation briefing must be given to all officers (including non-departmental officers) who are participating in the search warrant field operation and they should take notes in their ABF official notebooks.

It is the responsibility of the officer leading the operation to ensure any material handed out during the briefing/operation is returned.

Information provided in the pre-operation briefing can include, but is not limited to:

- date, time and location of search warrant field operation
- specific identifiers for the location (street address, building description, etc.)
- the scope of the warrant – POIs and/or DOI(s)
- detailed information (including intelligence holdings) regarding POIs/ address(s) and DOI(s)

- risk identification and mitigation
- location of the closest emergency services and contact numbers
- assigned roles
- method of transport, including details of vehicles being used
- rest stops to be used
- any external attendees (police, Ombudsman, Facilities and Detainee Service Provider, Child Welfare etc.)
- joint operation information – who is the lead for the operation
- exit strategy
- equipment and dress requirements
- UoF details, including who the trained officers are
- First Aid officer
- use of a locksmith or landlord.

5.2. Executing a search warrant

In order to execute a search warrant, the Warrant Holder must:

- have successfully completed Warrant Holder training
- have been issued a search warrant in the prescribed form
- be the officer named in the warrant
- have the original search warrant with them
- ensure that the warrant is in force
- at the time of execution, have RCB there may be found the person(s) or item(s) specified in the MCP1 at the location specified.

In executing the search warrant, the Warrant Holder must not:

- exceed the scope of the search warrant (as outlined in the MCP1)
- transfer the warrant to another person
- exercise search warrant powers if they cease to hold RCB.

5.2.1. Reasonable cause to believe at time of execution

The Warrant Holder must hold RCB at the time of the warrant execution. s. 47E(d)

Examples of information that may confirm that there is RCB includes, but is not limited to, whether:

- the person answering the door resembles the POI
- a vehicle belonging to the POI is parked outside
- the person answering the door confirms that the POI resides at, or is present at, the address.

RCB may cease if, for example:

- the person answering the door is not the POI and has just moved into the premises

- the premises are unoccupied and the neighbour informs officers that the person(s) who used to live there has moved out
- other information that was used in the MCP1 is no longer current.

If the Warrant Holder fails to maintain RCB, all officers must leave the premises immediately by the shortest route possible.

The Warrant Holder cannot proceed with the execution of the search warrant if they do not personally hold the RCB. Any decisions must be recorded contemporaneously in the officer's ABF official notebook and must be recorded in the MCP2.

5.2.2. Assistance in executing a search warrant

Persons who assist a Warrant Holder must act under the Warrant Holder's direction. They can enter and search premises and identify relevant documents, but only the Warrant Holder has authority to seize documents.

It is the Warrant Holder's responsibility to ensure that all officers and other people who are assisting with the execution of the warrant, including those from other agencies, search only for persons or documents that are within the scope of the warrant.

Officers from other agencies who wish to enter and search for persons/items outside the scope of the search warrant must do so only if they have their own separate lawful authority. For example, if assisting AFP members want to investigate a possible offence against the Commonwealth, they would need to do so under their own powers.

5.2.3. Recordkeeping

All officers are required to keep a contemporaneous record that can be relied on later, of any search warrant field operation they participate in.

In particular, the Warrant Holder must ensure that there is a record of:

- when and where the team entered the premises
- when a power is exercised
- whether there was force used to conduct the search (for example, forced entry including entry with the assistance of a locksmith)
- when and where they searched the premises
- what they found, where and when
- when and who they spoke to or interviewed
- if information provided by persons out of the scope of the warrant was given voluntarily
- when and who they detained
- if a person is lawfully detained, when and who was pat searched and by whom;
- what was seized as a result of the search (of the person and/or the property);
- any vulnerable persons indicators
- what Form 41 Property Receipts were issued and to whom
- whether there was any damage to the premises/injury to persons
- whether there were allegations/complaints made during the search
- whether there were any exceptions to policy, procedural or legislative requirements, and if so, why

- when the team exited the premises
- whether the premises were left in, or as close to, the condition in which they were found (verified by the occupant's signature where possible).

The records must detail which officer(s) undertook each action or activity.

Other officers must make a record of any relevant events or observations that the note taker may not have witnessed.

Officers who have been provided with an official diary or notebook must ensure it is kept safe and secure at all times, and must secure in accordance with the [Commonwealth's Protective Security Policy Framework – Part 8 – Sensitive and classified information](#).

Any loss of an official diary or notebook must be reported to the Privacy and Information Disclosure Section within 24 hours of becoming aware of the loss, by completing the Privacy Breach Report s. 22(1)(a)(ii)

5.3. Entry

5.3.1. With reasonable cause to believe

Officers do not require the consent of the occupant when seeking to enter a property with a search warrant, as long as the Warrant Holder holds RCB that a person(s) or item(s) prescribed in the MCP1 may be found at the property.

Upon gaining entry, the Warrant Holder must:

- identify themselves and other officers as appropriate to the occupant(s) (for example, a resident or an owner/manager of a business)
- explain the purpose of the visit
- show the occupant(s) the original search warrant and give them a copy (the original search warrant must remain in possession of the Warrant Holder at all times)
- give the occupant(s) Form 1471i Immigration Search Warrant Powers – Information for Occupiers that explains the Migration Act search warrant powers
- ensure that both the process and the situation leading to gaining entry are clearly documented.

The copy of the search warrant given to the occupant(s) must clearly indicate that the document is a copy of the search warrant.

The occupant(s) must not be given:

- information about any other addresses to which the search warrant may apply
- a copy of the MCP1, as this contains confidential material.

A Warrant Holder must establish to the person whose premises are being searched that the Warrant Holder has lawful permission to do so. If there are safety/security concerns about the name of the Warrant Holder and/or Warrant Delegate on the Search Warrant, options that may be considered are:

- organising the search warrant to be issued to a police officer, rather than an ABF officer. Refer to [Persons to whom a s251 search warrant can be issued](#)
- reading the warrant out in full at the time of execution rather than providing a copy (prior approval from a Field Operation Supervisor (APS6) or above is required).

Note: The search warrant is in the form prescribed under s251(4) of the Migration Act and subregulation 5.32(2) of the Migration Regulations, therefore the search warrant form cannot be amended to exclude names and/or replace names with position numbers.

5.3.2. Without reasonable cause to believe

The Warrant Holder may decide to conduct a field operation as a non-warrant visit in cases where the Warrant Holder:

- does not establish RCB from outside the target location (OWOO Stream Two)
- has lost RCB.

If the Warrant Holder gains consent from the occupant to enter, this must be recorded in official notebooks including acknowledgement that the occupant understood what they were consenting to.

Whilst inside the premise, if the Warrant Holder establishes RCB, they can contact a Warrant Delegate to discuss executing the warrant. If the Warrant Delegate agrees, the Warrant Holder can serve and execute the search warrant.

The Warrant Holder must then follow steps under [With reasonable cause to believe](#).

If RCB is not formed and the visit continues under informed consent, the officer must enter a retrospective FVA into the CCMD Portal. Refer to the [Field Operations Non-Warrant – SOP \(BE-6743\)](#) on the PPCR or [EICOP SharePoint](#).

5.3.3. Entry methods and use of force

Use of force to gain entry to premises when executing a search warrant must be in accordance with the Operational Safety Principles and Use of Force Model outlined in the [Operational Safety Order](#).

5.3.4. Unoccupied premises

Subsection 251(4) permits entry, whether a location is occupied or not, where RCB is held. However, it is highly preferred that a premise be entered and a search warrant executed only if the occupant(s) is (are) present. If the occupant is not present, the Warrant Holder should return later to execute the search warrant when the occupant(s) returns. This reduces the scope for dispute about actions occurring during the search and gives the occupant(s) the opportunity to assist if they are prepared to do so.

However, circumstances may arise where it is necessary to enter and search unoccupied premises. For example, if a UNC has already been detained and transferred to a detention centre and officers need to search their premises to find travel documents.

In such circumstances, the Warrant Holder should:

- contact a Field Operation Supervisor (APS6) or above
- inform the Field Operation Supervisor (APS6) or above that the premises are unoccupied
- seek advice on whether the search should take place.

When leaving the unoccupied premises, the Warrant Holder should:

- leave a copy of the search warrant for the occupant(s) of the premises to let them know that a search has occurred
- ensure that the premises are secured
- if applicable, leave a Form 41 Property Receipt for any items that have been seized under the search warrant.

5.3.5. When only a minor is present

Refer to [Locating and Detaining a Minor \(Including Unaccompanied Minors\) – SOP \(BE-5426\)](#) on the PPCR or [EICOP SharePoint](#).

5.4. Searches

Officers must note that only person(s) and/or documents (as specified in section 251(6)) and outlined in the MCP1 can be lawfully searched for and seized under s251.

When conducting searches, officers must take into account the following:

- searches of business premises should be carried out with the minimum disruption to the premises and the occupants, that is:
 - o officers should allow occupants to close their businesses before carrying out the search
 - o officers should allow persons who are not of interest to leave the business premises.
- the Warrant Holder may request occupants of a business premises to cease business operations if this is required to ensure the safety of officers, persons or members of the public. If this occurs the business should be allowed to resume as soon as possible.
- all occupants are to be treated with dignity and respect.
- all belongings are to be handled with care and respect in a manner that is not likely to damage them or be offensive to their owners
- occupants should be given an opportunity to uncover, empty or show the contents of their belongings, such as containers, bags and boxes (for example, the occupant could first be asked: "Is that your bag? Can you show me what is inside?")
- officers are not to place their hands into any space where they cannot see what they are touching
- officers should wear gloves
- officers should separate occupants from potential weapons (for example, officers should not interview occupants in a kitchen environment)
- as far as possible, the premises should be left as they were found and made secure if the occupants are detained and removed from the premises.

5.4.1. Material related to the commission of criminal offences

The discovery of material relating to the alleged commission of criminal offences must be reported to the relevant authorities as soon as practicable. These materials must not be handled or moved.

In cases where officers identify material that could relate to the commission of a criminal offence, they must make notes of the material to communicate to the relevant authorities, such as the police, being sure to include:

- what was discovered
- where/when it was discovered

5.4.1.1. Videoing or taking photos of material related to the commission of criminal offences

Officers must be aware that videoing or taking photos of things unrelated to the warrant purpose is not an explicit power under s251 but could be considered as an implied warrant power. Officers must ensure any videoing or taking of photos is limited to the suspected material.

5.4.2. Material related to alleged contraventions or breaches of the Migration Act

The discovery of material that may relate to other alleged contraventions or breaches of the Migration Act (such as evidence of worker exploitation) cannot be seized under a search warrant. However, officers can seek consent to take the material.

5.4.2.1. Documents related to non-compliance with visa conditions

The discovery of documents relating to non-compliance with visa conditions (such as no work condition 8101) cannot be seized under the search warrant. However, officers can ask the owner of the document for their consent to take the document or a copy.

Officers must record the request and the response of the person in their ABF official notebooks. Even where the document pertaining to the non-compliance of the visa condition cannot be obtained, visa cancellation may still commence provided that the outcomes of the field operation are properly recorded.

5.4.3. Cash

While searching a property, officers may come across sums of cash. To protect officers and the ABF from allegations of inappropriate behaviour, any cash found must be brought to the attention of another officer as soon as operationally practicable. Both officers must record their observations in their ABF official notebooks.

Officers must also report these observations to the Warrant Holder and at the post activity/operation debrief. Any cash found should remain where it is found because section 251 does not authorise the seizure of cash.

However, if a person has been immigration detained following a search warrant field operation, the person should be asked whether they wish to bring any of their valuables, which includes cash. If the detainee states that they wish to bring their cash with them, in these circumstances, a detailed record must be made of:

- who owns the cash (name)
- the amount of cash (by denomination)
- the currency of the cash
- where it was found
- who found the cash and the names of any witness
- the name(s) of the witness(es) present when the cash is counted.

The cash must be placed into a secured sealable bag (using an ABF seal) which is to be sealed in the presence of the detainee. A Form 41 Property Receipt is to be completed and a copy provided to the owner.

This cash has not been seized, will be transported with the detainee's belongings and returned to them once they are no longer in detention.

Should an officer have concerns that the cash may be related to criminal offences, refer to [Material related to the commission of a criminal offence](#).

Note: Cash may be seized under a section 223 warrant only for the purposes of section 223. Refer to [Removal from Australia - Planning and Logistics - SOP \(BC-7204\)](#) on the PPCR or [EICOP SharePoint](#).

5.4.4. Issuing receipts

The Warrant Holder must provide the owner of the item(s) with a Form 41 Property Receipt for any document, book or papers and other specified items seized under a search under ss251(6).

If a decision is made to enter and search unoccupied address(es)/premise(s)/place(s) and documents, (or other specified items) are seized, the Warrant Holder must leave a Form 41 Property Receipt at the premises and record this in their ABF notebooks.

When seized items are returned, the Form 41 Property Receipt is to be completed and distributed in accordance with the instructions on the form.

5.4.5. Multiple searches of the same address

In exceptional circumstances, it may be necessary to search the premises again under the same approval if the warrant period has not expired. For example, a Warrant Holder may enter and search the premises a second time if a UNC has been found but absconds, and returns after the search team has left the premises.

On each execution of a search warrant at the same address, the Warrant Holder must have RCB that the person(s) and/ or document(s) sought may be found on the premises. Reasons for subsequent entry must be clearly documented in the officer's ABF notebook and recorded in the MCP2.

To minimise disruption and avoid allegations of harassment, the same address should not generally be searched more than once using the same approval for use of a search warrant.

5.5. Interviewing located persons

Please refer to [Field Operations Interviewing Located Persons – SOP \(BC-5436\)](#) on the PPCR or [EICOP SharePoint](#) for instructions on interviewing located persons and the use of the Located Person Interview (LPI) form.

5.6. One Warrant – One Objective model process in the field

5.6.1. Stream one – visiting additional locations

Where the MCP1 referenced the possibility of an additional location (other than the targeted location), which may need to be searched in order to achieve the objective of the search warrant field operation, the Warrant Holder must:

- consider potential risks associated with visiting any additional address/location and discuss identified risks and mitigation strategies with a Field Operation Supervisor (APS6) or above.

The Field Operation Supervisor (APS6) or above must be satisfied that the identified risks will be managed effectively. Refer to [Operation planning and risk assessment in the field](#).

- contact a Warrant Delegate and provide sufficient information for them to be satisfied that there is RCB and that a search of the additional location will contribute to achieving the objective of the search warrant field operation.

Once the Warrant Delegate has established RCB (and assuming the Warrant Holder still has RCB) for the additional location, the Warrant Holder can proceed to execute the warrant at the additional location.

If the Warrant Delegate does not establish RCB for the additional location, the Warrant Holder cannot proceed to execute the warrant at the additional location.

Both the Warrant Delegate and Warrant Holder must contemporaneously record details of the circumstances and the reasons for their decision in their ABF official notebooks and later in the MCP2.

5.6.2. Stream two – RCB not established at time of warrant application

Where the MCP1 referenced that the Warrant Holder will attempt to establish RCB for the targeted location from within the field in order to achieve the objective of the search warrant field operation, the Warrant Holder must:

- contact a Warrant Delegate and provide sufficient information for them to be satisfied that there is RCB in order to proceed to execute the search warrant at the target location.

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Once the Warrant Delegate has established RCB in relation to the target location (and assuming the Warrant Holder still has a RCB), the Warrant Holder can proceed to execute the search warrant at the target location.

If the Warrant Delegate does not establish RCB in relation to the target location, the Warrant Holder cannot proceed to execute the warrant at the target location.

If the Warrant Holder had pre-determined the need to visit additional location(s) in the Stream 2 warrant application, before execution at additional location(s), the Warrant Holder must:

- consider potential risks and WHS issues associated with visiting any additional address/location and discuss identified risks and mitigation strategies with a Field Operation Supervisor (APS6) or above.

The Field Operation Supervisor (APS6) or above must be satisfied that the identified risks will be managed effectively. Refer to [Operation planning and risk assessment in the field](#).

- contact a Warrant Delegate and provide sufficient information for them to be satisfied that there is RCB and that a search of the additional location will contribute to achieving the objective of the search warrant field operation.

Once the Warrant Delegate has established RCB for the additional location (and assuming the Warrant Holder still has RCB), the Warrant Holder can proceed to execute the search warrant at the additional location.

If the Warrant Delegate does not establish RCB for the additional location, the Warrant Holder cannot proceed to execute the warrant at the additional location.

Both the Warrant Delegate and Warrant Holder must contemporaneously record details of the circumstances and the reasons for their decision in their ABF official notebooks and later in the MCP2.

5.6.3. Operation planning and risk assessment in the field

In cases where the Warrant Holder intends to visit an additional location for achieving the search warrant field operation objective, planning will need to be conducted while in the field. This is required in order to demonstrate that officers have considered the possible risks and mitigation strategies and how to conduct the search warrant field operation.

The Warrant Holder must gather as much information as possible. This can be achieved through [REDACTED] or seeking information from intelligence sources.

s. 47E(d)

This information is then provided to the Warrant Holder who will undertake planning, including an assessment of risks and mitigation strategies. The Warrant Holder must record this information in their ABF official notebook.

Once completed, the Warrant Holder must contact a Field Operation Supervisor (APS6) or above to provide a verbal account of planning and outline the identified risks and mitigation strategies, noting risk approval requirements listed in the Risk Escalation Treatment Guide tab within the ABF Official Risk Register Template s. 22(1)(a)(ii)

In making their decision, the Field Operation Supervisor (APS6) or above must be satisfied with the plan for visiting an additional location and that all identified risks will be managed effectively.

Both the Warrant Holder and the Field Operation Supervisor (APS6) or above must make a record of this process in their ABF official notebooks. Upon return to the office, all ABF official notebook records must be scanned and saved in TRIM.

5.7. Duration

A search warrant remains in force until immediately before midnight on the date of its expiry. Officers must not remain on the premises if a search warrant is not in force or has expired, unless informed consent has been obtained.

Furthermore, the power of the search warrant ceases as soon as either the objectives of the search warrant have been met (for example, the person(s) and/or item(s) subject of the search warrant are located) or RCB ceases.

6. Reviewing

6.1. After Action Review (AAR)

An AAR must be conducted as soon as practicable after the search warrant field operation has been concluded. The Warrant Holder must determine if the AAR needs to be conducted while in the field immediately after the search warrant field operation, or on return to the office.

Documentation produced from the AAR must be saved in TRIM. The Warrant Holder, in consultation with a Field Operation Supervisor (APS6) or above, is responsible for following up any issues raised during the AAR.

Templates and resources to assist in the AAR process can be found on the [ABF Operational Planning Framework SharePoint](#).

6.2. MCP2 – Report on the use of a search warrant

Following the conduct of a search warrant field operation, a detailed report must be prepared by the Warrant Holder using the MCP2 online form in the CCMD Portal. The report must:

- provide a full and complete version of events that occurred during the conduct of the search warrant field operation, in particular noting any powers used and reasons for their use
- be completed for search warrant field operations in cases where the location was not visited and/or the warrant not executed
- be reviewed by a Field Operation Supervisor (APS6) or above (reviewing officer) within the 14-calendar day timeframe
- be prepared and submitted to a Warrant Delegate (approving officer) within 14 calendar days of the warrant being executed, or the intended date of execution in cases where the search warrant field operation was not conducted.

Where an external officer was the Warrant Holder, the above responsibilities must be completed by the officer who submitted the MCP1.

Only in exceptional circumstances, if the Warrant Holder is unable to complete the MCP2 (e.g. Warrant Holder on personal leave), can the note taker or a senior officer involved in the search warrant field operation complete the MCP2.

Note: In cases where additional locations were visited, a separate MCP2 (for each additional location) must be completed within a separate Field Action in the same Job within the CCMD Portal.

6.2.1. Reviewing officer

A Field Operation Supervisor (APS6) or above must review the MCP2 and record their decision and reasoning within the required fields of the MCP2 online form.

After the Field Operation Supervisor (APS6) or above has completed their review, the MCP2 is submitted to the Warrant Delegate.

6.2.2. Approving officer

The Warrant Delegate who issued the search warrant must review the MCP2 to determine that appropriate action was taken during execution of the search warrant.

The definition of 'appropriate action' includes:

- the search warrant used was valid and in force at the time of execution
- the search warrant was executed at the approved location(s) (either outlined in the MCP1 or identified in the field)
- that RCB was established and maintained prior to entry and during execution
- the seizure of items was carried out in conformance with legislation and policy.

The Warrant Delegate is required to record their decision and reasoning within the required fields of the MCP2 online form.

6.2.3. Alternate Warrant Delegate

If the Warrant Delegate who issued the search warrant is unavailable, the Warrant Holder must seek to contact an alternate Warrant Delegate in order to progress completion of the MCP2 within the required timeframe.

In this case, the alternate Warrant Delegate must be provided with a copy of the approved MCP1 and any other Warrant Delegate decision records made during the conduct of the search warrant operation.

7. Recordkeeping

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

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

7.1. ABF official notebooks

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

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

8. Freedom of Information (FOI)

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

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

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

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

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

9. Privacy

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

The Privacy Act provides the legislative framework for the management of the collection, use and potential disclosure of both personal and sensitive information. The Department is bound by the Privacy Act. The Privacy Act establishes the *Australian Privacy Principles* (APPs), which regulate the collection, handling and protection of personal information, including sensitive information. All officers and contracted service providers dealing with these kinds of information must be aware of the Department's obligations under the APPs in the Privacy Act. The Privacy Act determines how officers must handle personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

APP 3 requires that the Department should only collect personal information where reasonably necessary for, directly related to, one or more of its functions. The Department may only collect sensitive information where the above conditions are met and the individual concerned consents to the collection. Information about the Department's privacy policy and the form 1442i *Privacy Notice* is available on the Department's website at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>.

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

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

For further information, refer to:

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

10. Accountabilities and Responsibilities

Role	Description
Superintendent: Enforcement & Immigration Compliance Operational Policy section (Document Owner)	Accountable to Commander Workforce Operational Policy and Practices Responsible for: • endorsing/approving Field Operations Standard Operating Procedures • verifying appropriate stakeholder consultation was undertaken during document drafting • directing regular evaluation of the document to ensure that it achieves the intended purpose • monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect document content.
Field Operational Policy Team: Enforcement & Immigration Compliance Operational Policy section (Document Author)	Accountable to Superintendent, Enforcement & Immigration Compliance Operational Policy section. Responsible for: • drafting documents in compliance with the Policy and Procedure Control Framework (PPCF) • stakeholder consultation • addressing key requirements of the policy or procedure.
Field Operations Officers (APS4 to EL2): (Stakeholder)	Accountable to Commander Field Operations & Sponsor Monitoring Responsible for: • identifying the need for additions or amendments to the document and submitting the details to the Field Operational Policy team • ensuring attendance of subject matter experts at stakeholder consultation workshops • ensuring draft documents are reviewed and solution focussed feedback is provided within the specified timeframes • complying with the instructions outlined in this SOP.

11. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	15/10/2020	Field Operational Policy	Draft document created based on content taken from the Field Operations (Field Compliance) PP (BE-5351) during the mandatory 3 year PPCF review
1	25/06/2021	Field Operational Policy	Final document – endorsed by Chief Superintendent.
1.1	13/09/2022	Field Operational Policy	Update to align with new C3 doctrine.

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Version number	Date of issue	Author(s)	Brief description of change
1.2	28/08/2023	EICOP	Mandatory 3 Year PPCF review commenced
2	28/05/2024	EICOP	Final – Superintendent Approved
2.1	09/09/2025	EICOP	Administrative Amendment – update to current PPCF template and references to removal policy documents

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	As defined in section 4 of the <i>Australian Border Force Act 2015</i> , the Australian Border Force means that part of the Department known as the Australian Border Force. The Australian Border Force, an operationally independent body within the Department of Home Affairs, is Australia's frontline border law enforcement agency and customs service. The Australian Border Force delivers critical border protection and national security outcomes while facilitating the movement of people and goods across the border.
<i>Australian Border Force Act 2015</i>	the ABF Act	The <i>Australian Border Force Act 2015</i> (Cth), amongst other things, establishes Australian Border Force within the Department, and an ABF Commissioner who is to have the control of the operations of the ABF. It also contains secrecy and disclosure provisions applicable to entrusted persons.
Australian Federal Police	AFP	The statutory authority established under the <i>Australian Federal Police Act 1979</i> (the AFP Act) whose role is to enforce Commonwealth criminal law, contribute to combating complex transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas. Members of the AFP are conferred under s40B of the AFP Act.
Detain		As defined under subsection 5(1) of the Migration Act, detain means: • take into immigration detention; or • keep, or cause to be kept, in immigration detention; and includes taking such action and using such force as is reasonably necessary to do so. Note: This definition extends to persons covered by residence determinations (see section 197AC of the Migration Act).
Detainee		As defined under subsection 5(1) of the Migration Act, a detainee means a person detained (in immigration detention). Note: This definition extends to persons covered by residence determination (see section 197AC of the Migration Act).
Immigration detention		As defined in part under subsection 5(1) of the Migration Act, immigration detention means: • Being in the company of, and restrained by: ○ an officer, or ○ in relation to a particular detainee – another person directed by the Secretary or ABF Commissioner to accompany and restrain the detainee; or • Being held by, or on behalf of, and restrained by in: ○ a detention centre established under this Act or

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		- o a prison or remand centre of the Commonwealth, a State or a Territory, or - o another place approved by the Minister in writing (i.e. in an appropriate alternative place of detention (APOD) for example, a motel or hospital). but does not include being restrained as described in subsection 245F(8A) of the Act, or being dealt with under paragraph 245F(9)(b) of the Act. Note 1: Subsection 198AD(11) provides that being dealt with under subsection 198AD(3) does not amount to immigration detention. Note 2: This definition extends to persons covered by residence determinations (see section 197AC).
Informed consent		Informed consent means that the information, proposal or procedure has been explained to the person in such a way that they are aware of the implications of providing or withholding consent (such as a service no longer being available) and how their personal information will be handled if consent is or is not provided. Consent must be obtained each time there is a material change in circumstances. It must be specific, current and able to be withdrawn at any time. To ensure a person has given informed consent, a person must be given a full and detailed explanation of what is and what is not going to happen, in the language they understand.
LEGEND		The Department's online database of migration, citizenship and customs legislation, policy, guidelines and other related information.
Mandatory Control Point 1	MCP1	Relates to an application for search warrant.
Mandatory Control Point 2	MCP2	Relates to a report on the use of a search warrant.
<i>Migration Act 1958</i>	the Migration Act	The primary Commonwealth legislation governing the entry into, and presence in, Australia of non-citizens, and the removal or deportation from Australia of non-citizens. The <i>Migration Act 1958</i> governs, amongst other things, the immigration detention of unlawful non-citizens. The <i>Migration Act 1958</i> must be complied with at all times in relation to the manner in which an unlawful non-citizen is taken into or being held in immigration detention.
<i>Migration Regulations 1994</i>	the Migration Regulations	The Migration Regulations consist of more specific rules relating to Australian migration law. For example, the Migration Regulations set out the requirements that must be met in order for an applicant to be eligible for an Australian visa. The Migration Regulations work in conjunction with the Migration Act.
Migration zone		As defined under subsection 5(1) of the Migration Act, migration zone is defined as the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes: • land that is part of a State or Territory at mean low water; and • sea within the limits of both a State or a Territory and a port; and

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		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.
Non-citizen		As defined under subsection 5(1) of the Migration Act, non-citizen is defined as a person who is not an Australian citizen.
Notification		Notification is a formal outbound written correspondence from the Department to a visa applicant or holder (or their authorised recipient or carer) or approved business sponsor, which is prescribed by legislation and either: - informs them of a decision affecting their visa status or approval status, or - requests additional information or comment to inform a decision affecting their visa status or approval status.
Officer		As defined under subsection 5(1) of the Migration Act, officer is defined as: - an officer of the Department, other than an officer specified by the Minister in writing for the purposes of this paragraph; or - a person who is an officer for the purposes of the Customs Act, other than such an officer specified by the Minister in writing for the purposes of this paragraph; or - a person who is a protective service officer for the purposes of the <i>Australian Federal Police Act 1979</i> (AFP Act), other than such a person specified by the Minister in writing for the purposes of this paragraph; or - a member of the Australian Federal Police (AFP) or of the police force of a State or an internal Territory; or - a member of the police force of an external Territory; or - a person who is authorised in writing by the Minister to be an officer for the purposes of the Migration Act; or - any person who is included in a class of persons authorised in writing by the Minister to be officers for the purposes of the Migration Act, including a person who becomes a member of the class after the authorisation is given.
Unlawful non-citizen	UNC	As defined under subsection 5(1) and section 14 of the Migration Act, unlawful non-citizen is defined as: - a non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen. - to avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.

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Warrant Applicant		An officer making an application for a section 251 search warrant
Warrant Delegate		An officer delegated to issue section 251 search warrants under s251(4) of the Migration Act.
Warrant Holder		An officer issued with a section 251 search warrant by a Warrant Delegate for the purpose of exercising power under s251(6) of the Migration Act.

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Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

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

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
<i>Migration Act 1958</i>	s251	Powers of entry and search	s251(4) Yes	<i>Australian Border Force (Secretary) Instrument No. 1 of 2018 (ABF(S) No.1 of 2018)</i>

1.2 Controls and Assurance

Related Policy	Operational Planning Framework Operational Safety Order Commonwealth's Protective Security Policy Framework – Part 8 – Sensitive and classified information		
Procedures / Supporting Materials	Field Operations – PI (BE-6712) Interviewing Located Persons – SOP (BC-5436) Non-Warrant Field Operations – SOP (BE-6743) Section 251 Search Warrant Accountability – SOP (BE-5227) Locating and Detaining a Minor (including Unaccompanied Minors) – SOP (BE-5426) Removal from Australia - Planning and Logistics - SOP (BC-7204)		
Training/Certification or Accreditation	Refer to Training in the Field Operations – PI (BE-6712)		
Other required job role requirements	Refer to Training in the Field Operations – PI (BE-6712)		
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Officers should seek assistance from a Field Operations Supervisor (APS6) or above in the first instance. Field Operational Policy (Connected Services Portal)		
Escalation arrangements	Field Operational Policy (Connected Services Portal) s. 22(1)(a)(ii) @abf.gov.au		
Recordkeeping (eg system based facilities to record decisions)	Total Records and Information Management (TRIM) (also known as Content Manager) Compliance Case Management and Detention (CCMD) Portal		

Program or Framework (i.e. overarching Policy Framework or Business Program)	<u>Status Resolution System Control Framework – PS (BC-763)</u> <u>Status Resolution System Control Framework – Mandatory Control Points – SM (BC-6186)</u>
Job Family Framework Role	Field Operations Officer

Attachment C – Consultation

1.1 Internal Consultation

Branch	Section
ABF College	Compliance, Investigations & Trade Faculty
ABF Workforce Capability	Enforcement & Immigration Compliance Management
Compliance and Community Protection Policy	Migrant Worker and Field Compliance Policy
Field Operations & Sponsor Monitoring	Field Operations WA/SA
	Field Operations QLD/NT
	Field Operations NSW/ACT
	Field Operations VIC/TAS
Legal Group	
Legislation	Legislation Strategy & Coord (Delegations)
People Operations	Workforce Health & Safety
Privacy, FOI & Records Management	Freedom of Information
	Privacy
	Records Management
Commander – Field Operations and Sponsor Monitoring	
Employee consultation as per clause 1.7 of the <i>Department of Home Affairs Workplace Determination 2019</i>	

1.2 External Consultation

Nil

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Vulnerable Persons

Supporting Material

Document ID (PPN)	SM-5337
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1. Introduction

The definition of “vulnerable person” was developed in response to a recommendation from the internal audit *Management of Vulnerable Persons by the Australian Border Force* Engagement #43 – 2015/16 which is located at ADD2021/6673667. This Supporting Material document provides a broad definition intended as general guidance for developing operational documentation.

2. Definition of ‘Vulnerable Persons’

A vulnerable person is a person who, because of any condition or circumstance, has a reduced ability to manage their own interests. Whether a person is vulnerable can depend on both the situation and circumstances of the individual concerned. Vulnerability can be either temporary or ongoing. A person may experience multiple vulnerabilities concurrently and therefore may present as experiencing a higher level of vulnerability.

While it is not possible, nor intended to provide an exhaustive list of persons who are vulnerable, the following categories of persons may be considered to be vulnerable.

- Any child under 18, whether or not accompanied by a parent, guardian or responsible adult
- Pregnant women and women who have recently given birth
- Persons who are aged 65 years and over
- Aboriginal and Torres Strait Islander persons
- Persons with a physical disability, impairment, condition or illness
- Persons with an intellectual disability or mental health condition
- Persons with gender-related special needs
- Persons who have been subjected to psychological, emotional, physical or sexual violence or abuse
- Persons who have been or are victims of a serious crime
- Persons who have experienced or are experiencing family violence (including coercive control or dowry-related abuse)
- Refugees and persons seeking asylum
- Victims or alleged victims of modern slavery
- Persons with limited literacy (in English or any language) or limited English language ability
- Persons experiencing family separation and relationship breakdown
- Persons who are experiencing financial hardship, including homelessness or persons with no fixed address
- Persons who are intoxicated or drug-affected and/or addicted to illicit and legal drugs and/or alcohol.

Officers should be aware that a person may fall into one of the above categories and not be considered a vulnerable person.

Consideration should also be given to the needs of carers or family members of vulnerable persons. Considering vulnerability across policy, procedural and operational contexts is important, as failure to address vulnerability can expose clients and the Department to unacceptable levels of risk.

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3. References and legislation

The *Management of Vulnerable Persons by the Australian Border Force* Engagement #43 – 2015/16 found that there is no guidance around what constitutes “vulnerable persons” in the *Migration Act 1958*, the *Migration Regulations 1994*, the *Customs Act 1901* or the *Australian Border Force Act 2015*. This definition has been developed to address in part the Internal Audit’s recommendation that the Department should establish an overarching Vulnerable Persons Policy which outlines the legislative requirements and principles that ABF officers should consider when identifying and managing vulnerable persons.

The ABF has developed a Policy Statement - [Management of Vulnerable Persons by the Australian Border Force \(bcz.gov.au\)](https://www.bcz.gov.au) and a Policy Instruction - [Management of Vulnerable Persons by the Australian Border Force \(bcz.gov.au\)](https://www.bcz.gov.au) which provide further operational guidance on interacting with vulnerable persons.

4. Consultation

4.1. Internal consultation

In the development of this definition, consultation was undertaken with:

- Status Resolution Returns and Removals Policy section
- Family and Permanent Resident Policy section
- Traveller Policy section
- Traveller Operational Policy section
- Child Wellbeing Strategy and Capability section
- Unaccompanied Humanitarian Minors & Guardianship section
- Migrant Worker & Field Compliance Policy section
- Legal Group
- Joint Agency Task Force, Operation Sovereign Borders
- Status Resolution Capability and Criminal Justice Programs section
- Domestic and Family Violence Support Section
- Detention Contracts Management Unit
- Detention Health Operations and Program Management section
- Immigration Compliance Governance Branch
- Health Policy and Assurance Branch

4.2 External consultation

In the development of this definition, in June 2024 consultation was undertaken with:

- SERCO
- IHMS

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Version number	Date of issue	Author(s)	Brief description of change
0.1	23/03/18	s. 22(1)(a)(ii)	First draft – followed endorsement by FAS, Immigration and Citizenship Policy on 24 May 2017.
0.1	29/03/18		Uploaded on PPCF
0.2	13/01/21		Review commenced.
0.2	22/03/21		Uploaded on PPCF
0.3	20/05/24		Review commenced.
0.4	29/04/25		Uploaded on PPCF

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Operational Safety

Procedural Instruction

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1. Purpose

The purpose of this Procedural Instruction (PI) is to provide guidance on actions and activities detailed in the Operational Safety Order 2021 (the OSO) to ensure the *Comptroller-General of Customs (Operational Safety) Directions 2021* are appropriately implemented.

This PI provides procedural guidance regarding the use of force that is necessary and reasonable in the circumstances and its implementation, as outlined in the OSO. It is designed to ensure that ABF Employees effectively manage the response to conflict or potential conflict situations using the ABF Use of Force Model and Operational Safety Principles stipulated in this PI.

2. Scope

2.1. In scope

This PI provides further guidance on operational safety and use of force practice, reporting, training, assessment, qualification and administration requirements outlined in the OSO and is relevant to Australian Border Force (ABF) Employees who, in the course of their duties, may use force in the exercise of their statutory powers.

In relation to ABF accoutrements, this PI details the considerations prior to issuing ABF accoutrements and the reasons for deciding to deploy with ABF accoutrements only.

2.2. Out of scope

This PI does not apply to an ABF Employee contracted to provide immigration detention services who are designated as Authorised Officers under the *Migration Act 1958* (Cth) (the Migration Act).

This PI does not apply to items seized and held within Detained Goods Management (DGM) storage facilities or custodial firearms that are not retained by the ABF for training purposes.

This PI does not detail the actual use of ABF accoutrements.

3. Document Considerations

This PI should be read in conjunction with the *Comptroller-General of Customs (Operational Safety) Directions 2021*, the OSO and applicable policy and procedural documents. In the event of any inconsistency between this PI, the OSO and any other ABF procedural documents relating to operational safety and use of force, the OSO will prevail.

4. Governance

4.1. The Operational Safety Order

The OSO is made under the *Comptroller-General of Customs (Operational Safety) Directions 2021* and under subsection 189A (2) of the *Customs Act 1901* (Cth) (the Customs Act). Subsection 189A (2) provides that the Comptroller-General of Customs may give directions relating to the deployment of approved firearms and other approved items of Personal Defence Equipment (PDE).

The OSO sets out the ABF operational safety and use of force practice, reporting, training, assessment, qualification and administration requirements.

The OSO applies to an ABF Employee who has an operational safety qualification, their Supervisor and their chain of command whose roles and duties require them to exercise statutory powers, or anything that is reasonably incidental to that statutory power, which may require:

- use, or potential use of force, including self-defence and defence of others;

- management of operations and incidents that involve operational safety and the potential of actual use of force;
- possession, use or storage of ABF accoutrements and approved items of PDE;
- training or qualifying persons in use of force and operational safety; or
- monitoring and reporting on use of force.

4.2. Operational Safety Committee

S. 47E(d)

4.3. Use of Force in the Exercise of Statutory Powers

Decisions and actions taken by ABF Employees directly affect the lives of the public, and the confidence the public has in the Government. It is important that all ABF Employees are and remain aware of the standards of professionalism expected of them by the public and understand their obligations and responsibilities under the *Professional Standards Framework* and the *Integrity Framework*.

Paragraph 189A(1)(a) of the Customs Act provides that an Authorised Arms Issuing officer (AAIO) may issue approved firearms and other approved items of PDE to officers authorised to carry arms, for the purpose of enabling the safe exercise, by such officers, of powers conferred on them under the Customs Act or any other Act. 'Any other Act' includes, but is not limited to, the Migration Act, the *Maritime Powers Act 2013* and

the *Environment Protection and Biodiversity Conservation Act 1999*. It includes all Commonwealth legislation which ABF Employees have a statutory power.

Subsection 189A(7) provides that an officer of Customs may be authorised in writing to use approved firearms and approved items of PDE for the purpose in paragraph 189A(1)(a) by the Comptroller-General of Customs or their authorised delegate.

An *officer* in section 189A refers to an '*officer of Customs*' and is defined in section 4 of the Customs Act and includes (among others):

- a) the Secretary of the Department;
- b) the Comptroller-General of Customs (ABF Commissioner);
- c) an APS employee in the Department; or
- d) a person authorised to exercise all (or specified) powers and perform all (or specified) functions of an officer.

Reference to an ABF Employee includes an officer as defined in the Customs Act.

The meaning of 'powers' in section 189A of the Customs Act is not restricted to powers which expressly authorise the use of force. Accordingly, approved firearms and approved items of PDE may be issued for the purpose of the safe exercise of any power conferred on an ABF Employee under Commonwealth legislation.

Approved ABF accoutrements and PDE may be issued where the officer is about to perform a role in which it is foreseeable that the accoutrements or PDE may be required to safely exercise a statutory power.

However, these circumstances are limited and the policy guidance must be strictly adhered to.

4.4. Self-Defence

Use of force in self-defence may be authorised during the exercise of a statutory power whether an ABF Employee is the holder of a Use of Force Permit, or has received any other level of use of force training or not. Further, if an ABF Employee is exercising a statutory power, the ABF Employee would be authorised to use such force as is necessary and reasonable to defend themselves or another person in those circumstances. Furthermore, an ABF Employee carrying ABF accoutrements may use their accoutrements in an act of self-defence or defence of others from an immediate threat of death or serious injury; however, in circumstances where an ABF Employee is not exercising a statutory power, the use of force will not be authorised.

Subsection 10.4(1) of the *Criminal Code* states that a person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.

Subsection 10.4(2) of the *Criminal Code* states that a person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

- a) to defend himself or herself or another person; or
- b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
- c) to protect property from unlawful appropriation, destruction, damage or interference; or
- d) to prevent criminal trespass to any land or premises; or
- e) to remove from any land or premises a person who is committing criminal trespass; and
- f) the conduct is a reasonable response in the circumstances as he or she perceives them.

Subsection 10.4(3) of the *Criminal Code* states that section 10.4 does not apply if the person uses force that involves the intentional infliction of death or really serious injury:

- a) to protect property; or
- b) to prevent criminal trespass; or
- c) to remove a person who is committing criminal trespass.

Subsection 10.4(4) of the *Criminal Code* states that section 10.4 does not apply if:

- a) the person is responding to lawful conduct; and

b) he or she knew that the conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

Section 10.5 of the Criminal Code states that a person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law.

4.5. Determining Suitability for Roles Appointments

S. 47E(d)

4.5.1. Use of Force Permit

S. 47E(d)

4.5.2. Armoury Registrar and Deputy Armoury Registrar

S. 47E(d)

4.5.3. Authorised Arms Issuing Officer

S. 47E(d)

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4.5.4. Operational Safety Trainer

S. 47E(d)

5. ABF Operational Safety

S. 37(2)(b)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

s. 37(2)(b)

5.2. Use of Force

ABF Employees may only use force in the exercise of their statutory powers or in self-defence. Further, any application of force must be the minimum force necessary and reasonable in the circumstances of a particular incident and be proportionate and appropriate in all of those circumstances.

Factors which may assist in deciding if the use of force is necessary may include:

- a) the extent of the threat or resistance offered; and
- b) options available to the ABF Employee to mitigate the threat or resistance, including prioritisation of less restrictive options.

Where operational planning identifies a potential need to deploy with ABF accoutrements and/or body armour, ABF operational risk management practices, policies and procedures must be considered and used to assess and mitigate identified risks in accordance with the ABF Operational Risk Management Framework. Any risk treatment option requiring deployment with ABF accoutrements:

- a) must occur in teams with two or more ABF Employees who hold a Use of Force Permit to provide mutual support with two or more ABF Employees carrying ABF accoutrements; or
- b) is permitted if an ABF Employee is seconded in a team, or as a single officer to the AFP and involved in an operational activity, or where the ABF Employee is involved in a joint operation with a State or Territory law enforcement agency where that agency has a supporting use of force capability.

This does not include if the ABF Employee is travelling alone to meet a second ABF Employee prior to conducting operational duties, nor does this apply to National Surveillance Unit (NSU) where ABF Employees are conducting specific tasks individually but are performing their duties as part of a surveillance team.

In all circumstances, the decision to carry ABF accoutrements must be based on a documented, approved assessment of the operational activity. For business as usual activities this can be completed once per annum. For specific operational activities i.e. warrants, the risk assessment can encompass all anticipated risks and considerations in one assessment; however, this must be completed per operational activity. For urgent operational matters i.e. rolling warrants, where a time critical operational response is required, this can be completed verbally and approved by the ABF Employee with the appropriate delegation from the same work area with appropriate documentation completed as soon as practicable after the use of force activity.

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Where the risk assessment does not support the carrying of ABF accoutrements, the operational plan must be updated to ensure that ABF accoutrements are not issued unnecessarily.

An ABF Employee must not use more force, or subject the person to greater indignity, than is necessary, reasonable and proportionate to resolve a situation in the exercise of statutory powers.

ABF Employees working with restricted staffing levels should adopt a risk-based approach to deployment with ABF accoutrements and consult with their chain of command prior to deploying. The decision to carry ABF accoutrements in all circumstances must be based on:

- a) the nature of the duties being performed;
- b) the potential threat related to those duties;
- c) the security environment;
- d) the location; and
- e) any other relevant consideration.

5.3. Use of Lethal Force

Lethal force is an option that must only be used when necessary and reasonable in the following circumstances:

- a) in self-defence from the imminent threat of death or serious injury; or
- b) in defence of others against whom there is an imminent threat of death or serious injury; and
- c) only when other use of force measures are insufficient to achieve these objectives

An ABF Employee who considers using lethal force to be necessary and reasonable must:

- a) not use more force, or subject the person to greater indignity, than is necessary, reasonable and proportionate to the seriousness of the circumstances; and
- b) minimise risk of injury to other people with a view to preserving human life

5.4. Excessive Force

ABF Employees should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances. ABF Employees should not use more force than is reasonably necessary for the safe and effective exercise of their powers and individual ABF Employees are accountable and responsible for their use of force and must be able to justify their actions. Use of more or greater force than required in the circumstances will be considered excessive, and in no circumstances is the use of excessive force endorsed.

5.5. Reportable Use of Force Incident Requiring General Notification

In addition to section 6.5 of the OSO, refer to the *Use of Force Reporting PI* (BC-6700) for direction on reporting Use of Force incidents requiring general notification.

5.6. Non Use of Force Incidents Requiring General Notification

The Supervisor of an ABF Employee who receives a report in relation to an injury to an ABF Employee or any other person as a result of incidents that fall outside the requirement of a Use of Force Report in regards to equipment use or malfunction, or training deficiencies, will, as soon as practicable, report the incident to the Operational Commander for consideration and appropriate action. The Operational Commander will forward any recommendations resulting from a review of the incident to the Superintendent OSCS for consideration and appropriate action as soon as practicable.

5.7. Use of Force Incidents Requiring Immediate Notification

In addition to section 6.6 of the OSO, refer to the *Use of Force Reporting PI* (BC-6700), the *Critical Incident PI* (BC-6622) and the *Complying with the Critical Incident in the Maritime Environment Standard Operating Procedure (SOP)* (BE-6705) for direction on reporting use of force incidents requiring immediate notification.

5.8. Vulnerable Person

A vulnerable person is a person who, because of any condition or circumstance, has a reduced capacity to look after or manage their own interests. Whether a person is vulnerable can depend on both the situation and resilience of the individual concerned. Vulnerability can be either temporary or ongoing. While it is not possible, nor intended to provide an exhaustive list of persons who are vulnerable, the following categories of persons may be considered to be vulnerable:

- any child under 18, whether or not accompanied by a responsible adult;
- pregnant persons and persons who have recently given birth;
- elderly;
- aboriginal and Torres Strait Islander persons;
- persons with physical disability, condition or illness;
- persons with an intellectual disability or mental illness;
- persons with gender-related special needs;
- persons who have been subjected to psychological, emotional, physical or sexual violence or abuse;
- persons who have been victim of a serious crime;
- persons who have experienced family violence or dowry-related abuse;
- persons seeking asylum;
- victims or alleged victims of human trafficking;
- victims of slavery or slavery like offences;
- persons whose English language abilities significantly impact the functional ability of the person in the circumstances;
- persons who have arrived in Australia under distressing circumstances or faced a distressing event upon arrival;
- persons experiencing family separation and relationship breakdown;
- persons who are experiencing financial hardship, including homelessness; or
- persons who are intoxicated or drug-affected and/or addicted to illicit and legal drugs and/or alcohol.

A person may be identified as vulnerable at any stage during the course of an ABF Employee's duties. It is imperative that vulnerable persons are identified as early as possible and that appropriate considerations are made as soon as practicable; however, in relation to a use of force incident, as soon as an ABF Employee has identified the need to use force, they must use the minimum force necessary and reasonable in the circumstances of a particular incident and only use force that is proportionate and appropriate. Pre and post any use of force incident, ABF Employees are to refer to their work areas PI's for direction on working with vulnerable persons.

5.9. Mental Health and Wellbeing

S. 37(2)(b)

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s. 37(2)(b)

6. ABF Accoutrements & Personal Defence Equipment

6.1. General Considerations

s. 37(2)(b)

6.2. Operational Safety Options

s. 37(2)(b)

6.3. Carriage

s. 37(2)(b)

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s. 37(2)(b)

6.4. Mutual Support

s. 37(2)(b)

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7. Body Armour

s. 37(2)(b)

S. 37(2)(b)

8. Management of ABF Accoutrements & Personal Defence Equipment

S. 37(2)(b)

9. Operational Safety Training

9.1. Basic Operational Safety Training

S. 37(2)(b)

9.2. Operational Safety Trainers

S. 37(2)(b)

9.3. Removal from Operational Safety Training

S. 37(2)(b)

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s. 37(2)(b)

9.4. Deck Mounted Weapon Training

s. 37(2)(b)

9.5. Skills Maintenance Training

s. 37(2)(b)

9.6. Skills Enhancement Training

s. 37(2)(b)

10. Managing Operational Safety Qualifications
and Use of Force Permits

10.1. Initial Issue of Use of Force Permit

s. 37(2)(b)

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s. 37(2)(b)

10.2. Use of Force Permit Extensions

s. 37(2)(b)

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10.3. Use of Force Permit Expiry

S. 37(2)(b)

10.4. Use of Force Permit Recertification

S. 37(2)(b)

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s. 37(2)(b)

10.5. Basic Operational Safety Training Recertification

s. 37(2)(b)

10.6. Recognition of Current Competence in Operational Safety

s. 37(2)(b)

10.7. Designated Use of Force Positions

s. 37(2)(b)

10.8. Creation of Use of Force Designated Positions

s. 37(2)(b)

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10.9. Occupying a Designated Use of Force Position

S. 37(2)(b)

10.10. Transferring to a Non-Use of Force Designated Position

S. 37(2)(b)

10.11. Delimiting and Transferring a Designated Use of Force Position

S. 37(2)(b)

10.12. Use of Force Designated Positions Enquiries

S. 37(2)(b)

10.13. Change of Circumstances

S. 37(2)(b)

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s. 37(2)(b)

10.14. Reporting Change of Health Circumstances

s. 37(2)(b)

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s. 37(2)(b)

10.15. Reporting Declarable Circumstances

s. 37(2)(b)

10.16. Temporary Access Restriction

s. 37(2)(b)

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s. 37(2)(b)

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10.17. Training Related Use of Force Permit Temporary Access

s. 37(2)(b)

s. 37(2)(b)

10.18. Sensitive or Time Critical Temporary Access Restriction,
Suspension or Revocation

s. 37(2)(b)

10.19. Use of Force Permit Suspension

s. 37(2)(b)

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s. 37(2)(b)

10.20. **Reinstatement of a Temporarily Restricted or Suspended Use of Force Permit**

s. 37(2)(b)

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s. 37(2)(b)

10.21. Use of Force Permit Revocation

s. 37(2)(b)

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s. 37(2)(b)

10.22. Process Post Use of Force Permit Revocation

s. 37(2)(b)

10.23. Surrender of a Use of Force Permit

s. 37(2)(b)

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s. 37(2)(b)

10.24. Extended Absence from Duty

s. 37(2)(b)

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11. Variation to the Operational Safety Order

ABF Employees must comply with the OSO unless non-compliance with the OSO has been approved (in writing) by the Commissioner or a Deputy Commissioner (a variation to the OSO).

Variations to the OSO enable the ABF to evolve their use of force practices and procedures without the requirement to conduct a full review of the OSO. Variations require significant consideration; however, applying for a variation should be seen as pathway to maintain flexibility in order to adapt to the ever-changing operational environment. If approved, variation to the OSO will enable ABF Employees to perform their duties safely, efficiently and effectively.

12. Other Associated Instruments or Guidelines

No other instruments, notifications, procedures, directions or guidelines are to be established that may affect the provisions of the OSO without first seeking the endorsement (through the OSC) of the Assistant Commissioner ABF Workforce, and the Commissioner.

13. Statement of Expectation

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

Failure by an APS employee to comply with any direction contained in this PI document may be determined to be a breach of the APS Code of Conduct, which could result in sanctions under subsection 15 (1) of the Public Service Act. The Secretary's Professional Standards Direction, issued under subsection 55 (1) of the *Australian Border Force Act 2015*, (the ABF Act) requires all IBP workers who are not employed under the Public Service Act to comply with any lawful and reasonable direction given by someone in the Department with authority to issue that direction.

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

All IBP workers who make decisions or exercise powers or functions under legislation have a duty to do so in accordance with the requirements of the legislation and legal principles.

*IBP worker are defined in section 4 of the ABF Act. The definition of an IBP worker is only to be considered in relation to the Statement of Expectation only.

14. Accountabilities and Responsibilities

S. 47E(d)

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s. 47E(d)

15. Key Contacts

s. 47E(d)

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s. 47E(d)

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16. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1.0	September 2020	Operational Readiness Branch	s. 47E(d)

Version number	Date of issue	Author(s)	Brief description of change
1.1	November 2021	Operational Readiness Branch	s. 47E(d)
1.2	November 2021	Operational Readiness Branch	
1.3	December 2021	Operational Readiness Branch	Reviewed by PPCF Legal Advice Section
1.4	December 2021	Operational Readiness Branch	Approved by the Commander

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Attachment A – Definitions

Term	Acronym	Definition
Australian Border Force	ABF	As defined in section 4 of the <i>Australian Border Force Act 2015</i>, (the ABF Act) the ABF means the part of the Department (the Department) known as the Australian Border Force. The ABF, as an operationally independent body within the Department of Home Affairs, is Australia's frontline border law enforcement agency and Australia's customs service. The ABF delivers critical border protection and national security outcomes while facilitating the movement of people and goods across the border.
Authorised ABF Employee		An ABF Employee authorised by this PI to implement and reinstate a TAR, suspension or revocation of a Use of Force Permit and or armoury access.
ABF Accoutrements		Any approved firearm and other approved personal defence equipment endorsed by the Comptroller-General of Customs (Commissioner) or the Operational Safety Committee (OSC), including batons, oleoresin capicum spray, handcuffs and other approved restraints. While anti-ballistic clothing referred to as body armour is an approved item of PDE for the purposes of the <i>Customs Act 1901</i> , (the Customs Act) it is not considered to be 'ABF Accoutrements'
ABF Armourer		An ABF Employee who has attained and maintains the appropriate qualifications for ABF weapons systems, which qualifies them through manufacturer approved training to service the weapons they are qualified in. These officers must be appointed as an ABF Armourer and are responsible for the servicing and repair of ABF approved firearms and PDE.
ABF Armoury		An approved secure storage facility used to safely store firearms, ammunition, dangerous goods, accoutrements, PDE or other restricted items and includes those based on vessels and excludes any ABF custodial armoury.
Australian Border Force Commissioner	ABF Commissioner	As defined in subsection 11 (3) of the ABF Act. While a person holds office as the ABF Commissioner, the person is also the Comptroller-General of Customs. For the purpose of this PI, any reference to the Commissioner is also a reference to the Comptroller-General of Customs, and vice versa.
ABF Employee		A person who is an officer of Customs in, or working for the Australian Border Force. For the purposes of this PI an ABF Employee is an "officer" as defined in section 4 of the Customs Act.
Action Condition		In relation to a firearm means the firearm has a round in the chamber, the firearm may or may not have a magazine fitted to be in the action condition. In an operational context, the firearm must have a magazine containing rounds seated in the magazine well.
Appointment		Refers to the formal appointment of an ABF Employee who has completed and continues to maintain currency in the required recognised training to one or more of the following positions: • ABF Armourer; • Armoury Registrar or Deputy Registrar; • Authorised Arms Issuing Officer (AAIO); or • Operational Safety Trainer (OST).
Appointment Authorities		• Chief Armourer; • Armoury Registrar; • Deputy Armoury Registrar; or • AAIO.

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Term	Acronym	Definition
Approved Firearm	Firearm	Has the same meaning as 'approved firearm' under subsection 189A(5) of the Customs Act and means a firearm of a kind declared by regulation 119 of the <i>Customs Regulation 2015</i> (the Customs Regulation) to be an approved firearm for the purpose of subsection 189A(5) of the Customs Act. To avoid doubt any reference to firearm in this PI is an approved firearm unless explicitly stated. For the definition of approved firearm in subsection 189A(5) of the Act, the following are approved firearms: a) Colt M16 automatic rifle; b) Glock 9mm semi-automatic pistol; c) Remington 870 Marine Magnum shotgun; d) CZ .22 Bolt Action Rifle; e) Remington 700 Bolt Action Rifle; f) Browning 0.50 Calibre Infantry Machinegun; and g) FN Herstal General Support Machine Gun (GSMG) MAG 58 (7.62mm).
Approved Restraints		Restraints approved by the OSC, used to restrict the movement or actions of a person.
Approved Storage Container		For the purposes of this Order approved storage is a secured or lockable storage space or container with restricted access that allows safe and secured stowage of equipment, accoutrements and other PDE and includes vehicle mounted and home storage firearms facilities (HSFF). If transportable, it is a container that: • is of solid construction; and • has at least two latch points which are double action; and • has at least two padlocking points to fit the shackle diameter of approved/endorsed padlocks; and • has a single steel pin hinge ("pelican" case or similar). HSFF will be a commercially manufactured pistol storage container with a combination lock outer door and a lockable inner storage area for ammunition securable with a key or combination, fixed by a minimum of two fixing points within a cupboard or concealed hiding place.
Armoury		An approved secure storage facility used to safely store weapons, ammunition, dangerous goods, accoutrements, PDE or other restricted items and includes those based on vessels and home storage firearms facilities.
Armoury Registrar	Registrar	An ABF Employee who has completed the necessary training and is appointed by the Comptroller-General of Customs or their authorised representative. The Armoury Registrar has the responsibility for all firearms and PDE assigned to their armoury.
Australian Border Operations Centre	ABOC	The centralised and unified operations centre, providing a single source of situational awareness on ABF operations. The ABOC is also the primary point of contact for partner agencies and stakeholders engaging with the ABF.
Authorised Arms Issuing Officer	AAIO	Has the same meaning as 'authorised arms issuing officer' under subsection 189A (5) of the Customs Act – an officer of Customs authorised under subsection 189A (6) of the Customs Act to exercise powers or is appointed to perform the functions of an 'authorised arms issuing officer' under section 189A of the Customs Act.
Authorised Representative		For the purposes of this PI: Assistant Commissioner or above is an authorised representative of the Comptroller-General of Customs.
assetDNA		The approved asset management system used by the ABF to maintain accountability and tracking of ABF armoury assets.

Term	Acronym	Definition
Basic Operational Safety Training Course	BOST	An ABF Employee will attend and successfully complete a Basic Operational Safety Training Course in order to be qualified in use of force and to be issued with a Use of Force Permit. The training will provide the necessary skills and tactics required to undertake and perform the role of a Use Of Force designated officer.
Basic Operational Safety Training Recertification Course	BOST Recertification	An ABF Employee will attend and successfully complete a Basic Operational Safety Training Recertification Course annually in order to maintain their operational safety Use of Force qualification. They will undertake revision of knowledge, skills and tactics from the BOST course, then complete the associated assessments. Successful completion results in an ABF Employee having their operational safety use of force qualification recertified and Use of Force Permit authorised for a further 12 month period, to expire on the last day of the month in which recertification occurs.
Baton		An approved impact weapon and item of PDE.
Body Armour	BA	Approved item of PDE designed to provide ABF Employees with protection from ballistic threats. For the purposes of this PI body armour covers the term anti-ballistic clothing, which is the definition within the Customs Act.
Chemical Munition		An approved substance, namely oleoresin capicum (OC spray), discharged from an approved delivery mechanism that delivers a chemical in liquid, foam or gas.
Change of Health Circumstances Questionnaire	CHCQ	A questionnaire used to report changes in physical or psychological health and decreases in levels of fitness.
Child		A person who is under the age of 18 years.
Commander		An APS employee of the Department who has attained the rank of Commander (SES Band 1). A Commander generally holds the responsibility for the management of a Branch (or equivalent) within the ABF.
Compliant Escort		The process of escorting a person who is detained or in lawful custody, including application of a holding technique that does not induce pain where it is necessary and reasonable and the person voluntarily complies, and without the requirement for any other use of force or threat of force, including verbal, to achieve the person's compliance. If, during or after applying an escort hold, a person physically or verbally resists an ABF Employee directions or is injured, the incident is no longer a compliant escort.
Compliant Handcuffing		The application of handcuffs or approved restraints to a person where the person complies with verbal commands for the application of the handcuffs or restraints without the requirement for any other use of force or threat of force. If, during or after being compliantly restrained a person physically or verbally resists an ABF Employee directions or is injured, the incident is no longer a compliant handcuffing.
Compliant Search		A lawful search conducted on a person who is complying with directions, not offering resistance and without the requirement for any other use of force or threat of force (excluding compliant handcuffing), including verbal, to achieve the person's compliance. If, during or after applying a compliant search, a person physically or verbally resists an ABF Employee directions or is injured, the incident is no longer a compliant search.
Comptroller-General of Customs		A person appointed under section 11 of the ABF Act the ABF Commissioner is also the Comptroller-General of Customs.
Critical Incident		A critical incident means an incident involving an ABF Employee that has resulted in the death or serious injury of a person. It may also relate to any other incident that could attract significant attention, interest or criticism and the public interest will be best served by investigating the matter.

Term	Acronym	Definition
Death or Serious Injury		Death or serious injury resulting from or associated with: • discharge of an approved firearm by an ABF Employee; • any other use of force by an ABF Employee; • custody-related operations such as warrants and arrests, which include where an ABF Employees is attempting to detain a person; • persons in the process of escaping or attempting to escape from lawful custody; • persons being in lawful custody, whether in holding rooms, on board a vessel or elsewhere, including where either: ○ there is suspicion on the part of any an ABF Employee; ○ there is an allegation made by any person; or ○ the circumstances indicate. ○ that any death or serious injury occurring subsequent to a period of ABF detention is because of that detention; or • any other action or omission by an ABF Employee in the course of their duties.
Deck Mounted Weapon	DMW	A fixed machine gun deployed on an ABF vessel in support of maritime operations.
Deputy Armoury Registrar		An ABF Employee appointed by the Armoury Registrar to assist with management of firearms and PDE assigned to their armoury.
Excessive Force		Force beyond that which is considered necessary and reasonable in the circumstances of any particular incident, including: • any force when none is needed; • more force than is needed; or • any force or level of force continuing after the necessity for it has ended.
Fitness for Duty		ABF Employees must meet the ABF fitness requirement relevant to their age and gender to be deemed operationally ready and to ensure they are psychologically and physically suited to undertake certain tasks or fill a particular position or appointment. This includes fitness, medical and psychological assessments.
Handcuffs or Flexi-cuffs		The approved restraints endorsed by the Operational Safety Committee to restrain a person's hands.
Lawful Custody		A person will be in lawful custody if they are: • under arrest; • being detained; • being restrained; or • in a place of detention.
Lethal Force		Force that is likely to cause death or serious injury.
Munitions		Approved ammunition, cartridges, or chemical canisters that can be discharged from an approved weapon delivery system.
M2		A M2HBQCB MG = 12.7mm, Mark 2, heavy barrel, quick change barrel, machine gun.
Non-reportable Use of Force		Use of force (that is not reportable as an incident) performed as part of an ABF Employee's operational duties and is an action which may include: • verbal commands in the absence of any other use of force; • compliant escort (including to effect an arrest); • compliant handcuffing including for search and transport purposes; • compliant search of a person; • removing or breaking locks or similar devices on baggage/containers

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Term	Acronym	Definition
Notifiable Incident		Under section 35 of the <i>Work Health and Safety Act 2011 (Cth)</i> (the WHS Act) a notifiable incident arises out of the conduct of a business or undertaking of the Department including the ABF and results in: - the death of a person; - a 'serious injury or illness' of a person; or - a 'dangerous incident'.
Officer Authorised to Carry Arms		An ABF Employee authorised by the Comptroller-General of Customs (Commissioner) or their authorised representative under subsection 189A (7) of the Customs Act to carry and use approved firearms and approved items of PDE issued by an AAIO.
Officer of Customs		Has the same meaning as 'officer of Customs' under section 4 of the Customs Act.
Operational Safety Capability Section	OSCS	The OSCS Section works jointly with ABF Armouries and is responsible for the development of robust policies and practices that underpin the safe and lawful use of force when required, operational safety performance management, and also provides secretariat functions in support of the Operational Safety Committee and management of use of force reporting.
Operational Safety Committee	OSC	The ABF advisory body for operational safety and use of force policy, training, equipment and administration and related issues. The OSC performs functions in accordance with the OSC Terms of Reference.
Operational Safety Committee Chair	OSC Chair	An ABF Commander performing the role of OSC Chair as described within the OSC Terms of Reference. The OSC Chair is accountable to an ABF Assistant Commissioner and the Strategic Co-ordination Group for the activities of the OSC.
Operational Safety Equipment		An item that is approved at Commander level and endorsed by the OSC that is an accompaniment to accoutrements or PDE that may form part of an ABF Employee's personal issue items. It may include but not limited to alternate carriage belts, firearm seated torches or other attachments, firearm retaining devices or firearm slings.
Operational Safety Order	the Order or OSO	The Operational Safety Order forms part of Legislative Instrument <i>Comptroller-General of Customs (Operational Safety) Directions 2021</i> made under subsection 189A(2) and section 183UC of the Customs Act.
Operational Safety Trainer	OST	A person qualified, appointed and endorsed to train and assess an ABF Employee or partner agency in operational safety, in accordance with this PI.
Operational Safety Trainer Qualifying Programme	OSTQP	An endorsed training program that qualifies an ABF Employee in order to be appointed as an Operational Safety Trainer. The training will provide the necessary skills and tactics and instructional techniques required to undertake and perform the role.
Personal Defence Equipment	PDE	Has the same meaning as 'approved item of PDE' under subsection 189A (5) of the Customs Act and means an extendable baton, oleoresin capicum spray or anti-ballistic clothing (body armour). It also includes any other item that is declared by the Customs Regulation to be an approved item of PDE for the purposes of section 189A of the Customs Act. Note: at time of writing there are no items listed in the Customs Regulation.
Personal Issue		The approved equipment, ABF Accoutrements and body armour individually issued to an ABF Employee for the safe exercise of powers in the performance of their duty.
Place of Detention		A place where persons in lawful custody are held and can include: - a place of Immigration Detention or equivalent; - a prison or remand centre of the Commonwealth; - a state or territory location or facility; - a Police station or watch house; or

Term	Acronym	Definition
		a vessel.
Prescribed Range		A live firing range that accords with departmental policy concerning range regulations.
Reasonable Force		The minimum amount of force necessary and reasonable in the circumstances of a particular incident.
Remedial Training		Remedial training is extra training offered to an ABF Employee who has failed to demonstrate competence on an assessment or assessments of a Basic Operational Safety Training course. The training is captured in a remedial plan. The training is targeted to meet the ABF Employees' knowledge or skills deficit that was required by the particular assessment/s.
Revocation		The permanent removal of an ABF Employees Use of Force Permit or appointment authorities and includes the cancellation of all armoury access privileges.
Rules of Engagement	ROE	Rules of engagement refer to the orders issued by a competent authority that delineates when, where, how, and against whom force may be used.
Serious Injury (excluding for WHS purposes)		Types of injuries which, by their nature, are likely to: - be life threatening; - require emergency admission to a hospital and significant medical treatment; - result in permanent impairment or long term rehabilitation; or - constitute grievous bodily harm.
Skills Enhancement Training	SET	Delivery of training to upgrade existing skills of ABF Employees who hold a current BOST qualification and Use of Force Permit.
Skills Maintenance Training	SMT	Revision and/or application of knowledge, skills and/or tactics under the supervision of a full-time or part-time OST. An OST can only provide Skills Maintenance Training (SMT) within the scope of their appointment, or if the OST is from another Law Enforcement Agency, within a formally agreed scope of practice endorsed by the OSC. SMT has previously been referred to as 'continuation training'.
Supervisor		A person who supervises an ABF Employee, regardless of rank.
Surge		A reserve capability of basic operational safety qualified ABF Employees. An ABF Employee who may not currently occupy a designated use of force position but who are able to be deployed operationally in a use of force designated role if extra personnel are required. All surge officers must maintain the fitness for duty requirements and maintain a Use of Force certification.
Suspension		The short term removal of Use of Force Permit or appointment authorities and will include the removal of armoury access.
Temporary Access Restriction	TAR	The temporary removal of armoury access differs from a Suspension. The TAR may be modified dependant on circumstances to allow an ABF Employee to conduct other armoury related duties whilst the restriction is in place on their permit.
Unauthorised Absence		Is when an ABF Employee fails to present at their designated place of work without having previously had leave approved, or does not contact an appropriate supervisor within a reasonable time to report their reason for absence.
Unauthorised Discharge		Discharging an approved firearm, whether or not it is used to deploy lethal or less lethal munitions, contrary to this PI. This includes unintentional discharge of an approved firearm, misconduct, unsafe or uncontrolled handling practices resulting in the unintentional discharge of a firearm without endangering any person.
Under the Influence		For the purposes of this PI, ABF Employees must not be impaired by any alcohol (a requirement of Blood Alcohol Concentration (BAC) & Breath Alcohol Concentration (BAC) of 0.00), drug or any

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Term	Acronym	Definition
		other substance, prescribed or other, that may impair performance or judgement while on duty such as: • being issued or deploying with ABF Accoutrements; or • accessing an ABF Armoury.
Unsafe Practice		Any activity by an ABF employee which is not in accordance with the required (or prescribed) safety practices for the discharge of firearms as outlined in the OSO 2021 and related documents.
Use of Force		Any situation where ABF Employees use physical force or other approved techniques, including a firearm and/or PDE in the exercise of powers, or to respond to an actual or perceived threat, including but not limited to: • verbal commands used to gain compliance; • any physical interaction with a person in the exercise of their duties; • approved restraints as a security/transportation procedure of a person in custody; or • force to enter a building, vehicle, vessel, or other secured area to search, recover or seize, where there is no application of force against a person.
Use of Force Permit		A permit that is issued to an officer after successful completion of BOST or BOST Recertification and all other prerequisites as detailed in the <i>Operational Safety Procedural Instruction</i> and the officer has been authorised under subsection 189A(7) of the Customs Act by the Comptroller-General of Customs (Commissioner), or their representative, to use approved firearms and approved items of PDE.
Vulnerable Person		An individual who, because of any condition or circumstances, has a reduced capacity to look after or manage their own interests.
Work Health and Safety	WHS	The term used to describe the function of ensuring people are safe whilst at a workplace or undertaking work. This includes not just physical health but also psychological (mental) health.

Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

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

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Customs Act 1901</i>	s189A (2)	Comptroller-General of Customs may give directions relating to the deployment of approved firearms and other approved items of personal defence equipment (PDE).	Yes	n/a
	s189A (1) (a)	Authorised Arms Issuing Officer (AAIO) may issue approved firearms and other approved items of PDE to officers authorised to carry arms, for the purpose of enabling the safe exercise of powers conferred on them under the Customs Act or any other Act.	No	n/a
	Subsection 189A (7)	An officer of Customs may be authorised in writing by the Comptroller-General of Customs to use approved firearms and approved items of PDE for the purpose in paragraph 189A (1) (a).	Yes	Australian Border Force (Comptroller-General) Instruments No. 1 of 2018
<i>Work Health and Safety Act 2011 (Cth)</i>	Section 17	Management of Risk	No	No
	Section 27	Duties of Officers	No	
	Section 28	Duties of workers	No	
	Section 35	What is a notifiable incident	No	
	Section 36	What is a serious injury or illness	No	
	Section 38	Duty to notify of notifiable incidents	No	

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1.2 Controls and Assurance

Related Policy	s. 47E(d)
Procedures / Supporting Materials	
Training/Certification or Accreditation	
Other required job role requirements	
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	

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Escalation arrangements	s. 47E(d)
Recordkeeping (e.g. system based facilities to record decisions)	
Program or Framework (i.e. overarching Policy Framework or Business Program)	<u>Realising our full potential 2020-2025)</u>
Job Vocational Framework Role	Border Enforcement Operations

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Attachment C – Consultation

1.1 Internal Consultation

- ABF College
- ABF Health & Fitness Support Section
- ABF Armouries Team, Operational Readiness Branch
- Australian Border Operations Centre
- Border Patrol and Coordination Command Executive Support
- Chief Medical Officer/Clinical Advisory Team
- Close Support Command
- Customs Group
- Delegations Policy Section
- Enforcement Operations
- Immigration Detention Group
- Industrial Relations
- Integrity & Professional Standards Branch
- Maritime Border Command
- Maritime Operational Compliance
- Legal Group
- Operational Safety Capability section, Operational Readiness Branch
- Operational Safety Training Unit, ABF College
- People Business Partner, including Regional PBP
- Port Operations Command, including all Regional Commands
- Security Branch
- Strategic Border Command
- Health Services Division
- Workforce Health & Safety
- Workforce Management & Conditions
- National Security & Law Enforcement
- All ABF Employees

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