

s5G - Relationships and family members - Custody (parental responsibility) for minor children

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Introduction

This part comprises:

- section 1 Purpose of this instruction
- section 2 Overview to PICs 4015 & 4017.

1 Purpose of this instruction

The main purpose of this instruction is to give policy guidance on the interpretation of Schedule 4 public interest criteria (PICs) 4015 & 4017 (commonly known as the 'custody criteria'). However, the instruction also deals with specific visa categories and circumstances for which the custody criteria are, under policy, a consideration even though Schedule 4 criteria do not by law apply to the case.

The reasons why migration law addresses issues of custody and the question of how these issues are addressed for certain visas are outlined in:

- Migration law custody criteria - Background
- Family law and
- Schedule 4 parental responsibility & Schedule 2 visas.

Policy and procedure on assessing custody criteria are set out in:

- Assessing PICs 4015 & 4017
- Assessing PICs 4015 & 4017 - Relevant factors and
- Unaccompanied minors.

2 Overview to PICs 4015 & 4017

2.1 Age is the only factor

PICs 4015 & 4017 refer to persons "under the age of 18". This therefore covers all children under the age of 18 years of age included in the visa application, not just the dependent child of the main applicant. It follows that the same custody and best interests of the child issues arise in relation to any relative (for example, a niece or nephew) if they:

are included in the visa application

are under 18 years old and

meet the regulation 1.12 definition to be a member of the family unit.

References to 'minor' in this document means any person under 18 years.

2.2 'Custody' and Australian family law

The term 'custody' is no longer used in Australian family law and has been replaced by the term 'parental responsibility' (see section 5 The Family Law Reform Act 1995 (FLRA)). Where 'custody' is used in PAM3, it encompasses parental responsibility and incorporates all relevant Australian parenting orders, pre-FLRA (Family Law Reform Act 1995) court orders and relevant international law/court orders and is relevant solely to PICs 4015 & 4017.

2.3 Best interest of the child

The term 'best interests of the child' does not come within the ambit of parental responsibility so should be referred to as an entity by itself. Therefore, reference to PICs 4016 & 4018, the 'best interests of the child' criteria, should not be included under the umbrella term 'custody criteria', but should be referred to as 'best interests' criteria - see PAM3: Act - Act-defined terms - s5G - Relationships and family members - Best interests of minor children.

2.4 PICs 4015 & 4017 & 1 July 2000 regulations changes

PICs 4015 & 4017 were inserted into the Regulations with effect from 1 July 2000, with consequential amendments to most Schedule 2 primary and secondary criteria relating to custody and best interests of minors.

PICs 4015 & 4017 apply (as prescribed) to visa applications made on or after 1 July 2000. Note: Any minor "added" on or after 1 July 2000 to a visa application that was made before 1 July 2000 is by law assessed under the pre-1 July 2000 custody criterion (that is the law prior to 1 July 2000) - see PAM3: Div2.2/reg2.08A. This ensures that all minors in the one application are assessed against the same custody and best interests criteria.

custody criteria - Background

This Part comprises:

- section 3 International obligations
- section 4 In regards to abducted children
- section 5 The Family Law Reform Act 1995 (FLRA).

3 International obligations

3.1 The status of international conventions in Australian law

Any international obligations Australia has (such as the Hague Convention on the Civil Aspects of International Child Abduction - in this instruction, "the Hague Convention") have no domestic legal force in Australia unless they are incorporated into an Australian law. Migration legislation seeks in particular to assist Australia in meeting its obligations as a party to several international conventions relating to the protection of children under 18 years of age, such as the Hague Convention, the Convention on the Rights of the Child (CROC) and the Hague Convention on Protection and Cooperation in Respect of Intercountry Adoption.

3.2 The Hague Convention

Australia is a signatory to the Hague Convention. The Convention's objectives that have been incorporated into Australian domestic law are to:

- secure the prompt return of children wrongfully removed to, or retained in, any contracting state (that is, any country that is a signatory to the Hague Convention) and
- ensure that the rights of custody and access under the law of the contracting state are effectively respected in other contracting states.

3.3 The Hague Convention and migration law

Migration law requires officers to consider the effect that granting a visa to a minor may have on the objectives of the Hague Convention. Generally, officers are expected to ensure that, as far as possible, a visa is not granted to a minor if doing so would conflict with parental rights/responsibilities that a person may have under the laws of the minor's home country (including local court orders).

Where there is a local court order in effect, it may generally be assumed that the court took into account the best interests of the child in determining parental rights/responsibilities. However, as this may not always be the case, officers outside Australia should develop an understanding of local laws and local court processes. This will enable them to be confident about whether or not parental responsibility considerations for a child warrants further investigation and be able to inform departmental officers in Australia who request advice on such issues.

4 In regards to abducted children

4.1 Australia's central authority

The Hague Convention provides for each signatory country to establish a central authority to deal with applications under the Hague Convention for children to be returned to their home country. Australia's central authority is in the Commonwealth Attorney-General's Department.

4.2 Responsibilities of departmental officers

Officers handling a visa application for (or including) a child in Australia who it is reasonably suspected has been abducted (that is, removed from its home country in breach of a court order or without the consent of everyone who can determine where the child resides) are expected to consider very carefully whether granting the visa is consistent with Australia's obligations under the Hague Convention.

If an officer has a reasonable suspicion that a child has been abducted, they should refer details to the policy Owner for advice and possible referral to the Legal Opinions Help Desk and/or Attorney-General's Department.

4.3 Liaison with local authorities

Outside Australia, officers may, at their discretion, first liaise with the relevant local authorities regarding suspected child abduction cases. However, they should consider the interests of the child. It is accepted that, in certain situations, liaising with local authorities may be consistent with Australia's obligations under the Hague Convention but may at the same time compromise the best interests of the child.

5 The Family Law Reform Act 1995 (FLRA)

The FLRA replaced the concepts of custody, access and guardianship (which were used in the Regulations) with the broader concept of parental responsibility. This concept refers to "all the powers, duties, responsibilities and authority which, by law, parents have in relation to children".

The Family Court now makes only one type of order, a parenting order, which has a number of components including residence, contact, maintenance and specific issues. The parenting order may deal with any or all of these parts.

Family law

This Part comprises:

- section 6 Family law - Overview
- section 7 Australian child orders
- section 8 Custody, guardianship & access rights.

6 Family law - Overview

Various terms are commonly used to describe the different legal relationships that exist between a child (that is, a minor) and another person. These terms vary from country to country.

In assessing a visa application made by a minor (whether separately or combined with another applicant's), officers are expected to consider carefully the various relationships that the child has with other persons. It is the question of who has the legal right/responsibility to decide where the minor can live, however that may be expressed, that is of primary consideration in assessing the PICs 4015 & 4017 custody criteria.

7 Australian child orders

7.1 Definition of Australian child order

Australian child order is defined in regulation 1.03 to have "the meaning given by subsection 70L(1) of the Family Law Act 1975", which states that it means either a Subdivision C parenting order or a State child order. Section 4 of the Family Law Act (FLA) provides further explanation of the terms 'subdivision C parenting order' and 'state child order'.

7.2 Parenting orders - overview

Since the FLRA came into effect on 11 June 1996, the Family Court now registers 'parenting plans'. Parenting plans can be made up of several 'parenting orders'.

The court makes parenting orders usually in favour of a parent, but can make an order in favour of any other person who has an interest in the minor's welfare, for example, a step-parent.

A Subdivision C parenting order, issued by the Family Court of Australia, deals with whom a child is to live; with whom a child is to spend time or who is to be responsible for a child's day-to-day care, welfare and development. Terms such as 'residence orders', 'contact orders', 'maintenance orders' and 'specific issues orders' are used. Note: The term 'care order' is no longer used as the relevant section in the FLA that referred to care orders was repealed with effect from 1 July 2006.

Subdivision C parenting orders include:

- Residence orders - see section 7.3 Residence orders
- Contact orders - see section 7.4 Contact orders
- Maintenance orders - see section 7.5 Maintenance orders
- Specific issues orders - see section 7.6 Specific issues orders.

But not all of these orders are relevant to assessing a person's eligibility for a visa.

A parenting order in relation to a minor stops being in force if the minor turns 18 years of age, marries or enters into a de facto spouse relationship. In the case of a child of a formerspouse relationship, the step relationship between the step-parent and the step-child will cease when the residence or specific issues order stops being in force.

7.3 Residence orders

A residence order specifies with whom a child is to live. An order for residence is very different from a custody order under the old FLA. Unless it specifically says so, an order for residence does not change the sharing of parental responsibility for a minor. For example, the minor might live with one parent for most of the time and with the other for specified times, such as every second weekend and half the school holidays. A residence order is relevant to whether or not PICs 4015(b) or 4017(b) is met. Depending on the content of the order, it may also be relevant to whether or not PICs 4015(c) or 4017(c) is met.

7.4 Contact orders

Contact orders replace the old access orders. They can be made in favour of persons other than the parents (for example, grandparents) and provide for visitation of the child(ren). A contact order may be relevant to whether or not PICs 4015(c) or 4017(c) is met.

7.5 Maintenance orders

Maintenance orders deal with the financial responsibilities for a minor. Such orders are not relevant evidence for purposes of PICs 4015 & 4017.

7.6 Specific issues orders

Under the old FLA, the person granted custody had sole responsibility for decisions about the daily care and control of the child. Now, unless both parents agree or a court decides otherwise, neither parent has sole responsibility for decisions about a child.

A specific issues order is an order about any aspect of parental responsibility not covered by a residence, contact or maintenance order. The order may address any issue that may affect the daily or long-term care, welfare and development of the child (for example, who is responsible for decisions about the minor's schooling, medical treatment, holidays, and religious education). A specific issues order may therefore be relevant to whether or not PICs 4015(c) or 4017(c) are met, particularly if it specifies which parent has the right to determine where the minor can live.

7.7 State child orders

A State child order is an order made under a State/Territory law that has the effect of:

- determining the person/s with whom a minor is to live or

- providing for the person/s to have custody of that minor or
- providing for contact between the minor and another person/s or
- providing for the person/s to have access to the child.

A State child order may be relevant to whether or not PICs 4015(b) and (c) or PICs 4017(b) and (c) are met.

8 Custody, guardianship & access rights

8.1 Overview

The transitional provisions of the FLRA give access and custody orders made under FLA prior to the FLRA the effect as if they were an Australian child order - see section 7 Australian child orders for details of parenting orders made under the FLRA.

Overseas jurisdictions may still use custody, guardianship and such related terms.

8.2 Custody (parental responsibility)

Custody, or parental responsibility as it is now termed in Australian family law, relates to the daily care and control of a child, in particular, the right to determine the child's home. Parental responsibility rights are relevant to overseas jurisdictions and pre-FLRA Australian child orders. More than one person may have parental responsibility over a child. For example, both parents generally have joint parental responsibility for the child unless this has been varied by a court order or by a parent's expressed wish (such as, formal relinquishment).

8.3 Access

A person with access rights (included now in parental responsibility as now termed in Australian family law) is permitted to take a child from its home for a specified (usually limited) period. Access rights are relevant to overseas jurisdictions and pre-FLRA Australian orders. Access rights:

- are usually given by a court order and
- may be given to a parent other than the custodial parent and/or to another person (for example, a grandparent or step-parent).

Officers should keep in mind that a court order giving access rights may be separate from a parental responsibility order.

Access orders are unlikely to provide a person with rights to decide where a child can live. However, it is possible that some countries would not allow the person with custody to remove the child if another person has access to the child. Officers should satisfy themselves as to the relevance of access - bearing in mind that it is the right to decide where the child shall live that is the key issue - on a case by case basis.

Schedule 4 parental responsibility & Schedule 2 visas

This Part comprises:

- section 9 Visas not covered by PICs 4015 & 4017
- section 10 If PICs 4015 & 4017 do not apply
- section 11 Other regulatory custody considerations.

9 Visas not covered by PICs 4015 & 4017

There are Schedule 2 visas for which PICs 4015 & 4017 are not relevant. In all such cases, note:

- section 10 If PICs 4015 & 4017 do not apply
- section 11 Other regulatory "custody" considerations.

In addition, PICs 4015 & 4017 do not generally apply to situations where an applicant must be, or is generally expected to be, aged 18 years or older at time of application (for example, main applicants for Prospective Marriage, Partner or Parent visas).

10 If PICs 4015 & 4017 do not apply**10.1 Policy requirements**

For visas that do not have PICs 4015 & 4017, there is no power to refuse to grant a visa on the grounds that there are unresolved issues of parental responsibility.

However, consistent with Australia's obligations under the Hague Convention, officers outside Australia must read the section in this document relating to Unaccompanied minors in assessing applications by minors for any temporary visa before any decision to grant a visa is made. This should be done regardless of whether or not the visa in question has custody requirements.

This is to ensure that persons who have an interest in (or responsibility for) the minor have reasonable time and opportunity to take appropriate legal action should they wish to prevent the child from leaving the country.

11 Other regulatory "custody" considerations**11.1 Visa-specific consideration**

The following are a few specific parental responsibility considerations that apply to certain visas. The list may not be complete and if in any doubt, officers should seek case-specific advice from Family Section, National Office.

11.2 Adoption (102)

Primary criteria for an Adoption (102) visa do not include parental responsibility criteria. The main applicant for this visa is exempt as it is presumed custody and best interests considerations have already been assessed by a court as part of the adoption process. However, subclass 102 secondary criteria, (that is, if there is an additional secondary applicant, which is unlikely) does include PIC 4017.

11.3 ETAs

Regulation 2.43(1)(e) provides grounds for cancelling an Electronic Travel Authority (ETA) if granting the ETA to a minor breached custody (or similar) rights of another person - for guidelines, see PAM3: Act - Visa cancellation - General cancellation powers (s116, s128, s134B and s140).

11.4 Bridging visas

Although the Bridging visa subclasses do not have Schedule 2 (or Schedule 4) parental responsibility criteria, regulation 2.20(5) and (7) make custody (as defined in regulation 1.03) a factor in assessing eligibility of certain minors for a bridging visa.

For policy and procedure see:

- PAM3: Div1.2/reg1.03 - Custody
- the relevant PAM3: Sch2Bridging visas instruction.

Also, for Bridging B visa (020), it is a Schedule 2 criterion that the applicant's return to Australia not be contrary to the public interest. As such, it is policy that PICs 4016 & 4018 should be considered in all applications made by minors.

11.5 Unaccompanied children (PIC 4012)

Although not a "custody" requirement, Schedule 4 PIC 4012 prescribes certain requirements to be met by minors who are not travelling with a parent or guardian and who wish to visit non-relatives in Australia. See also Unaccompanied minors.

11.6 DELETED

11.7 Enforced departures

Custody (or similar) rights are also considerations in decisions relating to enforced departures from Australia - for guidelines, see Act - Compliance and Case Resolution - Case resolution – Returns and removals - Removal from Australia.

This Part comprises:

- section 12 Which PICs apply
- section 13 Effect of the PICs
- section 14 If child & both parents applying

- section 15 If child applying alone or with one parent only.

12 Which PICs apply

12.1 Primary criteria

Officers must have regard to the parental responsibility PICs 4015 & 4017 specified in the Schedule 2 provisions of the visa they are assessing.

PIC 4015 refers to the 'additional applicant', and PIC 4017 refers to the 'applicant'. Whether or not the applicant being referred to is the main or additional applicant depends on where the PIC is referenced in Schedule 2 (that is, if it is referenced in the primary criteria or in the secondary criteria).

If PIC 4017 is in the primary criteria, the main applicant must satisfy that PIC in order for the main applicant to meet the primary criteria.

If PIC 4015 is in the primary criteria, any additional applicant (for example, a dependent child included in the application) must satisfy that PIC in order for the main applicant to meet the primary criteria. If the child does not satisfy that PIC, the main applicant will not meet the primary criteria and both applicants must be refused the grant of a visa. This is known as a 'one fails, all fail' approach.

An example of this is when a parent and their child apply for a Partner (820) visa. Under 820.225 in the primary criteria, the parent must meet PIC 4015, and the only way this provision can be met is if the child satisfies PIC 4017, as provided for in 820.324 in the secondary criteria.

12.2 Secondary criteria

If PIC 4015 is in the primary criteria, PIC 4017 will also appear in the secondary criteria.

However, for some visas, PIC 4017 will appear in the secondary criteria (without PIC 4015), but refer to the secondary applicant (that is, the minor) as the 'applicant'. When this occurs it means that if the minor does not satisfy PIC 4017, they will not meet the secondary criteria and will be refused the grant of the visa but this decision will not affect the main applicant's visa application.

13 Effect of the PICs

13.1 Preclusion on visa grant

For visas with PICs 4015 & 4017, the criteria operate to preclude the grant of a visa:

- to the minor if there are unresolved custody/residence issues concerning the applicant and/or

- to a family of applicants for permanent visas if there is an unresolved (or unsatisfactory) custody/residence issue in respect of any family unit member who is a visa applicant and a minor.

13.2 The basis for visa eligibility is irrelevant

The above applies regardless of whether the child in question needs to satisfy primary criteria or secondary criteria. It is also irrelevant whether the child has applied separately or has combined their application with another applicant's or whether the application is for a permanent or temporary visa.

13.3 The period of proposed stay is relevant

Officers need to ensure that the period for which the person can take the child from the country, if specified in any orders in force or in written permission from the other parent, is consistent with the period of validity of the visa being applied for. For example, if the visa is for three months and the order for six months it would be consistent, but would not be consistent if the visa is for six months and the order is for three months.

13.4 Permanent visa cases

Orders and similar court directions that place a time limit on a person's parental responsibility for the child are not acceptable for the grant of a permanent visa.

13.5 Offshore provisional visa cases

In the case of:

- provisional visas (for example, Partner (309) visa or
- temporary visas (for example, Prospective Marriage (300) or Dependent Child (445) visas) that are intended to lead to the grant of a permanent visa,

it is policy that the court order or permission from the other parent must permit the permanent removal of the child to Australia (or permanent removal from the court's jurisdiction).

14 If child & both parents applying

14.1 Documentation needed

If a child and both parents apply for the same class of visa, officers may regard the custody requirement as being satisfied provided:

- the child's full birth certificate (or equivalent official document such as a family book or adoption order) is submitted and verifies the relationship to both parents
- there is no evidence to the contrary (for example, the grandmother has a residence order) and

- there is no evidence to indicate that the minor's best interests are contravened.

In such cases it should not usually be necessary for officers to request any further documents.

15 If child applying alone or with one parent only

15.1 Typical cases

This situation usually arises where, for example:

- the child is a Child visa (101/802) applicant or
- the child is an Orphan Relative visa (117/837) applicant or
- only the child and one parent are visa applicants or
- the child is applying as a member of the family unit of its biological parent and a step-parent or
- the child is a member of the family unit but not the dependent child of the family head (or the family head's spouse) - for example, the minor is a sibling of the family head.

For applications in these situations, either (a), (b) or (c) in PICs 4015 & 4017 (depending on whether it must be satisfied by the main applicant or family unit member) must be met to satisfy the criteria.

There is no provision to waive PICs 4015 & 4017, even in circumstances that appear to be compelling and/or compassionate.

15.2 Documentation needed

In all cases, officers should request evidence of the parent-child relationship (that is, full birth certificate of the child or equivalent official document such as a family book or adoption order).

If it is claimed that the other parent is dead, the parent should be asked to provide a death certificate or other official documentation to confirm this.

15.3 Minor child travelling

To assist officers in assessing visa applications where minor children are travelling (especially temporary visa applications such as visitor visas), a checklist has been developed for use when interviewing applicants - see Minor child travelling checklist. This checklist is to be completed by the interviewing officer and, when applicable, should be signed and dated by them and by the applicant and/or the person acting on the minor's behalf. In addition, checks on other ongoing visa applications either in or

outside Australia should be undertaken, as well as referral to Family Section in cases of concern.

Such a process will ensure that increased scrutiny is given to instances where there are unresolved parental responsibility and/or adoption issues or where there are compelling reasons for an officer to determine that the visa grant would not be in the best interests of the child.

This Part comprises:

- section 16 The three parental responsibility clauses
- section 17 The law of the applicant's home country
- section 18 Consent of all relevant persons
- section 19 Australian child orders
- section 20 Australian court orders & overseas law/orders
- section 21 If PICs 4015 & 4017 are not satisfied.

16 The three parental responsibility clauses

There are three options for satisfying both PICs 4015 and 4017. The decision maker must be satisfied of one of the following:

- (a) the law of the applicant's home country permits the removal of the applicant
- (b) each person who can lawfully determine where the applicant is to live consents to the grant of the visa
- (c) the grant of the visa would be consistent with any Australian child order in force in relation to the applicant.

Note: Only one of the above clauses needs to be satisfied. For example, if a parent has a court order permitting a child to migrate, the other parent's permission is not required. In rare cases, officers may consider the PICs 4016 and 4018 best interests criteria to refuse a visa in such cases - see PAM3: Act - Act-defined terms - s5G - Relationships and family members - Best interests of minor children.

While parts (a), (b) and (c) carry equal weight in being able to satisfy the PICs 4015 and 4017 requirements, given parental responsibility that includes the right to determine where the child can live is of primary concern for visa decision makers, under policy, part (b) is the preferred, (and often simplest) way of applicants being able to meet PICs 4015 and 4017.

17 The law of the applicant's home country

17.1 Requirements

For PICs 4015(a) and 4017(a), the law of the child's home country must allow the child to be removed.

The question of who has the right to determine where the child shall live varies from country to country. Generally, the person with sole custody of the child will have this right. However this may differ according to the jurisdiction. It will generally be decided by the local law of the country or state of which the child is a citizen or in which they usually reside, that is their home country as defined in regulation 1.03.

To be able to meet part (a) of either PIC 4015 or 4017, officers must be satisfied that the local laws allow the parent (that is, the main applicant or the family head or sponsor) to take the child to Australia either permanently or temporarily, as applicable.

Outside Australia, officers are expected to become familiar with local custody laws. It is open to officers to seek further advice from a local authoritative source should any case-specific issues arise. In Australia, officers should address case-specific queries to the Family Section, National Office, who will as applicable forward them to the Legal Opinions Help Desk.

17.2 Evidencing

For PICs 4015(a) or 4017(a) to be satisfied, officers should satisfy themselves that the local laws allow the parent (that is, the family head or sponsor) to take the child to Australia either permanently or temporarily, as the case may be. This may be evidenced by:

- a court granting permission (that is, a court order) for the child to leave the court's jurisdiction and/or to travel to, or settle in, Australia or
- officers approaching the relevant authorities to confirm the parent's legal status in relation to removing the child. For example, under Swiss law, it is clear that the custodial parent has the right to determine where the child shall reside and it is not necessary to seek the non-custodial parent's permission for the child to migrate.

17.3 If evidence is unavailable

If officers are not satisfied that such information can be obtained, PIC 4015(b)/(c) (or, if applicable, PIC 4017(b)/(c)) should be addressed instead - see:

- section 18 Consent of all relevant persons
- section 19 Australian child orders.

17.4 Court orders

If officers are concerned about the validity of a court order (for example, the order was made a few years earlier and they want to ensure a more recent order has not been

granted), it is open to them to request the applicant to have the order re-validated by the issuing authority. If it is only a temporary order, officers will need to check that the period of the order is consistent with the period of the visa being applied for. For example if the residence order is for three months it would not be acceptable for a permanent migration application.

17.5 If the child has a right to decide

If the laws of the relevant country allow a minor to decide its own residence independently of adult permission, under policy this criterion may be considered to be met. For example, in some countries, a child who has turned 16 years of age may be considered an adult and not require parental permission to travel.

In such circumstances, as the Department must be very careful about any potential child abduction issues, it is policy for officers initially to seek parental permission for the child to travel. Where such permission is not forthcoming, officers should closely assess local law to determine if the child indeed has the right to decide their own place of residence. Furthermore, officers may wish to check if there are any particular issues in the case (for example, past or prospective court proceedings) that may be affected by the minor's departure for Australia. If not, then the decision maker can be satisfied that part (a) of PICs 4015 & 4017 have been met and proceed to assess other criteria for the grant of the visa.

18 Consent of all relevant persons

18.1 Requirements

For PIC 4015(b) or 4017(b) to be satisfied, the main question officers should consider is does the adult supporting the child's application (for example, the sponsor or family head) have sole right/responsibility to decide where the child can live. If anyone else has such rights, the preferable form of evidence is a completed Form 1229 (Consent to grant an Australian visa to a child under the age of 18 years). Alternatively, written consent may be in a statutory declaration, or the equivalent in the country) from all such persons (if they are not visa applicants also).

18.2 Assessing & evidencing

For PICs 4015(b) or 4017(b) to be satisfied, officers should:

- satisfy themselves that there is no other person (for example, the other parent or a grandparent) who has custody/residence responsibilities or
- if another person appears to have custody/residence responsibilities (for example, joint custody), ensure that that person has provided a completed form 1229. Alternatively, a written statement (a statutory declaration or equivalent) to the effect that they have no objection to the child settling in, or travelling to,

Australia (as the case may be). Where appropriate, this statement should be verified by contacting the person concerned.

18.3 If evidence is unavailable or one parent cannot be contacted

If there is no evidence of any person other than the sponsoring parent having custody/residence responsibility, officers should presume that the parent is the only person who needs to consent to the visa grant. However, they should note the following.

The mere fact (or claim) that a non-custodial parent has had no contact with the child for a long time (or cannot be located) does not negate that person's rights with regard to the child and officers cannot assume that this person consents to the grant of a visa. In such cases, PICs 4015(b)/4017(b) cannot be met and applicants will need to satisfy PICs 4015(a)/4017(a) or PICs 4015(c)/4017(c), that is, the sponsor/family head will need to:

- obtain a court order permitting removal of the child
- provide other evidence that the laws of the child's home country permits removal of the child or
- provide an Australian child order.

18.4 If custody is in dispute

It is not appropriate for officers to become involved in custody disputes or to attempt to resolve complex custody/residence issues. In such cases, the parent/adult supporting the child's visa application should be advised to seek legal advice or to approach the Family Court (if in Australia).

19 Australian child orders

19.1 Definition

For PICs 4015(c) and 4017(c), Australian child order is defined in regulation 1.03 definition - see section 7 Australian child orders.

19.2 Assessing

For PICs 4015(c) and/or 4017(c) to be satisfied, officers must be satisfied:

- that the relevant order provides the parent with sole responsibility for deciding where the child should live or
- if another person (for example, the other parent or a grandparent) shares responsibility, that PICs 4015(b) and/or 4017(b) is satisfied and
- that if the order has an expiry date, it is consistent with the visa application (that is a court order is not for three months and the visa for permanent migration).

Alternatively, an Australian court order may satisfy PICs 4015(c) or 4017(c) if it states:

- the child should reside with or remain in the company of a particular person who resides in Australia or
- the child is able to remain in Australia for the length of the visa (or permanently if a permanent visa.)

For more detail about Australian Family Court orders see section 7 Australian child orders.

20 Australian court orders & overseas law/orders

20.1 Australian law will generally prevail

If an Australian family court order conflicts with the law of the overseas country or an overseas court order, generally, for visa purposes, officers may accept that an order made by an Australian court will prevail. This is because the FLA provides for situations where there is an Australian order and a conflicting overseas child order that has been registered (before or after the making of the Australian order).

20.2 If there is any doubt

If there is any doubt (or if the Australian court order is only an interim order), a decision to grant or refuse a visa should not be made without first obtaining written advice from Legal Opinions Section, National Office, as to the exact legal effect of the relevant order in question. Family Section, National Office should also be included in any email sent to Legal Opinions Section on custody matters.

21 If PICs 4015 & 4017 are not satisfied

21.1 No waiver provision

There is no provision to waive the PIC, even in compelling circumstances, and officers should not become involved in custody disputes. The intention of the custody PICs is to ensure that the laws of the minor's home country are abided by, except where PICs 4015(c) and 4017(c) are satisfied by an Australian court order.

21.2 Visa refusal

Applicants should be given a reasonable period to provide evidence that PICs are satisfied. Such a period is not defined, but officers should have regard to the specific circumstances of the case.

For example, for a permanent visa application, a period of at least three months may be allowed for the applicants to resolve parental responsibility issues. However, the period for a temporary visa application may be significantly less depending on the period that the visa for which the main applicant is applying is in effect. For instance, for a three-

month Tourist visa, a matter of two to three weeks may be considered a reasonable period.

Each case must be considered individually and a judgement made on whether or not it would be appropriate to delay visa processing to await, say, a court outcome. For example:

- if there is no other avenue open to the applicant to satisfy PICs 4015 & 4017 and
- if there is no contesting parent and
- if there are compelling reasons (usually factors beyond the court's or an applicant's control) for the delay in the court outcome

a reasonable delay, which has been approved by the applicant, would be consistent with departmental policy.

If the applicant cannot, within this reasonable period, provide evidence that PICs 4015 & 4017 can be satisfied, the visa application must be refused or the minor's application may be withdrawn.

21.3 If the child is in Australia

Officers assessing applications involving children who are already in Australia should exercise particular care if:

- a parent does not have the sole legal right to decide where the child can live and
- another parent has expressly denied permission for the child to remain in Australia.

Officers should not facilitate the continued separation of the child and the other parent by delaying a decision on the visa application.

This may include children for whom an application has been lodged for return under the Hague Convention on International Child Abduction. The parent supporting the application should be given notice of the intention to refuse the visa and counselled as to the implications of that refusal, for example being barred under s 48 of the Act from making a further visa application. Officers should contact Family Section, National Office, for advice if necessary.

21.4 After PICs 4015 & 4017 have been assessed as met

If PICs 4015 or 4017 have been satisfied, officers must turn their minds to assessment of PICs 4016 or 4018 (whichever is applicable), that is, the best interests of the child criteria - see PAM3: Act - Act-defined terms - s5G - Relationships and family members - Best interests of minor children.

This Part comprises:

- section 22 Relevant cases
- section 23 Responsibilities of departmental officers.

22 Relevant cases

The procedures that follow reflect policy that departmental officers also take appropriate steps to develop local warning lists and complementary procedures to protect the interests of unaccompanied children travelling to Australia. These procedures and policy apply in situations where an application, whether made onshore or offshore, is for any class of temporary visa and:

- the child who is applying for the visa is not travelling with (or staying with) a parent or other adult relative but
- Schedule 4 PIC 4012 does not apply.

The procedures apply irrespective of whether the child's parent(s) has given written consent for the child to be granted a visa and/or whether PIC 4017 applies.

23 Responsibilities of departmental officers

23.1 Refer to National Office

Procedures for these cases are currently being reviewed.

In the interim, departmental officers should seek information about the person with whom the child will be travelling or staying and the degree of awareness the child's parents have about the arrangements. The checklist Minor child travelling checklist may assist officers in this process.

Once this information is received, officers should then seek advice from Family Section, National Office, on how to proceed. Family Section may in some circumstances recommend that a National Police Check be requested for the person with whom the child will be travelling/staying.

23.2 If adverse information is received

If adverse information is provided by the departmental liaison officer, visa assessing officers should:

- discuss with the local child welfare authority any concerns regarding the child's welfare in Australia should a visa be granted and
- if the matter cannot otherwise be resolved (for example, by intervention of the child welfare authority), consider refusing the visa on the basis that granting the visa is not in the best interests of the child.



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Managing CMAL Alert Reason Code 26 (ARC26)

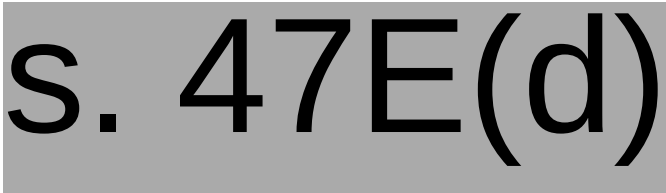
Standard Operating Procedure

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1. Purpose

The Central Movement Alert List (CMAL) is the system that the Department of Home Affairs (the Department), including the Australian Border Force (ABF), uses to store, maintain and access a central repository of Movement Alert List (MAL) identities and documents of concern.

CMAL is programmed to determine the MAL Status of a client so that CMAL concerns are brought to the attention of decision makers in both the pre and post visa contexts. The MAL status must also be considered when assessing sponsors for visa applicants and those entering Australia.

This SOP relates to CMAL Alert Reason Code (ARC) 26 (Missing Children INTERPOL) – Yellow Notice - and the procedures to list and manage children on ARC 26.

The Central Movement Alert List (CMAL) (bcz.gov.au) PI relates.

2. Scope

2.1. In Scope

This SOP provides guidance for officers in Family Program Management (FPM), who are the ARC owners, on how to action True Match notifications for ARC 26 – Missing children INTERPOL Yellow Notice listings.

3. Background

An INTERPOL Yellow Notice is a global police alert for a missing person. It is usually published for children who are missing due to parental abduction, criminal abduction (kidnappings) or unexplained disappearances. The Department is notified of INTERPOL Yellow Notices as we are able to report on relevant information that may help locate the child where an application for a visa or citizenship is made for the child.

ARC 26 is the reason code used to alert departmental officers to children who have been reported as missing to INTERPOL. An ARC 26 listing is created in CMAL for any person under 18 years of age who has been reported as missing. By creating an ARC 26 alert in CMAL system, it ensures that the next interaction by the missing child with the Department will be subject to increased scrutiny.

The CMAL or Border Operations Centre (BOC) teams load INTERPOL Yellow Notices into CMAL using ARC26 and, where a true match occurs, actions an email to INTERPOL on behalf of the ARC owners FPM.

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s. 47E(d)

3.6 Contacts for ARC 26

Family Program Management Section, Family Visas Branch:

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

CMAL:

Email: s. 22(1)(a)(ii) @abf.gov.au

Phone: 1300 3680126 – option 2

4. Accountabilities and Responsibilities

Role	Description
Document Owner	Approves SOPs and verify that appropriate stakeholder consultations have been completed.
Document Author	Responsible for verifying the need for a document, drafting documents, consulting with all required stakeholders.
Officer	Officers in the Department responsible for complying with all lawful and reasonable directions in this SOP.

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5. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	31/07/2024	Family Program Management Section	Establishment of the document.
0.2	12/9/2024	Traveller Operational Systems	Review
1	23/09/2024	Director Family Program Management	Cleared for publication.

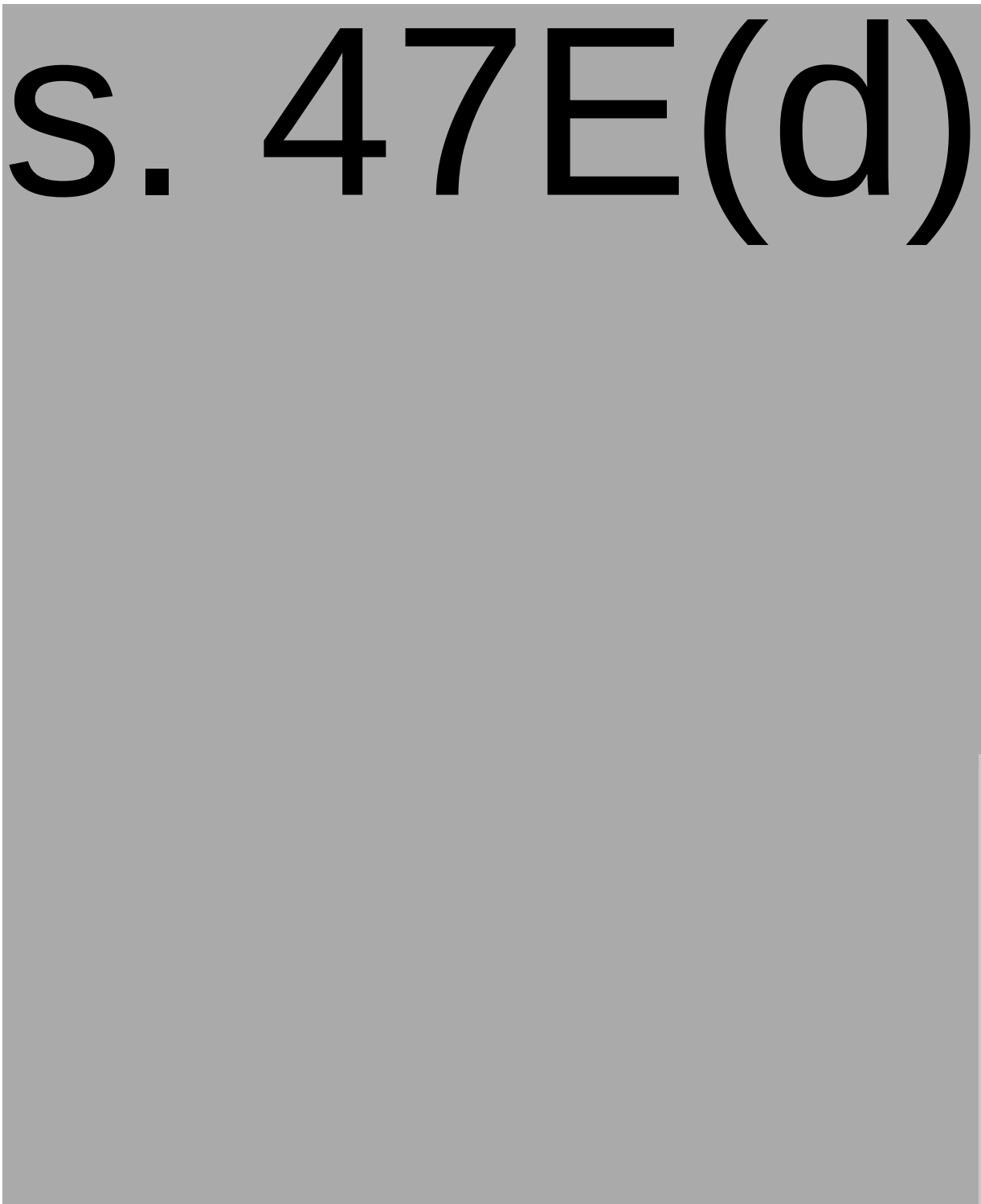
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Attachment A – Definitions

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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 power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
<i>Migration Act 1958</i>	s65(1)	Power to grant, or refuse to grant, a visa	Yes	ADMIN 21/051 - <i>Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020</i>

1.2 Controls and Assurance

Related Policy	Central Movement Alert List (CMAL) Procedural Instruction (VM-4816)
Procedures / Supporting Materials	Nil
Training/Certification or Accreditation	Nil
Other required job role requirements	Access to CMAL Remote Input Function (CRIF) interface
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	For CMAL system assistance, email s. 22(1)(a)(ii)@abf.gov.au . For matters relating to this document, email s. 22(1)(a)(ii)@homeaffairs.gov.au .
Escalation arrangements	Email s. 22(1)(a)(ii)@homeaffairs.gov.au .
Recordkeeping (e.g. system based facilities to record decisions)	Content Manager, CMAL, ICSE.
Program or Framework (i.e. Policy Framework or Business Program)	Family Migration
Job Vocational Framework Role	Visa and Citizenship Decision Maker Program Advice and Support

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Overseas Post

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Page maintenance	
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Date of last review:	[Date]
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Auto-reports enabled for referrals to Overseas Posts 19JAN2026

Manual instructions if required

s. 47E(d)





Australian Government
Department of Home Affairs



Australian
BORDER FORCE

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Working with the Australian Federal Police

Procedural Instruction

Document ID (PPN)	BC-2469
TRIM Record Number	ADD2026/3161470
BCS Function	Trade and Traveller Clearance Management
Document Owner	Commander, Operational Practices
Approval Date	11 June 2026
Document Contact	Traveller Practices Section s. 22(1)(a)(ii) @abf.gov.au

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1. Purpose

The disclosure and use of information by the Department of Home Affairs and the Australian Federal Police (AFP) must be in accordance with any relevant legislation that applies, such as the *Privacy Act 1988* (the Privacy Act), the *Australian Border Force Act 2015* (the ABF Act), the *Migration Act 1958* (Migration Act) and the *Australian Citizenship Act 2007* (the Citizenship Act), amongst other legislation. Australian Border Force (ABF) officers must ensure ABF and AFP processes are conducted separately.

This Procedural Instruction (PI) outlines procedures for creating alerts that will appear on the Passenger Analysis Clearance Evaluation (PACE) system when travellers are being processed inwards or outwards. ABF officers can enter alerts directly into Alerts Management System (AMS), PACE or enter alerts into Central Movement Alert List (CMAL) which generate traveller referrals via PACE. AFP enter alerts into PACE via the AFP Police Real Time Online Management System.

2. Scope

2.1. In Scope

This procedural instruction applies to staff in the aviation and maritime environments that require the assistance of the AFP, while ensuring any processes conducted by the ABF and AFP remain separate.

2.2. Out of Scope

ABF officers at the border that do not require the assistance of the AFP. Clearance of travellers goods under the *Customs Act 1901*.

3. Procedural Instruction

3.1. What to refer to Australian Federal Police

An AFP referral is required when the following is suspected:

- Document fraud
- Passport fraud
- People smuggling and human trafficking
- Organised crime and proceeds of crime
- Identity crime
- Child abduction, grooming or offending
 - Note: Detection of Child Abuse Material is referred to ABF Investigations and evidence of child grooming or contact offending is referred to AFP.
- Narcotics detection
- Contact offending.

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In most cases, a person who is refused immigration clearance will be detained and arrangements made for their removal. If a person is of interest to the AFP, their removal can only be stopped through the issue of a Criminal Justice Stay Certificate.

If the traveller is an unlawful non-citizen, then in order for the AFP to stay the removal of a non-citizen they must be refused immigration clearance under the Migration Act, and the AFP must apply for a temporary Criminal Justice Stay Certificate (CJSC). See [Criminal Justice Stay Certificates and Criminal Justice Entry Visas at the Border](#) – PI (VM-4861).

ABF officers must notify the AFP where:

- they know or reasonably believe a traveller or another person (accomplice) has been involved in an attempt to facilitate illegal entry of persons into Australia

• s. 47E(d)

ABF officers must not evaluate or investigate any cases of suspected human trafficking and must refer known individuals or suspected involvement in human trafficking to the AFP for assessment. See [Human Trafficking at the Border](#) – PI (TT-2708).

Under certain circumstances, a traveller may arrive in Australia as a result of fraudulent documents and seek Australia's protection obligations. s. 47E(d)

Refer to [Protection Claims at the Border](#) – SOP (TT-7223) before taking further action.

Note: When the AFP take custody of a traveller for questioning and/or possibly charging with a criminal offence and this person is known to be, or is reasonably suspected to be, an unlawful non-citizen, the person must continue to be detained under section 189 of the Migration Act. This requirement must be continued by the AFP as officers for the purposes of the Migration Act. ABF officers must use the [Transfer of Custody](#) form and ensure it is recorded in line with Departmental recording practices in Content Manager. The AFP officer accepting the transfer must themselves be satisfied that the person is an unlawful non-citizen. When transferring custody, the ABF officer must ensure that the AFP officer understands that they are responsible for maintaining the immigration detention status of the traveller.

3.2. Referral process

The ABF officer should undertake the following as soon as practicable:

- Contact the AFP Operations Coordination Centre (AOCC) on 131 237 or [s. 22\(1\)\(a\)\(ii\) @afp.gov.au](#) to log the referral (where the AFP attends ABF offices, the referral must still be logged with the AOCC)
- Where AFP officers attend the ABF office following a referral, they may seek and may be provided information about the traveller of that particular referral only
- For cases involving suspected people smuggling, human trafficking, providing false documents or false or misleading information and offences relating to visas as outlined in section 236 of the Migration Act:
 - Complete the form [Offences under the Migration Act AFP Referral](#), in the Traveller Practices Toolkit, and seek further information from the AFP if required
 - Request the attending AFP officer completes the AFP section of the referral form
 - Where applicable, record the reasons why the AFP decided not to action the referral further.
- Conduct a baggage search, if one has not been performed. See [Baggage examination at the border \(s186 Customs Act\)](#) – PI (BC-699).

- Where items of interest are found, to ensure continuity of evidence, photographs of the items should be taken in-situ and notebook entry made, a referral should also be generated to AFP in relation to items located
- Officers should be aware of the powers they are utilising in transferring items to the AFP.

Record all AFP referrals, as per airport and seaport arrangements.

3.3. Multiple agency interest in a traveller

Immigration alert processes and immigration clearance decisions should be completed prior to the AFP accessing travellers of interest. If the AFP believe their alert should be actioned prior to immigration processing, the ABF officer should refer the case to their Superintendent for consideration, prior to allowing access to the traveller.

The only exception to this is when the AFP knows or reasonably suspects a traveller is carrying drugs internally. In this case, the ABF officer should:

- cease immigration processing
- notify their ABF supervisor
- refer the traveller to AFP immediately,
- await AFP decision as to whether they intend to arrest and transfer the traveller for an x-ray.

Note: if the traveller's health and safety is reasonably believed to be at risk, then the ABF officer must escalate the matter to their supervisor. See [Bypassed Immigration Clearance – PI \(BC-2437\)](#).

3.4. Interview considerations by the Australian Federal Police

While the AFP determines whether an interview is necessary, the ABF officer should continue immigration processing, including progressing any removal arrangements.

After completion of the ABF interview and in consultation with the duty manager, the AFP officer/s may be provided with access to the person to request an interview. Interviews should not be 'interspersed', that is, the interview with ABF should be completed before the AFP begins interviewing the traveller.

Where the traveller makes statements that could potentially engage Australia's protection obligations at an AFP interview, the AFP should cease the interview and advise an ABF officer before taking any further action.

Where a traveller has been refused immigration clearance, the AFP officer must be advised of the following:

- That the ABF is required under section 198(2)(b) of the Migration Act to remove the traveller as soon as reasonably practicable, unless they have made a valid application for a visa or hold a valid visa
- The expected removal plans including time, date and place of the traveller's planned removal once arrangements are confirmed
- Where the AFP decides the traveller should be arrested or removed from the airport or seaport for further investigation, they are required to obtain a CJSC which stays the removal of the person
- Where a CJSC is issued, the ABF will facilitate the transfer of custody of the detainee to the AFP.

3.5. Travellers suspected of carrying drugs internally

Where an ABF officer reasonably suspects a traveller may be carrying drugs internally, the ABF officer must cease immigration questioning and discuss their concerns with their supervisor immediately regarding a potential referral to the AFP for assessment. The officer should await a decision from the AFP as to whether they intend to arrest the traveller and conduct an x-ray examination. However, if the ABF officer suspects the

traveller requires urgent medical attention, the ABF officer must immediately notify their supervisor. See [Detention and Search \(Division 1B and 1BA Customs Act 1901\) – PI \(BC-687\)](#) for further information.

Note: Suspicion of carrying drugs is a breach of the Customs Act, not Migration Act, and is not grounds for visa cancellation. Determination on immigration clearance is based on s 166 requirements.

3.5.1. Traveller meets immigration clearance requirements

If the AFP decide to take the traveller to hospital for an x-ray examination or medical attention and the traveller meets immigration clearance requirements (including, in the case of a non-citizen, presenting evidence of their identity and a visa that is in effect and held by the person), the ABF officer should:

- immigration clear the traveller
- create an Inspector Report M304 and make contemporaneous notes detailing the case. Refer to [3.10 M304 Reporting](#) for further information.
- depending on the circumstances, consider referring the matter to onshore compliance for possible follow up action/monitoring.
 - Referral to onshore compliance should be completed by both AFP and ABF officers.

Note: Once a traveller has been immigration cleared and left the s15 port boundary, the traveller cannot be returned to immigration clearance to subsequently consider bona fides or character concerns. ABF should notify onshore stakeholders such as [General Cancellations Network](#) and/or local Field Operations if there are outstanding concerns and the traveller is in the community. Section 172 of the Migration Act states that once an officer has made an immigration clearance decision, whether the person is immigration cleared, refused or bypassed, the clearance process is taken to be complete, and the traveller cannot be returned to immigration clearance.

3.5.2. Traveller does not meet immigration clearance requirements

Where the traveller failed to meet immigration clearance requirements, is detained under the Migration Act, and the decision is made to take them to hospital, the traveller **must be** refused immigration clearance.

The traveller cannot be returned to immigration clearance after they are taken to a hospital. See [Arrival Immigration at Airports and Seaports – PI \(BC-536\)](#).

Where AFP suspect a traveller is carrying drugs internally but have not made a decision to transfer the traveller for an x-ray examination, where appropriate, the ABF officer may continue immigration processing of the traveller, and consider whether visa cancellation is appropriate, unless the traveller's health and safety is reasonably suspected to be at risk, then the ABF officer must escalate the matter to the supervisor. If there is insufficient evidence to refuse clearance the traveller should be immigration cleared and local Field Operations be notified of the incident.

In all circumstances of suspected or confirmed internal drug concealment, the Superintendent should be notified, and the AFP should be requested to inform ABF of the outcome of the test. ABF officers should notify and also request AFP notify local Field Operations to ensure cases are effectively followed up, including situations where serious bona fides concerns remain outstanding.

To ensure the ABF maintains an oversight of such cases, ABF officers must notify the local Field Operations team initially, when a traveller transfer or referral to AFP has occurred.

3.6. Suspected child abduction, grooming or offending

ABF officers must remain vigilant in situations where minors appear uncomfortable, in the presence of a responsible adult. ABF officers may identify passengers of concern in immigration clearance because of possible child abduction. These cases must be referred to the AFP.

The AFP must be advised of all cases where the ABF becomes aware of an accompanying adult, parent or guardian attempting to remove a minor subject to an Australian court order, with no permission to travel out of Australia. See [Managing Minors in Immigration Clearance – PI \(BC-2676\)](#).

3.7. ABF referral to AFP from the Secondary Examination Area

Where a traveller has been processed at the primary line, and is subsequently referred to the AFP by the ABF due to responses provided or evidence located during a baggage search, the ABF officer must assess the relevance of the information in establishing whether the person meets the immigration clearance requirements and whether there may be grounds for cancellation of the traveller's visa under the Migration Act.

After completion of the ABF interview, the AFP should be advised of the ABF's decision as to immigration clearance or refusal of the referred traveller.

3.8. AFP requests for traveller information

The AFP may request personal information about a traveller who is in immigration clearance or who is recorded on departmental systems such as Mainframe and Referrals Processing (RefPro). Where the request relates to a person in immigration clearance, or where it relates to an urgent matter (such as a Family Court matter), ABF officers may release the information in accordance with the relevant legislation, including the Privacy Act and the ABF Act.

See [Information Handling Procedures \(Privacy, Secrecy and Disclosure\) – SOP \(VM-3985\)](#).

Any release of information to the AFP is to be noted in the M304 report. Refer to 3.10 *M304 Reporting* for further information.

Where the AFP seeks information regarding the immigration status of a traveller they should be referred to the Immigration Status Service (ISS). ISS is a single point of contact for the AFP and state police to conduct enquires in relation to the immigration status of unlawful non-citizens.

- ISS is available for police enquiries 24 hours, seven days a week
- ISS can be contacted on 1800 558 414 or [§ 22\(1\) @abf.gov.au](#).

3.9. Issuing a Criminal Justice Stay Certificate

If a CJSC is provided to the ABF by the AFP (usually via email), the ABF officer must forward the certificate to the Criminal Justice Visa Helpdesk via email [§ 22\(1\)\(a\)\(ii\) @homeaffairs.gov.au](#).

A CJSC stays the removal of a detainee. The airline or seaport is to be notified and provided with relevant written notice advising the detainee is unavailable for removal until further advice is provided.

The ABF officer must place a copy of the CJSC on the traveller's TRIM file.

For further information on the issuance of a temporary CJSC see [Criminal Justice Stay Certificates and Criminal Justice Entry Visas at the Border – PI \(VM-4861\)](#).

3.10. M304 reporting

The M304 report consists of several components, including personal details, flight details, narrative and coding, which combined, form a unified client record. This information is downloaded from TRIPS and PACF systems. All referrals must be finalised with a completed M304 report.

When completing a referral, ABF officers must ensure the required categories are completed, describing all actions and events occurring during border clearance:

For further information on M304 reporting, refer to the Traveller Practices [Border Procedural Instruction Toolkit](#).

4. 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 Australian Border Force (Immigration and Border Protection Worker Professional Standards) Directions 2024 (the Professional Standards Secretary Direction) issued under subsection 55(1) of 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 Secretary 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.

All records created as a result of this procedure must be managed in accordance 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](#).

5. Accountabilities and Responsibilities

Role	Description
Document author	Responsible for: - Drafting policies and procedures in compliance with the Policy and Procedure Control Framework - Using the approved Framework templates - Addressing the key requirement of the policy or procedure - Prior to drafting or reviewing, engage with their Divisional Coordinator.
Document owner	As the framework document owner, approves PIs and verify that appropriate stakeholder consultations have been completed.
Superintendent, Traveller Practices section	As the framework document owner, the Superintendent is responsible for

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Role	Description
	- regularly evaluating each PI document to ensure that it is still achieves its intended purpose - determining whether a document requires editing or retirement monitoring change and amendments to legislation or other legal requirements, business operations or risk profiles which may have an adverse effect on PI documents
ABF Officers	Participate in the PI evaluation and feedback processes and provide suggestions on effectiveness and usability of the document
Divisional Coordinator	Responsible for: - confirming the need for the development of a Framework document in consultation with the Framework document author - registration of Framework documents with the NPCT - submitting draft and approved Framework documents to the NPCT for processing - assisting the policy author with the consultation process - managing the endorsement and final approval process - coordinating and responding to requests from the NPCT regarding all aspects of the Framework - supporting Division Heads and the NPCT by providing them with assurance and advice relating to policy and procedural outputs and activities within their Division Actively promoting a professional approach to policy management across their Division and actively communicates and collaborates with the National Policy Coordination Team and other key Divisional contacts.
Migration and Citizenship Law Branch	Provide legal subject matter expertise. Act as a key stakeholder during the PI development process. Review PI and provide legal clearance
Stakeholder	Advise author on policy and procedure relevant to business area. Attend stakeholder consultation workshop. Identify other stakeholders that should be consulted. Review draft documents and provide solution focussed feedback within the specified timeframe.
Subject Matter Expert	A generic term for a departmental staff member or contractor who possesses specific expertise on the processes detailed in that PI/SOP.

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6. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1.0	12 Dec 18	s. 22(1)(a)(ii)	Approved by SES
2.0	11 June 2026	s. 22(1)(a)(ii) Traveller Practices	2026 Commander Approved PPCF Review

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is an agency within the Home Affairs portfolio responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 ABF Act) authorised to perform border clearance duties.
Australian Federal Police	AFP	Is the organisation whose role is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas.
Australian Federal Police officer	AFP officer	Is a person engaged under section 24 of the <i>Australian Federal Police Act 1979</i> (Australian Federal Police Act).
AFP Operations Coordination Centre	AOCC	AOCC provides a centralised monitoring, initial response and coordination and communications support service for the AFP's national and international activities.
Central Movements Alert	CMAL	Is a system used to store, maintain and access a central repository of identities and documents of concern.
Criminal Justice Stay Certificate	CJSC	May be requested and issued in relation to a person who is outside Australia but is required to travel to and temporarily remain in Australia for the purpose of the administration of criminal justice. Commonwealth CJSCs are issued by the Attorney-General under section 147 or section 148 of the Migration Act.
Criminal Justice Stay Visa	CJSV	Are Act-based visas granted for non-citizens whose entry to and/or continued presence in Australia is required for the purposes of the administration of criminal justice. The administration of criminal justice is defined in section 142 of the Migration Act as: - an investigation to find out whether an offence has been committed - the prosecution of a person for an offence the punishment by way of imprisonment of a person for the commission of an offence

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Term	Acronym (if applicable)	Definition
Immigration detention		Under the Migration Act immigration detention means: (a) being in the company of, and restrained by: i) an officer ii) in relation to a particular detainee—another person directed by the Secretary or Australian Border Force Commissioner to accompany and restrain the detainee (b) being held by, or on behalf of, an officer: i) in a detention centre established under this Act ii) in a prison or remand centre of the Commonwealth, a State or a Territory iii) in a police station or watch house iv) in relation to a non-citizen who is prevented, under s 249, from leaving a vessel—on that vessel v) in another place approved by the Minister in writing but does not include being restrained as described in subsection 245F(8A), or being dealt with under paragraph 245F(9)(b). Note 1: Subsection 198AD(11) provides that being dealt with under section 198AD(3) does not amount to immigration detention. Note 2: This definition extends to persons covered by residence determinations (see section 197AC).
Immigration officer's report	M304	Is a report consisting of components, such as personal and flight details, narrative and coding, which together form a unified client record in the event a traveller is referred for secondary clearance
Integrated Client Service Environment (Production & Offspring)	ICSE	Is a processing system used to record and process citizenship, sponsorship and nomination applications and a multitude of onshore and offshore visa applications.
Passenger Analysis Clearance Evaluation System	PACE	Is a system used to process travellers at Australia's international air and seaports.
Content Manager	TRIM	Is the Department of Home Affairs approved EDRMS for storing information.

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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 power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
<i>The Migration Act 1958</i>	s 189	Detention of unlawful non - citizens	Yes	ABF (M) No.1 of 2018
<i>The Migration Act 1958</i>	s 198(2)(b)	Removal from Australia of unlawful non - citizens	Yes	ABF (M) No.1 of 2018
<i>The Customs Act 1901</i>	s 234AA	Places set aside for purposes of Act	No	Instrument No.1 of 2018 (ABF (C-G) No.1 of 2018)

1.2 Controls and Assurance

Related Policy	Border Clearance – PS (TT-2983)
Procedures / Supporting Materials	Arrival Immigration at Airports and Seaports – PI (BC-536) Bypassed Immigration Clearance – PI (BC-2437) Criminal Justice Stay Certificates and Criminal Justice Entry Visas at the Border – PI (VM-4861) Human Trafficking at the Border – PI (TT-2708) Managing Minors in Immigration Clearance – PI (BC-2676) Protection Claims at the Border – SOP (TT-7223) Referral Codes – PI (BC-2485) Detention and Search (Division 1B and 1BA Customs Act 1901) – PI (BC-687) Traveller Practices Border Procedural Instruction Toolkit
Training/Certification or Accreditation	On the job training
Other required job role requirements	Nil

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Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	Advice on this document can be provided by the Traveller Practices Section s. 22(1)(a)(ii) abf.gov.au
Escalation arrangements	Escalations of concerns or issues regarding this document can be sent to the Superintendent, Traveller Practices Section: s. 22(1)(a)(ii) abf.gov.au
Recordkeeping (e.g. system based facilities to record decisions)	Content Manager (TRIM)
Program or Framework (i.e. overarching Policy Framework or Business Program)	Border Clearance – PS (TT-2983)
Job Family Framework Role	Border Enforcement Operations

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Attachment C – Consultation

1.1 Internal Consultation

- Targeted Consultation
 - Traveller Policy
 - ABOC
 - Systems Admin TRIPS
 - RCU Operations NT
 - RCU QLD
 - RCU South Australia
 - RCU VIC STAFF
 - RCU VICTAS operations
 - RCU WA
 - RCU NSW
 - Border Entry Visas
 - Integrity Awareness
 - College Coordination Unit
 - Military Event Coordination
 - WHS
 - ABF WHS Coordination
 - Records Management Section
 - Maritime Travellers Processing Committee
 - SEOC
 - Major Event Coordination
 - DM Airport Ops Sydney
 - Duty Manager Hobart Airport
 - AFP National Headquarters – AFP Liaison
 - Region Aviation Travellers
 - Border Intelligence Watch Office
 - ABF Intelligence Partnerships
- All staff consultation
- PPCF team review

1.2 External Consultation

- Nil

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Managing Minors in Immigration Clearance

Procedural Instruction

This instruction applies to the immigration clearance of persons less than 18 years old. These persons are considered 'minors' under the Migration Act 1958.

Approval Date	30 April 2018
Date of Review	30 April 2019
Contact	s. 22(1)(a)(ii) @abf.gov.au
Document ID (PPN)	BC-2676
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1. Introduction

1.1. Background

This instruction aims to:

- Identify cases of concern with the travel of minors that may come to the attention of Australian Border Force (ABF) officers
- Advise ABF officers on considerations when dealing with cases of concern involving minors
- Provide additional background to ABF officers about various circumstances of minors who may be arriving or departing at airports.

2. Scope

2.1. In Scope

This instruction applies to managing minors in immigration clearance under the *Migration Act 1958* for *travellers in both air and sea ports*.

2.2. Out of Scope

This instruction does not cover clearance of travellers and/or goods under the *Customs Act 1901*.

This instruction does not apply to travellers that are not deemed to be minors under the *Migration Act 1958*(the *Migration Act*).

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3. Glossary

Table 1 – Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 Australian Border Force Act) authorised to perform border clearance duties.
Australian Federal Police	AFP	Is the organisation whose role is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas.
Convention of the Rights of Children	CRC	Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to minors. The Convention on the Rights of the Child (CRC) of 1989 defines a child as any human person who has not reached the age of eighteen years.
e-passport		A biometric passport that has an embedded electronic microprocessor chip that contains biometric information that can be used to authenticate the identity of a passport holder.
Formal interview		Are interviews held with a traveller in immigration clearance, excluding the initial conversations at the primary or outward clearance line.
Guardianship under the Immigration (Guardianship of Children) Act 1946		Under the IGOC Act, the Minister for Home Affairs is the legal guardian of certain unaccompanied non-citizen minors if the following circumstances are present at the time of the minor's entry to Australia: - the minor has not turned 18 years of age - the minor is entering Australia as a non-citizen - the minor is not entering Australia in the charge of or for the purposes of living with a parent, relative who is 21 years of age or over, or intending adoptive parent - the minor intends or is intending to become a permanent resident of Australia
Incoming Passenger Card	IPC	Is a card including personal particulars and a declaration of incoming travellers required to present to a clearance officer under Regulation 3.01(3) of the <i>Migration Regulations 1994</i> (Migration Regulations).

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Term	Acronym (if applicable)	Definition
Independent observer	IO	Is an adult who is independent of the Department and ensures agencies treat an unaccompanied minor fairly, appropriately and reasonably. Independent observers provide pastoral or physical care of unaccompanied minors while they attend interviews, meetings and immigration processes undertaken by ABF or other government agencies on Christmas Island and the Australian mainland. These may include entry interviews, Australian Federal Police (AFP) and other intelligence interviews, interviews directly concerning their immigration status, identity processes and returns and removals processes.
Minor		A person under 18 years of age.
Minor accompanied by a parent (natural or adoptive) or legal guardian		A person under 18 years of age who has arrived in Australia under the direct care of one or both of their parents (natural or adoptive).
Minor accompanied by a relative or an adult who is not related to the minor		A person under 18 years who has arrived in Australia under the direct care of a relative (a person related to the minor by blood or marriage) or an adult who is unrelated to the minor but has been authorised by the minor's parents to provide care and be responsible for the minor while in Australia.
Public Interest Criteria	PIC	Means a criterion set out in a clause of Schedule 4 of the Migration Regulations 1994 (<i>Migration Regulations</i>), and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule.
Unaccompanied minor		Is a person under 18 years of age who has arrived, or intends to depart in Australia without their parent, relative or an adult.
Working with Children Checks	WWCC	In Australia, state and territory governments are responsible for the administration of statutory child protection. Some state and territory governments have introduced legislation that requires individuals working with children, in a paid or volunteer role, to undertake a WWCC

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4. Procedural Instruction

4.1. Managing minors through the arrival and departure process

Australian law considers a minor to be a person under the age of 18.

Standard immigration clearance processes apply to all persons, regardless of age. However, in the case of minors, additional care must be taken in assessing for potential issues.

As a matter of Departmental policy, a minor (under the age of 16) cannot be held liable for any incorrect information on a passenger card.

Where the minor is under 18, they should not be formally interviewed without a parent or accompanying adult or an Independent Observer (IO) present.

Where a minor is too young to read or comprehend the content of an incoming passenger card (IPC), it should be completed by:

- an accompanying parent or legal guardian
- an authorised third party with whom the minor is travelling
- where the minor is unaccompanied, an ABF officer.

If an ABF Officer confirms that an accompanying adult does not intend to care for the minor whilst they are in Australia, the minor may be considered an unaccompanied minor. If the unaccompanied minor intends to reside permanently in Australia, the minor may fall under the Minister's legal guardianship under the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act). To determine whether the minor falls under the IGOC Act, please contact Unaccompanied Humanitarian Minors and Guardianship section [s.22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) for an IGOC assessment.

For further information, see *Procedural Instruction: Passenger Cards* and *Procedural Instruction: Processing domestic passengers on international flights*

At the primary clearance point ABF officers must ask basic questions before determining whether a formal interview with the child or the engagement of an IO.

IOs may attend interviews and meetings between accompanied minors and the Department and/or other agencies where no adult relative is present during the interview or where concern exists regarding the adult relative's understanding of processes and capability of acting in the best interests of the minor with regards to a minor's physical and emotional wellbeing.

If it is necessary to gather extensive information from the minor, an interview room should be used to ensure privacy and confidentiality.

Steps that can be taken to minimise the negative impacts on the child in their interactions with the Department include, but are not limited to, the following:

- ensuring that the family unit stays together, if applicable
- progressing the matter as expeditiously as possible
- ensuring interaction in the child's presence is calm, respectful and discrete
- check the individual immigration status of family members for any variation, if applicable.

4.1.1. Airline arrangements for minors

An ABF officer would generally consider an airline escort as an indicator that the child has permission from their parent or guardian to travel.

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Under the International Air Transport Association's (IATA) Recommended Best Practice for Minors, airlines generally refer to a minor as a child under 16 years old and an unaccompanied minor as a child under 16 years old who is travelling alone, or travelling only in the company of another child aged less than 16 years old.

Generally, airlines require unaccompanied minors under 12 years old to travel under the airline's minor arrangements. These arrangements ensure a minor is escorted by an airline representative on arrival or departure through immigration and customs processing. Airlines may also offer an escorted service for unaccompanied between 12 and 16 for a fee.

4.2. Obligations in managing children at the border on arrivals

4.2.1 Sections 4AAA and 11 of the Immigration (Guardianship of Children) (IGOC) Act

Section 4AAA of the IGOC Act and section 6 of the IGOC Act have the effect that the Minister is the legal guardian of non-citizen minors if at the time of the minor's arrival to Australia:

- the minor is entering Australia as a non-citizen
- the minor is not entering Australia in the the care and responsibility of a parent, or relative who is 21 years of age or over
- the minor intends or intended to become a permanent resident in Australia.

If an ABF officer is dealing with an unaccompanied minor who they believe may fall under the Minister's guardianship, they should contact UHM and Guardianship section ^{s. 22(1)(a)(ii)} [@homeaffairs.gov.au](mailto:homeaffairs.gov.au).

Section 11 of the IGOC Act gives the Minister the authority to exclude a child or class of children from the provision of the IGOC Act. The current section 11 order excludes the following classes of minors:

- minors who are tourists or visitors
- minors who are prohibited immigrants by virtue of a provision of the Migration Act
- minors whose continued presence in Australia is subject to a limitation as to time imposed by law, other than minors who on arrival in Australia claim asylum as refugees.

4.2.2. Article 3 of the Convention on the Rights of the Child (CRC)

Article 3 of the CRC provides:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

Note this means that the best interests of the child must be treated as a consideration, not necessarily the primary consideration in exercising any discretionary power under the Act.

Importantly, as Article 3 has regard for 'all actions concerning children', officers should assess the best interests of a child in relation to:

- decisions directly relating to a child and
 - decisions about a family member, primary care giver or other person who has claimed responsibility for the child, even if the decision does not directly relate to the child. This is because any decision about a parent or primary care giver will affect the child. The child concerned may be a non-citizen, or an Australian citizen child of a non-citizen parent.
- The meaning of 'best interests of the child' is not defined, but is informed, in part, by the principles in the CRC. The principles that are most likely to be relevant to actions in relation to children in immigration clearance are:

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- protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse;
- families should be able to stay together, as far as possible;
- respect for the rights and duties of parents and other relevant family members and recognition that both parents have common responsibilities for the upbringing and development of the child;
- the child has the right to preserve his or her identity, including nationality, name and family relations as recognised by law;
- prevention of the illicit transfer and non-return of children abroad;
- freedom of religion; and
- the views of the child should be given weight in accordance with the child's age, maturity and level of understanding.

Although it may be assessed that a particular decision would be in the best interests of a child, it does not automatically follow that it is the decision that should be so made. Article 3 requires that the best interests of the child be a consideration in all actions concerning children.

The best interests of the child must be weighed with or against any other primary considerations in the specific circumstances, for example, the objectives of the relevant provision/s in the Act; and Community protection.

4.2.3. Relevant CRC obligations for decisions made regarding minors in immigration clearance

When taking actions that concern or affect a minor, the decision-maker must consider Australia's obligations under the CRC where there is a discretion to do so. However, it is important to note that when exercising a power that does not specifically address the best interests of the child and which does not allow the decision-maker any discretion, there is generally no scope to consider the obligations under the CRC.

In considering and CRC obligations, ABF officers should consider the following to ensure compliance with the CRC:

- the best interest of the minor must be a primary consideration in any decision, especially affecting children where the power being exercised is discretionary. This will include decisions about visa cancellations of parents or guardians even if the decision does not primarily relate to the minor because such a decision will affect the minor
- preserve the family unit and the right of the minor to be cared for by their parents, unless competent authorities have found this to not be in the best interest of the minor (to prevent abuse or neglect). Where a minor is temporarily deprived of their family environment, special arrangements should be made for their care, welfare and support
- when a minor has to be detained, it should be as a matter of last resort and for the shortest possible period of time. It is government policy that where immigration detention does occur family groups will, whenever possible, be accommodated together. If it is necessary to separate a minor from their family, the minor must be able to maintain contact with them and should be kept separate from adults who are not family members. The priority is that children and, where possible, their families will be placed in the least restrictive form of appropriate accommodation for the shortest practical time
- when a parent has requested that the minor be removed when they are removed, ensure the request is dealt with in a positive, humane and expeditious manner
- when a decision is being made that will affect the minor, ensure that the minor's views are given weight in accordance with the child's age and maturity and level of understanding;

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- consider the appropriate treatment of the minor given their age, level of understanding and maturity, gender, cultural background, and other needs such as medical and religious requirements

4.2.4. Important considerations when managing unaccompanied minors

Where a child is being processed through immigration clearance without a responsible adult, and the child's circumstances of travel are such that an officer has concerns about their welfare arrangements, or for any reason it is clear that they have been abandoned, then:

- all reasonable efforts must be made to identify and contact the child's parents or an adult in Australia responsible for their care. These efforts can commence with inquiries by ABF officers and cooperation with partner agencies at the airport, airlines and airport facilities managers
- the case must be escalated to the Supervisor
- when the minor is an unlawful non-citizen, appropriate accommodation should be arranged, a case manager should be immediately allocated, and information passed on about the circumstances of the minor to the case manager for further action
- State welfare authorities and police should be contacted for assistance by the Supervisor, either while the minor is in immigration clearance or once they are taken to appropriate accommodation.

In other cases, the travel plans of a minor who is alone may not be suspicious, but still of concern. For example, where a minor is waiting in transit alone for an unusually long time before a connecting flight. If ABF officers become aware of such situations, they may be able to assist airlines or other partner agencies to provide a higher standard of care for the minor.

4.2.5. Important considerations when managing families with minors subject to same day removal

When a family member or responsible adult travelling with a minor is detained at the airport ABF officers should consider whether there are special needs for the minor. For example, facilities for feeding infants and baby change facilities.

4.2.6. Health and character concerns

If a minor (unaccompanied or otherwise) declares 'Yes' to health and / or character questions, the ABF officer should confirm with them if they intended to tick 'Yes'.

To ascertain whether the minor has the required understanding and maturity to comprehend the nature of the IPC questioning, the ABF officer should apply a conversational tone to inquiries about the minor's background and level of education and literacy.

Where the minor responds that they have understood the declaration and a formal interview will be necessary, see *Procedural Instruction: Character Concern* and *Procedural Instruction: Foreign nationals and tuberculosis*.

For New Zealand minors declaring criminal convictions, see *Procedural Instruction: Behaviour Concern Non-Citizen*.

4.2.7. Possible child abduction and /or human trafficking

Officers and/or agencies may identify passengers of concern in immigration clearance because of possible child abduction and / or human trafficking. These cases must be referred to the AFP, see *Procedural Instruction: Working with AFP*.

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ABF officers should consider indicators of a minor being trafficked or abducted into and out of Australia, these include:

- responding to questions with obviously prepared answers
- hesitation if asked unexpected questions
- attempts by the adult to answer for, or block questioning of the minor
- unwillingness to produce documents
- suspicious or inappropriate documentation
- unwillingness of any person in the group to make eye contact
- undue hesitation by minors in responding to questioning and overreaction by adults to their answers
- travelling on a school day
- physical appearance of a minor such as clothing, hairstyle or makeup that might indicate an attempt to alter appearance
- signs of physical abuse such as bruising, poor hygiene or malnourishment
- nervousness or fear on the part of a minor
- vague reasons for the absence of one or both parents
- adult passenger with infant, but no associated accessories
- minimal luggage
- appropriate reason for travel considering the age of a minor
- discrepancies between duration of trip and quantity of luggage carried
- recently purchased ticket or different purchase dates for adult and minor's ticket
- unconventional trip routing
- place of ticket purchase and issue inconsistent with minor's story.

ABF officers are responsible for ensuring:

- Suspected cases of child abuse and neglect are reported to the appropriate statutory child protection authority, see <http://www.aifs.gov.au/cfca/pubs/factsheets/a141787/index.html>
- AFP are advised of all cases where the department becomes aware of a parent / guardian attempting to remove a minor subject to an Australian court order, with no permission to travel out of Australia
- Where an ABF receives information from an informer that someone may attempt to depart Australia with a minor and without parental consent, the ABF refers the informer to the AFP

4.2.8. Working with Children Checks (WWCC)

In Australia, state and territory governments are responsible for the administration of statutory child protection. Some state and territory governments have introduced legislation that requires individuals working with children, in a paid or volunteer role, to undertake a WWCC.

4.2.9. Managing suspected child abuse and/or neglect victims

When an ABF officer suspects a child may be the subject of abuse and/or neglect, the officer must refer the matter to their supervisor for consideration of referral to State and Territory governments to meet mandatory reporting requirements. See the Policy statement reporting child related incidents. Attachment A: Relevant authorities and contact details.

4.2.10. Duties of an Independent Observer

An Independent Observer (IO) is an adult who is independent of the Department and ensures agencies, including the Department, treat an unaccompanied minor fairly, appropriately and reasonably.

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An IO must be impartial and objective in their behaviour and attitude towards a minor. They must ensure that the minor is treated fairly, equally and age appropriately. An IO should not be a Department or other government official involved in the minor's immigration clearance.

The role of the IO is to:

- communicate with the minor prior to the interview's commencement, if necessary
- build rapport with the minor
- explain to the minor that they are not a legal representative or an advocate and will be present during the interview to assist them with their physical and emotional wellbeing
- ensure appropriate toilet and food breaks are provided to the minor
- monitor for inappropriate questioning and/or behaviour by the interviewer
- ensure the minor is given the opportunity to ask questions and have their questions answered
- raise concerns, for example, emotional and physical wellbeing of the minor, with the interviewer
- intervene when he or she holds a concern for the minors wellbeing or believes an interviewing officer is behaving inappropriately towards a minor
- maintain documentation for concerns raised.

The ABF officer must retain any original notes taken by the IO and attach it to the minor's file. Before providing a copy of the notes to the IO, ensure any unrelated personal information is blanked out.

4.2.11. Requirements for immigration clearance and incoming passenger cards**Travel documentation belonging to a minor**

In cases of concern in immigration clearance, documents which may indicate that the travel of the minor is legitimate include:

- a valid passport/travel document for the minor
- documentary evidence or letter that proves the minor has the permission of an absent lawful parent(s) or guardian to travel
- a copy of any separation, divorce or custody decree, or court order that proves that the parent or guardian has custody of the minor
- evidence of the parent-child relationship (i.e. full birth certificate of the minor or equivalent official document such as a family book or adoption order)
- a death certificate or other official documentation to confirm a claim that the other parent is deceased
- a court order granting the holder guardianship of the minor
- a copy of the minor's birth certificate, detailing the parent(s) name(s).

4.2.12. Reasons for referral of a minor in immigration clearance

The reasons minors come to the attention of ABF officers include, but are not limited to, the following:

- passport/travel document issues
- bona fides/welfare concerns, or where other concerning information comes to light, for example:
 - they do not have a valid visa
 - the initial visa should not have been granted to the minor (for example, if the issuing post has discovered that false information was provided)
 - information is received that the circumstances that permitted the visa grant in relation to the minor have changed

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- suspected abduction and/or human trafficking
- travelling with parents/guardians who are of concern to the ABF
- claiming protection at the border
- they are not in the company of a responsible adult or do not know of arrangements for someone to meet them.

4.2.13. Actioning the referrals of accompanied minors

If a minor travelling with a parent/s or legal guardian is referred, the ABF officer has a duty of care to engage in primary conversation with the parent/s or legal guardian to establish:

- the purpose of the visit to Australia
- the intended accommodation arrangement for the family unit
- if travelling with one parent, the other parent's current location, and reason for travelling with the minor
- whether written consent (letter) of the non-accompanying parent has been provided.

If a minor travelling with an accompanying adult (not a parent or legal guardian) is referred, the ABF officer is responsible for engaging in conversation with the adult to establish:

- the nature of the relationship between the minor and the adult
- whether the minor's parents have authorised the adult to have the minor in their care for the purpose of travelling to and remaining in Australia
- whether care and welfare arrangements have been made for the minor while in Australia
- whether the minor may be attending school and confirm whether welfare arrangements have been made by the school
- the purpose of the minor's visit to Australia
- engage in conversation with the minor to establish the nature of the relationship between the minor and the adult.

In general, if a minor applies for protection in immigration clearance, regardless of whether they have right of entry to Australia, their details and any interview outcomes should be forwarded to UHM and Guardianship section at [s.22\(1\)\(a\)@homeaffairs.gov.au](mailto:s.22(1)(a)@homeaffairs.gov.au) for an IGOC assessment.

An IGOC assessment will be undertaken as soon as possible, however, note that IGOC status does not affect decisions made under the Migration Act.

ABF officers should be mindful where a minor is demonstrating behaviour that suggests they may not feel safe or may not be appropriately cared for by the accompanying adult (e.g. is the minor appearing emotionally or physically distant/detached from the adult, and appears to be fearful to speak openly in the presence of the adult).

Where the ABF officer continues to hold reasonable concerns regarding the welfare of the child in relation to the accompanying adult, the ABF officer **must** comprehensively refer all the circumstances of the case to a Supervisor and seek advice on the most appropriate action.

Possible factors relating to an accompanying adult's competence may be:

- intoxication
- urgent medical treatment
- mental health issues
- allegations or indication of neglect/abuse towards the minor.

4.2.14. Actioning referrals of unaccompanied minors

If an unaccompanied minor is referred, the ABF officer must:

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- establish if the minor was travelling under airline minor procedures and arrangements
 - ask airline to resume responsibility if they have left a minor unaccompanied
 - where there are immigration concerns, notify the airline and request all details of parents, guardianship, school guardian or person receiving minor on arrival
- determine the minor's level or understanding of English
- determine if apparent age, cultural needs or gender may warrant further primary line discussions with a more experienced or appropriate officer
- consider the minor's ability to communicate, in particular:
 - comprehension of time
 - attention span limitations
- ask questions that are:
 - simple and age appropriate
 - contain only one idea
 - open-ended and not leading
- establish the minor's purpose for travel to Australia
- establish whether the minor may be attending school and confirm whether welfare arrangements have been made by the school
- establish what care and welfare arrangements are in place for them in Australia, including if a person will be collecting them from the airport and their relationship to that person
 - establish if the minor has any connections to Australia, for example, friends, family or school

4.2.15. Visa grant to a minor in immigration clearance

Where the minor is invited to apply for a visa in immigration clearance, the ABF officer should read Procedural Instruction: *Granting an ETA in Immigration Clearance*, if applicable, see Procedural Instruction: *Granting Border Visas in Immigration Clearance*, and if applicable

- consider relevant Public Interest Criteria (PIC)
- where applicable, consider the immigration clearance outcomes of the accompanying adult.

4.2.16. Accompanied minors

Where the ABF officer has doubts about the minor's capacity to understand the immigration clearance process, an interview should not proceed without the involvement of a parent or accompanying adult or an IO.

An IO must also be engaged if there are concerns about the adult's understanding of immigration processes and their capability to act in the best interests of the minor's physical and emotional wellbeing.

4.2.17. Preparation and procedures involved in a formal interview

Should the Supervisor authorise a formal interview with an IO and an unaccompanied minor, the ABF officer must:

- brief the IO on the individual case
- provide regular updates to a Supervisor
- remain with the minor and IO at all times
- arrange the interview room or an appropriate private area to conduct the interview allowing the interviewer and minor to be at equal eye level
- consider the minor's ability to communicate, including the need for an interpreter
- ask age appropriate questions

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- structure the interview to include general questions at the beginning, for example, questions about friends, schools
- explain to the minor during the interview:
 - the reason for the interview
 - the role of the IO
 - the need to ask questions
- be open to listening to the minor's perception of issues in addition to listening to the literal meaning of their responses.

4.2.18. Section 192 questioning detention

Detention of a minor must be considered as a last resort and **must not** occur prior to:

- discussing the case with an ABF Inspector
- engaging an IO, where the minor is unaccompanied
- satisfying the questioning detention provisions, see Procedural Instruction: *Questioning detention*.

4.2.19. Visa Cancellation

The Migration Act makes no relevant distinction between adults and minors in regard to a client's visa eligibility and status.

Where there is a decision to cancel an accompanying adult's visa the, ABF officer must consider that if the minor's visa may be consequently cancelled under section 140 of the Migration Act, see *Procedural Instruction: Visa cancellation*.

Where a minor holds a visa in their own right and a decision is made to cancel the accompanying adult's visa, the ABF officer must consider if there are grounds to consider cancellation of the minor's visa.

Where a minor is clearly too young to be formally interviewed, for example under five, and the accompanying adult does not request the cancellation of the visa (considering that the minor could not be detained and removed with the adult), the ABF officer should discuss, with their Supervisor, whether there are any grounds for cancelling the minor's visa under section 140 or section 116 of the Migration Act.

Where there are grounds to consider cancellation of either the adult and/or the minor's visa, the ABF officer should also take into consideration the best interests of the minor in their decision-making about the practicalities for the minor following the cancellation, including if the accompanying adult:

- will be invited to apply for a Border visa
- will be detained
- will be transferred to an immigration detention facility
- will be removed from Australia
- has requested cancellation of the minor's visa in writing.

In broad terms, regulation 2.43(1)(h) of the *Migration Regulations 1994* (the Migration Regulations) provides for cancelling a temporary visa held by a minor if their parent, custodian or guardian asks that it be cancelled. However, there is no equivalent ground for cancelling a permanent visa held by a minor.

The prescribed grounds are that:

- the minor is not a spouse, a former spouse or engaged to be married
- an adult who can lawfully determine where the visa holder is to live asks the delegate, in writing, to cancel the visa
- the delegate is satisfied that there is no compelling reason to believe that the cancellation of the visa would not be in the best interests of the minor.

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The following procedures should be read in conjunction with the *Procedural Instruction: Events after refused immigration clearance* and *Procedural Instruction: Section 189 Detention*

Where a minor is refused immigration clearance, the best interests of the minor are the primary consideration. Detention should only be used as a last resort and for the shortest period of time.

The ABF officer, in consultation with their Supervisor, should:

- refer the client to Detention Operations according to local procedures
- provide as much placement advice in regard to specific needs of the client, such as physical or mental health, behavioural or safety concerns or dietary concerns
- endeavour to access the least restrictive and appropriate accommodation and in a facility other than an immigration detention facility
- provide access to embassy or consulate assistance where required, or in cases where the minor or accompanying adult have sought asylum, where they have specifically requested embassy or consulate assistance.

4.2.21. Case management of a minor

If a detained minor is to be accommodated in an alternative place of detention (outside of the airport) the ABF officer should:

- create a referral to Case Management through the Compliance Case Management Detention Settlement (CCMDS) portal
- email Case Management (using the state/territory generic case management email address) advising of the CCMDS referral.

Case managers will provide advice on a client's placement, if requested. However, it is not a requirement for the ABF officer to consult case management regarding a minor's placement.

4.2.22. Removal of the minor

The following procedure should be read in conjunction with the *Procedural Instruction: Summary removal*.

In all removals involving minors the best interests of the minor are a primary consideration.

ABF officers should seek advice from Supervisors as to whether a removal is a summary removal or requires referral to the Removals Team.

ABF officers, in consultation with the Supervisors, should:

- contact the minor's parents in the country of origin and providing travel details, where possible
- ensure the minor's passage through transit countries is safe and does not place them at risk of harm by referring to the removals team
- ensure the minor is returned into the custody of their parents or, if this is not possible and in agreement with the minor's parent, a next of kin
- consider whether it would be appropriate in the circumstances of the case to arrange for an escort to accompany the minor to the destination
- ensure the removal is dealt with in a positive, humane and expeditious manner
- ensure the removal is progressed as discussed with the Supervisor/Manager.

The summary removal of an unaccompanied minor can be carried out under the airline unaccompanied minor arrangements if deemed appropriate and with a relevant Superintendent's approval.

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Minors (unaccompanied or otherwise) placed into an immigration detention facility 'will become the responsibility of the Removals team once they are no longer a summary removal (i.e. not available for removal within 72 hours) and should be formally referred to the Removals team to be processed accordingly.

4.3. Managing minors through the Departure Clearance process

Section 175 of the Migration Act stipulate the legal requirements to be satisfied for departing Australia. These are met where an officer is satisfied with a traveller's identity and where they present a valid travel document. Notwithstanding this, the clearing officer should be aware the best interests of a minor are also a consideration under Article 3 of the CRC in considering whether to request further types of evidence under section 175 of the Migration Act.

As such, officers must be alert to circumstances where it may not be in a minor's best interest to be departing Australia.

It is worth noting there are mechanisms in place to ensure Australian travel documents and visas are not issued to minors without appropriate authorisation from legal guardians. There are also mechanisms in place for guardians to limit a minors ability to depart Australia(i.e. through the courts) even if they do hold a valid travel document and/or visa. As such, in the absence of any triggers by way of alerts it can generally be taken that a minor presenting for departure does have the appropriate consent from their guardian(s) for travel.

4.3.1. Departure Clearance of an accompanied minor

In most cases a minor will be travelling in the company of a responsible adult. In these circumstances the ABF officer is to identify the adult responsible for the minor. In cases involving groups of minors (such as a school/community group) it is reasonable to conclude that those in the group are under the care of the identified adult/s travelling (eg school teachers or nominated parent/s).

ABF officers must always be alert to situations where minors appear uncomfortable in the presence of a responsible adult. If these circumstances arise ABF need to consider advising the AFP.

4.3.2. Departure Clearance of an unaccompanied minor

Where an ABF officer holds concern about an unaccompanied minor attempting to depart Australia without an accompanying adult, the case must be escalated to the Supervisor.

Due to time constraints in the departure clearance process, the ABF officer is to establish the minor's purpose for travel and balance this against the initial concerns around the child's best interests.

Where concern around departure is allayed through investigation the Officer should make appropriate records of this reason.

Under Departmental policy, ABF officers can make reasonable enquiries to determine that the travel intentions of the minor are taken with the consent of a parent or legal guardian. The absence or inability to contact a guardian does not automatically indicate the travel is suspicious. However, a failure to respond to reasonable questioning regarding bonafide travel may require further investigation.

Where it is established the minor is travelling without the consent of a parent or legal guardian, or the minor hesitates if asked unexpected questions (or responds with obviously prepared answers), engagement of the AFP will be required to determine the unaccompanied minors travel intentions.

If the AFP is unable to attend immediately, explain the process to the minor and engage the services of an IO. The date and time of the conversation must be documented in the officer's notebook.

Where it is necessary to gather extensive information from the minor, an interview room should be used to ensure privacy and confidentiality. Steps that can be taken to minimise the impact on the child in their interactions with an ABF officer, AFP officer(s) and an IO can include:

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- Progressing the matter as expeditiously as possible
- Ensuring interaction in the child's presence is calm, respectful and discrete

The ABF officer should inform the airline of the situation as soon as the matter has been referred to the AFP. If the minor does not travel, the PACE record of outwards movement must be cancelled.

Where a minor is prevented from departing Australia after being intervened with by the ABF based on concerns about their welfare, the ABOC must be informed about the incident and circumstances surrounding this.

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5. Accountability and responsibilities

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

The Superintendent, National Border Programme has the responsibility for the preparation and dissemination of this Procedural Instruction in regards to operational policy and programme management of border clearance activities for air and sea travellers, under the *Customs Act 1901* and *Migration Act 1958*.

The Director, Traveller Policy Advice and Support Section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

Table 2 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
National Border Programme	Responsible for the management and development of Procedural Instructions
ABF Officers	All ABF Officers processing passengers inwards and outwards

6. Statement of Expectation

This Procedural Instruction under the PPCF sets out guidance and directions to workers on how to implement the Department's policy.

It is expected that all workers who are subject to this Procedural Instruction will have due regard to it and will only depart from it if:

- the departure is reasonable and justified in the circumstances;
- all risks have been considered; and
- approval has been sought and responsibility accepted for documenting the justification for the decision.

Workers are required to comply with all reasonable and lawful directions contained in this Procedural Instruction. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under section 55 of the *Australian Border Force Act 2015* (for non-APS employees).

All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

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7. Related Framework documents

This instruction must be read in conjunction with the following documents:

7.1. Policy Statement

[TT-2983] Border Clearance

[BE-928] Reporting Child related incidents

7.2. Procedural Instructions

[BC-536] Arrival, immigration clearance and entry - Immigration clearance at airports and seaports

[BC-2452] Behaviour Concern Non-Citizen

[BC-2476] Character Concern

[BC-2671] Events after refused immigration clearance

[BC-2481] Foreign nationals and tuberculosis

[BC-2538] Border visa grant in immigration clearance

[BC-2480] Questioning detention

[BC-2446] Section 189 Detention

[BC-2460] Summary Removal

[BC-2469] Working with AFP

8. References and legislation

8.1. Migration Act 1958

This Act sets out the primary requirements relating to immigration clearance as follows:

- Section 166 outlines the evidence that must be presented to a clearance officer or an authorised system upon entry to Australia.

8.2. Immigration (Guardianship of Children) Act 1946

This Act sets out the requirements for the Minister of Immigration and Border Protection to be the legal guardian of certain unaccompanied non-citizen minors if circumstances are present at the time of the minor's entry to Australia.

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9. Consultation

9.1. Internal consultation

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

- Integrity and Professional Standards / Integrity and Professional Standards Branch
- Legal Division / Legal Advice and Operational Support
- FOI, Privacy and Records Management / Records Management Section
- Traveller Customs and Industry Policy / Traveller Policy Advice and Support Section
- Unaccompanied Humanitarian Minors (UHM) and Guardianship Section
- Port Operations Command
- Strategic Border Command

9.2. External consultation

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

- No external consultation.

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

10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	04 May 17	s. 22(1)(a)(ii)	Update of document into PI
2.0	22 Nov 17	s. 22(1)(a)(ii)	Reviewed PI for legal
3.0	09 April 18	s. 22(1)(a)(ii)	Review of content and the inclusion of movement of unaccompanied minors through airports (Departures)
4.0	20 April 2018	s. 22(1)(a)(ii)	Update after Legal Advice.

10.2. Approval

Approved by:	Don SMITH Commander ABF Governance
Approved on (date):	30 April 2018

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