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PIC 4004 PROCEDURAL INSTRUCTION

To provide guidelines for delegates under s65 of the *Migration Act 1958* (Cth) when processing visa applications by non-citizens that are subject to Migration Regulation Public Interest Criterion (PIC) 4004 who have outstanding debts to the Commonwealth.

Related instructions

The following documents are related within this framework:

- [Accountable Authority Instructions](#)
FMG 1.07.01 – [Receiving relevant money](#)

Introduction

1.1. What this instruction is about

This instruction provides guidance on the legal, procedural and policy requirements to be followed by delegates under s65 of the *Migration Act 1958* (Cth)(the Act), when processing visa applications by non-citizens that are subject to Migration Regulations (1994)(the Regulations) Public Interest Criterion (PIC) 4004 who have outstanding debts to the Commonwealth. The term 'debt to the Commonwealth' refers to any debts or amounts owing to the Commonwealth, not just those owed to the Department of Home Affairs (The Department).

2. Scope

2.1. In Scope

This Procedural Instruction (PI) applies to:

- the Commissioner of the Australian Border Force (ABF);
- all employees of the Department;
- contractors and consultants undertaking work duties at the direction of the Department; and
- any person who is defined as an official in accordance with s 13 of the *Public Governance, Performance and Accountability Act 2013* (Cth)(the PGPA Act) and s 9 of the *Public Governance, Performance and Accountability Rule 2014* (the PGPA Rule).

2.2. Out of Scope

Staff debt is out of scope. Further guidance in relation to the management of staff debt can be found in the [Managing staff debt FMG-1.09.02](#).

3. Records Management

All records created because of this PI must be managed in accordance with the [Records Management Policy Statement](#), and saved in TRIMRM8.

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4. Glossary

Table 1 – Glossary of terms and abbreviations

Term	Definition
Applicant	A visa or citizenship applicant.
Debt to the Commonwealth	Any debts or amounts owing to the Commonwealth, not just those owed to the Department of Home Affairs.
Financial Management Guidelines (FMG)	FMGs provide guidance for the operational context when using and managing Commonwealth resources under the PGPA Framework and AAls.
invoice	A bill or record of charges issued by the Department to clients or purchasers of goods/services.
Policy and Procedure Control Framework (PPCF)	An internal framework outlining governance for all departmental policies and procedures, providing direction to all officers on the development and management of policy and procedure documents.
TRIM	The Department's approved recordkeeping system.
waiver	Waiver means that the debt is completely forgiven and the Department cannot pursue the debt later if the financial circumstances of the person or organisation improve.
write off	An accounting treatment which reflects management's decision to not actively pursue recovery of a debt balance because recovery would be inequitable or cause financial hardship.

5. The legal context

5.1. The *Migration Act 1958*

In relation to this instruction, the relevant sections of the Act are:

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s210	Subject to s212, a non-citizen who is removed or deported, other than an unlawful non-citizen who came to Australia on a criminal justice visa, is liable to pay the Commonwealth the costs of his or her removal or deportation.
s212	Relates to the liability of spouses/ de facto partners and dependents who are removed or deported to pay the costs of their removal or deportation.
s213	Carriers may be liable for costs of removal and deportation.
s214	If two or more persons are liable to pay the Commonwealth the costs of a non-citizen's removal or deportation, they are jointly and severally liable to pay those costs.
s215	Costs payable by a person to the Commonwealth may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

5.2. The Migration Regulations 1994

In relation to this instruction, the relevant provisions of the Regulations are:

Sch4/ 4004	The applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.
Sch8/ 8507	The holder must, within the period specified by the Minister for the purpose:
	(a) pay; or
	(b) arrange that is satisfactory to the Minister to pay;
	the costs (within the meaning of Division 10 of Part 2 of the Act) of the holder's detention.
Part 4/Div 4.2/ reg 4.31B	Specifies the fee payable for an application for review of a decision by the RRT.
Part 4/Div 4.2/ reg 4.31C	Details circumstances in which a RRT fee is refunded or waived.

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5.3. The *Public Governance, Performance and Accountability Act 2013*

In relation to this instruction, the relevant sections of the PGPA Act are:

PGPAAs63(1)(a)	The authority to waive the right of the Commonwealth to recover debts owing to it is vested in the Minister for Finance and has not been delegated to any officials within this Department.
PGPAAs63(1)(b)	The Secretary and delegated departmental officials have the authority to recover outstanding debts by instalment payments or to defer recovery.

5.4. The *Public Governance, Performance and Accountability Rule 2014*

In relation to this instruction, the relevant sections of the PGPA Rule are:

PGPARs11	Outlines the responsibilities of the Secretary in respect of pursuing the recovery of debts.
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6. Operation of PIC 4004

If specified in Schedule 2 of the Regulations as a criterion for a visa subclass, an applicant will be required to meet PIC 4004 for the visa to be granted. PIC 4004 states that an applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.

Where an applicant has a debt to the Commonwealth, a visa decision maker (the s65 delegate under the Act) can be satisfied that appropriate arrangements have been made if:

- the debt is paid in full; or
- the applicant has entered an approved instalment arrangement.

7. Debts owed to the Department

The Debt Management Unit (DMU) within the Department's Finance Division is responsible for the management of all applicant debts owed to the Department. Applicants may incur a debt in various ways including:

- Removal;
- Detention (for illegal foreign fishers (IFF) and people smugglers only);
- Litigation (costs awarded by the courts);
- Status Resolution Support Services (SRSS) overpayments;
- Chargebacks; or
- Cargo or customs duty.

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The DMU will record all debts owed to the Department in the Department's Financial Management Information System (FMIS) SAP. The DMU will also issue an invoice to the applicant for all debts and undertake appropriate debt recovery action.

Debts owed to the Department by non-citizens, will be recorded on the Central Movement Alert List (CMAL) under Alert Reason Code 12 (ARC12). Debts owed to the Department by Australian citizens, will not be recorded on CMAL, but will have a client of interest note created on ICSE.

Alerts will remain on CMAL until the debt has been paid in full, waived. ARC12 alerts should only be removed by the DMU, as confirmation must be obtained from the Department's FMIS SAP that all debts have been paid in full.

The DMU can be contacted at:

Email: s. 11C(1)(b) [@homeaffairs.gov.au](mailto: s. 11C(1)(b)@homeaffairs.gov.au)

8. Requesting payment

As a matter of policy, in most circumstances, it is expected that an applicant's debt be paid in full before the visa is granted. The decision maker must contact DMU via email to obtain the status of debts (if any). The DMU will provide details of all debts outstanding, including amount, debt type and SAP customer number. They will also advise if there are any Payment Arrangements (Arrangements) in place with the applicant or if the applicant has breached any previous Arrangements.

The visa decision maker must inform the visa / citizenship applicant of the debt and request the applicant to pay the debt in full. When the applicant is informed of the debt, it is very important that they are provided with the SAP customer number(s) provided to the decision maker by the DMU, as this is the Applicant's unique identifier on the Department's FMIS.

Applicants should be directed to their invoices for payment instructions. All applicants should be aware of their debts through previously issued invoices. Depending on the age and type of debt, the applicant may have received several reminder notices regarding their debt. If the applicant does not have their invoice or requests further information about their debt, they should be referred to the DMU. DMU's contact details are:

Email: s. 11C(1)(b) [@homeaffairs.gov.au](mailto: s. 11C(1)(b)@homeaffairs.gov.au)

9. Unable to pay the debt

If the applicant states that they are unable to pay the debt in full, they should be informed that they will need to apply for an instalment plan. Failure to pay the debt or enter an acceptable arrangement will result in the applicant being unable to satisfy the visa criteria and the visa will be refused.

Payment by instalment is not a loophole to allow clients to escape their legal obligation to pay their debts. An arrangement to pay by instalment must only be entered into on the clear understanding that instalments will continue to be paid after the visa is granted and until the debt is paid in full.

If the applicant wishes to apply for an instalment plan, then they will need to contact the DMU and request a Statement of Financial Details application form (f1355). Only an officer delegated under s63(1)(b) of the PGPA Act can enter an instalment plan and these delegates are located within the Department's Finance Division.

Once the applicant has submitted a completed Statement of Financial Details application form to the DMU, it can take up to 10 weeks for their application to be assessed. If the visa decision maker feels that the applicant has extenuating circumstances, they should email DMU with details and it may be

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possible to prioritise the application. Not all applications will be successful; the Applicant must be able to demonstrate that their financial situation precludes payment in full.

When an agreement regarding the instalment plan has been reached, the applicant will be required to sign an Instalment Agreement (Agreement). Even though the applicant may have signed the Agreement, it does not mean that the applicant has commenced or completed their scheduled payments. The applicant will be issued a receipt for every payment made. The applicant should provide a copy of their signed Agreement and receipts to prove that they are in an approved plan and making payments.

Agreements will be monitored by the DMU and if an applicant breaches their Agreement, they will be issued a default notice. Once the applicant has been issued this default notice, they are no longer considered to be in an approved arrangement for the purposes of their visa application.

The visa decision maker can be satisfied that an appropriate arrangement is in place once the delegate has approved an Agreement. However, the financial (PGPA) delegate who approved the instalment plan will have considered the applicant's financial circumstances and their ability to make payment, at a given point in time. The visa decision maker has access to a broader range of more current information and can choose to refuse a visa application on the grounds that they are not satisfied with the continuing appropriateness of the Agreement. The visa decision maker may request payment in full if they are not satisfied with the appropriateness of the agreement. Common examples of where payment in full may be demanded are:

- doubt over a client continuing with payments after visa granted – for example, the client has defaulted on previous Agreements or has a history of fraudulent, criminal or non-compliant behaviour; and
- changed financial circumstances since the instalment plan was approved – for example, Agreements can often extend for several years and current information may demonstrate the Applicant's financial situation has improved and they are no longer in financial difficulty.

10. Permission to work

It is not the Department's policy intention that an outstanding debt to the Commonwealth be used by a non-citizen as a lever to gain permission to work. If such permission would not normally be granted in the applicant's usual circumstances then, under policy, it cannot be granted because of a desire to work in Australia to pay the debt.

11. Debt Write-off

If a debt is considered uneconomical to pursue, a delegate under the PGPA Rule s11 can write-off a debt. The act of writing off a debt is simply a point in time decision to not undertake any further debt recovery action.

Applicants are not advised when a debt has been written off and the debt remains payable by the applicant. Debts that have been written off will remain on CMAL until the debt has been paid in full, or until the debt has been waived. Therefore, debts that have been written off must still be considered in determining if the visa applicant satisfies the requirements of the PIC 4004.

12. Debt Waiver

A debt waiver is a special concession that erases a debt owed to the Commonwealth. The debt is completely extinguished so that the Commonwealth cannot pursue the debt later should that person's circumstances change. The power to waive a debt is provided for under s63(1)(a) of the PGPA Act.

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This power is vested with the Minister for Finance and the delegates within the Department of Finance (DoF). This authority has not been delegated to any officials within the Department.

If an applicant enquires about a waiver, they should be referred to the [DoF website](#) to obtain further information. When an applicant submits a waiver request to DoF, the DMU is advised, and where requested, will prepare information for DoF's consideration.

Debts that are waived will be removed from CMAL. Debts that have been waived must not be considered to determine if the applicant satisfies the requirements of PIC [4004](#).

13. Accountability and responsibilities

13.1 External Budgets and Revenue Branch – Finance Division

The DMU forms part of External Budget and Revenue Branch and is responsible for:

- recording debts in SAP Accounts Receivable, and raising and pursuing debts;
- recording debt information in the appropriate database, including Passenger Movement Charge (PMC) in the PMC Database and non-citizens in the Central Movement Alert List (CMAL).
- negotiating and approving instalment plans and deferrals;
- undertaking debt recovery and follow up activities for outstanding debts;
- providing responses to debt waiver submissions from the DoF; and
- seeking legal advice, if legal action is proposed for the recovery of a debt.

14. 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:

- a) the departure is reasonable and justified in the circumstances;
- b) all risks have been considered; and
- c) 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 because of this procedure must be managed in accordance with the Records Management Policy Statement. Records created because of this policy/procedure must be saved in TRIM RM8 or an approved business system.

15. Related Framework documents

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The following documents are related within this framework:

- [Accountable Authority Instructions](#)
- [FMG 1.07.01 – Receiving relevant money](#)

16. References and legislation

The following documents have been referenced for the purpose of this PI:

- [Public Governance, Performance and Accountability Act 2013](#) (Cth)
- [Public Governance, Performance and Accountability Rule 2014](#) (Cth)
- [Migration Act 1958](#) (Cth)
- [Migration Regulations 1994](#) (Cth)

17. Consultation

17.1. Internal consultation

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

- Integrity and Professional Standards Branch
- Freedom of Information, Privacy and Records Management Branch
- Legal Division
- Risk and Assurance Branch

17.2. External consultation

The following external stakeholders were consulted in the development of this Policy Statement:

- Not applicable

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