

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 13 February 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(13) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 10) asked:

Provide a copy of the key MSIs which have been reissued or newly published since Mr Palmer reported.

Answer:

Mr Palmer completed his *Inquiry into the circumstances of the immigration detention of Cornelia Rau* on 6 July 2005. Since then, the following Migration Series Instructions (MSIs) have been published on the Department's Legend database:

- MSI 408 (*Removal from Australia*)
- MSI 409 (*Establishing identity in the field and in detention*)
- MSI 410 (*Exclusion periods*) and
- MSI 411 (*Establishing immigration status in the field and in detention*).

Copies of these MSIs are attached.

MSI 408:

Removal from Australia

This MSI refers to persons leaving Australia as:

- an unlawful non-citizen under s198 of the Act
- a deportee under s200 or
- a spouse or dependant of:
 - a removee under s199 or
 - a deportee under s205.

ABOUT THIS DOCUMENT

Contents

This document comprises:

- [About this instruction](#)
- [Migration legislation](#)
- [Determining availability for removal](#)
- [Travel documents](#)
- [Aviation procedures](#)
- [Escorts](#)
- [Travel arrangements](#)
- [Implementing departure from Australia](#)
- [Removal notification](#)
- [Special arrangements](#)
- [After leaving Australia.](#)

Related instructions

- [MSI: Carrier obligations and offences](#)
- [MSI: Deportation - general policy](#)
- [MSI: Detention of deportees](#)
- [MSI: Establishing identity in the field and in detention](#)
- [MSI: Exclusion periods](#)
- [MSI: Issue of documents to facilitate travel for unlawful non-citizens](#)
- [MSI: Liability of non-citizens to repay costs of detention, removal or deportation](#)
- [MSI: Non-citizens held in prison liable to enforced departure](#)
- [MSI: Personal identifiers: collection from immigration detainees](#)
- [MSI: Summary removal procedures in immigration clearance at proclaimed ports \(ie. for “turnarounds”\).](#)

Recent changes

Legislative

Nil.

Policy

This document was registered on 1 November 2005. It combines and replaces the following documents:

- [MSI: 6 Removal of spouses and dependants who are lawful non-citizens](#)
- [MSI: 267 Advice of removal arrangements and](#)

- MSI: 376 Implementation of enforced departures.

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ABOUT THIS INSTRUCTION

This Part comprises:

- [section 1 Overview](#)
- [section 2 About the attachments](#)
- [section 3 Types of departures/removals](#)
- [section 4 About ‘supervised departures’](#)
- [section 5 Roles in removals.](#)

1 OVERVIEW

This instruction sets out procedures for removing or deporting persons from Australia.

2 ABOUT THE ATTACHMENTS

The following attachments to be used for supervised departures, escorted removals and deportations:

Attachment 2 - Removal availability assessment	Removal availability assessment (n/a to deportations)
Attachment 5 - DIMIA aviation assessment	DIMIA aviation assessment
Attachment 6 - Detention service provider assessment	Detention service provider assessment (or a similar report/information for removees/deportees from correctional facilities) unless: <ul style="list-style-type: none"> ▪ the person has been detained for a short time - eg, less than three days or ▪ the person is not being removed from a secure/guarded detention environment
Attachment 7 - Notice of the Proposed Movement of a Person in Custody	Notice of the proposed movement of a person in custody (required under the Aviation Transport Security Regulations 2005)

Additional attachments for escorted removals/deportations

Attachment 9 - General information for escorts	General information for escorts (Information sheet)
Attachment 11 - Escorts removal report	Escorts removal report

Other attachments

The remaining attachments are for information or for discretionary use.

Officers should note that the discretionary *Removals checklist* ([Attachment 23 - Removals checklist \(discretionary\)](#)) is intended as a guide to the general steps to be considered when organising a removal. It should not be considered a comprehensive guide to all the factors that must be considered when organising every removal. Officers will need to consult this MSI for further information and guidance, particularly for more complex removals.

Copies of any completed attachments must be placed on the client’s file.

3 TYPES OF DEPARTURES/REMOVALS

A table summarising the types of departures/removals of non-citizens from Australia is at [Attachment 1 - Departures of non-citizens from Australia.](#)

This MSI provides advice on managing:

- supervised departures (ie. unescorted removals)
- escorted removals
- requested removals (ie. under s199 or 205)
- deportations.

Further information on turnaround removals/departures can be found in the [MSI: Summary removal procedures in immigration clearance at proclaimed ports](#).

4 ABOUT ‘SUPERVISED DEPARTURES’

The term *supervised departure* refers to the removal of compliant and low risk detainees who do not require an escort on the departing flight. Such detainees are escorted to the door of the aircraft and the officer waits until the aircraft is airborne before leaving the area. Such persons are removed and depart Australia as unlawful non-citizens.

In the past, this term referred to detainees who are granted a Bridging E visa (BVE) at an airport immediately before departure. This practice was used on occasion for compliant detainees who wished to purchase their own air tickets.

This practice is no longer permitted. If a person is eligible for the grant of a bridging visa then officers should grant the bridging visa earlier (eg. upon detention or at the detention facility).

For instructions on appropriate custody arrangements for travel documents for “supervised departures”, see [section 43 Who holds travel documents](#).

For instructions on the required escort arrangements (to the aircraft) for “supervised departures”, see [section 44 Completion of removal/deportation](#).

5 ROLES IN REMOVALS

5.1 Roles of various parties

DIMIA

Responsibilities vary according to the circumstances of the detainee’s detention (eg. compliance location or unauthorised arrival), the location of the office which detained the person and other factors.

State/Territory removal officers

- removal of persons detained from the community (compliance cases) and some unauthorised arrivals
- contribute details to the weekly Enforced Removals List.

Removals Support Section National Office

- national responsibility for removals policy
- proposal to remove with “ministerial intervention” requests outstanding
- section 218 notices directing airlines to carry detainees
- contribute details to and coordinate production of the weekly Enforced Removals List
- requests for destitute removal allowance above the standard amount
- higher level diplomatic issues
- management of voluntary return reintegration packages.

Removals Support Section can provide assistance/advice in the following circumstances:

- significant issues arising from the non-cooperation of a detainee
- prolonged difficulties in obtaining travel document or visas
- issues associated with court orders (officers must also contact Litigation Branch)

- proposed removal when known non-DIMIA court cases or charges pending (must also contact Litigation Branch)
- representations from recognised government and local and international organisations and agencies
- complications during implementation of removal – flights/transit points
- extended delays in receiving uplift approval that cannot be resolved at state/territory office level
- escort concerns.

DIMIA airport staff in Australia

- assistance at airport
- refused entry issues.

Immigration detention facility (IDF) DIMIA officers

- assist with liaison with the detention service provider (DSP) (including assistance with escort/transport arrangements)
- assistance with removal counselling for detainees
- assistance with detainee baggage/property
- assistance with information for aviation assessments.

Illegal Foreign Fishers & Logistics Task Force, National Office

- arrange charter flights

National Detention Centre Coordination Section, National Office

- manage problematic developments which threaten IDF security or could have a high media profile

Overseas posts at transit and destination points

- DIMIA officers at overseas posts can assist with organising immigration clearance in transit/destination countries or other removal issues.

5.2 Non DIMIA persons/organisations

Detention services provider (DSP)

- assist with security assessment for air travel
- provide removal escorts/security
- organise packing and weighing of remove/deportee's baggage/property
- collection of monies for excess baggage (when remove/deportee pays prior to leaving Australia).

Security escort agencies

- provide domestic and/or international escort services.

Department of Transport and Regional Services (DOTARS)

- on occasion will be required to approve proposed air travel/escort arrangements (see [section 21.3 DOTARS approval](#))

Travel service provider (currently Carlson Wagonlit)

- will provide travel booking services for removees and/or escorts.

Airlines

- consider proposed travel/escort arrangements
- provide uplift approval.

MIGRATION LEGISLATION

This Part comprises:

- [section 6 Removal or deportation](#)
- [section 7 Removal of unlawful non-citizens](#)
- [section 8 Deportation orders](#)
- [section 9 Assistance for dependants](#)
- [section 10 Importance of record keeping](#)
- [section 11 Aviation transport security](#)

6 REMOVAL OR DEPORTATION

There are two powers under which a person can be compelled to leave Australia:

- removal under s198 of the Act
- deportation under s200 of the Act

Removal

Removal is concerned with people leaving Australia who do not have a visa and, hence, are unlawful. People whose visa has been cancelled under s501 of the Act (character requirements) are removed under s198 of the Act.

Deportation

Deportation is concerned with people leaving Australia who are subject to a deportation order under s200 of the Act - on the basis of the grounds at s201 to 203. When a deportee leaves Australia they are lawful non-citizens who hold visas - their visa ceases when they leave Australia, see [MSI: Deportation - General policy](#).

There is no authority in migration legislation to compel an Australian citizen to leave Australia.

7 REMOVAL OF UNLAWFUL NON-CITIZENS

7.1 Overview

Section 198 of the Act requires that unlawful non-citizens in particular circumstances be removed from Australia 'as soon as reasonably practicable'.

Officers are to note that some flexibility exists as to what time period satisfies the direction to remove 'as soon as reasonably practicable'. While 'practicable' denotes what can be done, it is qualified by what is reasonable for the department in all the circumstances.

7.2 Definitions

Removee

Section 5 of the Act states that *removee* is an unlawful non-citizen removed or to be removed under Division 8 of Part 2 (ss198-199) of the Act.

Unlawful non-citizen

An unlawful non-citizen:

- enters Australia without being immigration cleared (eg. without a visa) or
- did enter lawfully on a visa that has subsequently ceased by passage of time or
- the visa has been cancelled since entering Australia,

see section 14 of the Act.

The most frequently occurring situations that lead to removal are where an unlawful non-citizen:

- asks the Minister in writing to be removed (s 198(1)) or
- is a detainee who was entitled to apply for a visa within two working days, or after requesting in writing an extension of time to apply (five additional working days) did not apply (s198(5)) or
- is a detainee whose application for a visa has been refused and ***finally determined*** (s 198(6)). ***Finally determined*** is defined in s5(9) of the Act as being an application that:
 - is not, or is no longer subject to any form of review under Part 5 or 7 of the Act (ie. by the MRT or RRT) or
 - where the period within which such a review could be instituted has ended without a review having been instituted as prescribed.

(Note: the department's policy is to not remove a person whose application has been 'finally determined' if they have ongoing court action in relation to the department's or MRT/RRT's decision.)

For other circumstances leading to removal, refer to s198 of the Act.

Further information about assessing a detainee's availability for removal is at [Determining availability for removal](#).

8 DEPORTATION ORDERS

See [section 6 Removal or deportation](#).

9 ASSISTANCE FOR DEPENDANTS

The department has discretion to assist the spouse or dependant, who is a citizen or lawful non-citizen, to accompany a person who:

- is to be removed or
- is subject to a deportation order.

For more information, see [section 53 Spouse/dependants of removees or deportees](#).

10 IMPORTANCE OF RECORD KEEPING

10.1 Overview

The department is required to maintain accurate, up to date and detailed records about the circumstances around removing or deporting a person from Australia. On occasions, these records are required to be produced as evidence in courts or other bodies - in order to demonstrate that the department attempted to remove a detainee 'as soon as reasonably practicable'.

It is important that removal officers ensure the following:

Accurate record keeping

A clear summary of all discussions, reports, events and case notes relating to a removee/detainee's removal must be recorded on ICSE. Detailed handwritten notes or electronic reports may be kept as hardcopy on the detainee's file or electronically on TRIM. Where this is the case, it is important that officers summarise and refer to these records using ICSE. Officers must note whether the services of an interpreter were offered and or used during contact with a detainee.

Travel documents and documents of identity

It is important that copies of the removee/deportee's identity documents, whether current or expired, are kept on their file.

Cooperation/non cooperation is recorded

It is important that case officers note the removee/deportee's level of cooperation with the removal processes.

Visa holders

Officers are to record in ICSE continuing efforts to facilitate the departure or removal of a person holding a visa for departure or removal purposes (eg. BVE or Bridging R visa (BVR)).

11 AVIATION TRANSPORT SECURITY

Instructions about DIMIA's obligations under the *Aviation Transport Security Regulations 2005* for arranging the air travel of removees/deportees are at Aviation procedures.

DETERMINING AVAILABILITY FOR REMOVAL

This Part comprises:

- [section 12 Overview](#)
- [section 13 Unlawful non-citizen requests removal](#)
- [section 14 Factors preventing removal](#).

12 OVERVIEW

12.1 Availability

If an unlawful non-citizen is considered available for removal, officers must actively seek to effect their removal 'as soon as reasonably practicable'. A person will be available for removal if their circumstances fall under s198 of the Act and there is nothing in departmental policy to prevent the removal from taking place.

Departure from usual departmental policy may be possible in exceptional circumstances and when appropriate approval has been obtained. For further advice contact the Director, Removals Support Section.

Availability for removal is to be checked:

- *at outset*, when the unlawful non-citizen comes to the department's attention/is detained.
- *Routinely - preferably monthly*, for cases where the detainee has been initially assessed as "unavailable" for removal.
- *before departure*, to ensure that the person is still available for removal the *Removal availability assessment* form - [Attachment 2 - Removal availability assessment](#) - must be signed off at this stage).

In some circumstances, progress may be made towards removal (such as acquiring a travel document) when the removee/deportee is considered unavailable for removal from Australia. This ensures that removal can take place promptly when the removee/deportee becomes available for removal. A travel document is not to be sought where the removee/deportee has an application before the RRT or the courts in regards to protection claims.

The table at [Attachment 3 - Progressing and effecting removal](#), provides an overview of when removal arrangements (such as obtaining a travel document) may be pursued and when removal can take place.

Officers should note that the *Progressing and effecting removal* table, reflects both legislative and policy requirements. For example, the Act does not require that removal action be stayed when a removee/deportee appeals beyond the MRT or RRT to the courts. However, the department's policy is to generally stay removal until court action is finalised.

If there is any doubt about a removee/deportee's availability for removal the case officer must refer to their supervisor and/or RSS for advice.

12.2 Identity/nationality

Before organising a removee/deportee's removal from Australia, officers must ensure that there are no identity issues relating to the person which could affect the lawfulness of the person's removal. As a minimum, officers are to check the removee/ deportee's file and ICSE case notes to see whether any concerns about identity or nationality remain unresolved. Officers should also check that the removee/deportee was matched to a movement record or record of entry (or if not, that the person's identity was nonetheless adequately established per the requirements of the MSI: Establishing identity in the field and in detention). If there is a possibility that the person is an Australian citizen or lawful non-citizen, then the person's status must be established as a matter of urgency. The MSI: Establishing identity in the field and in detention, outlines the procedures that must be followed where there are doubts about a detainee's identity and where there exists the possibility that a detainee may be an Australian citizen or resident.

Should an officer have any concerns about the identity/nationality of a person to be removed, the officer must raise these concerns immediately with an SES level officer (or an EL2 officer in those states/territories where there is no SES Officer).

12.3 Immigration status

Officers are to interrogate ICSE, mainframe and client files to confirm that the person is:

- an unlawful non-citizen (s198) or
- a deportee (s200) or
- a spouse or dependant of a removee/deportee(s199/s205).

A person must have this status, among other things, before they can be removed. In particular, the removals officer must ensure that they do not remove:

- holders of bridging visas of any subclass (including Bridging E visa)
- holders of Criminal Justice Stay visas or
- lawful non-citizens (visa holders) - (unless they are being deported, see section 6 Removal or deportation).

A visa holder may request that their visa be cancelled under s116(1)(g) of the Act and regulation 2.43. Once the visa is cancelled they become unlawful and can be removed under s198. For further information see:

- section 56 Destitute persons and
- MSI: Visa cancellation under sections 109, 116, 128 and 140.

13 UNLAWFUL NON-CITIZEN REQUESTS REMOVAL

13.1 Outstanding applications - litigation

When an unlawful non-citizen/detainee requests removal under s198(1), there is no requirement to allow time for them to lodge an application for a substantive visa. There is no requirement in the Act or Regulations that people who request removal under s198(1) must withdraw outstanding visa applications or immigration related litigation. It is departmental policy, however, that officers request the person to do so.

The Attachment 4 - Request for removal from Australia, addresses the requirement under s198(1) of the Act that a request for removal must be made to the Minister in writing. If a person wishes to be removed without withdrawing any outstanding visa applications or related litigation then removal is to proceed. The person will be required to request removal in writing, however, this request should not be made on Attachment 4.

If a detainee with an outstanding court matter requests removal and wants to withdraw from litigation, the officer must consult with Litigation Branch.

Legal representation -procedures

If the detainee is legally represented and wishes to withdraw from litigation the officer must:

- arrange for the detainee to complete and sign the relevant form at (Attachment 4 - Request for removal from Australia)
- fax this from to the litigation case officer and if required the department's external panel firm (as advised by Litigation Branch)
- forward the original from by post to the litigation case officer, keeping a copy on the client's file
- await advice from Litigation Branch as whether there are any litigation matters preventing removal.

No legal representation

If the detainee is not legally represented and wishes to withdraw from litigation the officer must:

- arrange for the detainee to sign the form at (Attachment 4 - Request for removal from Australia)
- arrange for the detainee to complete and sign the *Notice of Discontinuance* form. This is a legal document and the litigation will not be considered finalised until it has been accepted and stamped by the court. The notice can be obtained from the Litigation Branch; they will also assist in making the arrangements for the *Notice of Discontinuance*.
- fax both completed documents to the litigation case officer and if required the department's external panel firm (as advised by Litigation Branch)
- forward the original documents by post to the litigation case officer (or the panel firm if required), keeping a copy on the client's file
- await advice from Litigation Branch that there are no litigation matters preventing removal.

The removals officer should record the request for removal in ICSE (Enforcement Permission Request – 'Detainee Requested Departure' Event) noting whether the detainee had legal representation, if an interpreter was offered and/or used, and any other matters of note. A note should also be made in ICSE within the relevant Litigation Permission Request (this will usually be done by the relevant legal area).

13.2 Request withdrawn

If the detainee subsequently withdraws their request to be removed, the removals officer is to reopen the relevant event in ICSE and record the withdrawal in the Notes section ('Request Withdrawn') and Litigation Branch must be advised.

14 FACTORS PREVENTING REMOVAL

14.1 Court orders preventing removal

Persons must not be removed from Australia when there is a court order directing that the department stay the removal.

Procedure - removal commenced

If a removal is underway and the removee's lawyer advises that a court order has been granted to stay the removal, officers should, before halting the removal:

- confirm that the lawyer represents the detainee
- record the details in a file note, including the name of the solicitor, the law firm involved (if any), the telephone number and the date and time the call was taken
- note the court which ordered the stay
- find out when documentary evidence about the court order will be provided
- notify the Director, Removals Support Section

- notify the Assistant Secretary, Litigation Branch to obtain documentary evidence of the court order and to confirm the contents of the telephone advice.

If the court order is verified, the removals officer is to suspend the removal immediately. If the order is not verified the officer is to consult Removals Support Section for advice.

14.2 Family Court directions

A direction of the Family Court that a detainee has access to a child in Australia does not override the obligation to remove pursuant to the Act and removal should generally proceed. The Family Court however, has the power to order persons, such as children who are normally resident in Australia and who are the subject of joint custody or guardianship, not to leave Australia. If such an order is served on the department, or an officer becomes aware of an order, it is policy that removal of the child or custodial parent not proceed. Details of the case must be referred to the Litigation Branch for further consideration.

Officers removing detainees with family members in Australia, particularly those with Family Court involvement, must be mindful of the stresses this may place on the detainee and the implications for the removal process. Officers overseeing the case of a detainee with family members remaining in Australia should also be aware of the discretionary ability of the department to fund the departure of citizen and lawful non-citizen spouses or dependants of the detainee should such a request be made, see [section 9 Assistance for dependants](#).

14.3 “Ministerial intervention” requests

Requests for “ministerial intervention” (eg. under s417, s351 or s48B) are normally received by the Minister’s office, through the Ministerial Intervention Units (MIUs) in the State/Territory Offices, or in some cases by the officers arranging removal. A request for the Minister to intervene is not an application for a visa. Before removing a person however, officers are required to check whether there are any outstanding Ministerial intervention requests for the person.

Removal of a person with an outstanding Ministerial intervention request may only occur with the consent of the Director, Removals Support Section.

14.4 Criminal charges

If a detainee has been charged or it is known that charges are under consideration by state or federal police, officers are required to consult with Litigation Branch and Character and Cancellation Policy and Procedures Section before proceeding with the removal.

14.5 Representations made to halt removals

Organisations such as the United Nations High Commission for Refugees (UNHCR), United Nations Human Rights Commission (UNHRC), Human Rights and Equal Opportunity Commission (HREOC) or persons (such as lawyers, members of parliament) may contact officers regarding a removal. Such parties should generally be advised to make their representations in writing as soon as possible. Representations from official bodies such as the UNHCR, UNHRC, HREOC or the Ombudsman are to be discussed urgently with compliance managers, the Director, RSS or the Assistant Secretary, Case Management Support Branch.

Privacy provisions

Officers must ensure that they do not breach the provisions of the Privacy Act by revealing personal information about a detainee to someone who is not the detainee’s authorised agent/representative. For guidance, officers can contact the Ombudsman, HREOC & Privacy Section, National Office.

TRAVEL DOCUMENTS

This Part comprises:

- [section 15 Validity of documents](#)
- [section 16 Obtaining a travel document](#)
- [section 17 Recording - travel documents.](#)

15 VALIDITY OF DOCUMENTS

15.1 Validity

A detainee's travel document/s is to be examined for validity (including expiry date) and referred to senior officers and/or a document examiner if there are any concerns. When a document is forwarded to a document examiner a note should be made in ICSE stating the details of the travel document, the date it was sent, and where it is being sent from and to. The results of the document examination are to be placed on the detainee's file and noted in an ICSE note.

15.2 No travel documents

The need for an officer to obtain travel documents for a person to be removed/ deported can arise from:

- persons arriving in Australia without travel documents
- persons arriving on travel documents that are found to be bogus
- travel documents expiring after arrival
- loss of citizenship of the country of origin by renunciation or by changes in citizenship laws
- claimed statelessness or
- loss of permanent residence in the usual country of residence.

16 OBTAINING A TRAVEL DOCUMENT

16.1 Overview

The table at [Attachment 3 - Progressing and effecting removal](#), outlines what action may be taken on a persons' removal in different situations. In circumstances where a travel document can be sought the removee/deportee is to be given the opportunity to cooperate with the process. Officers must note on ICSE whether the detainee cooperates in obtaining a travel document. If a detainee refuses to cooperate they are to be informed that the department will apply for the travel document on their behalf.

Officers are to refer to the [MSI: Personal identifiers: Collection from immigration detainees](#) - with regard to the collection of personal identifiers from detainees, including involuntary collection, and the provision of such information to foreign governments.

In all instances the removee/ deportee is to be advised that the information provided to officials of the foreign government is for the acquisition of a travel document and not for any other purpose. Care must be taken to only provide foreign authorities with information that is directly relevant to obtaining a travel document. If a person has unsuccessfully sought a protection visa, this must not be disclosed to the foreign authority.

Identifying information about a person must not be provided to a foreign government if that person has a Protection visa application under consideration, including in the courts, and the person's protection claims relate to that foreign government/country.

16.2 Procedures

Procedures for acquiring a travel document will vary depending upon the country of nationality and individual circumstances of the detainee. It is important that officers check travel document and transit procedures for specific countries. The Department of Foreign Affairs and Trade website has links to individual country websites, many of which have travel document application forms available for printing. Removals Support Section can also be consulted if you are unsure of the requirements for certain countries.

Officers are to indicate clearly to the issuing authority that the request is for a travel document sufficient to return the person to the country of nationality or country where they have long term residence. The issuing country has the right to determine whether the travel document that they issue will be an emergency travel document, a Laissez-Passer or a full passport.

The removee/deportee is responsible for any fees associated with acquiring the travel document and should be approached to pay the fee. If they are unable or unwilling to pay, this cost will accrue as a debt to the Commonwealth.

16.3 Removals Support Section assistance

State/Territory Offices must advise Removals Support Section if there is a need to obtain a travel document, and of all proposed removals/deportations, for the following nationalities:

- Afghan
- Cuban
- Iranian
- Iraqi
- Israeli
- Jordanian
- Libyan
- North Korean
- Palestinians
- Palestinians from Syria
- persons claiming to be Kuwaiti Bedoons
- Vietnamese who have served a custodial sentence in Australia.

In addition, Removals Support Section should be consulted where:

- a request to issue a travel document has been rejected and there are no clear alternatives available. The refusal should be obtained in writing wherever possible
- where removal is being planned using a Certificate of Identity
- requests to issue a travel document lodged with the detainee's country of citizenship or residence have met with resistance and progress has stalled for at least three months
- multilateral agencies such as IOM, UNHCR etc may be required to assist in obtaining documents.

16.4 Unauthorised air arrivals

Removal of unauthorised air arrivals is the responsibility of the carrier that brought them to Australia, see [MSI: Carrier obligations and offences](#). This includes obtaining travel documents. Where possible the carrier should be provided with appropriate contacts to assist them in obtaining travel documents.

The department is able to offer advice and assistance in the acquisition of travel documents and this service should be offered to carriers in appropriate circumstances to facilitate timely departures.

17 RECORDING - TRAVEL DOCUMENTS

All steps related to obtaining a travel document are to be recorded as notes in ICSE (Travel Document Processing events within the Enforcement Permission Request). These should include, but are not limited to:

- written and verbal communication with diplomatic missions - both to and from
- interviews and contact with detainees or their legal representative relating to their travel documents or removal issues
- correspondence with other agencies or bodies relating to the detainees travel document.

The travel document details must be entered into the client record on ICSE at the earliest opportunity. Failure to record the travel document prior to the detainee's removal may result in difficulties at immigration clearance and, following departure, the detainee being inaccurately reflected as onshore in ICSE.

While in certain circumstances it may be more practical for some information to be manually entered by another party, it is the responsibility of the officer in charge of the removal to ensure that this information has been recorded, and it is accurate.

AVIATION PROCEDURES

This Part comprises:

- [section 18 Aviation Transport Security Regulations](#)
- [section 19 DOTARS - travel type](#)
- [section 20 Notification requirements](#)
- [section 21 DOTARS Escort requirement](#)
- [section 22 Airline refusal to carry.](#)

18 AVIATION TRANSPORT SECURITY REGULATIONS

18.1 Overview

This part contains procedural requirements under the *Aviation Transport Security Regulations 2005* for arranging the air travel of immigration “persons in custody”. This includes immigration detainees, removees, deportees and illegal fishers. The *Aviation Transport Security Regulations 2005* require that operators of prescribed aircraft, and in some cases operators of security controlled airports, be notified in advance of the travel of immigration persons in custody.

The *Aviation Transport Security Regulations 2005* state that these requirements do not apply to turnaround removals/ departures that occur within 72 hours of the person being refused entry at the airport. A turnaround departure is the departure of a person who is refused entry at an Australia airport, where the departure is organised by the airline that carried the person to Australia. These procedures also do not apply to persons departing on bridging visas.

18.2 Definitions - “persons in custody”

The following definitions are drawn from the *Aviation Transport Security Regulations 2005*:

Dangerous persons

The *Aviation Transport Security Regulations 2005* specify that an immigration “person in custody” is “dangerous” if the department:

- has assessed that they are likely to attempt to commit an unlawful interference with aviation or
- has assessed the “person in custody” as being likely to attempt escape or
- is aware that the “person in custody” has been charged with, or convicted of a crime involving violence or serious damage to property.

Prescribed air services/aircraft

Prescribed air services are subject to the notification requirements under the *Aviation Transport Security Regulations 2005*. The only air services that are not prescribed are non-jet aircraft with a maximum takeoff weight less than 5 700kg (provided that the aircraft isn’t being used as part of a regular flight available to the public - ie. as a regular air service).

Security controlled airport

The relevant Secretary can designate an airport as a security controlled airport. Once designated, particular parts of the airport are subject to requirements directed at safeguarding against unlawful interference with aviation. Removals Support Section has distributed a list of security controlled airports to all DIMIA removals units.

Domestic travel maintaining immigration detention

The escorted travel, on a prescribed aircraft operating a domestic service, of a person who is in custody for the purpose of maintaining immigration detention. This does not include persons in custody who are assessed as being “dangerous persons”, see [section 18.2 Definitions](#).

Supervised departure

The unescorted departure from Australia of a person who is a non-citizen, who cooperates in the departure process, and is in immigration detention and under the supervision on an officer under the Migration Act until they depart Australia.

Such persons must be:

- non-dangerous, see definition of “dangerous persons”, [section 18.2 Definitions](#) and
- under departmental policy are assessed as likely to be a low-risk of disruptive behaviour and
- do not have significant mental health/medical issues and
- do not require escorts for any other reasons.

For further information see:

- [Attachment 5 - DIMIA aviation assessment](#) and
- [Attachment 8 - Travel type summary](#).

Supervised departures can include deportees but in most instances deportees will be escorted.

Escorted international travel by non-dangerous persons

The escorted travel on a prescribed aircraft that is operating an international air service of a person in custody who:

- is non-dangerous and
- is being escorted for reasons other than those of the Aviation Regulations,

see:

- [Attachment 5 - DIMIA aviation assessment](#) and
- [Attachment 8 - Travel type summary](#).

Escorted travel by dangerous persons (domestic or international)

The escorted travel on a prescribed aircraft, domestically or internationally:

- of a person in custody and
- who is assessed as dangerous or otherwise presents a risk to aviation security.

19 DOTARS - TRAVEL TYPE

19.1 Determining a detainee’s air travel type

Before notifying aircraft operators of the proposed travel of a detainee, and (if required) arranging escorts, officers must determine the appropriate travel type for the “person in custody”, namely:

- domestic travel maintaining immigration detention or
- supervised departure or
- escorted international travel by non-dangerous persons or
- escorted travel by dangerous persons (domestic or international).

To determine the appropriate travel type, officers are required to:

- consult the detainee’s ICSE record and preferably IRIS records and the detainee’s file regarding their behaviour, immigration history, criminal history (if any) and mental or physical health issues
- obtain a *Detention service provider assessment*, see [Attachment 6 - Detention service provider assessment](#) or a similar report/information for removees from correctional facilities) unless:
 - the person has been detained for a short time ie less than three days or
 - the person is not being removed from a secure/guarded detention environment.

Once this information has been considered, complete the form at [Attachment 5 - DIMIA aviation assessment](#).

19.2 DIMIA aviation assessment

The form at [Attachment 5 - DIMIA aviation assessment](#)) is in a YES/NO format. It has been designed to ensure that officers consider relevant factors when determining a detainee's air travel type. When completing the form, officers will be directed, based on their answers, to a recommended travel type for the person. Officers have some discretion to choose a different travel type to that suggested in the *DIMIA Aviation Assessment* form, but before doing so, officers should discuss this with their supervisors/managers. For reasons of accountability, officers are to place a copy of the completed *DIMIA aviation assessment* form on the detainee's file.

Once the detainee's travel type has been determined, officers must notify the aircraft operator of their intended travel, see [section 20.2 Airport operators](#).

20 NOTIFICATION REQUIREMENTS

20.1 Aircraft operators

Notifications to aircraft operators of the proposed travel of a detainee must be made using the *Notice Form*, see [Attachment 7 - Notice of the Proposed Movement of a Person in Custody](#). This form was developed by DOTARS in consultation with DIMIA and the aviation industry. It is contained in the *Aviation Transport Security Regulations 2005*.

The form consists of two parts; Part A and Part B:

- supervised departures require the completion of Part A only.
- all other types of travel require the completion of Parts A and B.

Once completed, the form needs to be provided to the airline, generally by fax, within a stipulated time before the proposed flight, unless the aircraft operator agrees to less notice. For details of notification times see, [Attachment 8 - Travel type summary](#).

If an officer becomes aware that incorrect or incomplete information has been given to an aircraft operator, they must inform the aircraft operator as soon as practicable.

Once faxed, the officer should call to ensure that the *Notice Form* has been received by the aircraft operator, and follow up any immediate concerns. Once an aircraft operator has returned an approved Notice Form, removals officers should ensure that it is attached to the detainee's file.

The aircraft operator may request additional information from the department to conduct its own risk assessment. The department is not required to provide any additional information to an aircraft operator if doing so would constitute an offence under any Act (including a breach of the Privacy Act) or under the law of a State or Territory.

Officers should consult the Removals Support Section if there are concerns about the information requested by an aircraft operator.

A summary of travel types, notification and escort requirements is at [Attachment 8 - Travel type summary](#).

20.2 Airport operators

The *Aviation Transport Security Regulations 2005* require that operators of security controlled airports receive advance notice of the movement of dangerous persons in custody through their airport. This notification is to be done by sending the *Notice Form*, after it has been endorsed by the aircraft operator at the "Approved" section of the form, to the airport operator at least 12 hours before the "person in custody" arrives at the airport (the airport operator may agree to less notice).

DIMIA is responsible for ensuring that the form is provided to the airport operator, however, the aircraft operator can provide the form to the airport operator on DIMIA's behalf if it agrees to do so.

This information is provided to the airport operator so that it can institute any risk management procedures it considers necessary for the transit of dangerous persons. The airport operator does not determine whether the travel can proceed.

If a DIMIA officer becomes aware that incorrect or incomplete information was provided, they must inform the airport operator as soon as practicable.

Officers should consult Removals Support Section if airport operators request additional information to that already contained in the *Notice Form*.

21 DOTARS ESCORT REQUIREMENT

21.1 Requirements for dangerous persons

The *Aviation Transport Security Regulations 2005* specify the following escort requirements for dangerous “persons in custody”:

- the person must be escorted at all times, when on a prescribed aircraft or at a security controlled airport, by at least two escorts
- at least one of the escorts must be of the same sex as the person in custody
- unless DOTARS approves otherwise in writing, the escorts are not to be responsible for any other person in custody
- the escorts must be law enforcement officers or persons of a kind agreed to between the aircraft operator and the department, and must not be crew members of the aircraft and
- the department must provide the escorts unless the department and the relevant aircraft operator agree that the operator will provide the escorts.

Requirements - non-dangerous persons

For all other (ie. non-dangerous) escorted travel, the escort type/ratio is a matter for negotiation between the airline and the department.

A summary of travel types, notification and escort requirements is at [Attachment 8 - Travel type summary](#).

21.2 Limit of number of Persons in custody

The *Aviation Transport Security Regulations 2005* specify that no more than two escorted persons in custody, no more than one of whom is dangerous, are to be carried on the same flight without the written approval of the DOTARS Secretary or their delegate - a ‘DOTARS Approval’ - formerly known as a ‘DOTARS Instrument’, see [section 21.3 DOTARS approval required - more than limit](#).

21.3 DOTARS approval required - more than limit

If an aircraft operator agrees to the transport of more than two escorted “persons in custody” or more than one dangerous “person in custody” on a flight, it must seek a “DOTARS Approval” before undertaking the flight. DIMIA may seek the DOTARS Approval on the aircraft operator’s behalf, with the agreement of the aircraft operator.

DOTARS Approvals are to be sought by sending to the DOTARS Operations Centre:

- the completed *Notice of the proposed movement of a person in custody* - with the airline approval section at the end of Part A of the form completed and
- a covering note explaining why a DOTARS Approval is being sought.

The contact details for the DOTARS Operations Centre are:

- Phone: 1300 307 288
- Fax: (02) 6274 6089.

Should DOTARS grants permission for the carriage of additional escorted “persons in custody” it may impose any conditions it considers necessary to maintain aviation security.

21.4 Exception for family groups

The limit of two escorted “persons in custody” per flight does not necessarily apply to family groups. A family group of more than two persons, who are undertaking escorted travel, may be carried on the same flight without a “DOTARS approval” if:

- all family members are “non-dangerous” and
- DIMIA and the aircraft operator agree on escort arrangements.

22 AIRLINE REFUSAL TO CARRY

22.1 Airline refuses removee/deportee

If an aircraft operator refuses to carry a removee/deportee, officers are to seek to clarify the concerns of the operator and then discuss with their DIMIA supervisors/managers.

Further approaches may be made to the aircraft operator in an attempt to resolve the operator’s concerns.

If an operator continues to refuse to carry a removee, despite DIMIA proposing suitable escort arrangements, officers may wish to consider issuing the aircraft operator with a s218 notice, see, section 22.2 Section 218 Notice (Airline to receive person).

22.2 Section 218 Notice (Airline to receive person)

There may be occasions when an aircraft operator/carrier will refuse to carry a removee/deportee despite DIMIA proposing suitable escort arrangements. Under s218 of the Migration Act, the Secretary, or a delegate, may serve a notice on a carrier requiring it to carry a removee/deportee. The Act requires at least 72 hours notice to the airline.

RSS should be consulted if a s218 notice is being considered.

The *Notice under s218* notice (a copy is at Attachment 14 - Notice under section 218 (Airline to receive person)) is to be authorised by the Secretary or a delegate. Requirements for serving notices are set out in the Migration Act (see s218 onwards).

Passage costs are the liability of the detainee and are recoverable from the detainee under s210. In practice, the Commonwealth pays the carrier costs and recovery is sought from the detainee at a later date. Where a person is removed following issue of a s218 notice, the liability for costs of removal is determined by s221. For further information on removal costs see, section 28 Who pays for flight

Officers must ensure in advance that the detainee will be permitted to enter the country specified in the notice. Section 220 provides that where a country has notified the Minister that the non-citizen would not be permitted to enter that country the Minister is required to revoke the s218 notice. These matters are dealt with in the MSI Carrier obligations and offences.

ESCORTS

This Part comprises:

- [section 23 Escorts - legislative authority](#)
- [section 24 Restraint used by escorts](#)
- [section 25 Sourcing escorts](#)
- [section 26 Escort service requirements and conditions](#)
- [section 27 Final escort report](#)

23 ESCORTS - LEGISLATIVE AUTHORITY

23.1 Escorts - officers under the Migration Act

The term *officer* is defined in s5(1) of the Act.

Officers from DIMIA, Customs, Protective Services and Australian Federal, State and Territory (including external Territory) Police are *officers* for the purposes of the Migration Act. Their authority to take custody of/escort a detainee is given by the Act.

The Minister has also authorised the following staff as officers for the purposes of the Act:

- employees of GSL (Australia) Pty Ltd, who perform duties under the Act and who have met character and training requirements as set out in the Detention Services Contract
- employees of International Health and Medical Services Pty Ltd, who perform duties under the Act and who have met character and training requirements as set out in the Detention Services Contract
- employees of correctional services or prisons departments, or their equivalent, of all States and Territories who are employed at correctional service or prison facilities and
- employees of corporations engaged by State or Territory correctional services or prisons departments to provide correctional or prison services for the State or Territory who are employed at correctional service or prison facilities.

For a full list of persons authorised as officers for the purposes of the Act refer to the definition of *officer* in section 5 of the Act.

23.2 Other escorts (non-officers for the purposes of the Act)

Escorts who are not officers for the purposes of the Act will need to be accompanied by an officer for the purposes of the Act until the detainee leaves Australia (ie. up to the aircraft bay or departure gate).

If an *officer* for the purposes of the Act does not accompany the non-officer escort/s while in Australia, then the non-officer escort will need to be authorised as a “designated person” for the purpose of accompanying and restraining the detainee during the removal. This requires preparation of an instrument for approval by a delegate of the Secretary. Contact Detention Alternatives Section, National Office, for further information.

23.3 Aboard the aircraft

The International Civil Aviation Authority (ICAO) “*Convention on offences and certain other acts committed on board aircraft (Tokyo Convention)*” provides some authority to escorts on the aircraft.

Under Article 6 of the *Tokyo Convention*, the aircraft commander (usually the captain of the flight) may authorise a passenger to take action:

- to protect the safety of the aircraft, or of persons or property therein or
- to maintain good order and discipline on board or
- to enable them to deliver to competent authorities a person they consider has committed, or is about to commit an offence covered by Article 1 (that includes offences against penal law, or

acts that jeopardise the safety of the aircraft or persons or property aboard it, or which jeopardises good order and discipline on board).

The *Tokyo Convention* also authorises any passenger to take reasonable preventative measures where immediately necessary to protect the safety of the aircraft and property therein.

24 RESTRAINT USED BY ESCORTS

24.1 During the removal

Escorts are to be equipped with restraining devices, to be used only in the event that restraint is considered necessary for the security of the removal and the safety of the removee or the general public. Escorts must be trained in the appropriate use of physical restraint and restraint devices. Physical holds and/or restraint devices may only be used for the minimum time necessary.

Escorts should not carry mace, tear gas or similar incapacitating gas-generated devices, particularly on board an aircraft.

Departmental policy is that medication must not be used as a means of restraint, see [section 24.2 Oral restraint \(eg. mouth-taping\)](#), regarding the use of oral restraint.

24.2 Oral restraint (eg. mouth-taping)

On occasions it has been considered that further measures may be required to effect a removal, for example, oral restraint (such as mouth taping) to prevent serious injury from biting. Oral restraint should only be considered as an option in exceptional circumstances and it must not be employed without the approval of the Assistant Secretary, Case Management Support Branch.

Before approving the use of oral restraint the Assistant Secretary, Case Management Support Branch would in most cases need to seek specific medical and security advice.

24.3 After the removal

As the escorts will not be on duty on their return flight, arrangements may need to be made for carriage of certain restraining devices (such as flexi-cuffs) on the return journey. Australian Customs Service and the airline may need to be consulted on suitable arrangements.

25 SOURCING ESCORTS

25.1 Who can escort

Escorts for security purposes are to be security type personnel who are trained in using methods of restraint. To meet ICAO and DOTARS standards, persons from the following organisations may act as escorts:

- Australian Protective Service officers
- police officers
- correctional services officers (including those privately contracted by state governments)
- airline security personnel
- DSP officers, eg. employees of GSL
- International Security and Medical Escorts (ISME)
- Snyman and Migliore International (SMI) and
- other private security contractors/firms - where a risk assessment (using the department's risk assessment framework) has been undertaken. Before the private security contractor/firm is added to the list of available escorts, the risk assessment should be provided to the State Manager with responsibility for Compliance, the Director, Removals Support Section and the Director, Contracts and Procurement Advice Section, for comment.

See also [section 23 Escorts - legislative authority](#).

25.2 Instructions for escorts

Escorts for escorted removals on flights departing Australia are to be provided with the information at:

- [Attachment 9 - General information for escorts](#)
- [Attachment 10 - Removal procedures \(example\)](#), which specifies escort specific instructions; and
- the form at [Attachment 11 - Escorts removal report](#), to be completed and submitted to DIMIA after the escort has been completed.

The removals officer is responsible for informing the escort of the risk assessment of the removee/deportee and, in particular, of any security or health concerns.

25.3 Medical attendants

If a detainee has a mental illness or serious medical condition, a medical practitioner, general nurse or specialist nurse may be required to accompany the person on the removal. See, [section 36 Health issues](#) for more information.

25.4 DIMIA officers

In high profile, sensitive or large scale removal exercises, it may be appropriate for the department to nominate an officer or officers

- to accompany the detainee/s,
- to perform liaison functions with the escorts, airlines, foreign government officials and other parties.

The Compliance Manager should be consulted regarding the necessity of a liaison officer/s, and the appropriate APS level of the officer/s.

A DIMIA officer may not act as an escort for the purposes of restraint and must not act as a medical escort.

26 ESCORT SERVICE REQUIREMENTS AND CONDITIONS

26.1 Service requirements

A Memorandum of Understanding (MOU) or other agreement, which specifies service requirements, is to be established for escort providers.

Before developing an MOU or other agreement, the Directors, Removals Support Section and Contracts and Procurement Advice Section are to be consulted (see also [25 Sourcing escorts](#)).

26.2 Rest periods for escorts

Unless specified in the agreement with the escort provider, rest periods for escorts (after the removal is completed) are at the discretion of the officer organising the removal.

As a guide, officers should consider providing a rest period of no longer than 48 hours for journeys between:

- Australia and Europe, the Middle East, Africa, or South America
- eastwards from Australia to North America and
- westwards to Australia from North America (excluding California).

A rest period should generally be no longer than 24 hours for all other destinations.

If the escort wishes to vary the return date or route, this will be at their cost and discretion. CWT will need to be advised of such variations.

26.3 Accommodation

This would generally be standard level accommodation in the vicinity of the airport for the period in-between flights.

Male and female escorts are to be provided with separate rooms.

26.4 Insurance

For insurance purposes there are two categories of security and medical escorts:

- Escorts whose employers are paid by DIMIA to carry out escort duties. Such escorts are covered by their own employers' insurance arrangements for compensable claims relating to those escort duties (eg, GSL / other security firms).
- Other escorts working in a voluntary capacity (eg. off-duty police or correctional services staff) are covered for bodily injury, including death, as well as medical evacuation and other events under ComCover. Contact Removals Support Section, National Office if you require further information.

27 FINAL ESCORT REPORT

Upon completion of the escort (ie once the removee/deportee is in their home country and no longer in the custody of the escort/s), the head escort should contact the removals officer to report.

On return to Australia from escort duties (or earlier if preferred), the head escort is required to submit the report at Attachment 11 - Escorts removal report to the removals officer in charge of the removal. A DIMIA officer who accompanied the escort should provide a brief report for the removals officer.

Once the removals officer has received the report/s, they are to check if there are any matters requiring follow-up or referral to management/Removals Support Section. The report is to be retained on the removee/deportee's file.

TRAVEL ARRANGEMENTS

This Part comprises:

- [section 28 Who pays for flight](#)
- [section 29 Destination and route](#)
- [section 30 Travel arrangements](#)
- [section 31 Airline notification and uplift request](#)
- [section 32 Post-arrival care - special needs.](#)

28 WHO PAYS FOR FLIGHT

28.1 Section 210 - removee/deportee liable

Section 210 sets out the general rule that a non-citizen who is removed or deported, other than an unlawful non-citizen who comes to Australia on a criminal justice visa, is personally liable to pay the Commonwealth the costs of their removal or deportation.

The costs become a debt to the Commonwealth and are represented as Public Interest Criteria 4004 (PIC 4004) in the Schedule 2 criteria for most visa subclasses. If the removee/deportee applies for a visa to re-enter Australia, they must be able to satisfy PIC 4004. See [MSI Liability of non-citizens to repay costs of detention, removal or deportation.](#)

While the detainee is legally responsible for the costs, their removal may be initially funded by:

- a ticket held by the detainee
- detainee funds
- Commonwealth funds
- the airline (only in cases of turnaround departures, see [MSI Summary removal procedures in immigration clearance at proclaimed ports.](#))

Detainees are to be encouraged to use their own funds, or existing ticket, to depart Australia. The advantages to the detainee may include:

- minimising their debts to the Commonwealth
- flexibility to travel to a country, other than their country of citizenship, where they have clearly established entry rights and
- demonstrating compliance with their removal, which may positively affect assessment of escort requirements.

28.2 Use of existing ticket/funds

The removee/deportee is to be advised that s216 of the Act allows the DIMIA Secretary or a delegate to apply an existing ticket towards the cost of removal, with or without their consent. The Act does not specify a written requirement; however, for the sake of good record keeping/accountability one of the following should be used:

- Removee/deportee **consents**:
 - the *Consent to Use Ticket for Removal* ([Attachment 12 - Consent to use ticket for removal](#)) is completed by the removee/deportee, authorising departmental use of the ticket for their removal.
- Removee/deportee **does not consent**:
 - The form at [Attachment 13 - Use of detainee ticket without consent](#) is completed by an officer with s216 delegation, and is used to inform persons (travel agents, airline representative etc) of the department's authority to use the detainee's ticket.

If a removee/deportee's ticket is used, the value of that ticket is to be considered when calculating the detainee's debt to the Commonwealth.

Detainee funds and/or property may be seized under s223 provisions to be used for costs of conveyance from Australia, see MSI: Liability of non-citizens to repay costs of detention, removal or deportation.

28.3 Section 218 Notice - liability

See section 22.2 Section 218 Notice (Airline to receive person).

29 DESTINATION AND ROUTE

29.1 Destination

The removal provisions of the Migration Act and Regulations do not specify the destination for removals. However, a detainee can only be removed to a place where they have legal right of entry.

Detainees are usually returned to their country of nationality. A person may be returned to a country that is not their country of nationality (ie. a third country) if they have the right of entry to and long term stay in the third country.

Factors to consider before returning a person to a third country include:

- right of long term entry to and stay in the country
- availability of travel documents
- nationalities of immediate family members also being removed.

The department has no obligation to return a detainee to a specific city or town within the destination country; this remains at the discretion of the removals officer.

29.2 Route

Usual practice is to return the person to the port that is the most convenient and is least costly to the department. However, other factors may be taken into consideration, such as any threats to the detainee's safety posed by certain destinations within a country or whether the detainee is destitute.

When choosing the airline and route, consideration should be given to the following:

- cost and timing of flights
- departure point from Australia
- stopover time at transit points
- baggage issues at transit points (eg. can the removee's baggage be checked through to connecting flights or does it have to be collected? What implications can this have for security? can assistance be obtained in managing the removee's baggage so that escorts can concentrate on supervising the removee?)
- visa and security requirements at transit points, especially potential difficulties in certain transit countries
- implications of using other airlines for any necessary connecting flights and
- whether the detainee's funds allow their return to their home community from the port of arrival.

30 TRAVEL ARRANGEMENTS

30.1 Commercial flights

Consideration is to be given to transport of the removee/deportee from the IDF to the international departure point. In many cases this may be a short trip in an IDF vehicle. A hire car/bus, domestic commercial flight and/or charter flight may be required in certain circumstances, such as:

- departure from remote facilities
- transfers to other states/IDFs for international flights and/or
- security or transit concerns.

Domestic commercial flights and hire vehicles can be arranged through Carlson Wagonlit Travel (CWT) see, [section 30.3 Booking the travel](#).

Refer to [section 19 DOTARS - travel type](#) regarding procedures to assess a removee/deportee's air travel type, escort requirements and notification requirements to aircraft and airport operators.

30.2 Charter flights

Some removals and deportations may raise issues of timing, numbers, logistics, cost or security that make the use of a charter flight a reasonable option. This may be for the domestic and/or international leg. The practical advantages of a charter must be weighed against any additional costs.

If a State/Territory office wishes to pursue a charter, the Fishers and Logistics Taskforce, National Office, must be consulted (email "Log Charter" to ensure that the charter is approved and that necessary protocols are followed - eg. that quotes are obtained and DOTARS Approvals are sought if required).

30.3 Booking the travel

The department's travel service provider is currently Carlson Wagonlit Travel (CWT).

Removals officers are to request CWT to book flights and if required accommodation using the DIMIA Removal Travel Request Form. This form can be obtained from CWT.

Travel arranged by the department should be the best value and meet the best connections for the flight schedules. Officers are to consider transit requirements and security arrangements when making their decision. Cost centre codes should be provided at the time of booking.

Generally, transit accommodation will not be required as the most direct route will be chosen. In cases where transit accommodation is required it should, where possible, be in a transit hotel located within the terminal and not past immigration control.

30.4 Escort travel arrangements

Generally, escort travel and accommodation should be booked at the same time as the detainee travel. Escorts are to be advised in advance of their travel and accommodation arrangements.

See [section 26 Escort service requirements and conditions](#) for details of appropriate rest periods and accommodation for escorts.

31 AIRLINE NOTIFICATION AND UPLIFT REQUEST

Airline uplift approval is required for nearly all flights within Australia and leaving Australia, in accordance with the *Aviation Transport Security Regulations 2005*. Instructions for seeking airline uplift approval are at [Aviation procedures](#).

It is in the department's interests to request uplift approval at the earliest opportunity. This is particularly important for airlines who must contact their headquarters offshore before giving approval.

32 POST-ARRIVAL CARE - SPECIAL NEEDS

When removing removees/detainees who are vulnerable or have special needs, officers must ensure that their needs have been considered and appropriately met. Such persons include those with serious health issues, unaccompanied minors, family groups, pregnant women, or those in destitute circumstances.

The special arrangements put in place will vary according to the circumstances of the case, but may include special escorts, arrangements for individuals to be met upon their arrival by medical and/or welfare staff and consultation with relevant welfare bodies.

In some cases, officers will need to coordinate post-arrival arrangements with the Australian mission in the destination country.

For such special needs cases officers must discuss post-arrival care arrangements with their Compliance/Removals Manager and the Director, Removals Support Section.

For further information on:

- removing persons with health issues refer to section 36 Health issues
- reintegration packages refer to section 55 Reintegration packages - IOM
- assistance for destitute persons refer to section 56 Destitute persons.

IMPLEMENTING DEPARTURE FROM AUSTRALIA

This Part comprises:

- [section 33 Removal procedures](#)
- [section 34 Preparing detainee for removal](#)
- [section 35 Fitness to travel](#)
- [section 36 Health issues](#)
- [section 37 Administration of medication](#)
- [section 38 Property and baggage](#)
- [section 39 Inter-facility transfers](#)
- [section 40 Access to legal representation](#)
- [section 41 Airport arrangements](#)
- [section 42 Processing departure at airport](#)
- [section 43 Who holds travel documents](#)
- [section 44 Completion of removal/deportation.](#)

33 REMOVAL PROCEDURES

The removals officer must prepare the Removal Procedures. The procedures should cover all the travel details, specific instructions for escorts and relevant contact details see, [Attachment 10 - Removal procedures \(example\)](#).

The removals officer must forward these Removal Procedures to:

- the head escort and
- DIMIA officers who have an operational role in the removal and in particular:
 - DIMIA airport officers in Australia and
 - DIMIA compliance staff at overseas posts, at transit points and at the removee/deportees destination.

34 PREPARING DETAINEE FOR REMOVAL

34.1 Section 252 - searches

See [Removal notification](#) regarding the notice provided to a detainee of their removal.

Section 252 of the Act provides officers with powers of search and seizure in specified circumstances. The removee/deportee should undergo a pat down search at the IDF or other place of detention for weapons or implements for escape. Removee/deportee baggage, including carry-on baggage and persons being removed from a correctional facility should also be searched. These searches will usually be undertaken by DSP officers, or correctional services officers.

Departmental staff and the escort must positively identify the detainee against their travel documents.

If there is sufficient time, relatives and friends who wish to see a detainee before departure are to be advised to visit the person at the place of detention before the person leaves for the airport. Visits should not be facilitated at the airport.

Access to relatives and friends need not be facilitated immediately before the removal if this would jeopardise the removal.

35 FITNESS TO TRAVEL

All detainees departing Australia must be cleared as fit to travel. Removals officers are to liaise with the DSP, who will organise the assessment in accordance with the *Immigration Detention Standards* and the *Health Services Provider Operational Procedures*.

If the detainee is being removed from a correctional facility then officers will need to ensure that medical staff at the correctional facility assess the detainee's fitness to travel.

If the medical practitioner or airline security require or recommend a medical escort, this is to be arranged to comply with safety obligations and to ensure the proper care and support of the detainee.

36 HEALTH ISSUES

If a detainee has a mental illness or serious medical condition a medical practitioner or nurse including a psychiatric nurse may be required to accompany the person during the removal. Officers are to determine the need for such escorts based on the advice of the medical doctor who undertook the fitness to travel assessment, or another medical doctor who has the person's up to date medical history.

When engaging medical escorts, officers must ensure that there are clear, guidelines in place to ensure that the detainee will be under close observation and receive the necessary medication, nutrition and assistance with hygiene. These guidelines must be agreed to by the department and medical escort as part of the preparation to remove/ deport - ie well before the removal operation commences.

Provision of sufficient medication for a limited period (ie. sufficient to last up to two-three months after the individual's arrival in the destination country) may be provided to the removee/deportee. The appropriateness of this should be discussed with a medical doctor.

As part of the discharge process from the detention facility, the person will have been provided with their medical records and any necessary referrals.

In some cases it may be appropriate to arrange a medical handover in the destination country. The need for this should be discussed with a medical doctor. Such handover arrangements may include but are not limited to arranging to transport the person into the care of welfare staff, medical staff or a medical facility.

Where concerns exist regarding the appropriateness of medical escort/handover arrangements, the State/Territory Compliance Manager or Director, Removals Support Section should be consulted.

37 ADMINISTRATION OF MEDICATION

In the absence of a medical escort, if DIMIA officers or escorts are requested by the removee/deportee to administer medication (including headache tablets) then they must record what was administered, the dosage and the reason for administration. Prescription medications must only be administered as prescribed. Administration of medication by an escort must be noted in the *Escorts Removal Report*.

If a medical practitioner prescribes medication (including sedatives) to a detainee, the matter is one between the patient and medical practitioner. Neither DIMIA nor escorts are to request the administration of sedatives to a removee/deportee.

Any medication is to be held and managed by the escort, or travelling medical attendant if applicable.

38 PROPERTY AND BAGGAGE

38.1 Baggage management

While DIMIA IDF staff and the DSP have supporting roles, it is ultimately the responsibility of the removals officer to ensure that removee/deportee's baggage is managed effectively, so as to avoid any problems arising at the airport relating to contraband items and excess baggage.

All property must be weighed and checked before departure from the centre. This will be carried out by the DSP. The removals officer must liaise with the DSP regarding the appropriate time for weighing the baggage, and follow up any issues. At Baxter IDF, this will require liaison with the DIMIA Case Coordinator.

For compliant removals, it is preferable baggage be checked, weighed and stored at the earliest opportunity (ie. at least 24 hours before departure). This provides adequate time for resolution of any issues.

Sensitive or high risk removals may require baggage assessment in a small amount of time. In these cases it is preferable that a DIMIA officer be present with the DSP for the baggage procedures.

Unless prior arrangements have been made, if the removee/deportee is transiting through another detention facility before being removed from Australia, the baggage procedures must be undertaken at the original centre where the detainee has been resident.

38.2 Baggage allowances for escorts

The department's preference is that escort check-in baggage be limited as much as reasonable. If escorts have check-in baggage then their handling of such baggage may distract their supervision of the removee/deportee.

For DSP escorts the standard is that they will use carry-on luggage allowance only (ie. 7kg). If DSP escorts require a check-in allowance then the DSP needs to advise DIMIA in advance. Any reasonable requests may be granted.

For non-DSP escorts, removals officers are, where possible, to advise the escorts in advance that check-in baggage should be limited as much as possible.

38.3 Standard baggage allowance for removees/deportees

The following are standard baggage allowances for removees/deportees and are based on the length of time the person has been in detention.

DIMIA staff are to advise detainees of these standard allowances before they are removed. If required, a form suitable for this purpose is at [Attachment 22 - Information on removal baggage limits](#).

Persons detained less than 18 months

Standard allowance of 27kg, consisting of:

- 7kg carry on baggage
- 20 kg check-in baggage.

If the person has additional baggage (ie. above 27kg) then any spare escort baggage allowances are to be used (where administratively practicable). The removee/deportee's baggage must not be carried in an escorting officer's name.

If there is still additional baggage the removee/deportee will need to pay the excess baggage charge upfront, at the IDF before departure (see [section 38.5 Payment for additional baggage](#)).

If the removee/ deportee is unable or chooses not to pay for the additional baggage then the additional baggage cannot be taken by the removee/ deportee see, [section 38.6 Baggage/property not taken by the removee/deportee](#).

Detained longer than 18 months

Standard allowance of 47kg, consisting of:

- 7kg carry on baggage
- 40kg check-in baggage.

The additional 20kg check-in allowance (ie. above the standard 20kg allowance) should, where administratively practicable, be carried using any spare escort baggage allowance. The removee/deportee's baggage must not be carried in an escorting officer's name.

If there is insufficient spare escort baggage allowance for this purpose, or it is not administratively practicable to use any spare escorts baggage allowance, the removee/deportee may pay the excess baggage charge for the additional 20kg (or remaining balance) up-front at the IDF before departure, see [section 38.5 Payment for additional baggage](#).

If the removee/deportee is unable or chooses not to pay for the additional 20kg upfront, the person is still entitled to the additional 20kg allowance and officers should add any excess baggage costs for this to the person's debt to the Commonwealth.

If the person has baggage in addition to the 47kg allowance then any spare escort baggage allowances should be used where administratively practicable. If there is still additional baggage the removee/deportee will need to pay the excess baggage charge upfront, at the IDF before departure see, [section 38.5 Payment for additional baggage](#).

If the removee/deportee is unable or chooses not to pay for the additional baggage then the additional baggage cannot be taken by the removee/deportee, see [section 38.6 Baggage/property not taken by the removee/deportee](#).

Where officers determine that baggage issues may jeopardise the removal, officers should consult with their supervisor or the Director, Removals Support Section.

38.4 Where transport does not allow for standard baggage allowance

If the person is unable to take the standard baggage allowance (eg. due to baggage limits on the aircraft), officers are to arrange to ship the remaining baggage to the destination address. The cost for this may be added to the removee/deportee's debt to the Commonwealth.

The removee/deportee will need to pay shipment costs upfront for any baggage which is in excess of the standard baggage allowance.

38.5 Payment for additional baggage

To avoid payment difficulties at check-in, payment should generally be made by the removee/deportee at the detention facility. The excess baggage rate can be obtained from CWT and the removee/deportee advised of the charge. The removee/deportee pays the relevant amount to the DSP, who will pay for the excess baggage at check-in. Any unused excess-baggage monies (paid by the removee/deportee) must be returned to the removee/deportee.

If the person will not be escorted at check in by DSP staff, the person can still pay the money to the DSP who will arrange transfer of the funds to DIMIA. The DIMIA removals officer will then be responsible for arranging payment for the excess baggage (whether in advance through CWT or at check-in).

38.6 Baggage/property not taken by the removee/deportee

If a removee/deportee leaves property/baggage at the detention facility, the person is to be advised of the options for the property/baggage:

- collected by friends or family in the community
- given to other detainees (DSP procedures for this should be followed)
- shipped to the destination country at detainee expense or
- discarded.

If property is left at the detention facility, without arrangements having been made, it will be treated as lost/unclaimed goods. It will be held for a period specified by relevant State or Territory legislation and then disposed of according to the requirements under such legislation.

All property should remain in the care of the DSP or escort at all times from final checking of baggage to the end of the escorted journey. This includes travel documents, cash, phones, medication and carry-on luggage.

38.7 Opportunity to dispose of articles before removal and enroute

Before removal commences a removee/deportee is to be given the opportunity to dispose of any possessions they don't wish to take with them.

If a removee wishes to discard any of their possessions during the removal they are to be allowed to do so if this does not impede the removal or contravene any laws.

39 INTER-FACILITY TRANSFERS

If it is likely that a removee/deportee will be held at another IDF prior to departure, case officers must liaise directly with the receiving IDF early in the planning process.

It is important that consideration is given to ensuring the maintenance of lawful detention throughout any transfers.

40 ACCESS TO LEGAL REPRESENTATION

Section 256 of the Act outlines a person's right to request access to legal advice while in immigration detention. This section states that:

“Where a person is in immigration detention under this Act, the person responsible for his or her immigration detention shall, at the request of the person in immigration detention, give to him or her application forms for a visa or afford to him or her all reasonable facilities for making a statutory declaration for the purposes of this Act or for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention.”

If a removee/deportee requests to speak to a legal representative or advisor during a removal, access is to be facilitated. However, if such access would unduly delay or jeopardise the operational aspects of the removal it is departmental policy that this is not 'reasonable' within the meaning of s256 of the Act. For example, if such access would delay the transport of the removee/deportee by several minutes then in most cases this delay would not in itself jeopardise the operational aspects of the removal and access is to be facilitated.

If the removee/deportee is in discussion with their legal representative/advisor for a long time then this may, in many cases, unduly delay/jeopardise the removal and the person may be warned that contact with their legal representative/advisor will shortly be terminated to allow their removal to continue.

If access to a legal representative/advisor is facilitated during a removal, this can take the form of providing the removee/deportee access to a telephone. Physical access to a legal representative/advisor does not have to be provided.

Officers who are asked to facilitate access to a legal representative are to ensure that they make written records of any such requests and what action was taken in response to those requests (eg. attempts to facilitate access, timing of access, relevant operational contingencies preventing access). A record is particularly important if the removal process did not allow for the removee/deportee to access their legal representative.

41 AIRPORT ARRANGEMENTS

By liaising with DIMIA airport staff, removals officers can arrange to have removees/deportees await their flights in a secure area in domestic airports. It may also be beneficial to arrange with overseas compliance staff secure waiting areas at overseas transit points.

Public departure lounges should be avoided at both domestic and international airports wherever possible, particularly for involuntary removals.

Airport staff are generally not expected to be directly involved in implementing removals. However, their assistance may be sought in certain circumstances. For very sensitive/high risk removals, if possible, the airport manager or senior staff should be on hand at check-in to ensure a smooth departure from Australia. They can assist if a holding area is required for the detainee and arrange airside access, where possible.

Operators of Australian airports must be notified in advance of the movement of dangerous persons through their facility. For further information, see Aviation procedures.

42 PROCESSING DEPARTURE AT AIRPORT

42.1 Outgoing passenger card

An *Outgoing passenger card*, form 16 is to be completed on behalf of the detainee at, or before arriving at, the airport.

The reverse side of the card should be endorsed with the word *removee* or *deportee* with the section of the Act/ regulations noted under which the person was removed or deported; relevant office file number(s); and details of the visa at the time of original entry.

If there is a visa tab in the travel document it is to be removed and affixed to the passenger card. The passenger card is to be taken to the outward immigration line and surrendered. It is then to be processed normally.

42.2 Deportation– when the visa ceases

Section 82 of the Act provides that a deportee’s visa ceases on execution of the s200 deportation order. The visa must not be cancelled before execution of the deportation order. The associated review rights involved in cancelling the visa would delay the deportation.

Officers are to endorse the deportee’s permanent resident visa label and any other visa label for Australia in the travel document of a deportee which is still valid, with a note that it will cease on deportation and include the date and time of scheduled deportation. The visa is to be rendered inoperative by a delegated officer, signed and dated. The “Departed Australia” stamp is to be placed in the passport.

43 WHO HOLDS TRAVEL DOCUMENTS

43.1 Escort

Where a removee/deportee is escorted by an approved escort officer or a medical or para-medical officer, the detainee’s travel documents and passenger card (for the destination country) are to be held by the escort until arrival at the final destination.

43.2 No escort

On an international flight where the removee/deportee is not in the company of an escort (ie. a supervised departure), it is preferable to seek the co-operation of the flight service director or purser to retain the travel documents until the removee/deportee reaches their destination. This minimises the risk of the documents being lost and the passenger then becoming regarded as an undocumented arrival in a transit or destination country - something for which airlines may be fined.

Officers may give travel documents to compliant and a low-risk removee when they board the aircraft see section 4 About ‘supervised departures’.

44 COMPLETION OF REMOVAL/DEPORTATION

44.1 Supervised departures

The officer/s supervising the departure (whether the DSP or DIMIA) must accompany the removee to the point of departure and remain at the aircraft bay or departure gate until the aircraft takes off.

The supervising officer is to remain at the airport for a short time in case the aircraft is forced to return. Should this happen, the removee is to be taken into detention (s189) and all relevant DIMIA offices and posts concerned informed that the departure has been postponed.

If for any other reason the removal is cancelled or delayed for more than a short time, concerned parties, and other agencies alerted earlier as part of the proposed removal, are to be advised.

44.2 Escorted removals and deportations

The Removal Procedures should clearly specify at what point the escort function in relation to the removal should be finalised.

When the escort function has been finalised, escorts are required to complete and send to the removals officer the *Escorts Removal Report* (Attachment 11 - Escorts removal report).

REMOVAL NOTIFICATION

This Part comprises:

- section 45 Notification to removee
- section 46 Notice to immediate Australian family
- section 47 Enforced removals list
- section 48 Others to notify of removal.

45 NOTIFICATION TO REMOVEE

45.1 General notice to detainee about removals

Removee/deportee are notified of the department's obligation to remove them from Australia in particular circumstances by means of a notice provided by the department upon their detention.

45.2 Notice to detainee of imminent removal/departure

While there is no legislative requirement that detainees be notified of their removal arrangements, the department does, however, have a policy of advising removees/deportees at least 48 hours in advance of the removal. Officers are to use the *Notice of your removal from Australia* (Attachment 15 - Notice of your removal from Australia) to advise removees/ deportees.

Where an officer believes that less than 48 hours notice of removal should be given, to minimise the risk of the person harming themselves or others, or the risk of the removal being disrupted, written approval must be obtained from a State/Territory Director or an SES officer. In such cases a written record of the reasoning behind the decision to provide less than 48 hours notice of removal is to be placed on the removee's/ deportee's file.

Where possible, the *Notice* should be provided to the detainee personally by the case officer, or by DIMIA staff at the relevant IDF.

Officers are to be mindful of the impact that the notice may have on a detainee and consult with the DSP where concerns are held about the person's reaction to delivery of the notice.

The officer is to obtain written acknowledgment from the detainee that the removal details have been received. If a detainee or legal representative refuses to sign the notification, the witnessing officer is to endorse the notice 'Refused to Sign' noting time and date, full name, and signature of officer.

46 NOTICE TO IMMEDIATE AUSTRALIAN FAMILY

If a removee has immediate family in Australia (eg. a spouse or parent) then it will be the removee's responsibility to notify their family of their removal.

If a removee is unable to notify their family, for example, when they are notified of their removal immediately before it occurs, officers are to ask the removee if they would like their immediate family in Australia to be notified of the removal. If the removee requests that their family be notified of the removal, officers are to notify the family as soon as practicable after the removee has left Australia.

47 ENFORCED REMOVALS LIST

State/Territory Offices are required to forward notification of all their proposed removals (supervised, escorted and deportations) to Removals Support Section on a weekly basis.

All removals scheduled to take place the following week are compiled into the Enforced Removals List. The list is prepared by Removals Support Section and forwarded to the Minister's Office and Litigation Branch and other relevant areas of the department, who will inform the relevant State/Territory Office of any impediment to the removal.

48 OTHERS TO NOTIFY OF REMOVAL

The timing of the distribution of removal information will depend upon the circumstances of each case, but should allow adequate time for notification and required action. Different time zones should also be considered with regard to overseas communication.

DIMIA Airport Staff (transit/s and departure point):

- fax or email a summary of the removal (eg. names of removees/escorts, expected arrival/departure times, flight no. and any possible action required by airport staff). Where possible provide at least 48 hours notice, preferably more.
- *Removal Procedures* (eg. Attachment 10 - Removal procedures (example)) should also be provided for escorted removal cases, or where there is pre-arranged airport staff involvement.

Airport Manager, see section 5 Roles in removals.

DIMIA IDF Managers (originating and transit facilities):

- provide a summary of the removal including any action required by IDF DIMIA or DSP staff. Depending on the type of removal and the person being removed, significant assistance may be required from DIMIA IDF staff. In such cases early consultation is necessary and the DIMIA IDF Manager should be provided with the Removal Procedures.

Overseas posts (transit/s and final destination)

Case officers are to advise:

- the overseas posts at least 2 working days in advance, of escorted removals to or through the country or, a country in their area of responsibility.
- A suggested format for providing this information to overseas posts is at Attachment 16 - Notice to overseas post of removal of non-citizens from Australia.

Officers may also wish to send the escort-specific Removal Procedures to the post.

Officers must ensure that the most appropriate contact details are used for overseas posts.

Escorts

See:

- 25.2 Instructions for escorts
- Escorts.

Detention service provider

Case officers are to provide the detention service provider with:

- “Request for Services” for supervised departures - as per standard practice, ensuring the end point for the escort is specified.
- see section 26 Escort service requirements and conditions for further information regarding escorted removals.

Transit and destination countries

Some countries require notification of removals/transits. If in doubt about these requirements consult with Removals Support Section.

Other parties

In certain cases, officers may see a need to advise persons or organisations not specified in this MSI of an upcoming removal. Given the privacy and security sensitivities, officers should not broaden the scope of notification recipients without first consulting with Removals Support Section.

To protect the removee/deportee’s privacy, enquiries from family and friends should be referred to the detainee so that they can respond directly.

SPECIAL ARRANGEMENTS

This Part comprises:

- [section 49 Departures from prison](#)
- [section 50 Departures from alternative detention](#)
- [section 51 Departures from Baxter IDF](#)
- [section 52 Visa holder requesting removal](#)
- [section 53 Spouse/dependants of removees or deportees](#)
- [section 54 Australian born - one parent unidentified](#)
- [section 55 Reintegration packages - IOM](#)
- [section 56 Destitute persons.](#)

49 DEPARTURES FROM PRISON

If the non-citizen has been serving a prison term, officers are to read the [MSI: Non-citizens held in prison liable to enforced departure](#), in conjunction with this instruction.

A non-citizen in correctional detention will have usually been granted a Bridging E visa to regularise their status for the term of their imprisonment. The officer managing the removal is to ensure that the bridging visa is not in effect at the conclusion of the non-citizen's sentence.

A holding order should be in place at the prison to ensure that the unlawful non-citizen is not released into the community at the end of their sentence. Arrangements are to be made for the unlawful non-citizen to be transferred to an IDF once their sentence is completed. Alternatively, the officer may make arrangements for the unlawful non-citizen to directly depart Australia from prison upon conclusion of their sentence.

Officers should issue the standard removal notification documents as outlined in this instruction. These can be sent to the custodial authority (using the covering letter at [Attachment 17 - Letter to custodial authority advising removal arrangements](#)) if appropriate.

50 DEPARTURES FROM ALTERNATIVE DETENTION

When organising the removal of a person from alternative detention, officers have the discretion to transfer the person to a mainstream detention facility close to the time of removal. This option would be suitable when:

- the transfer is required in order to locate the person near services that may be required pre-departure (eg. medical examinations/treatment, handover of property from the DSP)
- the person is likely to resist being removed and would need to be located in an environment conducive to managing their behaviour and/or
- the removal is likely to be unduly disrupted if it commences from the place of alternative detention.

51 DEPARTURES FROM BAXTER IDF

Removals officers in State/Territory Offices should be aware that each detainee within Baxter IDF has been allocated an on-site DIMIA case coordinator. The case coordinator can be identified in ICSE, or by phoning Baxter DIMIA administration. Removals officers are to liaise with the Baxter case coordinator throughout all stages of the process. It is important that the removals officer informs the case coordinator when removal plans are initiated, and of the ongoing status of these plans.

The case coordinator may be able to assist with the delivery of information and forms to detainees, and can also provide local advice, eg. travel arrangements from the Baxter IDF.

52 VISA HOLDER REQUESTING REMOVAL

The department has discretion to “remove” a lawful non-citizen or citizen spouse and/or dependant of a removee or deportee on request. Refer to [section 53 Spouse/dependants of removees or deportees](#) below for further information.

Holders or former holders of Temporary Protection (TPV), Temporary Humanitarian (THV) or Return Pending (RPV) Visas who wish to return home permanently may be eligible for return assistance under a reintegration package administered by IOM.

If minors are involved and there is one parent travelling with them, see also [section 54 Australian born - one parent unidentified](#).

Visa holders, if destitute, may be considered as destitute removals, refer to [section 56 Destitute persons](#).

53 SPOUSE/DEPENDANTS OF REMOVEES OR DEPORTEES

53.1 Overview

Unlawful family members

Unlawful non-citizen spouses/children of a removee/deportee must be removed under the requirements of s198.

Citizens and lawful family members

Under the provisions of sections 199 and 205, the “removal” of citizen or lawful non-citizen spouses/children of a removee/deportee may be considered where:

- it has been established that citizen or lawful non-citizen spouses and/or dependent children do not wish to be separated from the removee/deportee and
- the removee/deportee and spouse (if any) are unable to meet the travel costs to the country of destination for the spouse/dependent children and
- the spouse/parent (or removee/deportee in the case of s199(3) and s205(2)) requests that the child be removed with the removee/deportee.

In any situation where a removee/deportee parent requests that his or her citizen or lawful non-citizen children be removed with them, custody arrangements must be considered. If there is another person with custody of the child/children then that person must be offered a reasonable opportunity to comment on the request for the child’s removal. Legal Policy Section must be consulted for further advice in such situations.

Refer to [section 14.2 Family Court directions](#) for further information on Family Court issues relating to removal.

53.2 Request for removal

The spouse and/or parent are to be interviewed separately to the removee/deportee to ensure that the officer has an opportunity to explain what is involved in the act of “removal” and, to allow the spouse/parent the opportunity to consider the implications of their decision.

Officers are to inform and, if necessary explain, the spouse and the removee/deportee, of the relevant exclusion period provisions that may apply to the removee/deportee.

Officers are to prepare interview notes and place them on file. A summary note of the interview is also to be recorded on ICSE.

Sections 199 and 205 do not require that requests to be removed from spouses or in relation to dependent children be in writing. As a matter of sound administrative practice, however, such requests should be submitted in writing. The following forms can be used for this purpose if required:

- request by spouse for removal of self and/or dependants, see: [Attachment 20 - Request by spouse for removal of self and/or dependants](#) or
- request by removee/deportee for removal of dependants, see: [Attachment 21 - Request by removee/deportee for removal of dependants](#).

53.3 Child's best interests

Any queries by an officer about the child's best interests are to be referred to Legal Policy Section for advice.

53.4 Arrangements to leave Australia

Before arranging tickets for the citizen or lawful non-citizen spouse/children, officers should check that these persons have right of entry to the destination country. If a visa is required, officers should sight the visa (to ensure its validity) before purchasing the tickets.

Officers are not to provide advice to the removee/ deportee and their family about longer-term migration outcomes, such as possible long-term or permanent residency in the destination country for the accompanying spouse/children. These matters are the responsibility of the family and their advisors.

Citizen or lawful non-citizen spouses and dependants removed under s199 and s205 do not leave from an immigration detention facility. Generally, their flight to leave Australia should be arranged to coincide with the removee/deportee's flight.

The spouse and/or dependants need not be escorted on to the flights as they will be departing as citizens or lawful non-citizens. If a dependent child/ren is being removed, the officer must ensure that there are adequate arrangements to meet their welfare needs for the outgoing journey.

Tickets may be provided to the spouse beforehand or made available at check-in. Officer's are to ensure that the ticket is issued under conditions which ensure accountability, ie. only the department is able to cancel or alter the ticket.

53.5 Liability for costs

In addition to their own removal/deportation costs, s212 of the Act provides that where a spouse and/or dependent child(ren) are removed with the removee or deportee, the removee/deportee and spouse are each liable to pay the Commonwealth for the conveyance expenses incurred in respect of their removal. There is no obligation for costs if the spouse is merely accompanying and has not asked to be removed.

This means that the removee/deportee and their spouse are each individually and jointly liable under section 212 for the whole of the conveyance expenses of the removal. The effect of this is that action to recover the whole of the conveyance expenses of the removee/deportee, the spouse and any dependent children can be taken against either the removee/deportee, or the spouse, or both of them jointly.

Officers are to note that dependant children (minors) do not accrue detention and removal debts in their own right; the costs accrue to the parent/parents. Similarly, unaccompanied minors do not accrue detention and removal debts.

A person removed under s199 or s205 as the spouse of a removee/deportee is subject to the same requirement to repay any outstanding debts to the Commonwealth, including debts relating to his or her removal costs under section 209 and/or section 210. Should the person wish to apply for a further visa to visit Australia, and Public interest criterion (PIC) 4004 is a criterion for the visa then the applicant is required to satisfy this criterion by repaying the debt, or by making appropriate arrangements to repay the debt. Repayment of the debt means that the person has satisfied PIC 4004 - all other criteria must be satisfied for the grant of the visa. For further information, see:

- [MSI: Liability of non-citizens to repay costs of detention, removal or deportation](#)
- [MSI: Visa applicants with debts to the Commonwealth](#).

54 AUSTRALIAN BORN - ONE PARENT UNIDENTIFIED

54.1 Procedure to be followed

When planning the removal of an unlawful non-citizen who has an Australian born dependent child (with them in detention) and where one parent is unknown, the following procedures must be followed:

- Ensure that all reasonable steps have been taken to identify the other parent of the Australian born child/children. This will include interviewing the removee to obtain further information regarding the identity and whereabouts of the other parent.
- Ask the removee if they are able to identify the immigration status of the other parent, at the time of the child's birth, (eg. unlawful non-citizen/temporary visa holder/permanent resident/citizen) and if they have supporting evidence.
- Contact the Director, Litigation Branch, to request that they check with the relevant courts to see if there are any custody arrangements for the child/children which may identify the other parent or, require the child/children to remain in Australia.
- If the unidentified parent is eventually confirmed to have been a permanent resident or citizen at the time of the child's birth, this means that the child is an Australian citizen and cannot be "removed" under s198. The child, however, may be 'removed' under s199 at the request of the parent who is being removed (see section 53 Spouse/dependants of removees or deportees for more information).
- If the child's other parent has been identified and located, and has custody/joint custody of the child, officers must seek written consent from this parent for the child to depart Australia. If the other parent does not provide this consent contact the Director, Litigation Branch and the Director, Removals Support Section, for advice.

Unable to identify other parent

If after all reasonable efforts to identify the child's other parent have failed, (including interviewing the parent and Litigation Branch has checked with the relevant courts, see section 54.1 Procedure to be followed) officers may still remove the child under the provisions of s199. Removal under this provision is possible for unlawful non-citizen children and does not constitute a statement about the child's nationality. If the parent being removed does not request that the child be removed with them (as required under s199) officers are to discuss management of the case with the Compliance Manager and/or the Director, Removals Support Section. In such cases removal of the child under s198 will be acceptable if all reasonable efforts to identify the other parent have been undertaken.

55 REINTEGRATION PACKAGES - IOM

55.1 Background

Reintegration packages support the voluntary return of some persons who are no longer found to be owed protection. The department has contracted the International Organization for Migration (IOM) to assist with the administration of certain reintegration packages.

Reintegration packages provide recipients with assistance, including:

- IOM or DIMIA assistance in obtaining travel documents or transit approvals
- air travel back to the person's home country (or other place where they have right of residence)
- cash assistance
- where possible, certain post-arrival services (eg. orientation briefings)

At the time this MSI was issued (Oct 2005), reintegration packages (administered with the assistance of IOM) were available to the following groups:

- Afghans in detention
- Iraqis in detention
- East Timorese (as identified by DIMIA)

- holders or former holders of a Temporary Protection Visa, Temporary Humanitarian Visa or Return Pending Visa who were in Australia on 27 August 2004, including those now in detention.

At the time this MSI was issued (Oct 2005), a DIMIA administered reintegration package was also available to Iranians in detention.

Queries about reintegration packages can be directed to Removals Support Section.

56 DESTITUTE PERSONS

56.1 Detainees

If a detainee who is to be removed is considered destitute (completely lacking resources or means of subsistence) the removals officer should suggest that the detainee approach relatives, friends or charitable institutions to provide assistance with cash and/or clothing.

It is departmental policy that the State/Territory Compliance Branch Manager has discretion to authorise up to \$200 for clothing and up to \$50 cash for use on the outward journey.

In cases where the State/Territory Branch Manager determines that there are circumstances where an amount above \$250 may be warranted, the Director Removals Support Section must be approached. The Director Removals Support Section may authorise an amount up to a total of \$700.

Officers are to note that the provision of a destitute allowance is not standard practice, and it is only to be provided in cases where it is warranted. There is no provision to appeal any decision not to provide an allowance, or to dispute an amount.

The destitute allowance is to be included in the statement of Debts to the Commonwealth provided to the detainee (see MSI: Liability of non-citizens to repay costs of detention, removal or deportation).

56.2 Visa holders

The department has discretion to assist destitute lawful non-citizens who wish to be removed from Australia, see MSI: Visa cancellation under section 109, 116, 128 and 140 - Visa holder requests cancellation.

Where lawful non-citizens request visa cancellation so that they can be removed from Australia, policy is that the cancellation under s116(1)(g) occur when removal is imminent (preferably on the same day). Cancellation under s116(1)(g) is only available to holders of temporary visas.

When planning a removal where a visa is first to be cancelled under s116(1)(g) all relevant papers for removal, including travel documents and removal/cancellation requests should be obtained prior to visa cancellation so as to minimise the period of time the person spends in detention.

If the lawful non-citizen is under 18 years additional requirements apply, in particular the person is not able to request their own visa cancellation. See regulation 2.431(h) for further information.

The suggested procedures for the removal of destitute lawful non-citizens are:

- the visa holder advises the relevant DIMIA Compliance Office of their wish to be removed from Australia.
- the person is counselled (with an interpreter if required) to approach friends, relatives, charities or their diplomatic mission for assistance.
- if the person is still unable to obtain funds for travel, the person is to be advised that they must be unlawfully in Australia for the department to undertake removal action, and that a person will only become unlawful when their visa ceases or is cancelled.
- the person is asked whether they still wish be removed from Australia, and if so, whether they wish to wait until their visa ceases or have their visa cancelled.

- the implications of becoming an unlawful non-citizen should be explained, specifically that under the Migration Act, unlawful non-citizens must be detained. They should also be advised of any relevant special return criteria and public interest criteria.
- they are also informed that detention and removal incurs costs to the Commonwealth for which the client is liable, and that this debt may impact on their ability to obtain a visa to re-enter Australia.
- if the person wishes to have their visa cancelled, they are to request the department to do this in writing (if required, forms are available at [Attachment 18 - Request for visa cancellation](#) and [Attachment 19 - Request for visa cancellation of a minor](#) for this purpose)
- the person is to be advised that to keep detention time to a minimum certain documentation should be provided prior to visa cancellation.

Officers are responsible for:

- ensuring that the travel document is valid
- cancelling the visa (officers should use form 1099). Officers may request the removee to attend a DIMIA office or detention facility shortly before cancelling the visa. The time of cancellation is at DIMIA's discretion but it is to be done as close to the time of departure as practical
- upon visa cancellation the person must be detained
- the person then completes the form at [Attachment 4 - Request for removal from Australia](#)
- the person may be provided with the destitute allowance, see [section 56 Destitute persons](#).

Standard removal procedures should be followed with regards to risk assessments and advice to the airline of the departure.

AFTER LEAVING AUSTRALIA

This Part comprises:

- [section 57 Movement Alert List](#)
- [section 58 ICSE](#)
- [section 59 Follow up.](#)

57 MOVEMENT ALERT LIST

Officers are responsible for recording MAL entries immediately after the person leaves Australia. Responsibility for entering the person's details on MAL varies from office to office and case to case. The removal case officer, however, is ultimately responsible for ensuring that the MAL entry is made immediately.

The MAL entry must detail relevant data that will be used by a decision maker if the person applies for another visa and whether the person was counselled about the possibility of PICS and SRCs - if so, details should be included; for instance, the date of the interview or date of correspondence etc. The MAL entry is to include data relevant to:

- PIC 4004 - Debts to the Commonwealth
- PIC 4013 - 3 year bar that applies to certain cancellations
- PIC 4014 - bar - more than 28 days unlawful
- SRC 5001 - s501 (cancellations and deportations)
- SRC 5002 - removal under s198, 199 or s205.

Officers requiring more information should consult the more detailed MAL instructions available from their Compliance Manager and the [MSI: Applying exclusion periods](#).

58 ICSE

The removals/compliance case officer must ensure that:

- the "country departed to" field has been completed
- the Enforcement Permission Request is finalised
- Immigration Detention Details have been updated
- in the case of a deportee, the deportee's visa has been manually ceased
- all relevant notes have been recorded.

Before finalising the ICSE records, the "client record" is to be checked to ensure that the person has only one client ID, and that the client's record is showing the client as being offshore.

If there is more than one client ID for the detainee, it is the case officer's responsibility to arrange for the PIDs to be "merged". The form is available on DIMIANet. Contact the ICSE Helpdesk for assistance.

59 FOLLOW UP

For financial accountability, the following items should be checked off:

- debts to the Commonwealth submitted to the relevant area (and/or included on MAL and ICSE)
- excess baggage voucher reconciliation
- return of any unused tickets
- escort billing accounted for
- flight costs matched to statistical codes
- reimbursement of escort costs where required

Officers are to ensure all associated documentation is placed on the removee/deportee's file. In particular, they are to ensure that the *Escorts Removal Report (Attachment 11 - Escorts removal report)* is returned by the escort.

It is important that any significant difficulties involved with the removal are flagged with management in the area, and if necessary with Removals Support Section. Systemic problems which arise repeatedly can then be identified and addressed.

If an officer becomes aware or suspects that:

- an Australian citizen or resident was removed as an unlawful non-citizen (ie. under s198) and/or
- that any aspect of a removal was unlawful

the officer must raise this with an SES officer as soon as possible.

NEIL MANN

First Assistant Secretary

Compliance Policy & Case Coordination Division

ATTACHMENT 1 - DEPARTURES OF NON-CITIZENS FROM AUSTRALIA

Departures of non-citizens from Australia

<i>Description</i>	Left Australia unlawful departure	Monitored departure	Turnaround removal/departure	Supervised departure (unescorted removal)	Escorted removal	Requested removal	Deportation
	Referred to immigration at airport on departure	Case officer checks 'movements' to ensure person departed	Detained (s189) following refused clearance at port (s172)	Removal from detention (s198) - not escorted on departing flight	Removal from detention (s198), escorted on departing flight because of administrative / operational reasons or because person is a threat to aviation security	Department assists a lawful non-citizen or citizen spouse/ dependant to accompany a removee or deportee (s199 & s205)	May be in detention, or (infrequently) depart unsupervised from community
<i>Departs from</i>	Community	Community	Detention - airport	Detention	Detention	Community	Detention/ community
<i>Status when leaves</i>	Unlawful	Lawful - BV	Unlawful	Unlawful	Unlawful	Lawful	Lawful
<i>Return funded by</i>	Person who has departed	Visa holder	Carrier (Removee liable)	Removee/DI MIA (Removee liable)	Removee/DIMI A (Removee liable)	DIMIA (Removee liable)	Deportee/DIMIA (Deportee liable)
<i>Criteria which may be relevant to subsequent visa application (SRC & PIC)</i>	4004 if Cwth debts 4013 if visa canx 4014 if >28days unlawful	4004 if Cwth debts 4013 if visa canx 4014 if >28days unlawful	5002 must apply 4004 if Cwth debts 4013 if visa canx 4014 if >28days unlawful	5002 or 5001 (some s501 canx) must apply 4004 if Cwth debts 4013 if visa canx 4014 if >28days unlawful	5002 or 5001 (some s501 canx) must apply 4004 if Cwth debts 4013 if visa canx 4014 if >28days unlawful	5002 must apply 4004 if Cwth debts	5001 must apply 4004 if Cwth debts 4013 if visa canx 4014 if >28days unlawful

ATTACHMENT 2 - REMOVAL AVAILABILITY ASSESSMENTRemovee details

Name: _____

Date of birth: _____

Citizenship: _____

Client ID: _____

IDF (if applicable): _____

I have reviewed the client file and associated documents and am satisfied that:

- There are no outstanding/unresolved identity or nationality issues (see section 12.2 Identity/nationality)
- The person is an unlawful non-citizen *See folio.....*
- The person does not have any visa applications which have not been finally determined *See folio.....*
- The eligibility period for appealing to the MRT/RRT or the Courts, following a substantive visa refusal or cancellation, has expired *See folio.....*
- The person has requested removal under s198(1) OR the initial two working days (or seven working days if extension granted) in which the person may apply for a visa has ceased (s195(1)) *See folio.....*
- The person has been cleared by the department's litigation/legal area of having any outstanding court matters relating to the department *See folio.....*
- The person has no outstanding "ministerial intervention" requests OR has outstanding "ministerial intervention" request but Removals Support Section has cleared removal action *See folio.....*
- The person is not the subject of orders/injunctions preventing removal from Australia, to the department's knowledge
- The person, or any other party (eg Ombudsman, UNHCR), has not made any substantial claims against removal OR claims have been made which have been considered and finalised. *See folio.....*

CONCLUSION

In the absence of any of the above matters being unresolved, there is no known impediment to the removal from Australia pursuant to section 198 of the above named.

Signed:

Case officer

State/Territory Director or SES Officer

Date: _____

Date: _____

A copy of the completed assessment is to be placed on the removee's/deportee's file

ATTACHMENT 3 - PROGRESSING AND EFFECTING REMOVAL

Progressing & effecting removal

	Progress removal travel documents & arrangements	Remove from A/A
Person requests removal in writing – at any stage.	√	Must have litigation clearance
1 st 2 days in detention, or 7 days if extension granted. (Eligibility period for lodging visa applications)	√	X
Application for a BV lodged, or within two days of a negative BV decision (ie. appeal window for the MRT), or has application for review of BV decision before MRT, AAT or the courts.	√	ONLY if cleared through RSS
Visa application in progress	X	X
Eligibility period for appealing to MRT/RRT, following a substantive visa refusal or cancellation.	X	X
MRT/RRT Review in progress	X	X
Eligibility period (28 days) to lodge with Federal and/or Full Federal Court following MRT/RRT decision relating to substantive visa application	X	X
Court cases in progress (PV applicants)	X	X
Court cases in progress (other substantive visa applications or immigration matters)	Consult with RSS	X
Court cases in progress – that DIMIA is aware of (unrelated to substantive visa applications or DIMIA matters)	√ for PV applicant cases RSS must be consulted	ONLY if cleared through RSS
Request for discontinuance of court proceedings provided to Department in writing	√	MUST be cleared through Litigation & RSS
Ministerial Intervention Request outstanding	√ for PV applicant cases RSS must be consulted	Consult with Intervention Unit. for PV applicant cases RSS must be consulted
Representations made to halt removal	Compliance Branch Manager and/or RSS must be consulted prior (RSS for all PV cases)	Compliance Branch Manager and/or RSS must be consulted prior (RSS for all PV cases)
Family court orders	Consult with RSS &/or Litigation	Consult with RSS &/or Litigation
Court injunction to stay removal	Consult with RSS	X

- ‘Substantive visa matters’ do not include those matters relating to bridging visa applications.
- If more than one of the above matters relates to a detainee the stricter provisions (ie preventing removal action) apply.
- If a detainee makes a request in writing to be removed and there are matters which may prevent removal RSS should be consulted.

ATTACHMENT 4 - REQUEST FOR REMOVAL FROM AUSTRALIA

Request for removal from Australia

To the Minister

I, _____ (*insert name*) am an unlawful non-citizen and hereby request removal from Australia under **section 198(1)** of the *Migration Act 1958* (the Act), which states:

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

This request (where applicable) also serves as notice that I wish to:

- withdraw any unresolved applications with the Department of Immigration and Multicultural Affairs and Indigenous Affairs as per s49(1) of the Act, and all requests for “ministerial intervention”.
- advise the Federal Magistrates Court, Federal Court, or High Court of Australia that I wish voluntarily to be removed from Australia and wish to discontinue any legal action that involves the Department of Immigration and Multicultural and Indigenous Affairs.

I understand that this means that if I have a matter before the department, Minister, Federal Magistrates Court, Federal Court or High Court, each of them will cease consideration of it.

In making the above requests I have consulted with my legal representatives (if applicable).

This document **has/has not** (mark out) been translated to me through a TIS interpreter.

Signature: _____

Name: _____

Date of birth: _____

Citizenship: _____

IDF ID Number: _____

Date: _____

Witnessed by:

Interpreter (If applicable)

Name: _____

Name: _____

Position: _____

TIS Number: _____

Signature: _____

Signature: _____

ATTACHMENT 5 - DIMIA AVIATION ASSESSMENT

DIMIA Aviation Assessment - (Removees and Deportees)

This form is for DIMIA use only. You must complete this form before completing the *Notice of the proposed movement of a person in custody*.

1. Detainee details

Name:

Date of Birth:

Nationality:

ICSE Client ID:

IDF/Centre ID:

2. Detention service provider assessment

Before assessing the detainee/removee travel type, you should obtain a Detention service provider assessment. DIMIA records about the person should also be consulted. (See MSI 19.1).

Was a DSP assessment received?

- YES**
- NO (state reason)** _____

Continue to 3

3. Is the person dangerous per Aviation Transport Security Regulations, ie:

- likely to attempt to commit an unlawful interference with aviation; or
 - likely to attempt to escape; or
 - DIMIA is aware that the person has been charged with, or convicted of, a crime involving violence against a person or serious property damage.
- YES - continue to 9**
- NO - continue to 4**

4. Is the person undertaking domestic or international travel?

- DOMESTIC - continue to 6**
- INTERNATIONAL - continue to 5.**

5. For persons undertaking international travel, do any of the following apply:

- Deportee (s200)
- Section 501 visa cancellation
- Criminal record
- Unauthorised boat arrival
- Reluctant or uncooperative attitude toward removal
- Serious medical issues
- Mental health issues
- DIMIA or foreign government wants the person to be escorted
- Any other issues that may disrupt flight _____
- YES - person should usually be escorted - continue to 8.**
- **If you consider that the person does not require an escort then discuss with your supervisor/manager state the reason here and continue to 7** _____
- NO - continue to 7**

6. Travel type is Domestic Travel Maintaining Immigration Detention

- complete Pts A and B of Notice of the Proposed movement of a person in custody
- send the Notice to the aircraft operator at least 24 hours before the flight is due to commence (unless aircraft operator agrees to less notice)
- the aircraft operator must raise any concerns at least 12 hours before the flight
- no set number of escorts required

7. Travel type is Supervised departure

- complete only Pt A of the Notice of the Proposed movement of a person in custody
- send the Notice to the aircraft operator at least 6 hours before the flight is due to commence (unless aircraft operator agrees to less notice)
- the aircraft operator must raise any concerns at least 3 hours before the flight
- nil escorts required

8. Travel type is Escorted International Travel by Non-Dangerous Persons

- complete Pts A and B of Notice of the Proposed movement of a person in custody
- send the Notice to the aircraft operator at least 48 hours before the flight is due to commence (unless aircraft operator agrees to less notice)
- the aircraft operator must raise any concerns at least 24 hours before the flight
- no set number of escorts required

9. Travel type is Escorted travel by dangerous persons (domestic or international)

- complete Pts A and B of Notice of the Proposed movement of a person in custody
- send the Notice to the aircraft operator at least 48 hours before the flight is due to commence (unless aircraft operator agrees to less notice)
- the aircraft operator must raise any concerns at least 24 hours before the flight
- once the aircraft operator has endorsed travel on the Notice, send the endorsed Notice to any Australian airports through which the removee/deportee will pass, at least 12 hours before the person is due to arrive at the airport (less notice may be given if the airport operator agrees)
- at least two escorts per dangerous person are required (at least one of the escorts must be of the same sex as the removee/deportee).

DIMIA Officer

Signed: _____

Name: _____

Position Number: _____

Office: _____

Date: _____

A copy of this form is to be placed on the removee's/deportee's file

ATTACHMENT 6 - DETENTION SERVICE PROVIDER ASSESSMENT

Detention service provider assessment of detainee for aviation travel

Detainee details

Name: _____

Date of Birth: _____

Sex: _____

Citizenship: _____

IDF: _____

Centre ID: _____

Information/assessment about the person:

Has any known history of violence, aggression or abusive behaviour (including in detention) YES/NO

Has been involved in rioting YES/NO

Known to have been charged with or convicted of a crime involving violence or serious property damage? YES/NO

Known to have engaged in sexually-related criminal activity YES/NO

Known to have any other criminal history YES/NO

Has escaped or attempted escape from custody YES/NO

Is likely to attempt escape during transportation YES/NO

Previously required restraint while being transported YES/NO

Likely to be offensive or disruptive towards crew or passengers YES/NO

Addicted to an illegal substance or has a history of substance abuse YES/NO

In a mental state requiring special attention YES/NO

Has any medical conditions which may affect travel (including physical disability/impairment) YES/NO

Required to take prescribed medication immediately before or during flight YES/NO

Has a history of self harm YES/NO

Known to be third parties in the community who may disrupt the person's departure/travel, facilitate the person's escape or attempt to harm the person YES/NO

Include details of any affirmative answers (or provide in attached documentation)

Any other issues you are aware of that may affect aviation security, or any other comments you wish to make (attach information if insufficient space)?

Signature: _____

Name: _____

Position: _____

Date: _____

**ATTACHMENT 7 - NOTICE OF THE PROPOSED MOVEMENT OF A
PERSON IN CUSTODY**

Contact Removals Support Section to obtain this form.

ATTACHMENT 8 - TRAVEL TYPE SUMMARY

Travel types, notification and escort requirements for prescribed aircraft

Type	Purpose	Notification reqts - using the 'Notification of the proposed movement of a person in custody'	Escort requirements
Domestic travel maintaining immigration detention	Domestic travel where detainee is non-dangerous but escorted to maintain immigration detention and/or because the Department wants to monitor the detainee	Parts A and B of the form sent to the aircraft operator at least 24 hours in advance of the flight (unless aircraft operator agrees to less notice) If aircraft operator wants further information or wishes to raise concerns about escort arrangements then aircraft operator must raise with DIMIA at least 12 hours before the flight	No set number of escorts required
Supervised departure (from Australia)	For removees who cooperate with the removal process, are non-dangerous and present a low-risk of causing a disturbance on the flight or in the overseas destination/s. Not suitable for persons requiring medical escort.	Part A of the form sent to the aircraft operator at least 6 hours in advance of the flight (unless aircraft operator agrees to less notice) If aircraft operator requires additional information it must ask for this at least 3 hours before the flight	Nil escorts
Escorted international travel by non-dangerous persons	Removee/deportee is non-dangerous but an escort is required for reasons such as ensuring that they proceed through transit; other governments require the person be escorted; person has serious mental health/medical issues, person uncooperative with departure process etc	Parts A and B of the form sent to the aircraft operator at least 48 hours in advance of the flight (unless aircraft operator agrees to less notice) Aircraft operator to raise any concerns at least 24 hours before the flight	No set number of escorts required
Escorted travel by dangerous persons (domestic or international)	For removees/deportees who are dangerous per aviation regulations, ie: - likely to attempt an unlawful interference with aviation; or - likely to attempt to escape; or - DIMIA is aware that the person has been charged with, or convicted of a crime involving violence or serious property damage.	Parts A and B of the form sent to the aircraft operator at least 48 hours in advance of the flight (unless aircraft operator agrees to less notice) Aircraft operator to respond to DIMIA at least 24hrs before the flight Once aircraft operator has endorsed travel on the form, DIMIA (or with its agreement, the aircraft operator) sends a copy of the endorsed form to each security controlled airport through which the person will travel, 12 hours in advance of the dangerous person arriving at the airport	At least 2 escorts per removee/ deportee (at least one escort of the same sex as the removee/deportee) Escorts cannot be responsible for any other persons in custody

ATTACHMENT 9 - GENERAL INFORMATION FOR ESCORTS

General information for escorts - on flights from, and within, Australia

Authority and restraint

Within Australia, the authority to hold the removee and to use reasonable restraint is afforded by the Migration Act.

Authority from an Australian law cannot be invoked once a person is outside Australia. The carriage of detainees is covered under guidance material on aircraft security provided by the International Civil Aviation Authority, in international conventions and through their "Security Manual for Civil Aviation against Acts of Unlawful Interference". The Department of Transport and Regional Services (DOTARS) is responsible for applying these standards in Australia.

The authority of an escorting officer to take preventative measures is derived from the aircraft commander in order to:

- protect the safety of the aircraft, or of persons or property, or
- maintain good order and discipline on board.

Escorts should be equipped with restraining devices, to be used only in the event that restraint is considered necessary. Escorts must be trained in the appropriate use of physical restraint and restraint devices. Physical holds and/or restraint devices must be used for the minimum time necessary.

Escorts should not carry mace, tear gas or similar incapacitating gas-generated devices on board an aircraft. Sedatives must not be used as a means of restraint.

Oral restraint (eg. mouth taping) may only be used if the aircraft commander directs that this be done aboard the aircraft. It is not to be used in any other circumstances.

Medication

If escorts are involved in the administration of medication (including headache tablets) they must record what was administered, the dosage and reason for administration.

Flight instructions

Escorts should identify themselves to the carrier's security personnel and flight attendants.

Subject to the airline's discretion, DIMIA has requested that the escorted person be:

- boarded before and disembarked after all other passengers
- seated as far to the rear of the passenger cabin as possible but not in a lounge area or next to/across from an exit
- seated with the escort between the detainee and the aisle
- accompanied and under surveillance at all times, including visits to the toilet
- served food, but not provided with glassware or metal utensils and
- not served any intoxicating beverages.

Escorts are not to consume any intoxicating beverages while on escort duty. It is not appropriate to take detainees into shops, including duty-free shops, during the escort.

A carrier may refuse to accept a detainee who jeopardises the safety of other passengers.

The escorting officer should maintain possession of the detainee's property, any medication and travel documents until the conclusion of the escort.

ATTACHMENT 10 - REMOVAL PROCEDURES (EXAMPLE)**Removal procedures (example)**

Removal of [detainee name] from [centre] to [destination] on [date]

Contents

1. Important contacts
2. Detainee details
3. Travel document information
4. Ticket information
5. Travel overview
6. Travel overview
 - 6.1 Travel overview Baxter
 - 6.2 Whyalla
 - 6.3 Adelaide
 - 6.4 Dubai
 - 6.5 Tehran
7. Escort accommodation and return travel
8. Finalisation of removal

Attachments

- General information for escorts
- Escorts removal report

1 IMPORTANT CONTACTS

Name	Position	Work Area	Number #1	Number # 2	When to contact
Peter Blatts	Removals officer	DIMIA National Office	0456516616	056464654	***FIRST CONTACT FOR ALL ISSUES*** - on receipt of procedures - difficulties at check-in, eg excess baggage - issues en route
Sarah Brown	DIMIA liaison officer	DIMIA Baxter IDF	0456516616	056464654	- travelling and undertaking liaison role on trip from Baxter to Whyalla to Adelaide
Karen Moffat	Director, RPOS	DIMIA National Office	0418956342	046545654	- as above, if unable to contact P. Blatts - serious incidents
n/a		Carlson Wagonlit	b/h 6533333	a/h 180003083	- Accommodation issues - Emergency travel assistance
Maria Foley	PMO	DIMIA Dubai	045646436		- Serious issues in transit in Dubai.
Richard Stodge	GSL Ops Manager	Baxter	0011223344		- Serious issues
Kim Smith	GSL - head escort	"On escort"	02314567		- issues directly affecting escort

2 DETAINEE DETAILS

Name: Mohammad MOHAMMAD
DOB: 13.02.1972
Centre ID: BX012345
Nationality: Iranian
Client ID: 1234567890

3 TRAVEL DOCUMENT

Collect from	When	Name on Doc	DOB on doc	Travel Document No.	Expiry Date	Issuing Country
DIMIA Deputy-Manager (Kevin Anderson)	Morning of departure 08/09/04	Mohammad Mohammad (detainee)	13.02.1972	L4589652	10.10.05	Iran

Holding instructions: Travel document should be held in the *Escort Removal Pack* throughout the removal procedure.

Return instructions: The travel document should be provided to the [detainee / third party] at [the end of the escort].

4 TICKETS

Collect from	When	Tickets for (escort/detainee)	For travel
DIMIA deputy	Morning of departure 08/09/04	Kim Smith (escort) Roger Siti (escort) Md Md (detainee)	Adel – Dubai - Tehran
Whyalla Airport	On arrival at airport	Sarah Brown (DIMIA) Kim Smith (escort) Roger Siti (escort) Md Md (detainee)	Whyalla - Adelaide

5 TRAVEL OVERVIEW

Removal

From	To	Dep (time-date)	Arr (time-date)	Flight/Vehicle	Escorts	Other detainees	DIMIA person/s
Baxter	Whyalla	0800-08/08/04	0900-08/08/04	GSL car	Kim Smith Roger Siti		Sarah Brown
Whyalla	Adelaide	1000-08/08/04	1100-08/08/04	AA123	Kim Smith Roger Siti		Sarah Brown
Adelaide	Dubai	1400-8/8/04	1200-9/8/04	MH233	Kim Smith Roger Siti		
Dubai	Tehran	1500-9/8/04	1900-9/8/04	MH344	Kim Smith Roger Siti		

Return of Escort

From	To	Dep (time-date)	Arr (time-date)	Flight/ Veh.	Escorts	DIMIA person/s
Tehran	Dubai	1800-10/08/04	2200-10/08/04	MH999	Kim Smith Roger Siti	
Dubai	Adelaide	0000-11/8/04	1200-11/8/04	MH000	Kim Smith Roger Siti	
Adelaide	Baxter	1230-11/8/04	1600-11/8/04	GSL car	Kim Smith Roger Siti	

Note: All times are local times

Time differences, relative to Adelaide, S. A.: Dubai +8hrs, Tehran +10hrs

6 REMOVAL PROCEDURES**6.1 BAXTER (TO WHYALLA)**

From	To	Dep (time-date)	Arr (time-date)	Flight/ Vehicle	Escorts	Other detainees	DIMIA person/s
Baxter	Whyalla	0800-08/08/04	0900-08/08/04	GSL car	Kim Smith Roger Siti		Sarah Brown

- Detainee baggage checked to ensure it meets baggage guidelines (as per operational procedures and removals officer advice)
- Detainee checked for contraband items on person
- Detainee identity checked against travel document and other records
- Escort removal pack prepared, with items checked off. Held by head escort on departure from centre.
- insert any specific instructions for this leg, incl airport considerations, transits, flight issues (notifying pilot etc)

6.2 WHYALLA (TO ADELAIDE)

From	To	Dep (time-date)	Arr (time-date)	Flight/ Vehicle	Escorts	Other detainees	DIMIA person/s
Whyalla	Adelaide	1000-08/08/04	1100-08/08/04	AA123	Kim Smith Roger Siti		Sarah Brown

- insert any specific instructions for this leg, incl airport considerations, transits, flight issues (notifying pilot etc), baggage handling etc

6.3 ADELAIDE (TO DUBAI)

From	To	Dep (time-date)	Arr (time-date)	Flight/ Vehicle	Escorts	Other detainees	DIMIA person/s
Whyalla	Adelaide	1400-08/08/04	1200-09/08/04	MH233	Kim Smith Roger Siti		

- insert any specific instructions for this leg, incl airport considerations, transits, flight issues (notifying pilot etc), baggage handling etc

6.4 DUBAI (TO TEHRAN)

From	To	Dep (time-date)	Arr (time-date)	Flight/ Vehicle	Escorts	Other detainees	DIMIA person/s
Whyalla	Adelaide	1500-09/08/04	1900-09/08/04	MH344	Kim Smith Roger Siti		

- insert any specific instructions for this leg, incl airport considerations, transits, flight issues (notifying pilot etc), baggage handling etc

6.5 TEHRAN - END OF ESCORT

- will be met by xxx [describe handover procedures, escort transfer to hotel etc.]
- return property
- complete escort undertaking

7 ESCORT ACCOMMODATION AND RETURN TRAVEL**Accommodation:**

Name	Address	Phone	Check-in	Check-out	Rooms booked	In name of
Rydges	234 Taylor Rd Dubai	0235631354	late -09/08/04	1600-10/08/04	2 x single	Kim Smith Roger Siti conf no. xxsdw4253

Return travel:

From	To	Dep (time-date)	Arr (time-date)	Flight/Veh.	Escorts	DIMIA person/s
Tehran	Dubai	1800-10/08/04	2200-10/08/04	MH999	Kim Smith Roger Siti	
Dubai	Adelaide	0000-11/8/04	1200- 11/8/04	MH000	Kim Smith Roger Siti	
Adelaide	Baxter	1230-11/8/04	1600- 11/8/04	GSL car	Kim Smith Roger Siti	

- any special instructions, eg carriage of handcuffs on flight(?)

8 FINALISATION OF REMOVAL

On return from escorted removal, the escorting officer is to:

- forward completed Escorts removal report to the DIMIA Deputy Manager who will forward to Removals Case Officer
- return relevant items held in the Escort removal pack to the Deputy Manager - such as ticket stubs, receipts etc.
- return the empty Escort removal pack to the DSP Operations Manager for re-use.

ATTACHMENT 11 - ESCORTS REMOVAL REPORT

*To be completed by the head escort and returned to DIMIA immediately on return to Australia.
Please include any matters you consider should be brought to the department's attention.
(Attach further information if there is insufficient space on this form)*

Escort name:**Detainee name:****Type (GSL, police etc):****Centre ID:****Destination:****Date of departure:****Departing from:****Time escort commenced:****Pre-departure**

Eg. Transfers, transportation, check-in, outwards clearance

During flight/transit

Eg. Cabin crew, transit ports, disturbances (include details of any medication administered)

Were restraints used at any stage of the escort? Yes / No (*If yes provide details of circumstances leading to restraint, types of restraint used and duration of restraint*)

Were restraints used at any stage of the escort? Yes / No (*If yes provide details of circumstances leading to restraint, types of restraint used and duration of restraint*)

Arrival at destination

Date and time of arrival: Time customs/immigration cleared:

The removee/deportee was (tick as applicable):

- Released from my custody after clearing customs/immigration
- Met by friends/relatives on arrival
- Transferred from my custody to that of _____ as per DIMIA instructions
- Met by law enforcement officers of that country
- Other _____

Post arrival & return

Eg. Hotel transfer, accommodation

Total length of escort: _____

(time of arrival at local airport to time of clearance in destination country)

Signed: _____

Date: _____

ATTACHMENT 12 - CONSENT TO USE TICKET FOR REMOVAL

To the Department of Immigration and Multicultural and Indigenous Affairs

I am the holder of the following ticket:

Name on ticket: _____

Airline: _____

Flight number/s: _____

Ticket number: _____

Flight from: _____

Flight to: _____

I hereby consent to your applying the said ticket for or towards the conveyance of:

Of _____ (name)

From _____ (departing city)

To _____ (destination city)

as arranged by the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs.

Dated this _____ day of _____ 20_____

Signed _____

/ / 20_____

Witnessed by:

Signature: _____

Name: _____

ATTACHMENT 13 - USE OF DETAINEE TICKET WITHOUT CONSENT

Notice in respect of removee/deportee holding a ticket for travel out of Australia

To: _____

(Master, owner, agent or charterer)

In accordance with provisions of the Migration Act 1958 _____ is to be removed / deported from Australia.

Section 216 of the Act provides among other things, that, where the Commonwealth makes arrangements for the conveyance of a removee / deportee from a place in Australia to a place outside Australia, and the removee / deportee or another person is the holder of a ticket for his / her conveyance from a place within Australia to a place outside Australia, the Secretary or a person delegate of the Secretary may, on behalf of the removee / deportee and either with or without his/her consent, arrange for the ticket to be applied for or towards his / her conveyance to a place outside Australia.

Section 216 of the Act further provides that such arrangements made by the Secretary or a delegate of the Secretary are as valid and effectual as they would be if they had been made by the removee / deportee themselves.

_____ is the holder of the following ticket:

Name on ticket:	_____	Ticket number:	_____
Airline:	_____	Flight from:	_____
Flight number/s:	_____	Flight to:	_____

In accordance with the provisions of section 216, and without the consent of the ticket holder, I request that you arrange for the ticket specified above to be applied for or towards his/her conveyance from _____ to _____ on the following flight _____ (flight no./time/date) if possible, or on the next alternative flight as agreed between yourself and the Department of Immigration and Multicultural and Indigenous Affairs.

Dated this _____ day of _____ 20____

By the delegate of the Secretary for the purposes of section 216 of the Migration Act 1958

Signature: _____

Name: _____

Position No. _____

Witnessed by:

Signature: _____

Name: _____

Receipt is acknowledged of the original of this notice

ATTACHMENT 14 - NOTICE UNDER SECTION 218 (AIRLINE TO RECEIVE PERSON)

To: _____

(Master, owner, agent or charterer)

WHEREAS is a person liable to removal under the Migration Act 1958:

AND WHEREAS the vessel _____ of which you are the master, agent, owner or charterer is due to leave _____ bound for the port of _____

AND WHEREAS I am satisfied that the said _____ will be permitted to land at that port.

YOU ARE HEREBY REQUIRED to receive the said on board the vessel for conveyance to the port of and to receive on board the vessel until it arrives at/departs from (Name of person), a person charged with the detention of the said

Dated this _____ day of _____ 20____

By the delegate of the Secretary for the purposes of section 218 of the *Migration Act 1958*

Signature: _____

Name: _____

Position No. _____

Witnessed by:

Signature: _____

Name: _____

ATTACHMENT 15 - NOTICE OF YOUR REMOVAL FROM AUSTRALIA

[To be provided to detainees when removal is to be effected]

To _____

As you have been assessed as being available for removal, you are to be removed from Australia under provisions of the *Migration Act 1958* at:

- s 198
- s 199
- s 205

You will be removed from Australia on _____ arriving at _____ on _____ / within the next 48 hours [*delete as appropriate*].

You **will/will not** be escorted on your departing flight.

You will **not** be permitted visitors at the airport.

You should be aware that there might be **restrictions on your re-entry** to Australia.

In particular the following provisions may apply to you:

- Public Interest Criteria 4004 - Debts to the Commonwealth outstanding. Eligibility for (temporary or permanent) visa grant affected while you have outstanding debts to the Commonwealth.
- Public Interest Criteria 4013 - Visa cancelled under *some* provisions of s116, 109, 128 or 137J. Eligibility for (temporary) visa grant affected for 3 years following departure.
- Public Interest Criteria 4014 - More than 28 days unlawful in Australia. Eligibility for (temporary) visa grant affected for 3 years following departure.
- Special Return Criteria 5001 - Deportations & s501 cancellations (where criminal conduct was involved.) Eligibility for (temporary or permanent) visa grant affected permanently.
- Special Return Criteria 5002 - Removed under s198, 199 or 205. Eligibility for (temporary or permanent) visa grant affected for 12 months following departure.

If you are considering applying for a visa offshore, you should consult with the local DIMIA post regarding any restrictions that may apply.

I acknowledge receipt of this notice

Signature: _____	Interpreter (if applicable):
Name: _____	Name: _____
Date: _____	TIS Number: _____
	Signature: _____

ATTACHMENT 16 - NOTICE TO OVERSEAS POST OF REMOVAL OF NON-CITIZENS FROM AUSTRALIA

- *to be emailed to posts in destination and transit countries [see OS removals contact list] at least 48 hours prior to removal. Follow up if required.*
- *required for escorted removals to all countries and for some unescorted removals (contact RSS).*

Destination post:**Transit post/s:****From:** *Officer, office, contact details***For post information only:** Yes/No**Detail any action required by post (if applicable):****Client details**

Name:

Date of birth:

Aliases:

Nationality:

Travel Doc. no:

Travel Doc. expiry:

ICSE client ID:

Detention facility:

Visa history*[Can cut and paste MAL narrative]***Criminal issues****Medical and mental health issues****Other issues***Eg significant detention incidents, third party involvement, etc***Compliance information**

Is the client cooperative with their removal? (eg requested removal or fully compliant) Yes/No

Will restraints be carried by escorts? (If yes, what type) Yes/No

Is it intended for the client to be restrained on the flight? Yes/No

Is it intended for the client to be restrained at the transit airport/s? Yes/No

Is a holding area required at the transit airport? Yes/No

(if yes, arrangements must be made in advance with the post)

Is the client being met by agencies/persons (including DIMIA) at the destination airport? Yes/No

(If yes, provide confirmed details)

Are there other detainees known to be travelling on these flights? (if yes, provide name/s & Yes/No
DOB)

Escort details

Mobile phone no. for head escort (if known):

Type of escort: (eg GSL, Police, Medical, DIMIA liaison etc)

Name:

Date of birth:

Gender:

Nationality:

Passport No.:

Passport expiry:

Travel details

[Cut and paste travel details]

ATTACHMENT 17 - LETTER TO CUSTODIAL AUTHORITY
ADVISING REMOVAL ARRANGEMENTS

To: The Superintendent

Dear Sir/Madam

NOTIFICATION OF REMOVAL OF PERSON IN CUSTODY

Please be advised that _____ who is currently in your custody is an unlawful non-citizen liable to be removed under section 198 of the Migration Act 1958 (the Act), or a person liable to deportation under section 200 of the Act.

Removal/deportation will be implemented when he/she completes the custodial portion of his/her sentence. It may also be necessary for you to hold the prisoner in immigration detention under section 254 of the Act until their removal/deportation, or to assist with their transfer to an immigration detention facility.

Please give the attached notice/s to the person specified above, and request that he/she sign that the notice/s have been received. If he/she refuses to sign the notice, this should be recorded.

It would be appreciated if you could fax the notices back to me at the earliest opportunity, and to send the originals through by mail. You may wish to retain a copy for your files.

Thank you for your help with this matter. Should you have any questions please don't hesitate to contact me.

Yours sincerely

(name)

(position)

(date)

ATTACHMENT 18 - REQUEST FOR VISA CANCELLATION**Request for visa cancellation**

To the Minister

I, _____ (insert name), am a non-citizen visa holder.

I request that my visa be cancelled, under section 116(1)(g) of the *Migration Act 1958*.

I am aware that following cancellation I will become an unlawful non-citizen and that, unless a further visa is granted, I will be detained and removed from Australia as soon as practicable.

I am aware that if my visa is cancelled and I am subsequently removed from Australia that this may affect future re-entry rights to Australia and may attract a debt to the Commonwealth for detention and removal costs.

In making the above request I have consulted with my legal representatives (if applicable).

This document **has / has not** (mark out) been translated to me through a TIS interpreter.

Signature: _____

Name: _____

Date of birth: _____

Citizenship: _____

Visa Subclass & Expiry: _____

Client ID: _____

Date: _____

Witnessed by:

Interpreter (If applicable)

Name: _____

Name: _____

Position: _____

TIS Number: _____

Signature: _____

Signature: _____

Note: This document does not serve as a record of visa cancellation. Form 1099 must be completed by the officer, following the completion of this request by the non-citizen. A Request for Removal form should also be completed if the person wishes for removal to be effected as soon as possible.

ATTACHMENT 19 - REQUEST FOR VISA CANCELLATION OF A MINOR

To the Minister

Visa holder details

Name: _____

Date of Birth: _____

Citizenship: _____

Visa subclass & visa period: _____

Client ID _____

Requesting person details

Name: _____

Date of Birth: _____

Relationship: _____

I, _____ (insert requestors name) request that the visa of _____ (insert minor's name) be cancelled under section 116(1)(g) of the *Migration Act 1958* and paragraph 2.43(h) of the *Migration Regulations 1994*.

I am 18 years or older and can lawfully determine where the minor visa holder is to live.

I am aware that following cancellation the visa holder will become an unlawful non-citizen and that, unless a further visa is granted, will be detained and removed from Australia as soon as practicable.

I am aware that if the visa is cancelled and the non-citizen is subsequently removed from Australia that this may affect future re-entry rights to Australia and may attract a debt to the Commonwealth for detention and removal costs.

In making the above request I have consulted with my legal representatives (if applicable).

This document **has/has not** (mark out) been translated to me through a TIS interpreter.

Signature: _____

Date: _____

Witnessed by:

Interpreter (If applicable)

Name: _____

Name: _____

Position: _____

TIS Number: _____

Signature: _____

Signature: _____

Note: This document does not serve as a record of visa cancellation. Form 1099 must be completed by the officer, following the completion of this request by the non-citizen. A Request for removal form should also be completed if the person wishes for removal to be effected as soon as possible.

ATTACHMENT 20 - REQUEST BY SPOUSE FOR REMOVAL OF SELF AND/OR DEPENDANTS

The following request for removal of a citizen or lawful non-citizen spouse and (if applicable) dependent children is in relation to the removal/deportation of _____ (insert removee/deportee name), who is

- An unlawful non-citizen to be removed under section 198; OR
- A non-citizen to be deported under section 200.

I, _____ (insert spouse name), am the spouse of the person named above who is liable for removal/deportation from Australia.

I am a lawful non-citizen / Australian citizen (delete as appropriate) and request that I be removed from Australia under the provisions in the Migration Act 1958 at:

- section 199 (spouse of unlawful non-citizen liable for s198); or
- section 205 (spouse of person liable for deportation under s200).

I also request that the following dependent children be removed with me:

_____	Lawful non-citizen / Australian citizen
_____	Lawful non-citizen / Australian citizen
_____	Lawful non-citizen / Australian citizen
_____	Lawful non-citizen / Australian citizen
_____	Lawful non-citizen / Australian citizen

(insert name and date of birth)

I have considered the legal implications of being removed from Australia, and have consulted with a legal representative for clarification (if required).

Signature: _____

Name (printed) _____

Date: _____

Interpreter (if applicable):

Signature: _____

Name: _____

TIS Number: _____

ATTACHMENT 21 - REQUEST BY REMOVEE/DEPORTEE FOR REMOVAL OF DEPENDANTS

I, _____ am a person named who is liable for removal/deportation from Australia as:

- An unlawful non-citizen to be removed under section 198; or
- A non-citizen to be deported under section 200.

I request that the children, named below, be removed from Australia with me under the provisions in the Migration Act 1958 at::

- section 199(3) (dependent child/ren of unlawful non-citizen liable for section 198); or
- section 205(2) (dependent child/ren of person liable for deportation under section 200).

	Lawful non-citizen / Australian citizen
	Lawful non-citizen / Australian citizen
	Lawful non-citizen / Australian citizen
	Lawful non-citizen / Australian citizen
	Lawful non-citizen / Australian citizen
	Lawful non-citizen / Australian citizen

(insert name and date of birth)

I have considered the legal implications of their removal from Australia, and have consulted with a legal representative for clarification, if required.

Signature: _____

Name (printed) _____

Date: _____

Interpreter (if applicable):

Signature: _____

Name: _____

TIS Number: _____

ATTACHMENT 22 - INFORMATION ON REMOVAL BAGGAGE LIMITS

Standard baggage allowances

Persons detained less than 18 months

If you have been detained for less than 18 months you will generally be entitled to 27kg baggage allowance upon your removal, consisting of:

- 20kg check-in luggage
- 7kg carry-on luggage

Persons detained longer than 18 months

If you have been detained for longer than 18 months you will generally be entitled to 47kg baggage allowance, consisting of:

- 40kg check-in luggage
- 7kg carry-on luggage

For persons detained longer than 18 months: Depending on the circumstances of your removal, the additional 20 kg check-in luggage (ie. to bring the check-in allowance up to 40kg) will be added to your debt to the Commonwealth (alternatively, you can pay for this upfront at the detention facility before you leave.) You will be advised by DIMIA staff if you need to pay for this additional 20kg luggage allowance.

Additional luggage to standard allowances

Luggage allowance in addition to the 27kg or 47kg standard allowance may be available in certain circumstances. You will be advised by DIMIA staff if this is the case.

In some cases you will be required to pay the excess baggage charge for any additional luggage at the detention facility before your removal. As a general guide, excess baggage charges range from \$30 - \$45 per kg, depending on the airline.

If you cannot or choose not to pay this excess baggage amount then you will not be able to take the additional luggage with you. You will need to make other arrangements for it (see below).

Leaving luggage/property at the detention facility

If you leave baggage/property at the detention facility, you have the following options:

- arrange for it to be collected by friends or family in the community;
- give it to other detainees (please discuss this with GSL);
- ship it to the destination country at your own expense; or
- discard it

If property is left at the detention facility, without arrangements having been made, it will be treated as lost/unclaimed goods. It will be held for a period determined by State/Territory legislation and then disposed of according to the requirements of the relevant legislation.

Restrictions on weight of each bag/box

Airlines have restrictions on the total weight per bag. Each bag (or box) must not weigh more than 20kg.

If you have any questions about the baggage allowance for your removal from Australia, or wish to weigh your baggage in preparation for removal, please speak with your DIMIA case officer.

ATTACHMENT 23 - REMOVALS CHECKLIST (DISCRETIONARY)

Removals checklist

This checklist is discretionary and is intended as a guide to the general steps that should be considered when organising a removal. It should not be considered as a comprehensive guide to all the factors that must be considered when organising every removal. Officers will need to consult the MSI for further information and guidance.

Detainee name:

Date of birth:

Centre ID:

ICSE client ID:

Detainee name:

Date of birth:

Centre ID:

ICSE client ID:

Detainee name:

Date of birth:

Centre ID:

ICSE client ID:

Detainee name:

Date of birth:

Centre ID:

ICSE client ID:

Planning the Removal

1	Identify the detainee against travel documents. If no current travel document held.	<input type="checkbox"/>
2	Check ICSE & Litigation databases for arrival details, case history & current status. Complete form at Attachment 2 - Removal availability assessment . Do not continue with the removal if there are any concerns that the person may be an Australian citizen or permanent resident, see section 12.2 Identity/nationality	<input type="checkbox"/>
3	Ensure the removee has been advised of the removal, if this has not occurred, provide the removee (or their legal representative) with the information form <i>Notice Regarding Removal from Australia</i> , see section 45 Notification to removee .	<input type="checkbox"/>
4	If voluntary, ensure <i>Request for Removal from Australia</i> form is completed with signature and held on file. If not held, have form faxed through from the relevant IDC/IDF.	<input type="checkbox"/>
5	Pass case history details onto Litigation Branch for further checking and preparation for possible last minute litigation	<input type="checkbox"/>
6	Liaise with DSP to organise an assessment clearing the removee as fit to travel.	<input type="checkbox"/>
7	Book flights - Domestic International Complete CWT Removal Travel Request Form and email to removals@carlsonwagonlit.com.au , noting relevant cost centre for billing purposes. Subject line should note: Booking request - SURNAME Firstname Mr/s - proposed departure date. Flights can be booked with substitute names of escorts until their names are known. Always provide CWT with an after hours contact number for the removal officer If the removee holds a return ticket and consents to the use of this ticket to complete <i>Consent to use Ticket for Removal</i> form. If the removee does not consent to the use of their return ticket, complete form, <i>Use of Detainee Ticket Without Consent</i> . Ensure a copy of either form is held on file.	<input type="checkbox"/>
8	Arrange Escort - Domestic International Speak with relevant Centre Manager/Officer. Provide them with the flight details and ask them to arrange an escort/s and to then provide you with the escort's name. Ensure you have provided the escort with the Escorts removal report pro forma and the General information for escort guidelines.	<input type="checkbox"/>
9	Provide CWT with final names of escorts as soon as possible so flights can be finalised. Ensure flight costs are provided for each individual removee & escort	<input type="checkbox"/>
10	Where the removee is required to stay overnight in a new centre, liaise with Centre Manager for the arrangement of GSL officers to meet removee at the airport, to transport to and accommodate at new Centre and to accompany to airport to oversight removal flight.	<input type="checkbox"/>
11	Ensure accommodation is booked for escort/s in overseas country and, where necessary, domestically.	<input type="checkbox"/>

Managing the removal

12	Check validity of travel documents If any concerns regarding travel documents refer to document examiner and put removal on hold.	<input type="checkbox"/>
13	Ensure Security / Risk Assessment received from Centre in order to facilitate uplift approval.	<input type="checkbox"/>
14	Request fitness to travel assessment and consider if there are medical or psychological/mental health needs which require special management.	<input type="checkbox"/>
15	Request uplift approval from Airline Security Officer of relevant airlines - for both domestic and international at the earliest opportunity Complete <i>Notice of the Proposed Movement of a Person in Custody</i> and send to the airline.	<input type="checkbox"/>
16	Request DOTARS approval where required. Telephone first to make contact then fax through request.	<input type="checkbox"/>
17	Check uplift approval has been received. Inform CWT via email that the uplift approval has been received.	<input type="checkbox"/>
18	Ensure baggage allowances are offered and organised, see section <u>38 Property and baggage</u> .	<input type="checkbox"/>
19	Request Centre Manager/Case Coordinator IDC/IRPC to hand down removal notice & complete transfer docs. Removal notice is to be completed by the officer managing the removal. Property to be acquitted and ID documents mobile phones etc to be packaged for the custody of escorting officers.	<input type="checkbox"/>
20	Liaise with Centre Managers of both departing and receiving Centres/Cities. Provide flight details and other relevant information.	<input type="checkbox"/>
21	Distribute completed <i>Removal Procedures</i> (recommended for escorted removals).	<input type="checkbox"/>
22	Add to Enforced Removals List (ERL)	<input type="checkbox"/>

Post removal procedures

23	Immediately upon departure - ensure removee is listed on MAL and any debt to the Commonwealth is recorded.	<input type="checkbox"/>
24	For escorted removals - ensure you have received <i>Escorts Removal Report</i> and this is actioned as required, see <u>After leaving Australia</u> .	<input type="checkbox"/>
25	Check the following has been completed in ICSE: - the 'country departed to' has been completed - the Enforcement Permission Request is finalised - removal and detention debts are recorded in ICSE and MAL - Immigration Detention Details have been updated - If required, the removee's visa has been manually ceased - All relevant notes have been recorded Before finalisation the client record should be checked to ensure that the client has only one client ID, and that the client is showing as offshore. If not arrange PID merge.	<input type="checkbox"/>
26	Ensure registry file contains all relevant papers including removal details	<input type="checkbox"/>
27	Ensure that outward movement has been recorded on MR.	<input type="checkbox"/>

MSI 409: Establishing identity - in the field and in detention

This MSI relates to sections 189, 192, 196 of the *Migration Act 1958*.

ABOUT THIS DOCUMENT

This document comprises:

- [Introduction](#)
- [Establishing identity in the field](#)
- [Establishing identity of persons detained by police under section 189](#)
- [Further checking in detention where cases are unresolved](#)
- [Dealing with identity information](#)
- [Documenting actions.](#)

Related instructions

- [MSI: Alternative places of detention](#)
- [MSI: Compliance and enforcement - overview](#)
- [MSI: Detention of unlawful non-citizens](#)
- [MSI: Establishing immigration status in the field and in detention.](#)
- [MSI: General detention procedures](#)
- [MSI: National compliance operational guidelines \(FOI exempt\)](#)
- [MSI: Non-citizens using false identities and/or bogus or fraudulent documents](#)
- [MSI: Personal identifiers: collection from immigration detainees](#)
- [MSI: Personal identifiers: collection from visa applicants and non-citizens \(except immigration detainees\)](#)
- [MSI: Section 188 - Evidence of Identity/Status/Personal Identifiers](#)
- [MSI: Travel documents and](#)
- [MSI: Unlawful non-citizens.](#)

Recent changes

Legislative

Nil.

Policy

This document was registered on 20 December 2005. It replaces MSI 406.

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INTRODUCTION

This Part comprises:

- section 1 Purpose of this instruction
- section 2 Obligations of officers.

1 PURPOSE OF THIS INSTRUCTION

1.1 Background

This instruction sets out the procedures officers should follow to identify persons who:

- must or may be detained under section 189 or 192 of the *Migration Act 1958* (the Act) or
- are kept in detention in accordance with section 196 of the Act.

In broad terms, an officer:

- must, under section 189, detain a person in Australia where they know or reasonably suspect that the person is an unlawful non-citizen (that is, a non-citizen who does not hold a valid visa that is in effect) and
- may, under section 192, detain a person in Australia where they know or reasonably suspect that the person holds a visa that may be cancelled under section 109, 116, 134, 501 or 501A. This is the case provided the officer reasonably suspects that, if not detained, the non-citizen would attempt to evade officers or otherwise not cooperate with inquiries.

That is, these detention powers only come into play once an officer has formed one of the following states of mind about the person's immigration status:

- knowledge (that the person is an unlawful non-citizen or person whose visa may be cancelled) or
- reasonable suspicion (that the person is an unlawful non-citizen or person whose visa may be cancelled).

To hold one of these states of mind, officers must first ask the question, "who is this person"? This is because, if an officer knows who a person is, they can then either:

- know that the person is an unlawful non-citizen or holds a visa that may be cancelled or
- reasonably suspect that they are an unlawful non-citizen or hold a visa that may be cancelled (although it is not strictly necessary to know who a person is to reasonably suspect that they are an unlawful non-citizen).

In most cases, it will be easy to answer this question and the person's identity and immigration status will be clear.

However, there are times when it can be extremely difficult to identify a person, particularly where the person:

- actively seeks to hide details
- is unable to provide details or
- provides conflicting details.

It is not possible to set out the precise checks to be carried out in all circumstances where it is difficult to establish a person's identity because different checks may be relevant, depending on what information the person provides and the surrounding circumstances.

However, this instruction sets out the minimum checks officers should undertake to establish, or attempt to establish, a person's identity. In addition, officers should make their own judgements as to what further checks should be undertaken in a particular case in order to establish the identity of a person.

Because establishing a person's identity will often involve establishing their immigration status, this instruction should be read in conjunction with the [MSI: Establishing immigration status - in the field and in detention](#).

Ultimately, every decision should be made in the knowledge that the power to detain involves the deprivation of a person's liberty, a right that the common law has gone to great lengths to protect.

1.2 When this instruction does not apply

The identification procedures set out in this instruction apply to persons detained under sections 189 and 192 of the Act. However, parts of this MSI:

- [Establishing identity of persons detained by police under section 189](#) and
- [Further checking in detention where cases are unresolved](#)

will not apply to persons detained under section 192, unless the person's visa is cancelled and they become an unlawful non-citizen who must be detained under section 189.

The identification procedures set out in this instruction do not apply to:

- illegal fishers detained for the purposes of prosecution or removal as soon as reasonably practicable or
- unauthorised boat arrivals (other than stowaways and deserters).

For guidance on how to deal with detained illegal fishers and unauthorised boat arrivals, contact the Unauthorised Arrivals and Illegal Fishers Taskforce in National Office.

All Attachments to this MSI can also be printed from the compliance site on the Intranet.

2 **OBLIGATIONS OF OFFICERS**

2.1 Overview of obligations

Officers are expected to:

- resolve identity issues as a matter of urgency by:
 - following up any leads as quickly as possible
 - where necessary, working out of hours (including on weekends and public holidays) to ensure that a person is not kept in detention unnecessarily or unlawfully
- ensure there are no periods of inactivity in investigating identity issues
- think laterally and creatively in order to:
 - uncover all possible explanations for the pieces of information available
 - pursue all reasonable avenues of inquiry
- fully document the process of identifying the person (and the conclusion), even in straightforward cases and
- in the case of detention under section 189, escalate cases of unresolved identity to senior officers, the National Identity Verification and Advice Section (NIVA) and the Detention Review Manager (DRM), as appropriate, and
- comply, as a matter of priority, with requests made by NIVA in National Office.

Officers should also familiarise themselves with the relevant sections of the following instructions:

- [MSI: Alternative places of detention](#)
- [MSI: Compliance and enforcement - overview](#)
- [MSI: Detention of unlawful non-citizens](#)
- [MSI: Establishing immigration status in the field and in detention](#).
- [MSI: General detention procedures](#)
- [MSI: National compliance operational guidelines \(FOI exempt\)](#)
- [MSI: Non-citizens using false identities and/or bogus or fraudulent documents](#)
- [MSI: Personal identifiers: collection from immigration detainees](#)

- MSI: Personal identifiers: collection from visa applicants and non-citizens (except immigration detainees)
- MSI: Section 188 - Evidence of Identity/Status/Personal Identifiers
- MSI: Travel documents and
- MSI: Unlawful non-citizens.

ESTABLISHING IDENTITY IN THE FIELD

This Part comprises:

- section 3 All reasonable efforts to identify
- section 4 Checking identity
- section 5 Identity documents
- section 6 Officer satisfied about identity
- section 7 Officer not satisfied about identity
- section 8 No identity is provided
- section 9 Claim of Australian citizenship or permanent residence.

3 ALL REASONABLE EFFORTS TO IDENTIFY

3.1 Officers to identify

Officers should make every effort to identify a person of interest in the field before deciding whether the person:

- must be detained under section 189 (based on knowledge or reasonable suspicion that they are an unlawful non-citizen) or
- may be detained under section 192 (based on knowledge or reasonable suspicion that their visa may be cancelled).

This is the case even though an officer does not always have to know who a person is to reasonably suspect that they are an unlawful non-citizen.

Conversely, just because an officer does not know who a person is, this will not, of itself, found a reasonable suspicion that the person is an unlawful non-citizen.

In response to asking the question “who is this person?”, an officer may:

- be satisfied that they know who the person is
- not be satisfied that they know who the person is or
- not know who the person is.

This will depend not only on the information and documents available but also but also on the person’s general behaviour and attitude (for example, whether they cooperate with requests to identify themselves).

4 CHECKING IDENTITY

4.1 Documentary evidence

It is departmental policy that, where officers are considering whether or not to detain a person, they should always check a person’s claimed identity by asking them to provide documentary evidence in support of that identity. Officers cannot be satisfied as to a person’s identity unless they see documents confirming that identity.

4.2 S188 - power to require evidence of identity

Section 188 of the Act provides that an officer may require a person known or reasonably suspected to be a non-citizen to show evidence of their identity.

Although it is not necessary to exercise this power before detaining a person under section 189 or 192, it may assist an officer to obtain documentary evidence about a person’s identity.

4.3 No power to retain documents

Unlike a document seized under a section 251 search warrant, there is no power under the Act that enables an officer to seize or retain a document provided under subsection 188(1). However, an officer may keep such a document for the period it takes to check the document against departmental records (for example, if an officer is in the field, the time it takes to phone a colleague at the office and ask for a check of departmental systems to be made). Alternatively, a person may consent to the department making a copy of their identity documents and retaining the copies.

For specific advice about exercising the power in section 188, see the [MSI: Section 188 - Evidence of Identity/Status/Personal Identifiers](#).

5 IDENTITY DOCUMENTS

5.1 Acceptable documents

As a general rule, only the following documents should be accepted as evidence of a person's identity:

- original documents (not copies); and
- documents that are current (ie that have not expired).

However, officers should not apply this rule inflexibly especially where the documents provided, though not original or current, match the identity information provided by the person and this information is further confirmed by checking departmental systems.

Generally, a person would be expected to provide a combination of documents to an officer to show evidence of their identity. The details provided in these documents should all be consistent.

An officer should decide what weight to give a document presented to them. Greater or lesser weight may be given to a document depending on whether:

- the document has biographical features, such as:
 - name
 - date of birth
 - photograph and
 - document identity number
- the authenticity of the document can be checked against departmental systems or with the authority that issued the document and
- the document is likely to be reliable (for example, less easily and less commonly forged, less likely to have been stolen or passed on).

For example, an Australian or foreign passport should normally be given substantial weight in proving identity because it contains the features mentioned above (in particular, a photograph which can be compared with the person) and can be checked against departmental systems (and with the issuing authority).

In contrast, a Medicare card would normally not be given much weight in proving identity because it contains little biographical information and no biometric information, such as a photograph.

However, if a person presents a number of documents that would normally not be given much weight by themselves, these documents may collectively prove their identity if the officer is satisfied that:

- the personal particulars on all the documents are consistent
- the documents are consistent with the credible oral account given by the person and
- the surrounding circumstances lead the officer to believe that the person is trustworthy (for example, they have been cooperative or have not attempted to evade officers when other persons of interest did).

5.2 Examples of types of documents

Examples of the types of documents that may be used to establish identity are as follows:

- an Australian or foreign passport
- an Australian driver's licence
- an Australian or foreign birth certificate
- an Australian or foreign marriage certificate
- an Australian or foreign government identity document (including military, seafarer or aircrew identity documents)
- a Certificate of Evidence of Australian Citizenship
- a credit or bank account card
- a Medicare, Centrelink or Department of Veterans' Affairs card
- a firearm's licence or
- a student card.

5.3 Checking documents

As a general rule:

- the authenticity of DIMIA issued documents should, wherever possible, be checked against departmental systems
- documents that have not been issued by DIMIA may be accepted at face value provided that there is no reason to suspect that the documentary evidence is fraudulent, forged, tampered with or, while technically genuine, fraudulently issued.

For guidance about what to do if there is a reason to suspect that documentary evidence is fraudulent, forged, tampered with or fraudulently issued, officers should see the [MSI: Non-citizens using false identities and/of bogus or fraudulent documents](#).

5.4 Extra caution

Although officers should always be cautious about relying on identity related information and documentation provided by a person, they should exercise particular caution in higher-risk situations.

These may include situations where:

- there is no record of the person's movement(s) to Australia
- there is an indication that the person may be suffering from a mental health condition
- the person has self-referred to the department (rather than being located in the field) or
- the person has been referred to the department by another agency (such as a law enforcement, health or community services agency).

5.5 No or insufficient documentary evidence

Where a person located in the field does not have any documentary evidence to show evidence of their identity, or the documentary evidence is insufficient to establish identity, officers should give the person a reasonable opportunity to produce documentary evidence.

For example, the person may contact a family member located at the place where the documents are stored and arrange for them to bring the documents to the person. This may be a good option if the person agrees to wait with the officers and the documents can be delivered within a short time.

In these cases, officers should tell the person that they are not in immigration detention (unless the officer already reasonably suspects that the person is an unlawful non-citizen).

Where officers have formed a reasonable suspicion that the person is an unlawful non-citizen even though the person has refused or been unable to provide identity documents, they must detain the person.

For advice on forming a reasonable suspicion that the person is an unlawful non-citizen, officers should see the [MSI: Establishing immigration status - in the field and in detention](#).

5.6 Search warrants

It is departmental policy that officers should apply for a search warrant to enter premises to seize identity documents where they have reason to believe that passports or documents of identity relating to an unlawful non-citizen may be found at the premises.

For guidance on search warrants, see the [MSI: Powers of entry, search and seizure - s 251, 252 and 223](#).

6 **OFFICER SATISFIED ABOUT IDENTITY**

6.1 Officer satisfied - identity

An officer may be satisfied that they know the identity of a person where, for example:

- the person provides their personal particulars (name, date of birth, place of birth, citizenship and address) and documentary evidence of some of these particulars
- at least one form of documentary evidence contains a recent photograph
- the documentary evidence confirms their personal particulars and matches the person's physical appearance
- there is no reason to suspect that the documentary evidence is fraudulent, forged, tampered with or, while technically genuine, fraudulently issued and
- the person displays an appropriately detailed level of knowledge regarding their claimed identity, such as is recorded on departmental systems (ICSE, movements database, IRIS, TRIM).

6.2 Further action by officer

If the officer is satisfied about the person's identity, and forms the view that the person is not an unlawful non-citizen or a person whose visa may be cancelled, then no further action is required.

If the officer is satisfied about the person's identity but forms the view that the person is or may be an unlawful non-citizen or a person whose visa may be cancelled, then they should carry out the checks outlined in [Attachment 1 - Checks in the field](#) to confirm identity and immigration status before deciding whether to detain the person.

If, after completing the checks outlined in [Attachment 1 - Checks in the field](#), the officer is satisfied about the person's identity and immigration status, then no further checking is required at this stage (however, see [section 11.1 How this part operates](#)).

7 **OFFICER NOT SATISFIED ABOUT IDENTITY**

7.1 Officer not satisfied - identity

An officer might not be satisfied about a person's claimed identity in circumstances where, for example:

- a person provides an officer with their personal particulars and documentary evidence purporting to confirm their identity but the documentary evidence does not match the person (impostor)
- a person does not have an appropriately detailed level of knowledge regarding their claimed identity, as recorded on departmental records (at a minimum, ICSE, Movements Database, TRIM are to be checked)
- a person provides an officer with their personal particulars and documentary evidence purporting to confirm their identity but the documentary evidence:
 - is listed on the Document Alert List (DAL)
 - relates to a person who is recorded on departmental systems as being outside Australia (and this issue cannot be resolved by further checks)
 - was not issued by the responsible authority or
 - appears to be fraudulent, forged or tampered with

- a person provides an officer with their personal particulars but is unable to produce any documentary evidence to confirm the particulars, despite being given a reasonable opportunity to do so
- a person provides an officer with multiple inconsistent personal particulars or
- a person is not recorded on departmental systems (in particular, there is no evidence of the person arriving in Australia).

Officers should be aware that there could be many reasons why a person is not able to give a plausible account of their identity and relationships. The fact that the story does not fit together well may simply reflect issues not associated with their immigration status and there is a need for officers to continue with investigations.

This is particularly important where a mental health condition may be contributing to the person's inability to produce a coherent story.

7.2 Further action by officer

If the officer is not satisfied about a person's claimed identity and forms the view that the person may be an unlawful non-citizen or a person whose visa may be cancelled, then they should:

- carry out the identity and immigration status checks outlined in Attachment 1 - Checks in the field before deciding whether to detain the person
- consult the senior compliance officer on site before deciding whether to detain the person (unless it is obviously impractical to consult in the circumstances - for example, if the person attempts to evade an officer) and
- in the case of detention under section 189 of the Act:
 - carry out the identity and immigration status checks outlined in Attachment 2 - Checks within 24 hrs of detention after deciding to detain the person and
 - if still not satisfied about the person's identity and immigration status, continue to carry out further relevant checks (for example, those suggested in Attachment 3 - Further sources of information).

8 NO IDENTITY IS PROVIDED

An officer cannot be satisfied about a person's identity if they refuse, or are unable, to provide their personal particulars.

In these cases, the officer should:

- carry out the checks outlined in Attachment 1 - Checks in the field to attempt to ascertain the identity and immigration status of the person *before deciding whether to detain the person* (for example, by asking someone else in the company of the person to provide the person's identity details)
- consult the senior compliance officer on site before deciding whether to detain the person (unless it is obviously impractical to consult in the circumstances - for example, if the person attempts to evade an officer) and
- in the case of detention under section 189 of the Act:
 - carry out the checks outlined in Attachment 2 - Checks within 24 hrs of detention to confirm identity and immigration status *after deciding to detain the person* and
 - if still not satisfied about the person's identity and immigration status, continue to carry out further relevant checks (for example, those suggested in Attachment 3 - Further sources of information).

Officers should also ensure that they follow the special procedures which relate to unidentified detainees set out in Further checking in detention where cases are unresolved.

9 CLAIM OF AUSTRALIAN CITIZENSHIP OR PERMANENT RESIDENCE

If:

- the officer has completed checks outlined in Attachment 1 - Checks in the field and
- the officer forms a reasonable suspicion that the person is an unlawful non-citizen (or a person whose visa is liable to cancellation under section 192) but
- the person claims to be an Australian citizen or the holder of a permanent visa (that is, a permanent resident)

then the officer should consult with the senior compliance officer on site (or the state/territory compliance manager) before deciding whether to take further action.

The senior compliance officer on site (or the compliance manager) should confirm that all reasonable steps have been taken to establish the person's identity and immigration status before deciding whether to detain the person.

If the person is detained, the person's claim should be reviewed within 24 hours unless the person withdraws the claim and the officer is satisfied the claim was false (see sections 12 and 13 of this MSI).

ESTABLISHING IDENTITY OF PERSONS DETAINED BY POLICE UNDER SECTION 189

10 ESTABLISHING IDENTITY

10.1 Background

This Part only applies to persons detained under section 189 of the Act. That is, it does not apply to persons detained under section 192 of the Act.

The fact that a person is detained by police under section 189 of the Act does not diminish in any way the responsibility on officers to establish that person's identity.

Normally, a person will only be detained by police after they consult with a DIMIA officer.

Where the Australian Federal Police, or state or territory police, consult an officer about a person reasonably suspected of being an unlawful non-citizen, it is departmental policy that the officer should:

- ask police if the detainee has claimed to be an Australian citizen or permanent resident
- make a written record (either by obtaining a written report from police or by making a written record of relevant conversations with police) of:
 - the circumstances in which the person was detained by police and
 - the basis for reasonably suspecting the person was an unlawful non-citizen and
- interview the person to establish and/or verify the person's identity and immigration status as soon as possible.

10.2 Interview - time limit

An officer should interview the person:

- in person and
- within 48 hours of the Department being notified of the person's detention (or, if the end of that period falls on a non-working day, on the first working day after that).

This is the case unless:

- the person claims to be an Australian citizen or Australian permanent resident - in which case the interview should take place within 24 hours of this claim being made
- the person is unidentified - in which case the interview should take place within 24 hours of the person being detained or
- it is not practical to interview the person within 48 hours - in which case there should at least be telephone contact with the person within 48 hours.

All checks that can be followed up from the telephone interview should be conducted urgently.

10.3 Interview - main purposes

The main purposes of the interview are to:

- apply the guidelines set out in Establishing identity in the field to establish the person's identity and
- arrange for the person to be released if there is no longer reasonable suspicion that the person is an unlawful non-citizen.

10.4 Other practical matters

Officers should also consider other practical matters - for example, whether to:

- transfer the detainee to another place of immigration detention (for example, a detention centre)
- request another person to hold the detainee in immigration detention

- grant the person a bridging visa or
- collect a personal identifier (see MSI: Personal identifiers: collection from immigration detainees).

FURTHER CHECKING IN DETENTION WHERE CASES ARE UNRESOLVED

This Part comprises:

- [section 11 Unresolved cases](#)
- [section 12 Escalation mechanisms - what detaining officers should do](#)
- [section 13 Escalation mechanisms – what reviewing officers should do](#)
- [section 14 What NIVA does](#)
- [section 15 Decisions about unresolved cases.](#)

11 UNRESOLVED CASES

11.1 How this part operates

This part only applies to persons detained under section 189 of the Act. That is, it does not apply to persons detained under section 192 of the Act. This part sets out the process to be followed by officers to ensure that cases of unresolved identity are escalated to senior officers and reviewed on a regular basis.

If an officer is not satisfied about a detainee's identity, the officer (or another officer) must continue to conduct inquiries to establish the detainee's identity.

This also applies if an officer detains a person and is initially satisfied about the person's identity, but there is later some reason to doubt the person's identity.

For example, an officer may be satisfied about Person A's claimed identity at the time of detention but when they later try to obtain a travel document for Person A from a foreign government, the foreign government does not believe Person A is who they claim to be.

All reasonable lines of inquiry, based on the surrounding circumstances and what the person has said, should be pursued. These inquiries may be internal or with third parties.

Officers who detain a person, but are not satisfied about their identity should carry out all checks in [Attachment 2 - Checks within 24 hrs of detention](#).

If the person's identity is still not established, [Attachment 3 - Further sources of information](#) provides a non-exhaustive list of additional sources of identity information.

It is departmental policy that the escalation process set out in this section is essential to ensure that identity issues are resolved systematically and as quickly as possible.

A flowchart summarising the escalation process is at [Attachment 7 - Escalation Mechanisms](#).

12 ESCALATION MECHANISMS - WHAT DETAINING OFFICERS SHOULD DO

12.1 Detainees who claim Australian citizenship or permanent residence

It is departmental policy that the officer who detained the person is responsible for reviewing the person's circumstances and resolving issues as to their identity and immigration status as soon as possible. If an officer detains a person who claims, either before or after being detained, to be an Australian citizen or permanent resident, they should refer the claim to the compliance manager as soon as practicable but in any case within 24 hours of the claim being made.

This is the case unless the person withdraws the claim and the officer is satisfied that the claim was false.

When referring a claim to the compliance manager, officers should set out, in writing:

- the circumstances of the person's location and detention
- all claims made by the person about their identity or immigration status
- all steps taken in attempts to establish the person's identity or immigration status and
- proposed further efforts to establish the person's identity or immigration status.

12.2 Unidentified detainees

An officer should interview an unidentified detainee within 24 hours of detaining them.

Interviews should:

- be tape recorded, provided the person consents to the tape recording (otherwise extensive notes should be taken), and
- cover, as a minimum, the checks outlined at Attachment 2 - Checks within 24 hrs of detention.

If the detainee is not medically fit to participate in an interview, the officer should document this and conduct the interview as soon as the person is medically fit to be interviewed.

If the person's identity is still unresolved after the interview, the officer should refer the matter to the compliance manager within 48 hours of the detention.

When referring the matter to the compliance manager, officers should set out, in writing:

- the circumstances of the person's location and detention
- all claims made by the person about their identity or immigration status
- all steps taken in attempts to identify the person and
- proposed further efforts to identify the person.

12.3 No record of detainee's last arrival in Australia

If an officer detains a person and there is no departmental record of the person's last arrival in Australia (including on microfiche), they should refer the matter to the compliance manager within 48 hours of the detention.

When referring the matter to the compliance manager, officers should set out, in writing:

- the circumstances of the person's location and detention
- all claims made by the person about their identity or immigration status and
- all systems checks undertaken.

12.4 Additional reporting to DRM

In addition to reporting unresolved cases to the compliance manager, detaining officers should report all decisions to detain under section 189 to the DRM within 48 hours of detention (or within 24 hours if a person's identity is still unresolved after the post-location interview).

The DRM will play an active role in reviewing the appropriateness of ongoing detention.

13 ESCALATION MECHANISMS – WHAT REVIEWING OFFICERS SHOULD DO

13.1 Review cases

The compliance manager should review all cases of:

- unidentified persons in immigration detention - within 24 hours of the date it is referred to them;
- detainees who have claimed they are Australian citizens or permanent residents - within 24 hours of the date it is referred to them (unless the claim is withdrawn and the compliance manager is satisfied that it was false).

If the compliance manager accepts a person's claim of Australian citizenship or permanent residence:

- the person must be immediately released from immigration detention and
- the compliance manager should review how and why the person was detained.

Where identity and/or immigration status remains unresolved despite this initial review of the case, the matter should be referred to the state/territory director or the person in their state/territory who is responsible for reviewing the lawfulness of detainees' detention (the reviewing officer) for the purposes of:

- ensuring that all relevant inquiries to establish the identity and immigration status of the person have been or are being pursued and
- considering whether to refer the matter to the DRM (if the person reviewing the case is not the DRM), or to NIVA in National Office.

13.2 Refer cases to NIVA

Mandatory referrals

It is departmental policy that reviewing officers are obliged to refer the following cases to NIVA:

- a detainee claims Australian citizenship or permanent residence - within 48 hours of the claim being referred to them (unless the claim is withdrawn by the detainee and the officer is satisfied that the claim was false)
- there is no record of the detainee's last arrival in Australia on departmental systems - within 48 hours of the matter being referred to them or
- a detainee who remains unidentified after 9 days in immigration detention (9 days signifies that the initial 48 hour review and 7 day review have passed).

Reviewing officers are also obliged to provide NIVA with an update on each case previously referred to NIVA following each 7 day review of the case.

This is the case regardless of whether the reviewing officer thinks that all available avenues of checking have been exhausted.

Referrals should include a full case history, including an accurate account of completed and proposed checks about the person's identity and/or immigration status.

Referrals will generally be only for information, unless the reviewing officer specifically requests involvement by NIVA.

Discretionary referrals

Reviewing officers may refer cases to NIVA for advice/action whenever they think that:

- all available avenues of checking have been exhausted or
- NIVA may have particular expertise or access to information to assist in identifying the detainee.

Referrals should include a full case history including:

- an accurate account of completed and proposed checks about the person's identity and/or immigration status and
- suggestions (if any) of further avenues which may be pursued by NIVA.

Case management and responsibility remains with the referring state/territory office

Although reviewing officers may refer a case to NIVA, the overall responsibility for managing the case remains with the referring state/territory office.

The relevant state/territory officers should continue to try to identify the person in question, albeit in close consultation with NIVA. In addition, relevant state/territory officers should keep NIVA informed of all activities and progress in relation to identity issues.

For example, state/territory officers should give NIVA notice of their intention to grant a visa to such a person, because changing a person's immigration status may significantly affect the identity checking options that are available.

14 WHAT NIVA DOES

In response to referrals from reviewing officers for advice and/or action, NIVA will:

- try to help resolve identity issues by drawing on its experience and all available resources in order to:
 - provide relevant advice and/or
 - undertake its own identity checking activities (this may include engaging external agencies at a higher level) and
- report back to reviewing officers on a regular basis.

NIVA will also regularly report to the Detention Review Committee (DRC) and other interested third parties on identity issues related to cases referred to it.

However, referral to NIVA of an identity issue is entirely separate from referral to the DRC of other issues relating to the detention process. In particular, NIVA cannot advise on the question of whether detention should continue.

15 DECISIONS ABOUT UNRESOLVED CASES

In very rare cases, a detainee may remain unidentified despite all reasonable efforts made to identify them.

In these cases, a decision must be made, based on the detainee's probable identity, about:

- granting them a visa (and releasing them from immigration detention) or
- removing them from Australia.

This decision will depend on whether or not the person is still reasonably suspected of being an unlawful non-citizen. For further guidance on what constitutes reasonable suspicion about a person's immigration status see the MSI: Establishing immigration status - in the field and in detention.

NIVA should be consulted about the status of the investigation into the person's identity before any decision is taken about the person's release from immigration detention or removal from Australia.

DEALING WITH IDENTITY INFORMATION

This Part comprises:

- [section 16 Purpose - collecting & disclosing information](#)
- [section 17 Collecting & disclosing personal information](#)
- [section 18 Collecting personal identifiers and disclosing identifying information](#)
- [section 19 Further advice.](#)

16 PURPOSE - COLLECTING & DISCLOSING INFORMATION

The purpose of this Part is to explain how officers can collect and disclose information about a person's identity and immigration status in order to perform detention functions under the Act.

For example, an officer may want to disclose information about a person's identity and immigration status to a third party to:

- check the authenticity of an identity document issued by the third party or
- compare personal information provided by the person with information held by the third party.

17 COLLECTING & DISCLOSING PERSONAL INFORMATION

17.1 Collecting personal information

Officers can collect information about a person's identity and immigration status in order to perform detention functions under sections 189 and 192 of the Act.

The collection of personal information in these circumstances is in accordance with Information Privacy Principle (IPP) 1, set out in section 14 of the *Privacy Act 1988*.

17.2 Disclosing personal information

Officers can only disclose personal information to third parties in accordance with IPP 11, set out in section 14 of the *Privacy Act 1988*.

Generally, this means that disclosure must be:

- authorised by or under law
- a disclosure that the person is reasonably likely to have been aware, or made aware, would have been made to the third party
- consented to by the person
- necessary to prevent or lessen a serious and imminent threat to health of the individual concerned or to another person or
- necessary for the enforcement of the criminal law or a law imposing a pecuniary penalty, or for the protection of public revenue.

17.3 Personal information that is a personal identifier

In relation to personal information that is also a personal identifier, officers must only collect this information as described in [section 18 Collecting personal identifiers and disclosing identifying information](#). In addition, officers must only disclose identifying information (which includes personal identifiers) as described in [section 18 Collecting personal identifiers and disclosing identifying information](#).

18 COLLECTING PERSONAL IDENTIFIERS AND DISCLOSING IDENTIFYING INFORMATION

18.1 Collecting personal identifiers

Sections 188 and 192 of the Act make provision for officers to collect personal identifiers from certain non-citizens in the field and Division 13AA of Part 2 of the Act makes provision for officers to collect personal identifiers from non-citizens in immigration detention.

Personal identifiers include:

- a person's fingerprints or handprints
- a measurement of a person's height and weight
- a photograph or other image of a person's face and shoulders
- a person's signature
- an audio or video recording of a person
- an iris scan or
- any other identifier of a type prescribed by the *Migration Regulations 1994* (the Regulations).

18.2 Using personal identifiers

Officers can only use personal identifiers to establish a non-citizen's identity in accordance with Part 4A of the Act.

For example:

- signatures collected from immigration detainees may be examined by document examiners to conduct comparative handwriting analyses and
- personal identifiers that have been collected from Person A when they applied for a visa to enter Australia, or when they was immigration cleared on entering Australia, may be compared to personal identifiers collected when they was detained under section 189 or 192 of the Act.

18.3 Disclosing identifying information

Part 4A of the Act provides a mechanism for disclosing identifying information such as personal identifiers (for example, photographs and signatures).

Any disclosure that is not a "permitted disclosure" as defined in section 336E(2) of the Act is a criminal offence, punishable by a fine of 120 penalty units or 2 years' imprisonment, or both. Officers should therefore satisfy themselves that any proposed disclosure is a permitted disclosure before proceeding.

19 FURTHER ADVICE

For a pro forma consent form, see [Attachment 4 - Consent to disclosure](#).

For specific examples of how to collect and disclose personal information for the purpose of establishing a person's identity and immigration status, see [Attachment 5 - Collecting personal information](#) and [Attachment 6 - Disclosing personal information](#).

For specific guidance on collecting personal identifiers and disclosing identifying information in relation to non-citizens who are not already in immigration detention, and procedural matters, see:

- the [MSI: Personal identifiers: collection from visa applicants and non-citizens \(except immigration detainees\)](#) and
- the [MSI: Section 188 - Evidence of Identity/Status/Personal Identifiers](#).

For specific guidance on the collection and disclosure of personal identifiers in relation to detainees, and procedural matters, see the [MSI: Personal identifiers: collection from immigration detainees](#).

If officers are unsure about whether personal information or identifying information can be disclosed in particular circumstances, they should contact the Ombudsman, HREOC and Privacy Section or the Legal Opinions Section in National Office.

DOCUMENTING ACTIONS

Officers should ensure that all actions taken in attempting to identify a person are accurately and comprehensively documented.

This includes actions taken during the initial location and detention of persons, or actions taken later.

This should be done by creating appropriate records on the individual's case file and in the relevant departmental processing systems (such as ICSE), as soon as possible after the action is taken.

In particular, the following should be recorded in the relevant case file and as a case note under the enforcement permission request in ICSE:

- inquiries that are actually undertaken, including conversations with the person concerned, to establish the person's identity
- the thought process (and conclusions reached) in establishing a person's identity and
- management advice that determines actions to be taken in attempting to establish a person's identity.

Neil Mann
First Assistant Secretary
Compliance Policy and Case Coordination Division

ATTACHMENT 1 - CHECKS IN THE FIELD

To be completed by an officer considering whether to detain a person of interest in the field. Wherever possible, all information must be checked against departmental systems while in the field. If not possible, checks must be completed within 24 hours of the person being detained.

IDENTITY CHECKS

Fields marked with an asterisk (*) must be checked against departmental systems (as appropriate).

Name*		<i>surname</i>		<i>given names</i>
Do you go by any other names?*	(Circle)	<i>If yes, insert other names here</i>		
	Yes / No			
Nationality*				
Date of birth*		<i>day</i>		<i>month</i>
Do you have a spouse or children in Australia?*	(Circle)	<i>If yes, insert details below</i>		
	Yes / No			
Address				
Have you lived at this address for at least 3 years?	(Circle)	<i>If no, insert previous address details here</i>		
	Yes / No			
Home phone number?	(Circle)	<i>If yes, insert number here</i>		
Mobile phone number?	(Circle)	<i>If yes, insert number here</i>		
Do you have any documents on you to establish your identity?	(Circle)	<i>If yes, tick which of the following documents were sighted and provide details as relevant</i>		
	Yes / No			
		passport*	doc no	issue date
			country of issue	expiry date
		Certificate of Evidence of Aust. Citizenship*	doc no	issue date
		issuing officer		
	document of identity*	doc no	expiry date	

		birth certificate	doc no		issue date	
		marriage certificate	doc no		issue date	
		driver's licence	doc no		expiry date	
			state of issue			
		Medicare card	doc no		expiry date	
		credit card	doc no		expiry date	
		Centrelink card	doc no		expiry date	
		employee photo ID card	doc no		expiry date	
			employer			
		student photo ID card	doc no		expiry date	
			study institution			
		firearms licence	doc no		expiry date	
		other (<i>specify</i>)	doc details			

IMMIGRATION STATUS CHECKS

Wherever possible, all information must be checked against departmental systems while in the field. If not possible, checks must be completed within 24 hours of the person being detained.

Are you an Australian citizen?	(Circle)	<i>If yes, provide details of claim below</i>	
	Yes / No	<i>If no, continue</i>	
			<i>date of grant</i>
			<i>location of ceremony</i>
Are you an Australian permanent resident?	(Circle)	<i>If yes, provide details of claim below</i>	
	Yes / No	<i>If no, continue</i>	
			<i>visa type</i>
			<i>date/place of entry</i>
Do you have a visa?	(Circle)	<i>If yes, provide details below</i>	
	Yes / No	<i>If no, continue</i>	
			<i>visa type</i>
			<i>date/place of entry</i>
			<i>place of issue</i>

Have you applied for a visa?	(Circle)	<i>If yes, provide details below</i>	
	Yes / No	<i>If no, continue</i>	
			<i>application date</i>
			<i>name used</i>
Have you applied for review of a visa decision or for the Minister to intervene to grant you a visa?	(Circle)	<i>If yes, provide details below</i>	
	Yes / No	<i>If no, continue</i>	
Have you recently travelled to or from Australia?	(Circle)	<i>If yes, provide travel details</i>	
	Yes / No		

DIMIA OFFICER TO SIGN

Based on the completion of this checklist, I (*circle as relevant*):

- know or reasonably suspect that the person listed above is an unlawful non-citizen (the person *must be detained*)
- know or reasonably suspect that the person’s visa may be cancelled under s109, 116, 134, 501 or 501A (the person *may be detained*)
- don’t know or reasonably suspect that the person is an unlawful non-citizen or the person’s visa may be cancelled under s 109, 116, 134, 501 or 501A (the person *must not be detained*)
- cannot reach a conclusion about the identity or status of the person (the person *must not be detained*)

In relation to persons detained under s 189, I will take the following further action (*circle as relevant*):

- in relation to claims of Australian citizenship or permanent residence - contact the compliance manager within 24 hours of the claim being made
- in relation to unidentified detainees - interview the person within 24 hours and if identity is still unresolved, refer the case to the compliance manager within 48 hours.

Officer’s signature

Officer’s name

Date:

Time:

ATTACHMENT 2 - CHECKS WITHIN 24 HRS OF DETENTION

For all detainees	Have you ever been hospitalised or received treatment for an illness in Australia?	(Circle) Yes / No	<i>If yes, provide details below</i>
For all detainees	Do you have a doctor or counsellor in Australia?	(Circle) Yes / No	<i>If yes, provide contact details below</i>
For all detainees	Does your family know where you are?	(Circle) Yes / No	<i>If no, provide details for contacting family below</i>
For all detainees	Is there a possibility you may have been listed as a missing person?	(Circle) Yes / No	<i>If yes, insert reasons why</i>
For all detainees	Have you ever been fingerprinted?	(Circle) Yes / No	<i>If yes, provide details below as to where, by whom, why... etc</i>
Ask person to consent to disclosure of personal information and/or identifying information (use Attachment 4)			
If there is no match with departmental records	How did you travel to Australia?		
	Where and when did you arrive in Australia?		
	Where did you board the plane/ship to come to Australia?		
If there is no match with departmental records	What name did you use to travel to Australia?		
	Did you travel to Australia on a genuine travel document?	(Circle) Yes / No	<i>If yes, provide details below</i>

	Where is your travel document now?		
	Who do you know in Australia?	<i>Ask for details of family or friends in Australia</i>	
	Do you have relatives overseas?	(Circle) Yes / No	<i>If yes provide details below</i>
	Have you been known by any other names?	(Circle) Yes / No	<i>If yes, provide details below</i>
	Have you ever held a driver's licence in Australia or overseas?	(Circle) Yes / No	<i>If yes, provide details below</i>
	Do you have any bank accounts in Australia?	(Circle) Yes / No	<i>If yes, provide details below</i>
	Have you been employed in Australia?	(Circle) Yes / No	<i>If yes, provide details below (in particular, names and addresses of employers)</i>
	Were you employed in your home country?	(Circle) Yes / No	<i>If yes, provide details below (in particular, names and addresses of employers)</i>
	Did you attend school in your home country?	(Circle) Yes / No	<i>If yes, provide details below</i>

	What language/s do you speak?		
	Do you belong to a religious group?	(Circle) Yes / No	<i>If yes, provide details below</i>
	Request issuing authority to confirm authenticity of identity documents		
For detainees claiming Australian citizenship or permanent residence	Ensure any checks of departmental records unable to be conducted in the field have now been completed (eg check TRIM for a photo and ICSE for citizenship grant details)		
	Request photo from Australian Passport Office if person claims to have been granted an Australian passport		
	Refer the claim to the compliance manager within 24 hours of the claim		
For unidentified detainees	Refer case to the compliance manager within 48 hours, if still not identified		

DIMIA OFFICER TO SIGN

Based on the completion of this checklist, I:

- am satisfied I know the identity of the person listed above, and that they are an unlawful non-citizen (*the person must be kept in detention*)
- am not satisfied about the identity of the person listed above, but still reasonably suspect they are an unlawful non-citizen (*the person must be kept in detention and the checks should continue - consider the suggested avenues in Attachment 3 - Further sources of information*)
- cannot reach a conclusion about the identity or status of the person (*if there is no reasonable suspicion that the person is an unlawful non-citizen, then the person must be released from detention*)

Officer's signature

Officer's name

Date:

Time:

ATTACHMENT 3 - FURTHER SOURCES OF INFORMATION

OTHER DEPARTMENTAL RESOURCES

- online search of various ATO databases via UNCLE (Unlawful Non-Citizen Location Enquiry) - available on Intranet (for last 3 financial years). This may assist in providing address or related information on unlawful non-citizens
- search of the Overstayers File (contact the Compliance Business Systems Section)
- search of the MRT's Case Management System (CMS) to check for appeals which may not be noted on ISCE
- departmental overseas offices
- departmental document examiners (where handwriting analysis may assist)

OTHER GOVERNMENT AGENCIES

- relevant document issuing authorities (to confirm authenticity of identity documentation such as drivers' licences and Medicare cards)
- the Australian Federal Police and national security agencies
- the National Missing Persons Unit (www.missingpersons.gov.au)
- State and Territory police, including their Missing Persons Units
- the Australian Taxation Office (to check for information available before the last 3 financial years)
- Centrelink
- Australia Post
- hospitals and other relevant health facilities

OTHER ORGANISATIONS

- financial institutions and insurance companies
- tenancy databases (ie National Tenancy Databases)
- organisations which may be able to assist with language analysis
- embassies of foreign governments
- foreign bodies that issue travel and identification documents
- Australian and overseas organisations that issue identification documents such as student cards and officer records

SITE VISITS

- family members
- friends
- neighbours
- work colleagues

OTHER SEARCHES

- publicly accessible information such as White Pages telephone directory and the Australian Electoral Roll
- names searches using internet search engines

ATTACHMENT 4 - CONSENT TO DISCLOSURE

Information you should read before consenting to public disclosure of your personal information and/or identifying information

[TIS interpreter to translate for a person unable to read / understand English]

Your consent

- In order to disclose your personal information and/or identifying information, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) requires your written consent.
- You do not have to give this written consent to DIMIA. If you refuse to consent it will not affect how DIMIA or its contractors treat you in any way.
- If you consent to DIMIA disclosing your personal information and/or identifying information, DIMIA will disclose that information to the general public both in Australia and overseas, and to any Australian or foreign government agencies that DIMIA thinks can help to identify you.
- If you have applied for a protection visa, or you are an offshore entry person who has made a claim for protection under the Refugees Convention as amended by the Refugees Protocol, DIMIA is not allowed to disclose your identifying information to:
 - any country or a body of such a country in respect of which your application or claim is made. That is, the country where you claim to have been persecuted or
 - a third country or a body of a third country unless the officer making the disclosure is reasonably satisfied that the third country or the body will not then disclose your identifying information to a foreign country in respect of which your protection visa application or claim for protection under the Refugees Convention as amended by the Refugees Protocol was made

unless:

- you have requested or agreed to return to the foreign country in respect of which your application or claim is made
- your protection visa application has been refused and finally determined or
- your protection claim has been assessed and you have been found not to be a person to whom Australia owes obligations under the Refugees Convention as amended by the Refugees Protocol.

It is therefore very important that you tell DIMIA if you have made a protection visa application or a claim for protection under the Refugees Convention as amended by the Refugees Protocol.

I (*insert person's claimed identity here*) agree that, for the purposes of checking my identity and/or immigration status, DIMIA may disclose the following *personal information*:

- *include a list of the particular personal information DIMIA will or may disclose (for example, the person's name and date of birth)*

and *identifying information*:

- *include a list of the particular identifying information which DIMIA may or will disclose (for example, the person's photo and signature)*

to the following Australian and overseas government agencies, and other persons listed below:

- *include a list of agencies and persons to whom information may be disclosed (for example:*

AUSTRALIAN GOVERNMENT AGENCIES

- relevant document issuing authorities (to confirm authenticity of identity documentation (such as drivers' licences and Medicare cards)

- the Australian Federal Police and national security agencies
- the National Missing Persons Unit (www.missingpersons.gov.au)
- State and Territory police, including their Missing Persons Units the Australian Taxation Office (to check for information available before the last 3 financial years)
- Centrelink
- Australia Post
- hospitals and other relevant health facilities
- the Australian Electoral Commission

OTHER ORGANISATIONS

- financial institutions and insurance companies
- tenancy databases (ie National Tenancy Databases)
- organisations which may be able to assist with language analysis
- embassies of foreign governments
- foreign bodies that issue travel and identification documents
- Australian and overseas organisations that issue identification documents such as student cards and officer records

INDIVIDUALS

- family members
- friends
- neighbours
- work colleagues

OTHER SEARCHES

- publicly accessible information such as White Pages telephone directory and the Australian Electoral Roll
- names searches using internet search engines

Please read and sign the declaration below.

If you cannot read and write English, the officer who gave you this form will ask you some questions through the interpreter and will write down your answers. The interpreter will tell you what the officer has written and then we will ask you to sign and date this form.

DECLARATION BY INDIVIDUAL ABLE TO READ AND WRITE ENGLISH

(please tick one box only)

- I have read, and understand, the information on this form, and *I consent* to DIMIA disclosing my identifying information and/or personal information in the ways described above.

OR

- I have read, and understand, the information on this form, and *I do not consent* to DIMIA disclosing my identifying information and/or personal information in any of the ways described above.

OR

- I have read, and understand, the information on this form, and *I consent* to DIMIA disclosing my identifying information and/ or personal information in the ways described above, *except for the following* personal information/ identifying information:

Name: _____

Signature: _____

Date: _____

DECLARATION BY DIMIA OFFICER FOR INDIVIDUAL UNABLE TO READ AND WRITE ENGLISH

(please tick one box only)

- The information on this form was communicated, through an interpreter, to the individual named below, and *they consented*, through that interpreter, to DIMIA disclosing their identifying information and/or personal information in the ways described above.

OR

- The information on this form was communicated, through an interpreter, to the individual named below, and they indicated through that interpreter that they *did not consent* to the Department disclosing their identifying information and/or personal information in any of the ways described above.

OR

- The information on this form was communicated, through an interpreter, to the individual named below, and they indicated through that interpreter that *they consented* to DIMIA disclosing their identifying information and/or personal information in the ways described above, *except for the following* personal information/ identifying information:

Name of Individual: _____

Signature: _____

Date: _____

Name of DIMIA Officer: _____

Position: _____

APS Level: _____

Signature: _____

Date: _____

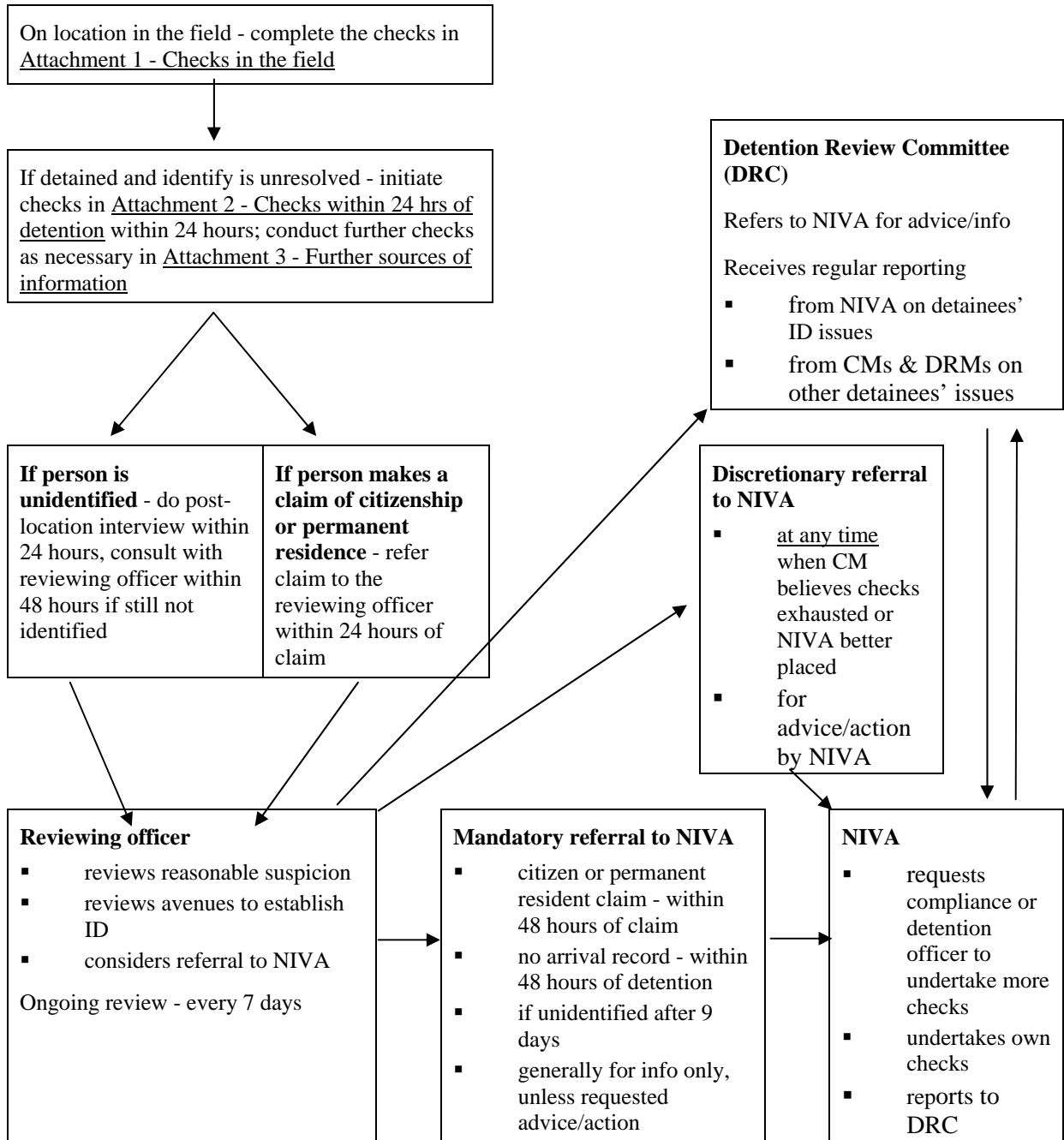
ATTACHMENT 5 - COLLECTING PERSONAL INFORMATION

How you can collect information	Who you can collect information from	When you can collect the information	The type of information you can collect
s18	Persons reasonably believed to be capable of giving information or documents relevant to ascertaining the identity or whereabouts of persons reasonably believed to be unlawful non-citizens.	After serving a s18 notice on the person and giving a reasonable period to provide information or documents.	Information about identity or whereabouts of persons reasonably believed to be unlawful non-citizens
<p><i>Example</i></p> <p>You receive dob-in information that there is an overstayer named Sarah renting premises above a restaurant in Murphy St. You serve a s18 notice on the restaurant to collect more information about Sarah's identity and whereabouts (eg, her surname and the exact address details).</p>			
By consent	Person who consents to give you information	Once consent has freely been given	Any identity information the person agrees to provide
<p><i>Example continued</i></p> <p>You go to execute a search warrant on Sarah's flat. When you arrive you realise that the flat only has internal access through the restaurant. While you are waiting in the restaurant for Sarah to answer the door, you see someone who looks like the person who recently absconded from another restaurant while you were executing a search warrant there. You approach the person and ask him for his name. He says he is Abdul Termizi.</p>			
s188(1)	Persons known or reasonably suspected of being non-citizens	After requiring the person to provide the information	Identity information (other than a personal identifier)
<p><i>Example continued</i></p> <p>When Abdul Termizi is asked to present his driver's licence to confirm his identity he refuses to do so. You tell him that he is required to provide you with evidence of his identity and immigration status. Abdul Termizi then shows you his Turkish passport.</p>			
s188(4)	Persons known or reasonably suspected of being non-citizens	<p>ONLY after the person has:</p> <ul style="list-style-type: none"> ▪ refused or failed to comply with a requirement under s188(1) within the relevant time period OR ▪ advised during the relevant time period that they refuse or are unable to comply with the s188(1) requirement OR ▪ provided evidence and the officer is not satisfied it is authentic or reliable. 	Personal identifiers - currently only photographs or signatures
<p><i>Example continued</i></p> <p>After examining Abdul Termizi's Turkish passport, you're not satisfied that it is authentic or reliable. You then tell Abdul Termizi that he is required to provide his photograph to you within the next 5 mins. After all procedural requirements are met, you take his photograph with your digital camera.</p>			

ATTACHMENT 6 - DISCLOSING PERSONAL INFORMATION

How you can disclose information	Who you can disclose information to	When you can disclose the information	The type of information you can disclose
s18	Persons reasonably believed to be capable of giving information or documents relevant to ascertaining the identity or whereabouts of persons reasonably believed to be unlawful non-citizens.	When trying to identify a person reasonably believed to be an unlawful non-citizen.	Any personal information (other than a personal identifier).
<p><i>Example</i></p> <p><i>You reasonably believe that Sarah is an overstayer renting a flat above a restaurant in Murphy St. You disclose her first name to the restaurant asking for her surname and exact address details.</i></p>			
With the consent of the person of interest	Whoever you have gained consent to disclose the information to	When the person has been told who you want to disclose the information to and has freely consented to this	Any personal information relevant to identifying the person of interest
<p><i>Example continued</i></p> <p><i>When you locate Sarah in her flat, she claims to have arrived in Australia on the same flight as her brother. You ask her for her brother's phone number so that you can confirm her movement record (which is not found on departmental systems). She agrees to this and gives you the phone number.</i></p>			
Rely on IPP 11(1)(a) - person reasonably likely to have been aware that the disclosure would occur	Depends on the circumstances, but commonly includes: <ul style="list-style-type: none"> ▪ police ▪ employers ▪ agencies issuing documents of identity 	When trying to identify a person of interest known or reasonably suspected of being a non-citizen or unlawful non-citizen	Any personal information (other than a personal identifier)
<p><i>Example continued</i></p> <p><i>You disclose Abdul Termizi's Turkish passport details to the Turkish embassy to be checked. Abdul Termizi's would be reasonably likely to be aware that the authenticity of his passport would be checked since he presented this document as proof of identity.</i></p>			
Rely on Form 993i	Generally: <ul style="list-style-type: none"> ▪ Australian and overseas law enforcement bodies ▪ Interpol ▪ Overseas immigration authorities 	When trying to identify a person of interest known or reasonably suspected of being a non-citizen	Any personal information (other than a personal identifier)
<p><i>Example continued</i></p> <p><i>You disclose Abdul Termizi's identity to Turkish law enforcement bodies to check whether he has any history of, or involvement in, passport fraud.</i></p>			

ATTACHMENT 7 - ESCALATION MECHANISMS



MSI 410:

Exclusion periods

This MSI relates to:

- public interest criteria 4013 and 4014 and
- special return criteria 5001, 5002 and 5010.

ABOUT THIS DOCUMENT

This document comprises:

- [About this instruction](#)
- [About exclusion periods](#)
- [Schedule 4 exclusion criteria](#)
- [Schedule 5 exclusion criteria](#)
- [Other exclusion provisions](#)
- [Assessing & deciding visa applications](#)
- [A visa is granted to a person but the exclusion period was not known](#)
- [Attachment 1 - Does an exclusion period apply](#)
- [Attachment 2 - Pro forma letter - request for further information.](#)

Related instructions

- [MSI: Visa cancellation under sections 109, 116, 128 and 140.](#)

Recent changes

Legislative

Nil

Policy

This instruction was registered in the department's centralised instruction system on 20 December 2005. It replaces MSI 381.

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ABOUT THIS INSTRUCTION

1 PURPOSE

This instruction describes the legal requirements and policy that apply in considering visa applications made by persons who are subject to exclusion periods. It also helps officers - particularly compliance officers - understand how and when exclusion periods will apply to a person whose visa is cancelled or who is removed or deported from Australia.

ABOUT EXCLUSION PERIODS

This Part comprises:

- [section 2 What are exclusion periods](#)
- [section 3 Purpose of exclusion periods](#)
- [section 4 Effect of exclusion periods](#)
- [section 5 Who is subject to an exclusion period.](#)

2 WHAT ARE EXCLUSION PERIODS

Exclusion periods are not defined in the *Migration Act 1958* (the Act) or the *Migration Regulations 1994* (the Regulations). Simply put, however, they are the periods of time specified in:

- public interest criteria (PIC) 4013 and 4014 and
- special return criteria (SRC) 5001, 5002 and 5010

(the “exclusion criteria”) during which particular persons cannot be granted certain visas to travel to, enter and remain in Australia, unless certain exceptions apply.

These periods come into effect because of the combined operation of s31(3) of the Act and Schedules 2, 4 and 5 to the Regulations.

Subsection 31(3) provides a power for the Regulations to prescribe criteria for visas or classes of visas. Under this power:

- Schedules 4 and 5 establish the exclusion criteria and
- Schedule 2 specifies that, where relevant, the exclusion criteria must be satisfied for the grant of a visa.

3 PURPOSE OF EXCLUSION PERIODS

The general purposes of exclusion periods are to:

- identify visa applicants who may pose a risk to Australia because of previous breaches of immigration law and
- preclude certain persons from entering Australia.

The following powers in the Act, although not exclusion periods, have a similar purpose and effect:

- s32(2), which provides that a criterion for a special category visa is that a New Zealand citizen must not be a “behaviour concern non-citizen” and
- s33(9), which enables the Minister to declare that it is undesirable for a person (or any class of persons) to travel to and enter Australia, or remain in Australia, on a special purpose visa.

4 EFFECT OF EXCLUSION PERIODS

Exclusion periods do not prevent a person from *applying* for a visa. In all cases, a person potentially subject to an exclusion period can validly apply for a visa.

5 WHO IS SUBJECT TO AN EXCLUSION PERIOD

A visa applicant, whether currently in or outside Australia, is subject to an exclusion period if:

- they apply for a visa for which Schedule 2 prescribes any one or more of:
 - PIC 4013 or 4014 or
 - SRC 5001, 5002 or 5010 and
- they do not satisfy any one or more of those criteria.

Officers must check whether exclusion criteria are relevant to the visa applied for (including whether they are primary criteria and/or secondary criteria) before deciding whether an exclusion period applies to the person.

Officers should be aware that:

- not all visas have exclusion criteria - for example, PIC 4013 and 4014 are criteria for a Subclass 417 (Working Holiday) visa but not for a Subclass 801 (Spouse) visa
- more than one exclusion criterion may apply at the same time – for example, if both PIC 4013 and 4014 apply the person would have to be assessed against both criteria
- exclusion criteria usually apply at the time of visa decision but may sometimes apply at the time of visa application
- for certain visas, exclusion criteria are “one fails, all fail” criteria ie if any family unit member applying for a visa is subject to an exclusion period, the applicant seeking to satisfy primary criteria will not satisfy Schedule 2 criteria for visa grant, even if they themselves are not subject to an exclusion period - see for example, clauses 121.226 and 405.227(6).

SCHEDULE 4 EXCLUSION CRITERIA

This Part comprises:

- PIC 4013
- PIC 4014.

PIC 4013

This part comprises:

- section 6 Effect of PIC 4013(1)
- section 7 PIC 4013(1A) risk factor
- section 8 PIC 4013(2) risk factor
- section 9 PIC 4013(2A) risk factor.

6 EFFECT OF PIC 4013(1)

Broadly, PIC 4013(1) provides that a person affected by a risk factor cannot be granted a visa unless 3 years have passed since the cancellation of their previous visa.

This is the case unless the decision maker is satisfied, in the particular case, that:

- compelling circumstances affecting the interests of Australia or
- compassionate or compelling circumstances affecting the interests of an Australian citizen, Australian permanent resident or eligible New Zealand non-citizen

justify granting the visa within this 3 year period.

PIC 4013(1A), (2), (2A), (3), (4) and (5) prescribe the circumstances in which a person is affected by a risk factor. For further guidance, see:

- section 7 PIC 4013(1A)
- section 8 PIC 4013(2)
- section 9 PIC 4013(2A).

Note: This MSI does not deal with clauses 4013(3), (4) and (5) because these provisions no longer apply.

7 PIC 4013(1A) RISK FACTOR

7.1 Visa cancellation - Incorrect information or bogus documents

A person is affected by this risk factor if their previous visa was cancelled because they provided incorrect information or bogus documents to the department. This is the case whether the visa was cancelled under s109, s116(1)(d) or s128 (on the basis of the cancellation ground in s116(1)(d)).

This provision does not apply, however, if the visa cancellation decision was subsequently set aside by the Federal Court, Federal Magistrates Court, Administrative Appeals Tribunal (AAT), Migration Review Tribunal (MRT) or Refugee Review Tribunal (RRT), because, in these circumstances, the visa is taken never to have been cancelled - see eg s114 of the Act.

7.2 Granting the visa within the exclusion period

For policy guidance on granting a visa in circumstances where the PIC 4013(1A) risk factor applies, see Assessing & deciding visa applications - Discretion to grant a visa during an exclusion period.

8 PIC 4013(2) RISK FACTOR

8.1 Visa cancellation - various prescribed grounds

A person is affected by this risk factor if their previous visa was cancelled under s116 or s128 of the Act on any of the grounds listed in PIC 4013(2)(a) to (d), namely:

- the person was found working without authority or
- in relation to a person who held a visa listed Schedule 4 Part 2 column 2 – the person breached a visa condition listed in column 3 for that visa or
- in relation to a former Subclass 773 (Border) visa holder who was apparently eligible for a substantive visa specified in Schedule 4 Part 2 column 2 at the time the Border visa was granted – the person breached a condition listed in column 3 for that visa or
- in relation to a former student visa holder – the visa cancellation decision maker was satisfied that the person:
 - was not, or was not likely to be, a genuine student or
 - engaged, was engaging, or was likely to engage, while in Australia, in conduct not contemplated by the visa or
- the visa cancellation decision maker was satisfied that regulation 2.43(1)(i), (j), (k), (m) or (o) applied to the person.

8.2 Regs. 2.43 (1)(i), (j) and (k)

Regulations 2.43(1)(i), (j) and (k) provide grounds for visa cancellation where the decision maker is satisfied that the visa holder did not have, or ceased to have, a genuine intention to engage solely in conduct contemplated by the visa. That is, an intention to stay in or visit Australia temporarily for the purposes of business, visiting family or tourism.

For further guidance on these cancellation grounds, see [MSI: Visa cancellation under sections 109, 116, 128 and 140](#).

8.3 Regs. 2.43(1)(m) and (o)

Regulations 2.43(1)(m) and (o) respectively provide grounds for visa cancellation where the decision maker reasonably suspects that:

- the visa holder has committed an offence under s232A, s233, s233A, s234 or s236 of the Act (for example, people smuggling, harbouring or fraud) or
- the visa has been obtained as a result of the fraudulent conduct of any person.

For further guidance on these cancellation grounds, see [MSI: Visa cancellation under sections 109, 116, 128 and 140](#).

8.4 Granting the visa within the exclusion period

For policy guidance on granting a visa in circumstances where the PIC 4013(2) risk factor applies, see [Assessing & deciding visa applications - Discretion to grant a visa during an exclusion period](#).

9 PIC 4013(2A) RISK FACTOR

9.1 Automatic student visa cancellation

A person is affected by this risk factor if they previously held a student visa that was automatically cancelled under s137J of the Act on the basis of breaching a condition relating to attendance or satisfactory academic performance.

This provision does not apply, however, if the automatic cancellation of a student visa was subsequently revoked under s137N of the Act. This is because, in these circumstances, the student visa is taken never to have been cancelled - see s137P of the Act.

9.2 Granting the visa within the exclusion period

For policy guidance on granting a visa in circumstances where the PIC 4013(2A) risk factor applies, see [Assessing & deciding visa applications - Discretion to grant a visa during an exclusion period](#).

PIC 4014

This Part comprises:

- [section 10 Effect of PIC 4014\(1\)](#)
- [section 11 PIC 4014\(4\) risk factor](#)
- [section 12 PIC 4014\(5\) - The exceptions to PIC 4014\(4\)](#)
- [section 13 Exception - clause 4014\(5\)\(a\)](#)
- [section 14 Exception - clause 4014\(5\)\(b\)](#).

10 **EFFECT OF PIC 4014(1)**

PIC 4014 relates to a person's immigration status at time of a previous departure from Australia.

Broadly, PIC 4014(1) provides that a person affected by a risk factor cannot be granted a visa unless 3 years have passed since the person left Australia.

This is the case unless the decision maker is satisfied, in the particular case, that:

- compelling circumstances affecting the interests of Australia or
- compassionate and compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand non-citizen

justify granting the visa within 3 years after the departure.

PIC 4014(2), (3), (4) and (5) prescribe the circumstances in which an applicant is affected by a risk factor. For further guidance, see:

- [section 11 PIC 4014\(4\) risk factor](#)
- [section 12 PIC 4014\(5\) - The exceptions to PIC 4014\(4\)](#).

Note: this MSI does not deal with clauses 4014(2) or 4014(3) as these provisions no longer apply.

11 **PIC 4014(4) RISK FACTOR**

11.1 Who falls within PIC 4014(4)

As a general rule, a person is affected by this risk factor if they left Australia as:

- an unlawful non-citizen or
- the holder of a Bridging C, D or E visa.

This is the case, whether the previous departure was the person's *most recent* departure from Australia or an earlier departure from Australia.

11.2 Granting the visa within the exclusion period

For policy guidance on granting a visa in circumstances where the PIC 4014(4) risk factor applies, see [Assessing & deciding visa applications - Discretion to grant a visa during an exclusion period](#).

12 **PIC 4014(5) - THE EXCEPTIONS TO PIC 4014(4)**

PIC 4014(5) provides 3 exceptions in relation to who falls within 4014(4), namely:

- PIC 4014(5)(a) - in relation to a person who leaves Australia as an unlawful non-citizen
- PIC 4014(5)(b)(i) & (ii) - in relation to a person who leaves Australia as the holder of a Bridging C, D or E visa.

13 EXCEPTION - CLAUSE 4014(5)(A)

13.1 How it applies to persons who leave Australia as unlawful non-citizens

If a person leaves Australia as an unlawful non-citizen, clause 4014(5)(a) provides that they are not affected by a risk factor provided they left Australia within 28 days of their substantive visa ceasing to be in effect.

14 EXCEPTION - CLAUSE 4014(5)(B)

14.1 How it applies to persons who leave Australia as Bridging C, D or E holders

If a person leaves Australia as the holder of a Bridging C, D or E visa, clause 4014(5)(b) provides that they are not affected by a risk factor if:

- the Bridging visa (C, D or E) they held when leaving Australia was granted within 28 days of their substantive visa ceasing to be in effect - clause 4014(5)(b)(i) or
- the Bridging visa (C, D or E) they held when leaving Australia was granted while the person held another Bridging visa (for example, a Bridging visa A). This other bridging visa must have been granted while the person held a substantive visa or within 28 days of that substantive visa ceasing - clause 4014(5)(b)(ii).

14.2 Clause 4014(5)(b)(i)

Clause 4014(5)(b)(i) is relatively straightforward, so is not further discussed.

14.3 Clause 4014 (5)(b)(ii)

Clause 4014(5)(b)(ii) is complicated and best explained by way of the following examples.

Clause 4104(5)(b)(ii) applies

Example 1

- 3 days after their substantive visa ceases, the person applies for *and is granted* a Bridging visa E (BVE) for 10 days in order to make arrangements to leave Australia
- *within that 10 day BVE period*, the person both applies for *and is granted* a further BVE because they need more time to arrange their departure and
- the person leaves Australia holding that further BVE.

In this instance, clause 4014(5)(b)(ii) applies because the bridging visa granted immediately before the bridging visa held at time of departure was granted within 28 days (in this example, within 3 days) of their substantive visa ceasing to be in effect.

Example 2

- 20 days after their substantive visa ceases, the person applies for *and is granted* a Bridging visa E (BVE) for 10 days in order to make arrangements to leave Australia
- the day before that BVE ceases, the person both applies for *and is granted* another BVE because they need more time to arrange their departure and
- the person leaves Australia 20 days after that further BVE ceases.

In this instance, clause 4014(5)(b)(ii) applies because the bridging visa granted immediately before the bridging visa held by the person when leaving Australia was granted 20 days after their substantive visa ceased to be in effect.

To make it clear, if clause 4014(5)(b)(ii) applies to a person, they are *not* affected by the risk factor and are *not* subject to the exclusion period set out in PIC 4014.

Clause 4014(5)(b)(ii) does not apply**Example 1**

Clause 4014(5)(b)(ii) would *not* apply if:

- a person's substantive visa ceases to be in effect
- 10 days later the person applies for and is granted a BVE for 20 days (in order to make arrangements to depart Australia)
- on the 19th day, the person applies for another BVE, realising that they need more time to arrange their departure from Australia
- they are granted a BVE for another 10 days
- before this BVE expires, the person applies for another BVE, realising that they still need more time to arrange their departure and
- they are granted that BVE and leaves Australia holding that BVE.

This is because the BVE granted immediately before the BVE held by the person when leaving Australia was granted 29 days after their substantive visa ceased to be in effect.

To make it clear, if clause 4014(5)(b)(ii) does not apply to a person, they are subject to the exclusion period set out in PIC 4014, unless the decision maker is satisfied, in the particular case, that:

- compelling circumstances affecting the interests of Australia or
- compassionate and compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand non-citizen

justify granting the visa within this 3 year period.

SCHEDULE 5 EXCLUSION CRITERIA

This part comprises:

- SRC 5001
- SRC 5002
- SRC 5010

SRC 5001

This Part comprises:

- section 15 About this Part
- section 16 Deportation
- section 17 Visa cancellation - s501 (pre-1/6/1999)
- section 18 Visa cancellation - Current s501, s501A & s501B

15 ABOUT THIS PART

Broadly, SRC 5001 provides that a person cannot be granted a visa if they:

- were deported from Australia under section 200 of the current Act or its historical equivalent or
- held a visa that was cancelled on certain grounds under:
 - section 501 of the Act in force before 1 June 1999 or
 - section 501, 501A or 501B of the current Act.

16 DEPORTATION

16.1 When SRC 5001 applies

If SRC 5001 is a criterion of the visa applied for, a person cannot be granted the visa if they were previously deported from Australia under s200 of the current Act or former equivalent.

However, this does not apply where:

- the deportation order was *revoked* before the person left Australia or
- the deportation order was *set aside* by the AAT.

16.2 Granting the visa within the exclusion period

If SRC 5001 applies, the person is subject to *permanent exclusion* from Australia.

17 VISA CANCELLATION - S501 (PRE-1/6/1999)

17.1 When SRC 5001 applies

If SRC 5001 is a criterion of the visa applied for, a person cannot be granted the visa if they have ever held a visa that was cancelled under s501 of the Act as in force before 1 June 1999, wholly or partly because the decision maker was satisfied the person was not of good character (based on the person's past criminal conduct).

However, this does not apply where:

- the visa was cancelled under (former) s501 on *other* grounds (for example, because the decision maker was satisfied the person was not of good character based on the person's general conduct) or
- the visa was *refused* (rather than cancelled) on character grounds.

17.2 Granting the visa within the exclusion period

If SRC 5001 applies, the person is subject to permanent exclusion from Australia.

18 VISA CANCELLATION - CURRENT S501, S501A & S501B

18.1 When SRC 5001 applies

If SRC 5001 is a criterion of the visa applied for, a person cannot be granted the visa if they have ever held a visa that has been cancelled under s501, s501A or s501B of the current Act, wholly or partly because:

- they had a substantial criminal record or
- they were not of good character, having regard to:
 - their past and present criminal conduct or
 - their past and present criminal and general conduct.

However, this does not apply where:

- the visa was cancelled under s501, s501A or s501B because of s501(6)(b) or (d) (for example, because of the person's criminal association or because they were of a certain significant risk to the Australian community) or
- the visa was *refused* (rather than cancelled) on character grounds or
- the cancellation of the visa on character grounds was subsequently revoked under s501C(4).

18.2 Granting the visa within the exclusion period

If SRC 5001 applies, the person is subject to *permanent exclusion* from Australia.

SRC 5002

19 ABOUT SRC 5002

19.1 Effect of SRC 5002

If SRC 5002 is a criterion of the visa applied for, a person cannot be granted the visa if they apply within 12 months of being removed from Australia under s198, 199 or 205 of the Act.

This is the case unless the decision maker is satisfied, in the particular case, that:

- compelling circumstances that affect the interests of Australia or
- compassionate or compelling circumstances that affect the interest of an Australian citizen, an Australian permanent resident or an eligible New Zealand non-citizen

justify granting the visa within that 12 month exclusion period.

Section 198 of the Act provides various situation-specific powers to remove unlawful non-citizens. Sections 199 and 205 respectively provide a power to remove or deport spouses and dependent children of unlawful non-citizens.

19.2 Granting the visa within the exclusion period

For policy guidance on granting a visa in circumstances where SRC 5002 applies, see [Assessing & deciding visa applications - Discretion to grant a visa during an exclusion period](#).

SRC 5010

This Part comprises:

- [section 20 About SRC 5010](#)
- [section 21 SRC 5010\(3\)-\(5\)](#).

20 ABOUT SRC 5010

20.1 Effect of SRC 5010

SRC 5010 applies to certain holders or former holders of various student visas.

Broadly, SRC 5010 provides that such persons cannot be granted a visa unless they have been outside Australia for at least two years since ceasing their course of study or training. This is the case unless:

- the relevant course was designed to be undertaken over a period of 12 months or less or
- the relevant course was designed to be undertaken over a period of more than 12 months but:
 - the AusAID Minister or foreign government supports the grant of the visa or
 - the Minister waives the requirement that the AusAID Minister or foreign government support the grant of the visa.

20.2 Current and former AusAID student visa holders

Persons who hold or have held an *AusAID student visa* as defined in regulation 1.04A(1) are subject to SRC 5010 (see SRC 5010(1)(a) and SRC 5010(2)(a)).

To satisfy this SRC, the person must:

- have spent at least 2 years outside Australia since ceasing the relevant course of study or training (see SRC 5010(4); note also the definition of *cease*) or
- meet the requirements of SRC 5010(3) or SRC 5010(5), for which see section 21 SRC 5010(3)-(5).

In assessing the SRC, officers must take care not to confuse it - and the persons to whom it applies - with the separate Schedule 2 visa criteria relating to AusAID students and AusAID recipients as defined in regulation 1.04A(2) and (3).

20.3 Certain current student visa holders

Persons who hold a *student visa* (as defined in regulation 1.03) granted on the basis that they had the financial support of the government of a foreign country are subject to SRC 5010 (see SRC 5010(1)(b)).

To satisfy this SRC, the person must:

- have spent at least 2 years outside Australia since ceasing the relevant course of study or training (see SRC 5010(4); note also the definition of *cease*) or
- meet the requirements of SRC 5010(3) or SRC 5010(5), for which see section 21 SRC 5010(3)-(5).

20.4 Certain former student visa holders

Persons who:

- have never held an AusAID visa
- do not hold a substantive visa and
- whose last substantive visa was a student visa (as defined in regulation 1.03) granted on the basis that they had the financial support of the government of a foreign country

are subject to SRC 5010 (see SRC 5010(2)(b)).

To satisfy this SRC, the person must:

- have spent at least 2 years outside Australia since ceasing the relevant course of study or training (see SRC 5010(4); note also the definition of *cease*) or
- meet the requirements of SRC 5010(3) or 5010(5), for which see section 21 SRC 5010(3)-(5).

21 SRC 5010(3)-(5)

SRC 5010(4) provides that a person cannot be granted a visa unless they have spent at least 2 years outside Australia since ceasing their course of study or training. This 2 year exclusion period does not apply if the person meets the requirements of SRC 5010(3) or 5010(5).

SRC 5010(3) is met if the relevant course of study or training was designed to be undertaken over 12 months or less.

SRC 5010(5) is met if the relevant course of study or training was one designed to be undertaken over a period of more than 12 months but:

- the AusAID Minister or the foreign government that provided the financial support for the course of study or training supports the grant of the visa or
- the visa decision maker is satisfied that waiving the requirement that the AusAID Minister or foreign government support the grant of the visa is justified by:
 - compelling circumstances affecting the interests of Australia or
 - compassionate or compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

For policy guidelines on assessing cases against this waiver provision, see Assessing & deciding visa applications - Discretion to grant a visa during an exclusion period.

OTHER EXCLUSION PROVISIONS

22 S503 OF THE ACT

Section 503 of the Act enables the Regulations to prescribe periods during which persons subject to certain decisions are not entitled to enter or be in Australia. As no regulations have been made under s503 to prescribe time periods for exclusion, s503 does not currently operate to exclude anyone from Australia.

Instead, SRC 5001, where it is a criteria of the visa applied for, will prevent persons from being granted a visa to enter Australia in the circumstances specified in the section SRC 5001.

ASSESSING & DECIDING VISA APPLICATIONS

This Part comprises:

- Identification & notification
- Discretion to grant a visa during an exclusion period

IDENTIFICATION & NOTIFICATION

This Part comprises:

- section 23 Checking if an exclusion period applies
- section 24 Multiple exclusion periods
- section 25 Notifying the applicant.

23 CHECKING IF AN EXCLUSION PERIOD APPLIES

An exclusion period applies if:

- Schedule 2 for the visa subclass prescribes any one or more exclusion criteria ie:
 - PIC 4013 or 4014 or
 - SRC 5001, 5002 or 5010 and
- the visa application is made by, or on behalf of, a person subject to an exclusion period and
- at the time of deciding whether to grant the visa, the exclusion period has not elapsed (for 5001, the time will never elapse - it is a permanent exclusion).

To determine whether an exclusion period applies, offices must check departmental records (including MAL, ICSE, IRIS and/or client files) to check:

- the date the exclusion period started (for example, the date the previous visa was cancelled)
- the date the exclusion period ends (for example, 3 years after the previous visa was cancelled)
- whether, in relation to a cancellation decision, that decision was revoked or set aside and the visa was taken never to have been cancelled.

See Attachment 1 - Does an exclusion period apply.

24 MULTIPLE EXCLUSION PERIODS

It is possible for a person to be subject to more than one exclusion period at the same time.

For example, this may be the case where a person:

- previously held a visa that was cancelled under s109 on the grounds that they provided incorrect information on their visa application
- was removed from Australia under s198 of the Act
- has applied for a new visa to travel to Australia and
- both PIC 4013 and SRC 5002 are criteria for the new visa.

Where this is the case, the visa cannot be granted unless the person applies:

- 3 years after the cancellation of their previous visa and
- 1 year after their removal from Australia

unless the decision maker is satisfied that circumstances justify the grant of the visa.

That is, the person must satisfy both exclusion criteria.

Although these exclusion periods are activated at different times (on cancellation and removal, respectively), they run concurrently.

25 NOTIFYING THE APPLICANT

An exclusion period does not prevent a non-citizen from applying for a visa and so is not a bar to making a valid application.

However, it is departmental policy that persons subject to exclusion criteria should be informed accordingly to prevent unnecessary processing for both the person and the department.

As soon as becoming aware that a person intends to apply for a visa where exclusion criteria apply, and the exclusion period has not elapsed, officers are to clearly inform the person that:

- an exclusion criterion applies (for example, one or more of PIC 4013 or 4014 or SRC 5001, 5002 or 5010)
- their application would be made before the exclusion period has elapsed
- if applicable to the exclusion criterion in question, the visa cannot be granted unless there are compelling or compassionate circumstances justifying the grant of the visa and
- if the visa is refused, the visa application charge cannot generally be refunded (see, PAM3: Div2.2A Visa application charge - Refund provisions.)

If a person applies for a visa and an exclusion period applies, it is departmental policy that the decision-maker should, as a general rule, assess the exclusion criterion/criteria before assessing any other criteria. The applicant should not be asked to complete any requirements relating to other visa criteria before a decision is made as to whether the exclusion period applies. This is because assessing other criteria may lead to unnecessary processing.

In order to prevent persons applying for visas without knowing that an exclusion period applies, at the time of an activating event such as a visa cancellation or removal from Australia, officers should clearly inform the person that:

- depending on the type of visa they apply for in the future, they may be subject to an exclusion period and
- if they want to apply for a visa in the future, they should check with the department (or overseas post) before lodging their application.

DISCRETION TO GRANT A VISA DURING AN EXCLUSION PERIOD

This Part comprises:

- section 26 Scope of discretion
- section 27 Who can exercise discretion
- section 28 Grounds for exercising discretion
- section 29 Compelling circumstances
- section 30 Compassionate circumstances
- section 31 Inviting further information from applicant
- section 32 Finalising the visa application.

26 SCOPE OF DISCRETION

26.1 What is within scope

Decision makers have discretion to grant a visa to an applicant in circumstances where:

- an exclusion period in PIC 4013, PIC 4014 or SRC 5002 has not elapsed but
- they are satisfied that prescribed circumstances exist to justify granting the visa.

Decision makers also have discretion under SRC 5010(5) to waive the requirement that an applicant have the support of the AusAID Minister or the foreign government that provided financial support to the applicant during their course of study or training (in order to be able to grant the visa).

26.2 What is outside scope

Decision makers have no discretion to:

- grant a visa to a person who does not satisfy SRC 5001 or
- reduce an exclusion period.

26.3 Effect of discretion

If a discretion is exercised, the applicant satisfies the applicable exclusion criterion whether or not they have been outside Australia for the prescribed exclusion period.

This is the case only in relation to the particular visa application being considered. If the person makes another visa application before the exclusion period has elapsed, they will again have to satisfy the exclusion criteria (if any) applicable to the visa.

27 WHO CAN EXERCISE DISCRETION

As exclusion criteria are Schedule 2 criteria for visa grant, all s65 delegates have the power to:

- grant or refuse to grant a visa where an exclusion criterion applies or
- exercise the discretion to grant a visa where the exclusion period has not elapsed.

It is departmental policy, however, only s65 delegates of EL1 or above should decide the visa application if the decision involves assessing whether the grant of the visa is justified despite the fact that the exclusion period has not elapsed.

In such cases, s65 delegates below EL1 should prepare a submission to an EL1 delegate setting out:

- why the person is subject to an exclusion period (including background information from departmental sources and the nature of the breach of migration law that led to the exclusion period)
- the start and end dates of the exclusion period and
- why the grant of the visa may be justified, for example any claims put forward by the person as to compelling or compassionate circumstances that justify grant of the visa.

The EL1 delegate is to decide whether to exercise the discretion or not and then assess all other criteria before deciding whether to grant the visa.

28 GROUNDS FOR EXERCISING DISCRETION

28.1 Legislative authority

Where decision makers are satisfied that there are:

- compelling circumstances affecting the interests of Australia, an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen or
- compassionate circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen

they may:

- in the case of PIC 4013, PIC 4014 or SRC 5002 - find that the criterion is satisfied even though the exclusion period has not elapsed or
- in the case of SRC 5010(5) - waive the requirement that the applicant have the support for visa grant from the AusAID Minister or the foreign government that provided financial support to the applicant.

Exercising the relevant discretion requires:

- first, deciding whether there are compelling or compassionate circumstances in the particular case and, if so,
- deciding whether those circumstances justify granting the visa (or waiving the SRC 5010(5) requirement to have financial support).

Deciding whether there are compelling or compassionate circumstances depend on the circumstances of the individual case. Some guidance, however, is provided below on what may amount to compelling or compassionate circumstances.

29 COMPELLING CIRCUMSTANCES

29.1 Affecting the interests of Australia

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

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

29.2 Departmental policy

It is departmental policy that compelling circumstances affecting the interests of Australia would not include circumstances where the non-citizen merely claims that, if granted the visa, they would:

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

However, if a s65 delegate considers, in a particular case, that the exclusion period has arisen:

- from departmental error or
- as an unintended consequence of the exclusion provisions (see examples below)

they should contact Compliance Coordination Section in National Office for further advice on whether the circumstances are compelling circumstances affecting the interests of Australia.

Example – unintended consequence

The exclusion provisions may be regarded as having an unintended effect if the person previously made every effort to leave Australia whilst a lawful non-citizen (eg while holding a bridging visa) but did not leave before the visa ceased due to factors beyond their control, for example:

- health issues
- unavoidable delays by airlines or
- delays associated with the issue of travel documents.

Example – not an unintended consequence

Generally, the exclusion provisions should *not* be regarded as having an unintended effect in cases where, for example:

- the person claims they inadvertently breached a condition of their Electronic Travel Authority (ETA) because the travel agent failed to inform them of the conditions of the ETA or
- the person claims the department wrongly cancelled a previous visa but:
 - although they applied for the cancellation decision to be revoked or reviewed the decision-maker decided not to revoke or set aside the cancellation decision or
 - they failed to apply for the cancellation decision to be revoked or reviewed, even though they were able to do so.

This is because:

- it is reasonable to expect a visa holder to find out the conditions of their visa
- if a decision-maker decided not to revoke or set aside a cancellation decision, it implies that the cancellation decision was correctly made and that therefore it is unlikely that the exclusion period applies in an unintended way and
- if a person fails to apply for a cancellation decision to be revoked or set aside, even though they were able to do so, it is less likely there are compelling reasons for a decision-maker to waive the exclusion period.

29.3 Affecting the interests of an Australian citizen, permanent resident or eligible New Zealand citizen

There may be compelling circumstances affecting the interests of such persons where:

- if the person was not granted the visa, a business operated by an Australian citizen would have to close down because it lacked the specialist skills required to carry out the business
- if the person was not granted the visa, civil proceedings instigated by an Australian permanent resident would be jeopardised by the absence of the non-citizen witness or
- if the person was not granted the visa, an eligible New Zealand citizen would be unable to finalise legal and property matters associated with divorce proceedings without the physical presence of the non-citizen in Australia.

30 COMPASSIONATE CIRCUMSTANCES

There may be compassionate circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen where:

- if the person was not granted the visa, family members in Australia would be left without financial or emotional support
- if the person was not granted the visa, family members in Australia would be unable to properly arrange a relative's funeral in Australia or
- if the person was not granted the visa, a parent in Australia would be separated from their child (for example, where the child was removed with their non-resident parent and is therefore subject to an exclusion period).

31 INVITING FURTHER INFORMATION FROM APPLICANT

The visa applicant must satisfy the decision maker that there are compelling or compassionate circumstances justifying the grant of a visa in their particular case. However, the applicant may not be aware that an exclusion period applies to them and, therefore, not provide reasons to justify the grant of the visa when making an application.

If this is the case, departmental policy is that decision makers should write to the applicant to seek further information – see the pro-forma letter at [Attachment 2 - Pro forma letter - request for further information](#).

When responding to this invitation, applicants should provide their response in writing and in accordance with the time limits prescribed in regulation 2.15(1)(c) (for example, normally 28 days after receiving the invitation if the applicant is offshore).

32 FINALISING THE VISA APPLICATION

32.1 Recording the decision

In decision records, delegates are to fully address the following issues in relation to whether an exclusion criterion is satisfied:

- the reason the person is subject to an exclusion period, including:
 - supporting evidence such as the MAL narrative, IRIS entries or file information
 - general background such as the nature of the previous breach of migration law (unless any secrecy provision apply) or (for SRC 5010) details of the person's previous course of study or training in Australia
 - dates of last entry to, and departure from, Australia
 - the start and end dates of the exclusion period
- the claims (if any) put forward by the visa applicant (or third party), whether provided in response to an invitation under s56 or otherwise and
- assessment as to whether there are any compelling or compassionate circumstances justifying grant of the visa.

Decisions to refuse (or grant) the visa are to be in IRIS/ICSE and the MAL entry updated (see MSI: Movement alert list: Policy and operational instructions).

All MAL narratives about exclusion periods must be as descriptive as possible, and include information as to why an exclusion period applies and the nature of the breach of migration law that led to the exclusion period.

A VISA IS GRANTED TO A PERSON BUT THE EXCLUSION PERIOD WAS NOT KNOWN

Circumstances might arise where a person is subject to an exclusion period but this fact is not evident to the department in the visa application process.

For example, a person who has previously been removed from Australia may, while outside Australia, change their name and be granted an Electronic Travel Authority (ETA) to re-enter Australia (despite the fact an exclusion period actually applies to that person).

Where it only comes to light that an exclusion period should have applied to the visa holder after the visa has been granted, it may be appropriate to consider cancelling the visa, in accordance with standard cancellation policies and processes as described in MSI: Visa cancellation under sections 109, 116, 128 and 140.

Neil Mann
First Assistant Secretary
Compliance Policy & Case coordination Division

ATTACHMENT 1 - DOES AN EXCLUSION PERIOD APPLY**FIRST: Check Schedule 2**

Does the visa subclass list any one of the following as a Schedule 2 criterion?

- PIC 4013 or 4014
- SRC 5001, 5002 or 5010.

If yes, continue with questions below

If no, there is no exclusion period. Continue processing the visa application.

SECOND: The person's circumstances

Do the person's circumstances fit within the relevant PIC or SRC?

- You may need to check ICSE, IRIS, MAL, movement records and client files as appropriate to check previous and current migration status.

PIC 4013	PIC 4014	SRC 5001	SRC 5002	SRC 5010
<p>Was the person's previous visa cancelled on one of the grounds mentioned in the PIC?</p> <p>If yes, exclusion period applies <i>UNLESS</i> the cancellation was:</p> <ul style="list-style-type: none"> ▪ revoked ▪ set aside ▪ taken never to have happened 	<p>Did the person previously leave Australia as unlawful non-citizen?</p> <p>If yes, exclusion period applies <i>UNLESS</i> they left within 28 days of their substantive visa ceasing</p> <p>Did the person previously leave Australia as the holder of BVC, BVD or BVE?</p> <p>If yes, exclusion period applies <i>UNLESS</i>:</p> <ul style="list-style-type: none"> ▪ BV was granted within 28 days of his or her substantive visa ceasing ▪ BV was granted while person held another BV (as long as that other BV was granted while the person held a substantive visa or within 28 days of it ceasing) 	<p>Was the person deported from Australia under section 200 of the Act (or equivalent previous provisions)?</p> <p>If yes, exclusion period applies</p> <p>Did the person previously hold a visa that was cancelled under s501 (or its previous provision), 501A or 501B on grounds that the person:</p> <ul style="list-style-type: none"> ▪ had a substantial criminal record ▪ was not of good character considering his or her past and present criminal or general conduct? <p>If yes, exclusion period applies</p>	<p>Was the person removed from Australia under section 198, 199 or 205?</p> <p>If yes, exclusion period applies</p>	<p>Does the person hold, or did they previously hold, an AusAID student visa?</p> <p>Does the person hold a student visa and receive financial support from a foreign govt?</p> <p>Was the person's last substantive visa a study visa where they received financial support from a foreign govt?</p> <p>If yes, exclusion period applies <i>UNLESS</i>:</p> <ul style="list-style-type: none"> ▪ the course was 12 months or less ▪ the AusAID Minister or the foreign govt that provided financial support supports the grant of the visa

If an exclusion period applies, check whether it is still in force.

If an exclusion period does not apply, continue to process the visa.

THIRD: Is the exclusion period still in force PIC 4013	PIC 4014	SRC 5001	SRC 5002	SRC 5010
START DATE The date the previous visa was cancelled	START DATE The date the person departed Australia	START DATE The date the person was deported or the visa was cancelled	START DATE The date the person was removed	START DATE The date the person ceased the course of study or training
END DATE 3 years after the date of cancellation	END DATE 3 years after the person departed Australia	END DATE Never	END DATE 12 months after the date of removal	END DATE 2 years after the person ceased the course

If yes, consider waiver

If no, there is no exclusion period so continue processing the visa application

FOURTH: Exclusion period waiver

Should the exclusion period be waived?

If yes, the PIC or SRC is satisfied so continue processing the visa application.

If no, the visa must be refused because the person cannot satisfy the PIC or SRC.

ATTACHMENT 2 - PRO FORMA LETTER - REQUEST FOR FURTHER INFORMATION

Dear [insert name]

I refer to your application for [insert visa class] visa lodged [insert date].

Based on departmental information currently available to me, your application is likely to be refused on the grounds that you do not satisfy criteria for this class of visa. This is because (*insert relevant paragraph/s below*):

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa class] visa having been cancelled under [insert s109, s116(1)(d) or s128] for providing incorrect information or bogus documents to the Department.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa class] visa having been cancelled under [insert s116 or 128] because you breached a condition of that visa.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa class] visa having been cancelled under [insert s116 or 128] because you were not, or were not likely to be, a genuine student.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa class] visa having been cancelled under [insert s116 or 128] because you engaged, or were likely to engage, in conduct not intended by the visa.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa class] visa having being cancelled under [insert s116 or 128] because you did not have, or ceased to have, an intention to stay in, or visit Australia temporarily for business purposes.

you do not satisfy public interest visa criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa class] visa having being cancelled under [insert s116 or 128] because you did not have, or ceased to have, an intention to stay in, or visit Australia temporarily as a visitor.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your Electronic Travel Authority (Visitor) visa having being cancelled under [insert s116 or 128] because you did not have, or ceased to have, an intention to stay in, or visit Australia temporarily for tourism purposes.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa subclass] having being cancelled under [insert s116 or 128] because you committed a people smuggling offence under [insert s232A, 233, 233A, 234 or 236] of the *Migration Act 1958*.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your [insert visa subclass] having being cancelled under [s116 or 128] because it was obtained as a result of fraudulent conduct.

you do not satisfy public interest criterion 4013 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of your student visa having being cancelled under s137J of the *Migration Act 1958* because you breached a condition relating to attendance or satisfactory academic performance.

you do not satisfy public interest criterion 4014 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of having left Australia more than 28 days after your [insert class of visa] visa ceased.

you do not satisfy public interest criterion 4014 in Schedule 4 of the *Migration Regulations 1994* because you have applied within 3 years of having left Australia in circumstances where at the time of departure you held a [select as applicable, Bridging C, D or E visa] granted more than 28 days after your [insert class of substantive visa] had ceased.

you do not satisfy public interest criterion 4014 in Schedule 4 of the *Migration Regulations 1994* because you

have applied within 3 years of having left Australia in circumstances where at the time of departure you held a [select as applicable, Bridging C, D or E visa] that was granted while you held another bridging visa, but that other bridging visa was granted more than 28 days after your [insert class of substantive visa] had ceased.

you do not satisfy special return criterion 5002 in Schedule 5 of the *Migration Regulations 1994* because you have applied within 12 months of having been removed from Australia under [insert section 198, 199 or 205] of the *Migration Act 1958*.

you do not satisfy special return criterion 5010 in Schedule 5 of the *Migration Regulations 1994* because you have applied within 2 years of having left Australia after previously holding an AusAID student visa and ceasing a course of study or training designed to be undertaken in more than 12 months.

you do not satisfy special return criterion 5010 in Schedule 5 of the *Migration Regulations 1994* because you have applied within 2 years of having left Australia after previously holding a student visa with the financial support of a foreign government and ceasing a course of study or training designed to be undertaken in more than 12 months.

This means that the visa you have applied for cannot be granted unless:

- you apply again after [insert date] or
- you provide information that:

[delete whichever does not apply]

[in the case of PIC 4013, PIC 4014 or SRC 5002]

- there are compelling circumstances affecting the interests of Australia; or
- there are compelling or compassionate circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

[in the case of SRC 5010]:

- you have the support of the foreign government that provided financial support for your course of study or training in Australia for granting this visa or
- you have the support of the AusAID Minister for granting this visa or
- the requirement for such support should be waived because:
 - there are compelling circumstances affecting the interests of Australia or
 - there are compelling or compassionate circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

If you do not provide me with any further information within [insert number of days] days of the date of this letter, or I assess the information you provide as not sufficient to justify granting the visa, your visa application may be refused.

If I refuse your visa application, you are entitled to apply for another class of visa, but if public interest criterion 4012 or 4014, or special return criterion 5002 or 5010 are prescribed for that visa, you will not satisfy these criteria unless:

- you apply for the visa after [insert date] or
- you satisfy the decision maker that there are reasons that justify granting the visa.

Yours sincerely

[signature, name, position, address, contact phone number]

MSI 411: Establishing immigration status - in the field and in detention

This instruction relates to sections 189, 192 and 198 of the *Migration Act 1958*.

ABOUT THIS DOCUMENT

This document comprises:

- [Introduction](#)
- [Establishing immigration status in the field](#)
- [Continuing obligation - person in detention](#)
- [Documenting actions.](#)

Related instructions

- [MSI - Establishing identity - in the field and in detention](#)
- [MSI - Section 188 - Evidence of Identity/Status/Personal Identifiers](#)
- [MSI - Powers of entry, search and seizure - s251, 252 and 223](#)
- [MSI - Procedures for detaining persons of interest.](#)

Recent changes

Legislative

Nil

Policy

This instruction is new; it was registered on 20 December 2005.

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INTRODUCTION

This Part comprises:

- section 1 Purpose of this instruction
- section 2 Obligations of officers.

1 PURPOSE OF THIS INSTRUCTION

1.1 Background

This instruction gives officers an understanding of the legal requirements and policy guidelines that apply when deciding whether a person must or may be detained, or kept in detention, under the *Migration Act 1958* (the Act).

In broad terms, detention is required under section 189 of the Act in circumstances where an officer knows or reasonably suspects that a person in Australia is an unlawful non-citizen. An unlawful non-citizen is a non-citizen who does not hold a visa that is in effect.

Although this power to detain is mandatory in nature, its exercise depends wholly upon whether an officer knows or reasonably suspects that a person is an unlawful non-citizen.

1.2 Knowledge/reasonable suspicion

That is, the requirement to detain a person only comes into play once an officer has formed one of the following states of mind:

- knowledge that the person is an unlawful non-citizen or
- reasonable suspicion that the person is an unlawful non-citizen.

Similarly, the continued detention of a person will only be lawful if an officer continues to either know or reasonably suspect the person is an unlawful non-citizen.

1.3 Person's immigration status

To hold such a state of mind, officers must address the following fundamental question:

- “what is this person's immigration status?”

In most cases, it will be easy to answer this question and the person's immigration status will be clear.

However, there are times when it can be extremely difficult to establish a person's immigration status, in particular, where the person:

- actively seeks to hide details
- is unable to provide details or
- provides conflicting details.

It is not possible to set out the precise checks to be carried out in *all* circumstances where it is difficult to establish a person's immigration status because different checks may be relevant, depending on what information the person provides and the surrounding circumstances.

However, this instruction sets out the *minimum* checks officers should undertake to establish, or try to establish, a person's immigration status. In addition, officers should make their own judgements as to what further checks should be undertaken in a particular case in order to know or reasonably suspect, or continue to know or reasonably suspect, that a person is an unlawful non-citizen.

Ultimately, every decision should be made in the knowledge that the power to detain involves the deprivation of a person's liberty, a right that the common law has gone to great lengths to protect.

Because establishing a person's immigration status will often involve establishing his/her identity, this instruction should be read in conjunction with the MSI: Establishing identity - in the field and in detention.

2 OBLIGATIONS OF OFFICERS

Officers are obliged to:

- resolve questions about a person's immigration status as quickly as possible
- fully document the process of identifying the person's immigration status (and the conclusion), even in straightforward cases and
- regularly review detention cases to ensure that reasonable suspicion that a person is an unlawful non-citizen persists.

ESTABLISHING IMMIGRATION STATUS IN THE FIELD

This Part comprises:

- [section 3 Reasonable effort to identify](#)
- [section 4 What is “reasonable suspicion”?](#)
- [section 5 Obtaining evidence - reasonable suspicion](#)
- [section 6 Reasonable to suspect - an unlawful non-citizen](#)
- [section 7 Not reasonable to suspect - an unlawful non citizen](#)
- [section 8 Unsure whether suspicion is reasonable](#)
- [section 9 Claim of citizenship/permanent residency.](#)

3 REASONABLE EFFORT TO IDENTIFY

3.1 Identity

An officer must either know or reasonably suspect that a person of interest in the field is an unlawful non-citizen before they are required to detain the person under section 189. As a general rule, officers should make all reasonable efforts to identify a person of interest before deciding whether the person must be detained under section 189 based on their knowledge or reasonable suspicion that the person is an unlawful non-citizen. This is the case even though an officer does not always have to know who a person is to reasonably suspect that they are an unlawful non-citizen.

For guidance on establishing a person’s identity in the field see the [MSI: Establishing identity - in the field and in detention](#).

3.2 Immigration status

Once an officer has addressed the question, “who is this person?”, they can then more easily address the question “what is this person’s immigration status”.

In response to both these questions, an officer may:

- be satisfied that they know who the person is, and that they are a lawful or unlawful non-citizen
- be satisfied that they know who the person is, and reasonably suspect that they are an unlawful non-citizen
- be satisfied that they know who the person is, but not know whether they are an unlawful non-citizen
- reasonably suspect who the person is, and reasonably suspect that they are an unlawful non-citizen
- reasonably suspect who the person is, but not know whether they are an unlawful non-citizen
- not know who the person is, but reasonably suspect that they are an unlawful non-citizen or
- not know who the person is, and not know whether they are an unlawful non-citizen.

Establishing a person’s identity will be the only way an officer *knows* that a person is an unlawful non-citizen and will generally form an integral part of deciding whether the person is or is not reasonably suspected of being an unlawful non-citizen.

However, an officer may reasonably suspect that a person is an unlawful non-citizen regardless of whether the officer knows, reasonably suspects, or does not know, the person’s identity.

For guidance on the checks to be conducted by an officer in the field before detaining a person under section 189 or 192 of the Act, see [MSI: Establishing identity - in the field and in detention - Attachment 1 - Checks in the field](#).

For guidance on the further checks to be conducted once a person has been detained under section 189 of the Act see the [MSI: Establishing identity - in the field and in detention](#):

- [Attachment 2 Checks within 24 hours of detention](#)
- [Attachment 3 Further sources of information.](#)

4 WHAT IS “REASONABLE SUSPICION”?

4.1 State of mind

Reasonable suspicion is a state of mind. It must be formed, or held, by an officer who detains a person under section 189. A suspicion is an apprehension, without adequate proof, of the existence or presence of the thing suspected (ie, that the person is a non-citizen who does not hold a valid visa). It is something less than a certainty or belief but more than mere speculation or idle wondering.

For a suspicion to be reasonable it should be:

- a suspicion that a reasonable person could hold in the particular circumstances and
- based on objective consideration of all relevant material.

4.2 Circumstances of the case

Further, the reasonableness of the suspicion will depend on the circumstances of the case. It will be judged on the facts that were known or reasonably capable of being known by an officer at the time, not what the officer *actually* knows. Therefore, the officer forming the state of mind is responsible for carrying out sufficient checks to establish a person’s immigration status and resolving discrepancies or conflicting facts.

For example, if an officer formed a suspicion that a person was an unlawful non-citizen on the basis of checking one departmental system, but did not check another departmental system when it would have been reasonable to do so, they may not have carried out sufficient checks to make the suspicion a reasonable one.

What constitutes sufficient inquiries will depend on the circumstances. For example, it may not be possible to make detailed inquiries in the field. However, officers should undertake whatever inquiries are reasonably possible to do.

In summary, although the test of reasonable suspicion involves an officer making a subjective assessment of whether they have formed the required state of mind, it is also an objective test because it will be judged on whether it was a state of mind that a reasonable person could have held.

5 OBTAINING EVIDENCE - REASONABLE SUSPICION

5.1 s188 - power to require evidence of lawful status

Section 188 of the Act provides that an officer may require a person known or reasonably suspected to be a non-citizen to show evidence of being a lawful non-citizen.

It is departmental policy that evidence of lawful status may be documentary evidence or oral evidence. Whether such evidence is enough to satisfy an officer of a person’s legal status will depend on the circumstances.

It is not necessary to exercise this power before detaining a person under section 189. However, it may assist an officer to form a view about whether the person is a lawful or unlawful non-citizen.

Regardless of whether an officer exercises the power in section 188, they must ensure that any reasonable suspicion about a person’s immigration status is based on objective evidence such as:

- information held in departmental systems
- the person’s inability to provide satisfactory documentary evidence of being a lawful non-citizen and a lack of credible explanation for this and/or
- the person evading or attempting to evade officers.

For specific advice about exercising the power in section 188, see the [MSI: Section 188 - Evidence of Identity/Status/Personal Identifiers](#).

5.2 Documentary evidence

Generally, an officer should require persons to produce documentary evidence to establish whether they are lawfully in Australia. Officers should tell the person what sort of documentary evidence is required to establish their immigration status.

It is departmental policy that:

- generally, only documents that are original (ie not copies) and current (ie not expired) should be accepted as evidence of a person's immigration status
- documents that contain a photograph of the person are preferred and
- officers should check these documents against departmental systems (particularly where passports do not include visa labels or where Certificates of Evidence of Residence Status are offered as evidence of lawful immigration status).

5.3 Acceptable types of documents

The types of documents that may provide evidence of lawful immigration status include:

- passports (whether or not they include visa labels)
- Certificates of Evidence of Residence Status (provided they were issued not longer than 2 years ago)
- Certificates of Evidence of Australian Citizenship and/or
- documents showing citizenship by birth (for example, an Australian birth certificate for persons born before 20 August 1986).

An officer may accept a copy of a document, or an expired document, as evidence of immigration status if it is appropriate in the circumstances (for example, where the person only has a copy of their passport in their possession and the information on the copy matches information on departmental systems). Of course, if it turns out that the copy is not a true copy of the original or otherwise does not actually provide evidence of immigration status, the officer may need to require other documentary evidence from the person.

5.4 No power to retain documents

Unlike a document seized under a section 251 search warrant, there is no power in the Act that enables an officer to retain a document provided under section 188. However, an officer may keep such a document for the period it takes to check the document against departmental records (for example, if an officer is in the field, the time it takes to phone a colleague at the office and ask for a check of departmental systems to be made). Alternatively, a person may consent to the department making a copy of their identity documents and retaining the copies.

5.5 No documentary evidence to support oral account

If the person is able to give a credible oral account that supports the conclusion that the person is a lawful non-citizen then it is not always necessary for the officer to require the person to produce documentary evidence. An officer can confirm the person's oral account by checking departmental systems.

However, where an officer is not satisfied with a person's oral account and the person does not have any documentary evidence as to their immigration status in their possession, officers should give the person a reasonable opportunity to produce that documentary evidence.

For example, the person may contact a family member located at the place where the documents are stored and arrange for them to bring the documents to the person. This may be a good option if the person agrees to wait with the officers and the documents can be delivered within a short time.

In these cases, officers should tell the person that they are not in immigration detention (unless the officer already reasonably suspects that the person is an unlawful non-citizen).

Where officers have formed a reasonable suspicion that the person is an unlawful non-citizen even though the person has refused or been unable to provide identity documents, they must detain the person.

5.6 Search warrants

It is departmental policy that officers should apply for a search warrant to enter premises to seize and retain identity documents where they have reason to believe that passports or documents of identity relating to an unlawful non-citizen may be found at the premises.

For guidance on search warrants, see MSI: Powers of entry, search and seizure - s251, 252 and 223.

5.7 Person claims Australian citizenship

If a person claims to be an Australian citizen, it is reasonable to ask the person to provide evidence of being an Australian citizen. However, there is no power in the Act to require this evidence, other than in the immigration clearance context. The power in section 188 applies only to persons known or reasonably suspected to be non-citizens.

It is clearly in a person's interests to produce evidence to clarify their lawful status.

Although documentary evidence of Australian citizenship will not normally be immediately available, an officer can check departmental systems to quickly verify the *grant* of Australian citizenship.

If a person refuses to cooperate by providing evidence of Australian citizenship, an officer should ask the person why they cannot or will not provide such evidence.

If the reason for not cooperating does not satisfy the officer, they should:

- inform the person that failure to produce evidence of citizenship or give a satisfactory explanation may result in further inquiries about whether they are lawfully in Australia
- inform the person that if an officer knows or reasonably suspects that the person is an unlawful non-citizen, they must be detained under the Act
- ask the person if they fully understand what has been said and
- ask the person to cooperate by providing evidence about their claim of citizenship.

5.8 Check departmental systems

Officers should carry out checks of relevant departmental systems to check a person's claimed immigration status.

Relevant departmental systems may include:

- the Integrated Client Service Environment (ICSE) database - this records, among other things, grants of Australian citizenship, onshore visa grants and departmental actions such as location, cancellation, detention and removal
- the ICSE Offspring database - this records, among other things, offshore visa grants
- the Movement Reconstruction (MR) database - this records arrivals in, and departures from, Australia
- the Passenger Card Imaging System (PCIS) - this contains images of passenger cards filled in (and signed) by people who arrive in and leave Australia
- the Travel and Immigration Processing System (TRIPS) database - this records, among other things, Australian and New Zealand passport details
- the TRIM database - this records, among other things:
 - whether a client file has been created (which may include photographs taken as part of a medical examination) and
 - the file's current location (for example, if it has been marked to the Migration Review Tribunal, this may indicate the person has lodged an application for review of a visa decision)
- the Passenger Card Index microfiche - this records arrivals and departures between 1973 and 1989

- the Migration Program Management System (MPMS) - this records permanent visas granted offshore and
- the Overstayers' Cube database (which has replaced the National Overstayers' Search Interface Engine (NOSIE) database) - this records overstayers according to broad profiles.

The number of systems to be checked, and which ones, may differ depending on the circumstances (in particular, whether the checks can be conducted in field). Officers should check as many of the systems as they need to until they know or reasonably suspect a person is an unlawful non-citizen.

Officers should be aware that:

- departmental systems may be inaccurate or not up to date
- some people may require special consideration because they are members of a class of people affected by certain court decisions, such as *Srey* (see the [MSI: Procedures for detaining persons of interest](#), for further information on what to do in relation to these caseloads) and
- even where departmental systems appear to show that a non-citizen does not have a visa, an officer may have information about a particular case or other knowledge that would make it unreasonable for the officer to suspect that the person is an unlawful non-citizen.

If a person claims to be lawfully in Australia, but the departmental systems show otherwise, officers should conduct all reasonable systems checks and, where practicable, arrange for the person's client file to be checked.

6 REASONABLE TO SUSPECT - AN UNLAWFUL NON-CITIZEN

6.1 Circumstances - reasonable

It may be reasonable to form a suspicion that a person is an unlawful non-citizen in the following examples.

Example 1

Each of the following applies:

- a third party provides credible information that an unlawful non-citizen is at a particular location
- on arrival at the location, an officer sees a person matching the description provided by the third party
- the officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- the person evades or attempts to evade the officer.

Example 2

Each of the following applies:

- an officer requires a person, whom the officer reasonably suspects is a non-citizen, to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- the person does not have an appropriately detailed level of knowledge regarding their lawful status in Australia (for example, they cannot provide a credible explanation of how they came to Australia, why they visited Australia, where they have stayed in Australia, when they are leaving etc).

Example 3

Each of the following applies:

- an officer requires a person, whom the officer reasonably suspects is a non-citizen, to show evidence of being a lawful non-citizen under section 188 of the Act and

- the person provides a document that purports to be evidence of their lawful status in Australia but the documentary evidence:
 - is listed on the Document Alert List (DAL)
 - appears to be fraudulent, forged or tampered with
 - relates to a person who is recorded on departmental systems as being outside Australia (and other checks do not resolve the issue) or
 - was not issued by the responsible authority.

Example 4

Each of the following applies:

- an officer executes a search warrant on premises where there is reasonable cause to believe a number of unlawful non-citizens will be located
- the officer requires a person found at the location to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- there is evidence that the person is known to, or involved with, other persons located at the same time who are known or reasonably suspected to be unlawful non-citizens.

7 NOT REASONABLE TO SUSPECT - AN UNLAWFUL NON CITIZEN

7.1 Circumstances - not reasonable

It would not be reasonable for an officer to suspect that a person is an unlawful non-citizen based *solely* on:

- the person's English language proficiency
- the person's ethnicity
- the person's inability to immediately produce documentary evidence of their lawful status in Australia or
- the fact that the person's identity cannot be established.

In addition, it would not be reasonable for an officer to suspect that a person is an unlawful non-citizen where all of the following apply:

- the person has an appropriately detailed level of knowledge regarding their lawful status in Australia
- the person provides a good reason why they are not able to produce documentary evidence to support the claim and
- departmental systems confirm the person's oral account.

8 UNSURE WHETHER SUSPICION IS REASONABLE

8.1 Further action

Where an officer suspects that a person is an unlawful non-citizen but is unsure whether there is sufficient evidence to make this suspicion reasonable, the officer must do one or more of the following:

- undertake further relevant inquiries until the officer reaches the level of reasonable suspicion
- seek advice from a supervisor about whether there is enough information/evidence to make the suspicion reasonable in the circumstances and/or
- decide not to detain the person under section 189.

For example, it may be necessary to undertake further inquiries or seek advice from a supervisor in circumstances where:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person is unable to provide documentary evidence of their lawful status but provides a credible account of how they came to Australia and what visa they hold and

- the officer is unable to carry out full checks of the departmental systems at that time.

In a case such as this, where the officer does not have the full story, further information will be necessary to form a reasonable suspicion that a person is an unlawful non-citizen. An officer cannot ignore gaps in information or conflicting facts and must consider all the available material when forming a reasonable suspicion.

9 CLAIM OF CITIZENSHIP/PERMANENT RESIDENCY

If:

- the officer has completed checks outlined in MSI: Establishing identity - in the field and in detention - Attachment 1 - Checks in the field and
- the officer forms a reasonable suspicion that the person is an unlawful non-citizen (or a person whose visa is liable to cancellation under section 192) but
- the person claims to be an Australian citizen or the holder of a permanent visa (that is, a permanent resident)

then the officer should consult with the senior compliance officer on site (or the state/territory compliance manager) before deciding whether to take further action.

The senior compliance officer on site (or the compliance manager) should confirm that all reasonable steps have been taken to establish the person's identity and immigration status before deciding whether to detain the person.

If the person is detained, the person's claim should be reviewed within 24 hours unless the person withdraws the claim and the officer is satisfied the claim was false (see section 11 of this MSI).

CONTINUING OBLIGATION - PERSON IN DETENTION

This Part comprises:

- section 10 Reviewing and resolving
- section 11 Claim of citizenship/permanent residence.

10 REVIEWING AND RESOLVING

10.1 Ongoing review

The exercise of power under section 189 involves not only taking a person into immigration detention but also keeping a person in immigration detention.

Subsection 196(1) provides that an unlawful non-citizen must be kept in detention until they are removed or deported from Australia, or granted a visa.

Subsection 196(2) makes it clear, however, that subsection 196(1) does not prevent the release from immigration detention of a citizen or a lawful non-citizen.

Therefore, there is an ongoing obligation to continue to reassess the lawfulness of the detention where a person has been detained under section 189 based on a reasonable suspicion that they were an unlawful non-citizen.

It is departmental policy that the relevant state/territory director is responsible for implementing the department's agreed system for regularly reviewing each detainee's circumstances and resolving issues as to their immigration status as soon as possible. This includes nominating who is responsible for conducting the review and ensuring that the review happens.

The outcomes of any further inquiries that are made may either strengthen the reasonable suspicion that the person is an unlawful non-citizen or bring into question whether the person should remain in detention.

If an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to knowing that they are an unlawful non-citizen, then the detainee must remain in immigration detention until they are granted a visa or removed from Australia.

10.2 Release from immigration detention

If an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to knowing that the person is a lawful non-citizen or an Australian citizen, then the person *must be released from immigration detention immediately*.

Equally, if an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to no longer reasonably suspecting it, then the person *must be released from immigration detention immediately*.

In these circumstances the officer should immediately:

- inform the state/territory director or the person in their state/territory who is responsible for reviewing the lawfulness of the detainee's detention and
- arrange for the person's release from immigration detention.

In addition, it is departmental policy that any officer (not necessarily the original detaining officer) who believes that a detainee can no longer be reasonably suspected of being an unlawful non-citizen should immediately inform the:

- original detaining officer and
- state/territory director or the person in their state/territory who is responsible for reviewing the lawfulness of detainees' detention.

The relevant compliance manager, in conjunction with the case manager, will decide whether the detainee can no longer be reasonably suspected of being an unlawful non-citizen. This decision may also involve the state/territory director.

Ultimately, officers must be able to demonstrate at any particular point in time that:

- they know that a detainee is an unlawful non-citizen or
- any suspicion that the detainee is an unlawful non-citizen persists and is reasonably held.

11 CLAIM OF CITIZENSHIP/PERMANENT RESIDENCE

11.1 Detaining officer's responsibility

It is departmental policy that the officer who detained the person is responsible for reviewing the person's circumstances and resolving issues as to their identity and immigration status as soon as possible. If an officer detains a person who claims, either before or after being detained, to be an Australian citizen or permanent resident, they should refer the claim to the compliance manager as soon as practicable but in any case within 24 hours of the claim being made.

This is the case unless the person withdraws the claim and the officer is satisfied that the claim was false.

When referring a claim to the compliance manager, officers should set out, in writing:

- the circumstances of the person's location and detention
- all claims made by the person about their identity or immigration status
- all steps taken in attempts to establish the person's identity or immigration status and
- proposed further efforts to establish the person's identity or immigration status.

In addition to referring these claims to the compliance manager, detaining officers should report all decisions to detain under section 189 to the Detention Review Manager (DRM) within 48 hours of detention.

The DRM will play an active role in reviewing the appropriateness of ongoing detention.

11.2 Compliance managers' responsibility

Compliance managers should:

- review all cases where detainees have claimed that they are Australian citizens or permanent residents - within 24 hours of the claim being referred to them (unless the claim is withdrawn and the compliance manager is satisfied that it was false) and
- refer these cases to the National Identity Verification and Advice Section in National Office - within 48 hours of the claim being referred to them.

If the compliance manager accepts a person's claim of Australian citizenship or permanent residence:

- the person must be immediately released from immigration detention and
- the compliance manager should review how and why the person was detained.

Where immigration status remains unresolved despite this initial review of the case, the matter should be referred to the state/territory director or the person in their state/territory who is responsible for reviewing the lawfulness of detainees' detention for the purposes of:

- ensuring that all relevant inquiries to establish the identity and immigration status of the person have been or are being pursued
- considering whether to refer the matter to the DRM (if the person reviewing the case is not the DRM) and
- considering whether it is reasonable to continue to suspect that the person is an unlawful non-citizen.

DOCUMENTING ACTIONS

12 DOCUMENTATION PROCEDURES

Officers should ensure that all actions taken in attempting to establish a person's immigration status are accurately and comprehensively documented.

This includes actions taken during the initial location and detention of persons, or actions taken later.

This should be done by creating appropriate records on the individual's case file and in the relevant departmental processing systems (such as ICSE), as soon as possible after the action is taken.

In particular, the following should be included in the relevant case file and as a case note under the enforcement permission request in ICSE:

- inquiries that are actually undertaken, including conversations with the person concerned, to establish the person's immigration status
- the thought process (and conclusions reached) in establishing a person's immigration status and
- management advice that determines actions to be taken in attempting to establish a person's immigration status.

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