

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner of Police in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use the VPM Professional and ethical standards to inform the decisions they make to support compliance.

Management of non-Australian citizens

Context

The role of Victoria Police is to serve the Victorian community and uphold the law to promote a safe, secure and orderly society. In performing this role, members may come into contact with persons who are non-Australian citizens. These interactions may result in members using powers under the *Migration Act 1958* (Cth) or liaising with the Department of Home Affairs (DHA).

This policy has been developed in collaboration with DHA to assist members in processing and managing non-Australian citizens.

This policy relates to both adults and children who are non-Australian citizens and applies to all operational members and supervisors.

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Definitions

Bridging visa – a class of temporary visa that may be granted to any eligible non-Australian citizen who is one of the following:

- immigration cleared
- in a prescribed class of persons
- determined by the Minister to be an eligible non-Australian citizen.

Officer – under the *Migration Act*, an officer includes a member of the Australian Federal Police or of the police force of a state or internal territory. Protective Services Officers (PSOs) and Police Custody Officers (PCOs) **do not** have any powers under the *Migration Act*.

Lawful non-Australian citizen – a non-Australian citizen who holds a current visa.

Migration zone – under s.5 of the *Migration Act*, the migration zone includes all Australian states and territories as well as some maritime areas.

Unlawful non-Australian citizen – a non-Australian citizen who does not hold a current visa.

Responsibilities and procedures

1. Processing of unlawful non-Australian citizens

1.1 Powers and detention

- Power of arrest – if an arrest power exists for a criminal matter, this must be utilised in preference to the detention authority contained in s.189 of the *Migration Act*. Once the arrest power no longer exists, the detention authority contained in the *Migration Act* may be used.
- Detention of unlawful non-Australian citizens – if an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-Australian citizen, the officer must detain the person; refer to s.189(1) of the *Migration Act*.
- While PSOs and PCOs do not have powers under the *Migration Act*, they are able to receive information regarding a person's immigration status from DHA as a person employed under the *Victoria Police Act 2013*.
- Members must ensure any interview is conducted in line with the requirements detailed in section 13.2 of **VPM Interviews and statements**.
- Members should also refer to the [DFAT Guide – Detention or Death of Foreign Nationals](#) for guidance.

1.2 Contacting DHA

- Upon contact, arrest or detention, where there is a reasonable suspicion that the person is an unlawful non-Australian citizen, members must contact the Australian Border Force (ABF) Immigration Status Service (ISS) via email: ISS@abf.gov.au or phone: 1800 558 414 (24 hour service).
- ISS will provide advice on the person's status (under s.44 of the *Australian Border Force Act 2015* (Cth)) and forward the relevant documentation.
- On advice from ISS that the person is an unlawful non-Australian citizen, the person must either:
 - where no arrest power exists, be detained pursuant to s.189 of the *Migration Act* and held until a determination is made by ISS
 - where an arrest power exists, be processed using the arrest power. Once the arrest power is no longer in effect, the person must be detained pursuant to s.189 of the *Migration Act* and held until a determination is made by ISS.
- The person will be subject to a phone interview by ISS. Upon completion of the phone interview, ISS will advise if detention is to continue under the *Migration Act* or if the person is to be released on a bridging visa (in accordance with section 1.5 of this policy). **Note:** where a person has been remanded for any criminal matters and a bridging visa is granted, the person is not to be released prior to any subsequent court hearing.
- Where a person is to be released on a bridging visa, documentation will be forwarded by DHA to the police member via email or fax for the person to sign.
- If detention is to continue, the person must be further detained, pending the arrival of the contracted DHA security. The person will then be transferred into their custody. This may take several hours (up to 24 hours for regional areas).

- DHA will proactively engage with the informant or corroborator to provide advice.
- Victoria Police will provide assistance as per the Victoria Police and Department of Immigration and Border Protection (now DHA) Memorandum of Understanding (MOU).

1.3 *No arrest power exists*

- This section applies to incidents where police come into contact with unlawful non-Australian citizens where no arrest power exists, including but not limited to person checks, victims, witnesses, persons involved in family violence, mental health or missing persons.
- Where no arrest power exists, contact ISS and follow the instructions in section 1.2 of this policy.

1.4 *Exonerated, cautioned, pending enquiries, intent to summons or charged and bailed*

Where the person has been exonerated, cautioned, charged and bailed, or where there are pending enquiries or an intent to summons has been issued, members should follow the below process:

Step	Action
1	Interview and process the person for the relevant offences.
2	Contact ABF - ISS and follow the instructions in section 1.2 of this policy. Advise ISS of the disposition, what any intended charges are, and the informant's details.
3	Where a brief of evidence is later authorised and a charge is to be issued, ISS must be notified via email at the time of authorisation. Advice should include details of criminal charges, informant and corroborator contact details and a summary of the incident.

1.5 *Remanded via bail justice or at court*

Where the person has been remanded, members should follow the below process:

Step	Action
1	Interview and process the person for the relevant offences.
2	Conduct a remand application.
3	If the person is to be bailed for the criminal offences, follow the instructions in section 1.4 of this policy. Additionally, provide ISS the next court date.
4	If the person is remanded in custody, follow the instructions in section 1.2 of this policy. Advise ISS of the charges, provided a copy of the summary or remand application, the next court date and the informant and corroborator contact details.
5	For any subsequent bail applications, ISS should be contacted to provide current advice on the status of the person. If the person's status has not changed from an unlawful non-Australian citizen, they must be detained pursuant to <i>Migration Act</i> (s. 189) if bail is granted.

1.6 *Transfer of a person*

- When transferring the unlawful non-Australian citizen into the custody of another police member, the member must brief the receiving police member to ensure that the reasonable suspicion that the person is an unlawful non-Australian citizen is also transferred and maintained.

- Where the person is to be transferred to an external agency, refer to section 9.4 of **VPMPG Safe management of persons in police care or custody** for instructions.
- Where the person is to be transferred to police custody from immigration detention, members must contact ISS to request information regarding any:
 - medical treatment or disability
 - custody issues
 - warnings for violence, suicide risk or any other warnings.

2. Processing of lawful non-Australian citizens

2.1 *Involved in a criminal offence*

- Where there is a reasonable suspicion that the person is a lawful non-Australian citizen and they are involved in a criminal offence, members must contact ISS to confirm the person's status.
- The person must be interviewed and processed for the relevant offences.
- If the person is remanded, bailed or later charged on summons, the informant must ensure ISS is notified.

2.2 *Breach of visa condition*

- Each visa may be subject to a number of visa conditions that must be complied with. Breaching a visa condition may result in the cancellation of that visa; however, there is **no power of arrest** for a breach of visa conditions.
- Where a suspected breach of a visa condition by a non-Australian citizen occurs, the member must contact ISS.

3. Applying for the cancellation of a visa

3.1 *General*

- Non-Australian citizens seeking a visa to enter or stay in Australia must satisfy a character test which is defined under s.501(6), *Migration Act*. The provisions of the character test are designed to protect the community from the risk of harm as a result of criminal activity or other serious conduct.
- Where a non-Australian citizen fails to meet the requirements of the character test while in Australia, their visa may be cancelled by the Federal Minister for Home Affairs requiring them to leave the country or be placed in detention.
- The decision to apply for the cancellation of a person's visa is not taken lightly and must be assessed against the *Charter of Human Rights and Responsibilities Act 2006* and **VPMP Human rights, equity and diversity standards**. The personal, family and community impacts can be significant.
- Victoria Police has established notification protocols with DHA requiring an internal review of any visa cancellation application. Visa cancellations are administrative functions and must not be used as a replacement for criminal justice processes.

3.2 *Substantial criminal record*

The term substantial criminal record relates to offences that have occurred within Australia or internationally. Under s.5C(2) of the *Migration Act*, substantial criminal

record includes where the person has been any of the following:

- a) sentenced to death
- b) sentenced to imprisonment for life
- c) sentenced to a term of imprisonment of 12 months or more
- d) sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more
- e) acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution
- f) found by a court to not be fit to plead in relation to an offence; and the court has nonetheless found that on the evidence available the person committed the offence; and as a result, the person has been detained in a facility or institution.

3.3 Categories of visa cancellation

The cancellation of a lawful non-Australian citizen's visa falls into two main categories:

- mandatory
- discretionary (for either objective or subjective reasons).

Category	Threshold
Mandatory visa cancellation	Non-Australian citizens who are serving a sentence of imprisonment, on a full time basis in a custodial institution, and have: • a substantial criminal record involving sections (a), (b) or (c) under the definition (refer to section 3.2 of this policy) • in a court in Australia or a foreign country, been: - convicted of one or more sexually based offences involving a child; or - found guilty of such an offence, or had a charge proven for such an offence, even if the person was discharged without a conviction.
Discretionary visa cancellation – objective grounds	Non-Australian citizens who: • have a substantial criminal record involving sections (d), (e) or (f) under the definition (refer to section 3.2 of this policy) • are subject to an adverse security assessment issued by the Australian Security Intelligence Organisation (ASIO) • have been charged with people smuggling, human trafficking, genocide, a war crime, a crime against humanity, a crime involving torture or slavery, or a crime of serious international concern, whether or not they have been convicted.
Discretionary visa cancellation – subjective grounds	Non-Australian citizens who: • are a member of a group or organisation, or had or have an association with a person, group or organisation reasonably suspected of being involved in criminal conduct • are the subject of an Interpol Notice from which it is reasonable to infer they are a risk to the community • are reasonably suspected of people smuggling, human trafficking, genocide, a war crime, a crime against humanity, a crime involving torture or slavery, or a crime that is of serious international concern, whether or not they have been convicted • are not of good character having regard to their past and present criminal or general conduct • are a risk in that they would either:

	- engage in criminal conduct - harass, molest, intimidate or stalk another person - vilify, incite discord in the community - be a danger to the community.
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3.4 Notification process

Where a member encounters a lawful non-Australian citizen who falls within the scope of the character test, the member must:

- complete a briefing note outlining:
 - the details of the person
 - the category of the application (mandatory or discretionary)
 - the circumstances as to why the persons visa should be considered for cancellation
- ensure the briefing note:
 - only contains evidence that can be supported and is relevant to the categories of visa cancellation
 - is compiled in a respectful, fair and non-discriminatory manner compatible with human rights standards (Refer to **VPMP Human rights, equity and diversity standards**)
- progress the briefing note to their work unit manager for review and endorsement
- once endorsed by the work unit manager, forward the briefing note by email to the Staff Officer to the Assistant Commissioner (AC) of Crime Command (**PBEA**: Staff Officer–AC Crime–OIC) who will consult the Superintendent, State Anti-Gangs Division on the application.

The member who made the application will be notified of the assessment outcome by the Staff Officer to the AC of Crime Command.

3.5 Applications relating to a child

- Applications relating to a child will only be considered in exceptional circumstances.
- Members should contact the Staff Officer to the AC of Crime Command for advice on any application regarding a child.

4. Death of a non-Australian citizen

- Where a suspected or known non-Australian citizen has died, ISS must be notified by the informant or corroborator via email at the earliest available opportunity.
- DHA will proactively engage with the informant or corroborator to provide advice. Victoria Police will provide assistance as per the Victoria Police and DHA MOU.
- For further requirements, refer to **VPM Deceased persons**.

Related documents

- **VPMP Information sharing**
- **VPMP External information disclosure**
- **VPMP Safe management of persons in police care or custody**

- **VPMP Human rights, equity and diversity standards**
- **VPM Deceased persons**
- *Migration Act 1958 (Cth)*
- *Privacy and Data Protection Act 2014*
- *Charter of Human Rights and Responsibilities Act 2006*
- Human Rights Practitioner Guide
- Memorandum of Understanding for Information Sharing between Department of Immigration and Border Protection (now DHA) and CrimTrac Agency, and Federal, State and Territory Police.

Further advice and information

For further advice and assistance regarding this policy, contact your local Crime Investigation Unit or Crime Command.

To establish the status of a person's visa, contact ISS on 1800 558 414.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
18/10/2021	CCI 02/17 converted to VPM and amended to include guidelines for notifications to DHA	FF – 201649
11/04/2022	Update of ABF-ISS contact details	N/A