

FWO 457 VISA REFERRAL DIBP

FWO Reference – VSM & Matter Number	Click here to enter text.
Date of referral to DIAC	
Fair Work Ombudsman officer approving the referral	s. 22
Position	Director – Overseas Workers Team
Telephone	s. 22 - irrelevant to FOI request
Email	
Power under which information is referred	Section 718 of the <i>Fair Work Act</i>
FWO current Investigation phase	Choose an item.

DIAC Contact Officer Details	s. 22 Assistant Director - Operational Integrity - NSW
Telephone	s. 22 - irrelevant to FOI request
Email	
Legal Name of Company	Click here to enter text.
Trading Name	Click here to enter text.
ABN/ABN	Click here to enter text.
Physical Street Address Where Visa Holder Employed	Click here to enter text.
Name of Person(s) able to speak on behalf of the ER	Click here to enter text.
Phone Number	Click here to enter text.
Email Address	Click here to enter text.

Details of Visa Holder(s)/Employee(s)

Family name or surname	Click here to enter text.
Given Name(s)	Click here to enter text.
Date of Birth	Click here to enter a date.
Nationality (if known)	Click here to enter text.
Native Language Spoken (if known)	Click here to enter text.
Contact Details (if known)	Click here to enter text.
Commencement Date (if known)	Click here to enter a date.
Termination Date (if known)	Click here to enter a date.

Reason for referral to DIBP

Nominated Salary	\$ Click here to enter text.	Identified Salary	\$ Click here to enter text.
Nominated Position	Click here to enter text.	Identified Position	Click here to enter text.

FWO assessment	Click here to enter text.
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by the
Fair Work Ombudsman

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Position	Director – Overseas Workers Team
Telephone	s. 22 - irrelevant to FOI request
Email	
Power under which information is referred	Section 718 of the <i>Fair Work Act</i>
FWO current Investigation phase	Choose an item.

DIBP Contact Officer Details	s. 22 Assistant Director – Program Integrity Unit
Telephone	s. 22 - irrelevant to FOI request
Email	
Legal Name of Company	Click here to enter text.
Trading Name	Click here to enter text.
ABN/ABN	Click here to enter text.
Physical Street Address Where Visa Holder Employed	Click here to enter text.
Name of Person(s) able to speak on behalf of the ER	Click here to enter text.
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Native Language Spoken (if known)	Click here to enter text.
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Reason for referral to DIBP

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FWO assessment	Click here to enter text.
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Email	
Power under which information is referred	Section 718 of the <i>Fair Work Act</i>
FWO current Investigation phase	Choose an item.

DIBP Contact Officer Details	s. 22 Assistant Director – Program Integrity Unit
Telephone	s. 22 - irrelevant to FOI request
Email	
Legal Name of Company	Click here to enter text.
Trading Name	Click here to enter text.
ABN/ABN	Click here to enter text.
Physical Street Address Where Visa Holder Employed	Click here to enter text.
Name of Person(s) able to speak on behalf of the ER	Click here to enter text.
Phone Number	Click here to enter text.
Email Address	Click here to enter text.

Details of Visa Holder(s)/Employee(s)

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Date of Birth	Click here to enter a date.
Nationality (if known)	Click here to enter text.
Native Language Spoken (if known)	Click here to enter text.
Contact Details (if known)	Click here to enter text.
Commencement Date (if known)	Click here to enter a date.
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Reason for referral to DIBP

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Nominated Position	Click here to enter text.	Identified Position	Click here to enter text.

FWO assessment	Click here to enter text.
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FWO 457 VISA REFERRAL DIBP**Referral Details**

FWO Reference - VSM	
Date of referral to DIBP	
Name of Fair Work Ombudsman Officer Approving the Referral	s. 22
Position	Director – Overseas Workers Team
Telephone	s. 22 - irrelevant to FOI request
Email	
Power under which information is referred	Section 718 of the <i>Fair Work Act</i>
FWO current Investigation phase	

DIBP Contact Officer Details	s. 22
Business Centre	Superintendent Immigration Compliance Branch Border Management Division Border Support Group Australian Border Force
Telephone	s. 22 - irrelevant to FOI request
Email	
Legal Name of Company	
Trading Name	
ABN/ACN	
Physical Street Address Where Visa Holder Employed	
Contact Name of Person(s) with authority to speak on Behalf of the Employer	
Phone Number	
Email Address	

Details of Visa Holder(s)/Employee(s)

Family name or surname	
Given Name(s)	
Date of Birth	
Nationality (if known)	
Native Language Spoken (if known)	
Contact Details (if known)	
Commencement Date (if known)	
Termination Date (if known)	

Reason for referral to DIBP

Nominated Salary	\$	Identified Salary	\$
Nominated Position		Identified Position	
FWO assessment	✓		

FWO 457 VISA REFERRAL DIBP**Referral Details**

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Position	Director – Overseas Workers Team
Telephone	s. 22 - irrelevant to FOI request
Email	
Power under which information is referred	Section 718 of the <i>Fair Work Act</i>
FWO current Investigation phase	Choose an item.

DIBP Contact Officer Details	s. 22
Business Centre	A/g Inspector Sponsor Monitoring Unit Coordination Immigration Compliance Branch Border Management Division Border Support Group Australian Border Force
Telephone	s. 22 - irrelevant to FOI request
Email	
Legal Name of Company	
Trading Name	
ABN/ACN	
Physical Street Address Where Visa Holder Employed	
Contact Name of Person(s) with authority to speak on Behalf of the Employer	
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Reason for referral to DIBP

Nominated Salary	\$	Identified Salary	\$
Nominated Position		Identified Position	
FWO assessment	✓		

Matters referred from FWO to DIBP by financial year, month and state

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No state recorded	Total
2014	13	83	1	130	12	1	16	64	18	338
Jul-13		2		3			2	4		11
Aug-13		1		3	1		1			6
Sep-13		5	1	2			1	12		21
Oct-13		3		9	4	1		3		20
Nov-13		4		4			1	2	18	29
Dec-13				5				2		7
Jan-14		23		40			7	3		73
Feb-14		8		28			1			37
Mar-14		1		35			2	8		46
Apr-14		8						17		25
May-14	13	28		1				13		55
Jun-14					7		1			8
2015		93		113	19	10	90	3		328
Jul-14				14	16		1			31
Aug-14				58	3		1	1		63
Sep-14		1		33				1		35
Oct-14		1		7						8
Nov-14		70					1			71
Dec-14		19		1			2			22
Jan-15								1		1
Feb-15							17			17
Mar-15							53			53
Apr-15		1					15			16
May-15						8				8
Jun-15		1				2				3
2016	20	31		6		19	44	18		138
Jul-15						8	2	10		20
Aug-15						1		1		2
Sep-15						1	1	1		3
Oct-15	6						10	6		22
Nov-15	13					5				18
Dec-15						1				1
Jan-16										
Feb-16	1					3	6			10
Mar-16		12					11			23
Apr-16		12								12
May-16		1					12			13
Jun-16		6		6			2			14
2017		53	1	19	5		76	6		160
Jul-16		3		11						14
Aug-16		4					34			38
Sep-16		12			2		3			17
Oct-16		18			3					21
Nov-16		7					1			8
Dec-16							5			5
Jan-17										
Feb-17								5		5
Mar-17		4						1		5
Apr-17		4					18			22
May-17		1	1				9			11
Jun-17				8			6			14
2018		30		5			16			51
Jul-17		2		3			2			7
Aug-17		11		2						13
Sep-17		16					6			22
Oct-17		1					8			9
Grand Total	33	290	2	273	36	30	242	91	18	1015

Matters referred from FWO to DIBP by financial year, month and issue

	Nominated Position & Salary concerns	Nominated Position concerns	Nominated Salary concerns	Total
2014	88	81	169	338
Jul-13		1	10	11
Aug-13			6	6
Sep-13	6	1	14	21
Oct-13	2	2	16	20
Nov-13	22	3	4	29
Dec-13	2	1	4	7
Jan-14	15	24	34	73
Feb-14	4	13	20	37
Mar-14	21	13	12	46
Apr-14	7	7	11	25
May-14	8	13	34	55
Jun-14	1	3	4	8
2015	36	70	222	328
Jul-14	4	11	16	31
Aug-14	7	20	36	63
Sep-14	8	6	21	35
Oct-14		2	6	8
Nov-14	6	16	49	71
Dec-14	1	3	18	22
Jan-15			1	1
Feb-15	1		16	17
Mar-15	6	11	36	53
Apr-15	2		14	16
May-15		1	7	8
Jun-15	1		2	3
2016	11	27	100	138
Jul-15	2	4	14	20
Aug-15			2	2
Sep-15		1	2	3
Oct-15	7	4	11	22
Nov-15			18	18
Dec-15		1		1
Jan-16				
Feb-16	2	2	6	10
Mar-16		7	16	23
Apr-16		3	9	12
May-16		3	10	13
Jun-16		2	12	14
2017	19	50	91	160
Jul-16	1	5	8	14
Aug-16	5	6	27	38
Sep-16		3	14	17
Oct-16	1	11	9	21
Nov-16	1	2	5	8
Dec-16		1	4	5
Jan-17				
Feb-17	2	2	1	5
Mar-17			5	5
Apr-17	1	14	7	22
May-17	2	4	5	11
Jun-17	6	2	6	14
2018		8	43	51
Jul-17		3	4	7
Aug-17		2	11	13
Sep-17		1	21	22
Oct-17		2	7	9
Grand Total	154	236	625	1015

Matters referred from FWO to DIBP by financial year, month and ANZSIC division

ANZSIC division	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Total
Accommodation and Food Services	2	1	3	2	4		15	13	8	1	7	5	61
Administrative and Support Services		1	2				8	2			1		14
Agriculture, Forestry and Fishing										2	2		4
Arts and Recreation Services								1	1				2
Construction	1		3	1			2	3	1	7	6		24
Education and Training			1							2			3
Electricity, Gas, Water and Waste Services									1				2
Financial and Insurance Services					1								2
Health Care and Social Assistance				1	3	4	5	1	5	4			23
Manufacturing	3				2		6	2	2	1	4		20
Mining				2			1			2			5
Other Services	1		1				5	5	7	2	2	1	24
Professional, Scientific and Technical Services	1	1	2	1		2	11	2	3		14		37
Public Administration and Safety											2		2
Rental, Hiring and Real Estate Services		2								3			5
Retail Trade	2			10			10	4	5		7		38
Transport, Postal and Warehousing				1				1	1		3		6
Wholesale Trade			1				4		1		3		9
No industry recorded	1	1	8	2	19	1	6	3	11	1	4	2	59
Grand Total	11	6	21	20	29	7	73	37	46	25	55	8	338

ANZSIC division	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Total
Accommodation and Food Services	10	9	4	1	23	8		7	12	6	3	1	84
Administrative and Support Services	2	8	5					1	10	3			29
Agriculture, Forestry and Fishing										1	1		2
Arts and Recreation Services		2											2
Construction	1	8		1	11	6							27
Education and Training		4	1					1	6				12
Electricity, Gas, Water and Waste Services	1								3				4
Financial and Insurance Services		2	6		5			3		2			18
Health Care and Social Assistance	3	1							2		1	1	8
Manufacturing	3	5	1		8	2							19
Mining		4	7								2	1	14
Other Services	3	3		4					1				11
Professional, Scientific and Technical Services	1	5	7		14	1		2	9	3	1		43
Public Administration and Safety	1												1
Rental, Hiring and Real Estate Services		1	1		1					1			4
Retail Trade	2	5		2	4	2		1	1				17
Transport, Postal and Warehousing	2	1						1	2				6
Wholesale Trade	1		1		2				2				6
No industry recorded	1	5	2	0	3	3	1	1	5	0	0	0	21
Grand Total	31	63	35	8	71	22	1	17	53	16	8	3	328

ANZSIC division	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Total
Accommodation and Food Services	4			7	8			4	8			6	37
Administrative and Support Services	4	1										1	6
Agriculture, Forestry and Fishing		1				1		1				2	5
Arts and Recreation Services					1								1
Construction	2			8	3				1				14
Education and Training								2			1		3
Electricity, Gas, Water and Waste Services					1								1
Financial and Insurance Services									2				2
Health Care and Social Assistance	3		1						8	11	7	2	32
Manufacturing	1			1	1								3
Mining			1										1
Other Services	1								1				2
Professional, Scientific and Technical Services	3			1									4
Public Administration and Safety													
Rental, Hiring and Real Estate Services												2	2
Retail Trade				1						1		1	3
Transport, Postal and Warehousing									1				1
Wholesale Trade			1								1		2
No industry recorded	2	0	0	4	4	0		3	2	0	4	0	19
Grand Total	20	2	3	22	18	1		10	23	12	13	14	138

ANZSIC division	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Total
Accommodation and Food Services	8	4	11	4						10	2		39
Administrative and Support Services		2	1										3
Agriculture, Forestry and Fishing					1	5							6
Arts and Recreation Services										1			1
Construction	1								1		2		4
Education and Training	1									1	1	1	4
Electricity, Gas, Water and Waste Services													
Financial and Insurance Services	1		2										3
Health Care and Social Assistance									2	9	6	8	25
Manufacturing				1				1				1	3
Mining													
Other Services		1	1	2									4
Professional, Scientific and Technical Services								1					1
Public Administration and Safety													
Rental, Hiring and Real Estate Services	2									1			3
Retail Trade		7											7
Transport, Postal and Warehousing		21		14	6			3	2			2	48
Wholesale Trade		2	2										4
No industry recorded	1	1	0	0	1	0		0	0	0	0	2	5
Grand Total	14	38	17	21	8	5		5	5	22	11	14	160

ANZSIC division	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Total
Accommodation and Food Services	1		1										2
Administrative and Support Services	1	1											2
Agriculture, Forestry and Fishing													
Arts and Recreation Services													
Construction													
Education and Training													
Electricity, Gas, Water and Waste Services													
Financial and Insurance Services													
Health Care and Social Assistance	2	5	1										8
Manufacturing		2	14	8									24
Mining													
Other Services	1		2										3
Professional, Scientific and Technical Services													
Public Administration and Safety													
Rental, Hiring and Real Estate Services													
Retail Trade	1	2	1										4
Transport, Postal and Warehousing	1	1											2
Wholesale Trade													
No industry recorded	0	2	3	1									6
Grand Total	7	13	22	9									51

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Matters referred from DIBP to FWO during the period 1 Jul 13 to 3 Nov 17

* Matter 1

* Received: Jul 13

* Allegation: Wages and Conditions

s. 22 - irrelevant to FOI request

* Industry: Education and Training

* Matter 2

* Received: Sep 16

* Allegation: Payslips - Failure to provide payslip in required time

s. 22 - irrelevant to FOI request

* Industry: Accommodation and Food Services

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Entity

s. 22 - irrelevant to FOI request

Date			Visa Type	Overview of Contravention
"Referred"	State	Industry		
27-Jul-16	WA	Farming	457	Underpayment/non-payment of wages, various allowances and penatly rates Unreasonable additional hours; unauthorised deductions; sham contracting; non-payment
29-Aug-17	Vic	Transport and Warehousing	457	weekend penaties
25-Aug-16	Qld	Horticulture	457	No overtime payments
17-Feb-17	NSW	Disability Support Services	457	Underpayment, Coercion in Agreement making, unlawful deductions
2/11/2012	SA	Restaurant	457	Underpayment of wages and unlawfull deductions.
9/06/2015	SA	Transport industry	457	No overtime payments
15-Jan-16	Vic	Construction	457	Payslips not provided

s. 22 - irrelevant to FOI request

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Entity	Date "Referred"	State	Industry	Visa Type	Overview of Contravention
s. 22 - irrelevant to FOI request	Dec-15	NSW	Recruitment	457	Unauthorised deduction impacting on Nominated salary
	19-Sep-16		Restaurant	457	Payment for visa
		Vic	Food manufacturing	457	Nominated Salary concerns
	6-May-16	NSW	Restaurant	457	Nominated Position concerns
	18-Jan-16	SA		457	Nominated Salary concerns
	21-Sep-16	WA	Restaurant	457	Nominated Salary concerns
	24-Feb-16	WA	Restaurant	457	Nominated Salary concerns, Payment for Visa
					Nominated Salary concerns, Nominate Position
	30-Nov-16	NSW	Fitness Centre	457	Concerns, Payment for Visa
	30-Nov-16	Qld	Construction	457	Nominated Position concerns
	9-Sep-17	Vic	Auto retail	457	Payment for visa
	11-Dec-15	ACT	Restaurant	457	Nominated Salary concerns
	3-Oct-17	WA	Construction	457	Nominated Salary concerns
	8-Aug-17	SA	Restaurant	457	Nominated Position concerns
	25-Jul-17	ACT	Restaurant	457	Nominated Salary concerns
	31-Aug-16	NSW	Training	457	Nominated Position concerns, Payment for visa
	1-Aug-17	Vic	Manufacturing	457	nominated salary concerns
	8-Aug-14	Vic	Hair and Beauty	457	Nominated salary and position concerns
	3-Jun-15	Vic	Hospitality	457	Nominated salary concerns
					Sponsor deducting annual leave accrual to recover
	13-Apr-15	NSW	Hair and Beauty	457	visa fees
	4-Mar-14	Qld	Retail	457	Nominated salary and position concerns
	15-Jan-15	Vic	Restaurant	457	nominated salary concerns
	9-Dec-13	Qld	ICT	457	nominated salary concerns
	9-Apr-15	WA	Restaurant	457	nominated salary concerns
	13-Dec-13	Qld	Business Services	457	Not employed by nominated employer

s. 22 - irrelevant
to FOI request



Australian Government

Fair Work

OMBUDSMAN

DIBP Quarterly Meeting

Date: Tuesday 21 March 2017

Time: 14:00-16:00 (CST)

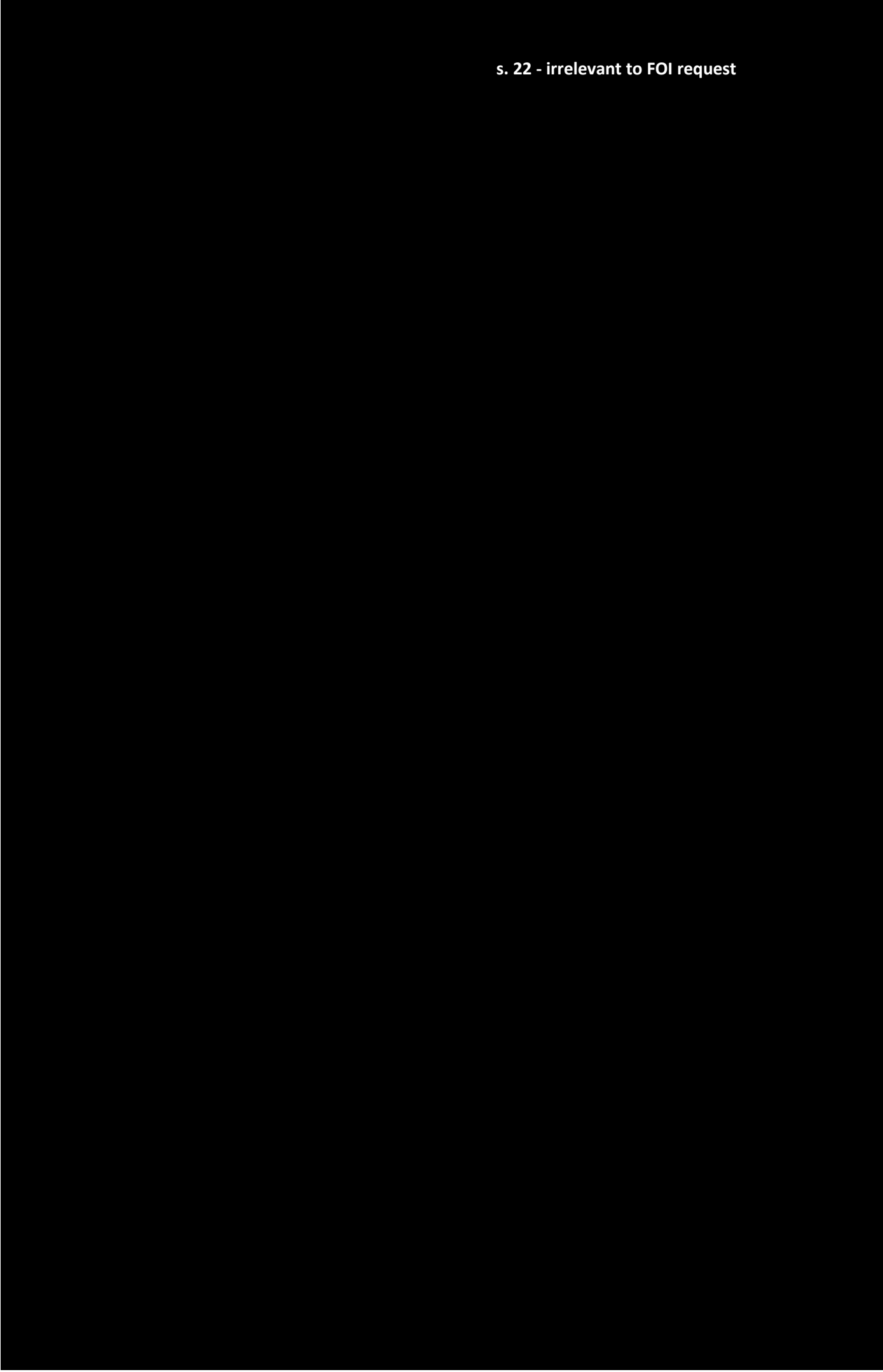
Location: FWO Office Adelaide

Attendees: s. 22 - irrelevant to FOI request
s. 22 - irrelevant to FOI request

Secretariat: s. 22 minutes)

s. 22 - irrelevant to FOI request

s. 22 - irrelevant to FOI request



s. 22 - irrelevant to FOI request

2.5	MoU Annual Report: Agreed publishing of snap shot and joint activity report will meet the requirements of MOU Annual Report.	s.22 to action as above
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s. 22 - irrelevant to FOI request

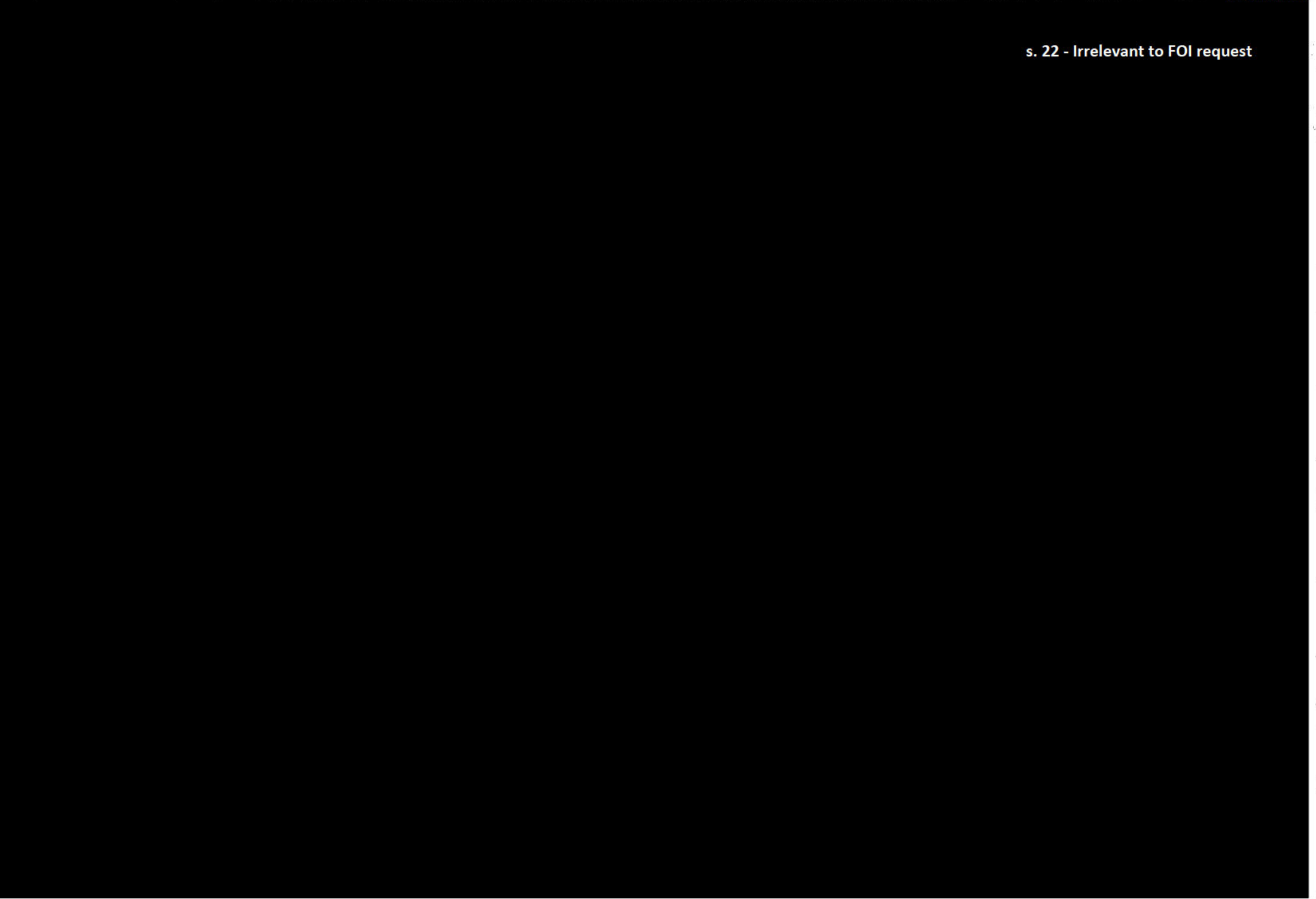
s. 22 - irrelevant to FOI request

Minutes

Meeting: DIPB/Fair Work Ombudsman (FWO) Meeting
Date: 26 August 2014
Time: 10.00AM – 3.00PM
Participants: DIBP: Program Integrity Lead Director s. 22, Assistant Directors s. 22 and s. 22 FWO: Director
s. 22, Assistant Director, s. 22 and FWO officer s. 22
Apologies: s. 22
Chair: s. 22

s. 22 - Irrelevant to FOI request

s. 22 - Irrelevant to FOI request



s. 22 - Irrelevant to FOI request

s. 47C -- Deliberative Processes

s.47C - Deliberative processes

Item No.8
Other business

raised the MOU requirement (under 14.2) to provide an annual report on FWO outcomes. A draft report has been completed and will be distributed shortly.

FWO to complete annual report on FWO outcomes from DIBP referrals.

s.22 - irrelevant to FOI request

Fair Work Ombudsman (FWO) + Department of Immigration and Border Protection (DIBP)
Operational Level Meeting
MINUTES

Date: 18 February 2015
Venue: FWO, Level 2, 148 Frome St, Adelaide
Chair: s. 22
Time: 10.00am – 12.00pm

Attendees:

s. 22 - FWO, s. 22 - FWO, s. 22 - DIBP, s. 22 DIBP
 s. 22 DIBP, s. 22 -DIBP, s. 22 -DIBP, s. 22 -FWO DRC

Secretariat

Apology: s. 22 -(FWO)

s. 22 - irrelevant to FOI request

s. 22 - irrelevant to FOI request

s. 22 - irrelevant to FOI request

3

Current Operational Matters

■ opened the discussion on issues with the current operations under the Memorandum of Understanding (MoU). The group referred to the discussion paper prepared by DIBP and distributed with the agenda. All agreed it was appropriate timing to discuss ways and means in streamlining operational activities between the two agencies

The key issue involved the information exchange between both agencies and the discussion paper formally recommended the following for consideration:

- Enhance capability to target high risk sponsors by case categorisation
- Targeting sponsors based on mutual priorities of both agencies to maximise results with finite resources
- Explore the ability to increase the number of reportable fields to be included in the monthly and ad-hoc FWO referrals.
- Reduce duplicated effort and improve staff knowledge through joint site visits and possible secondments
- Review the current MOU and seek amendments if required


■ undertook to consider and provide a formal response to the discussion paper by 6 March 2015

■ to provide formal response by 6 March 2015 to the DIBP discussion paper on the current operation of the DIBP/FWO MOU

s. 22 - irrelevant to FOI request

s. 22 - irrelevant to FOI request

s. 22 - irrelevant to FOI request



s. 22 - irrelevant to FOI request

7	<p>Other Business</p> <p>1. Annexure to MOU</p> <p>■ and ■ discussed the annexure to the MOU to allow 'read only' access to ICSE as well as movement access. The annexure will shortly be completed by DIBP and will be sent for co-signing between Directors ■ s. 22 - irrelevant to FOI request</p> <p>s. 22 - irrelevant to FOI request</p>	<p>Annexure to be forwarded to ■ s. 22 ■ for consideration / execution by end of March 2015</p>
8	<p>Next Meeting</p> <p>The next meeting will be scheduled for May 2015 at DIBP offices in either Canberra or Sydney</p>	<p>DIBP will advise of date and location of next meeting</p>

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Department of Immigration and Border Protection

DISCUSSION PAPER FOR MEETING WITH FAIR WORK OMBUDSMAN (FWO)

Adelaide, 18 February 2015

PURPOSE

To provide background on a number of issues Program Integrity Unit, DIBP, would like to discuss in relation to current operations under the Memorandum of Understanding (MoU). We are seeking to improve the operational effectiveness of current collaborative arrangements with the Fair Work Ombudsman (FWO) and streamline those processes that have the greatest impact in addressing Subclass 457 sponsors' compliance to their obligations.

BACKGROUND

Current MoU

Following the passing of the *Migration Amendment (Temporary Sponsored Visas) Act 2013* on 29 June 2013, Fair Work Ombudsman (FWO) and Fair Work Building and Construction (FWBC) inspectors are empowered to investigate a Subclass 457 sponsor's compliance with their obligations under the *Migration Act 1958*. Specifically, under Ministerial Direction no. 58, FWO inspectors can monitor a sponsor's compliance of:

1. Regulation 2.78 – the obligation to cooperate with inspectors;
2. Regulation 2.79 – the obligation to ensure equivalent terms and conditions of employment; in particular regulation 2.79(3)(a) which requires sponsors to ensure the Subclass 457 visa holders are paid at least the approved nominated salary; and
3. Regulation 2.86 – the obligation to ensure the primary sponsored person works or participates in the nominated occupation, program or activity; such that the Subclass 457 visa holder is performing duties consistent with the approved nominated position.

In July 2013, the department signed a Memorandum of Understanding (MoU) with the FWO and another with the FWBC to outline the agreed monitoring framework of Subclass 457 sponsors. By 31 January 2015, FWO has referred 1,470 sponsors to the department with various outcomes for the department to conduct further monitoring or enforcement action against the sponsor. A detailed summary of referral numbers and findings is available in **ATTACHMENT A**.

A review of practices under the MoUs will improve current arrangements and is in line with the deregulation agenda to reduce red tape and streamline processes. Increased interest from external stakeholders including the Minister's Office, media and unions, as well as reporting requirements for Senate Estimates, regularly require a level of responsiveness that would be enhanced by increased collaboration and further streamlining of co-operation between the FWO and DIBP. Drawing upon the experience from the past 18 months, opportunities have been identified to enhance the partnership to leverage further efficiencies with limited resources.

Current management of FWO referrals

Monthly referrals

Under the current referral process, FWO receives a monthly list of Subclass 457 visa holders and their sponsors along with details relating to the business from the department. The list is compiled based on the following parameters by the Integrity Liaison & Analysis Branch (ILAB):

- Current Subclass 457 primary visa holders only (ie: visa has not ceased or cancelled and is not a dependant Subclass 457 visa holder);

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- Nominations are current and linked to a sponsor; and
- The sponsor's Australian Business Number is recorded.

Each month FWO refers to the department a list of Subclass 457 visa holders of site visits conducted at the sponsor's business. The referrals also indicate if there are concerns a sponsor had breached obligations under regulations 2.79 and/or 2.86, and if available, the actual salary and occupation for the visa holder.

The department relies on FWO's referred outcomes to determine the level of action that should be undertaken and to prioritise sponsors for monitoring. All referrals received are consolidated in a spreadsheet which is used as a targeting tool by analysing FWO's outcomes and to track progress and outcomes of monitoring activities undertaken by the department. The level of remedial action subsequently applied (eg: warning letter, counselled, bar, cancellation and infringement) is dependent on the severity of the sponsorship obligations breached following further investigation by the department and is summarised in Figure 1 in **ATTACHMENT A**.

Ad-hoc referrals

In addition to regular monthly referrals, both the FWO and the department refer sponsors for monitoring and investigation to each other. These referrals generally have a higher profile which demands prompt action. Referrals are also exchanged following the imposition of sanctions under one Act for investigation of other possible non-compliance under another Act.

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Recommendations:

1. *Enhance capability to target high risk sponsors by case categorisation.*

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2. *Discuss ways of targeting sponsors based on mutual priorities to maximise results with finite resources.*

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3. *Explore ability to increase the number of reportable fields¹ to be included in the monthly and ad-hoc FWO referrals.*

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4. *Reduce duplicated effort and improve staff knowledge through joint site visits and possible secondment.*

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Concluding Recommendation:

5. *Review the current MoU.*

A number of the aforementioned recommendations may require amendments to the current MoU to facilitate changes. A review of the current MoU will provide the opportunity to refine current arrangements and better address the drivers of non-compliance in a more strategic manner. In the meantime the above changes should be implemented as fully as possible within the constraints of each organisations mandate.

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For Official Use Only**ATTACHMENT A****Overview of Referrals**

In the period from 1 July 2013 to 31 January 2015, FWO referred 1,470 Subclass 457 sponsors employing over 3,000 associated visa holders to the department.

ss. 47C - Deliberative Processes

For Subclass 457 sponsors who have all visa holders referred with no prima facie concerns by FWO, the department examines available information and if no adverse information is apparent, considers these sponsors to have satisfactorily met their sponsorship obligations. Of all FWO referrals between July 2013 and January 2014, 55.9% (821) of sponsors were referred with 'no prima facie concern'.

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Of the 1,470 sponsors referred by FWO, 737 entities or 50.1% were finalised by the department as 'satisfactory'. A further 625 sponsors are still being examined for appropriate treatment and 102 have been finalised with adverse outcomes. A further six businesses were outside the mandate of sponsored monitoring. It is important to note a FWO referral on its own does not automatically lead to a breach of sponsorship obligations but provides important information which may lead to the department conducting a more thorough audit.

Table 1: Departmental monitoring outcomes of referrals from FWO during 1 July 2013–31 January 2015

Outcome (Number of sponsors)	Outcome date		
	2013-14	2014-15 (as at 31 Jan 2015)	Total
Bar	17	8	25
Cancellation	7	4	11
Bar and cancelled	10	7	17
Infringement	0	0	0
Warning letters issued	7	13	20
Counselled	9	20	29
Satisfactory	257	480	737
No jurisdiction/cannot action	4	2	6
Active/on-hand cases	664 [^]	625	625
Total	975	1,159	1,470

[^] Number of action cases being considered by the department as at 30 June 2014.

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In 2014-15 to 31 January 2015, the FWO referred 1,115 visa holders and 455 employing entities to the department.

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s. 47C - Deliberative Processes

s. 47C - Deliberative Processes

s. 47C - Deliberative Processes



Australian Government

Fair Work

OMBUDSMAN

Brief

To:	s. 22 - irrelevant to FOI request	Contact:	s. 22
From:		Telephone:	s. 22
Date:	3 March 2015	Branch:	DRC
Copy:	s. 22 - irrelevant to FOI request	Team:	OWT

SUBJECT: Proposed changes to FWO subclass 457 visa monitoring work

Purpose

1. To provide a response to a number of proposals the DIBP Program Integrity Unit have raised in relation to current operations under the Memorandum of Understanding (MoU) and identify any impact on FWO resources and processes and make recommendations regarding the same.


Background:

2. Following the passing of the *Migration Amendment (Temporary Sponsored Visas) Act 2013* on 29 June 2013, Fair Work Ombudsman (FWO) inspectors are empowered to investigate a Subclass 457 sponsor's compliance with their obligations under the *Migration Act 1958*. Specifically, under Ministerial Direction no. 58, FWO inspectors can monitor a sponsor's compliance in regard to the nominated salary and nominated occupation provisions of the 457 program.
3. On 18 February 2015 an operations meeting was held between FWO and DIBP at the FWO Adelaide office. This meeting forms part of agreed operations and executive catch-ups between the respective agencies. Present at the meeting were: FWO – s. 22 and s. 22; DIBP – s. 22, s. 22 - irrelevant to FOI.
4. An agenda item identified for discussion was the DIBP discussion paper titled 'Discussion paper for meeting with Fair Work Ombudsman'. In this paper DIBP identified four proposals to develop and expand FWO 457 monitoring work and subsequent monthly reporting. These proposals aim to assist DIBP with their decision making processes regarding enforcement actions they select to take / not to take based on the data provided in the FWO monthly reports. These proposals are set out in the table below along with identified impacts on FWO resources and systems and recommendations. The brief concludes with potential risks to FWO and recommendations to address these.

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. 47C - Deliberative Processes

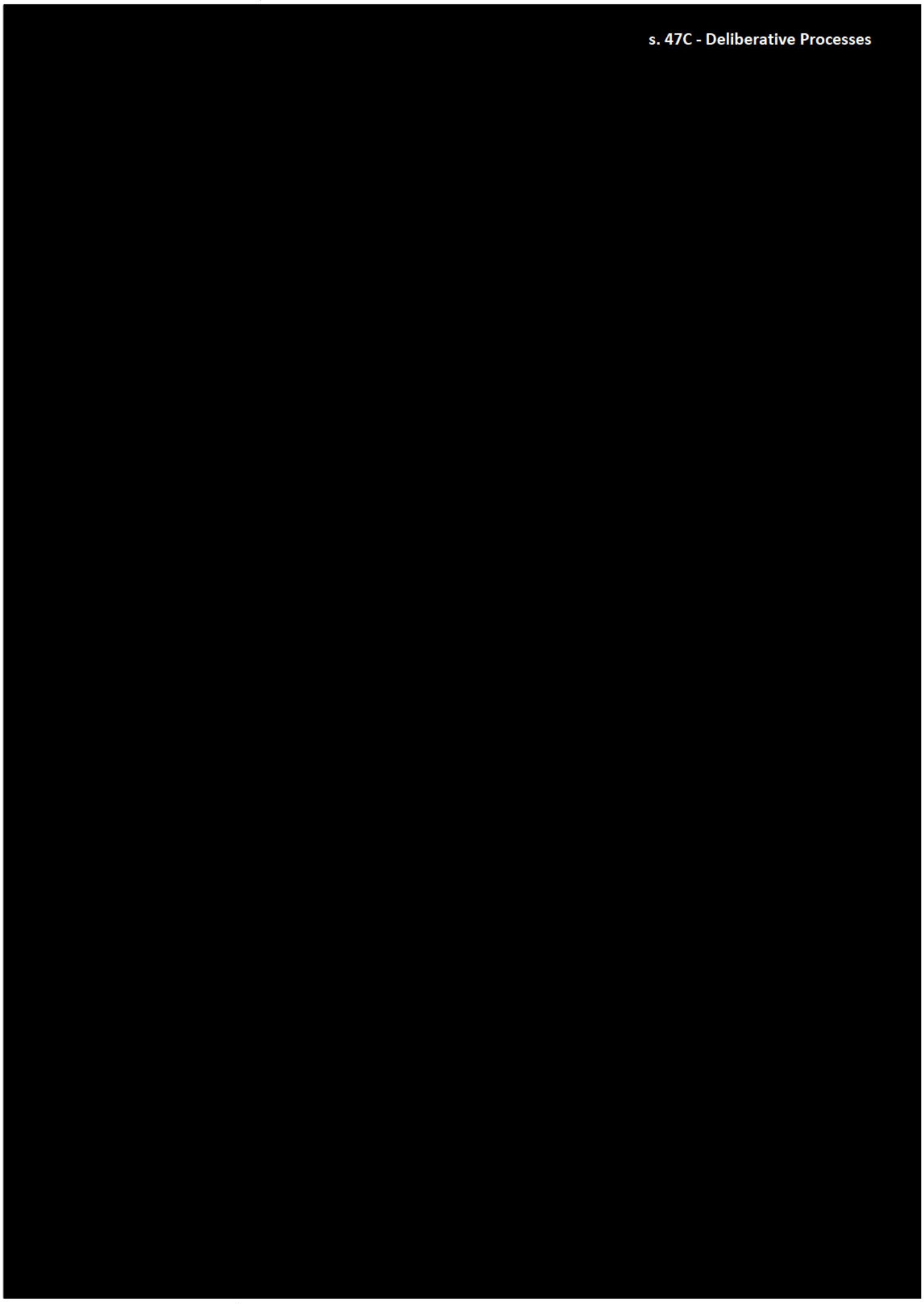


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Released under the
Freedom of Information Act
by the
Fair Work Ombudsman

TRUNDLE, Carey

From: s. 22 - irrelevant to FOI request @border.gov.au>
Sent: Friday, 26 February 2016 1:32 PM
To: s. 22 - irrelevant to FOI request
Subject: Final papers for FWO-DIBP meeting next Tuesday 1 March [SEC=UNCLASSIFIED]
Attachments: FWO MOU Governance Arrangements DRAFT.docx; FWO - DIBP Operational Meeting Agenda 1.3.16.docx; Minutes -FWO - ABF Meeting (17 August 2015).docx; FWO Referral Outcomes Report.pdf; MOU for provision of Movement Records to FWO (2).doc

Follow Up Flag: Follow up
Flag Status: Completed

UNCLASSIFIED

Dear colleagues,

Further to my earlier email, please find attached a final package of papers for next Tuesday's meeting, including:

- an updated Agenda;
- the Minutes from the previous meeting in August 2015 (previously circulated);
- a proposal for revised governance arrangements under the FWO-DIBP MOU;

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- a copy of the draft MOU for provision of Movement Records to FWO.

Apologies for the late notice. Please let me know if you have any queries regarding these documents. I look forward to seeing you next week,

regards

s. 22

A/g Superintendent, Sponsor Monitoring Operational Policy
 Immigration Compliance Branch | Border Management Division
 Border Support Group
 Australian Border Force

s. 22 - irrelevant to FOI request

-----Original Appointment-----

From: s. 22 @fwo.gov.au s. 22 - irrelevant to FOI request On Behalf Of s. 22
Sent: Wednesday, 10 February 2016 10:37 AM

s. 22 - irrelevant to FOI request

Subject: Meeting between FWO & DIBP [SEC=UNCLASSIFIED]
When: Tuesday, 1 March 2016 11:00 AM-12:30 PM (UTC+10:00) Canberra, Melbourne, Sydney.
Where: FWO, Level 2, 148 Frome Street, Adelaide

FWO and DIBP Meeting:

Tuesday 1 March 2016 at 10:30 AM

FWO Office – Level 2, 148 Frome Street, Adelaide

Conference Room 2.17

s. 22 Executive Assistant to s. 22
Fair Work Ombudsman
s. 22

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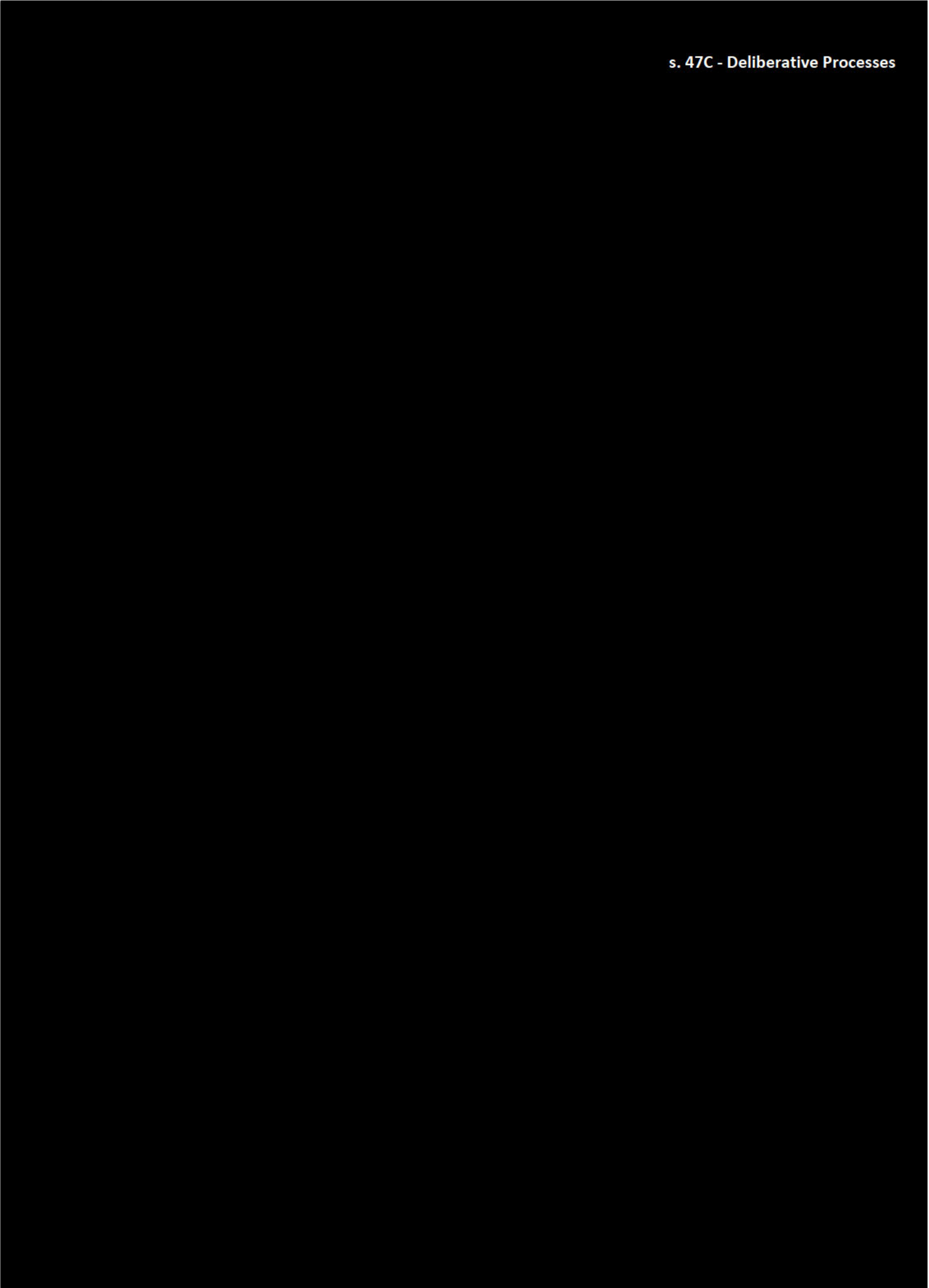


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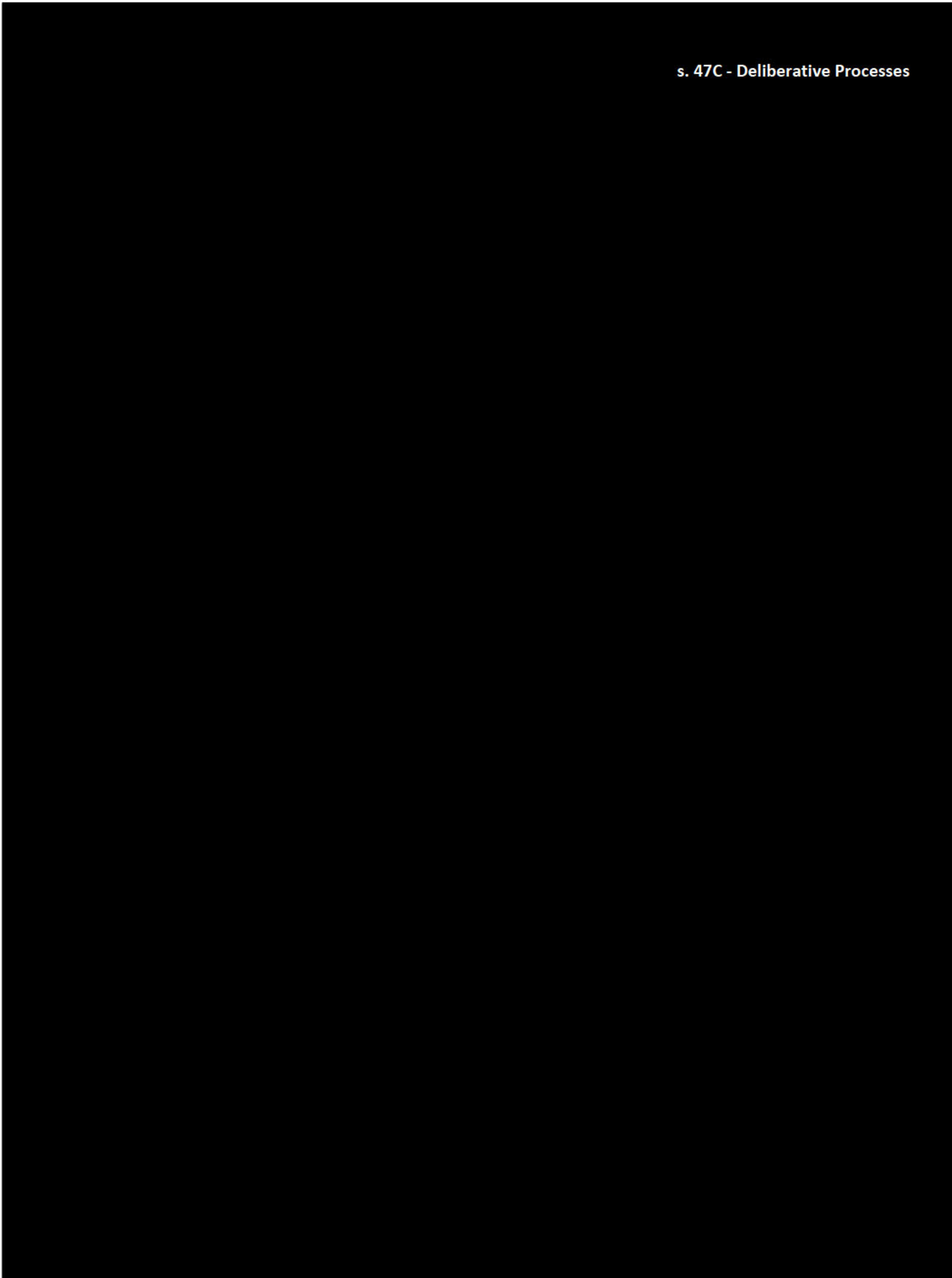


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Attachment C: FWO Referrals to DIBP 1 July 2013 – 18 February 2016

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FWO Outcomes

Prioritised FWO Outcome	PY2013-14 Sponsors	PY2014-15 Sponsors	PY2015-16 Sponsors	Total	%
No Prima Facie Concerns	532	246	93	871	44.80
No Longer Employed By Sponsor	216	102	29	347	17.85
Nominated Salary Concerns	118	152	40	310	15.95
Unable To Locate Sponsor	35	91	22	148	7.61
Nominated Position Concerns	62	45	9	116	5.97
Nominated Position & Salary Concerns	57	34	4	95	4.89
Sponsor Failed To Provide Information	3	38	16	57	2.93
Total	1023	708	213	1944	100.00

NOTE: FWO Outcomes prioritised by Sponsor:

1. Sponsor failed to provide information
2. Nominated position and salary concerns
3. Nominated salary concerns
4. Nominated position concerns
5. No longer employed by sponsor
6. Unable to locate sponsor
7. No prima facie concerns

FWO-DIBP Outcome Comparison

Prioritised FWO Outcome	DIBP Monitoring Outcome						Total
	No Match	Onhand	Sanction	Satisfactory	Unsatisfactory - whereabouts unknown	Warning	
No Prima Facie Concerns	4	29	17	809		11	871
No Longer Employed By Sponsor	2	33	18	275		19	347
Nominated Salary Concerns	4	59	26	169		51	310
Unable To Locate Sponsor	1	52	9	80		6	148
Nominated Position Concerns	1	23	3	78		11	116
Nominated Position & Salary Concerns	3	19	14	50		9	95
Sponsor Failed To Provide Information		34	1	21		1	57
Total	15	249	88	1482		108	1944



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Fair Work
OMBUDSMAN

Meeting Agenda: Fair Work Ombudsman (FWO) / Australian Border Force (ABF) Operational Meeting

Tuesday, 1 March 2016, Time (10:30-12:30)

Location: FWO Office, Level 2, 148 Frome St, Adelaide

Chair: s. 22

AGENDA ITEM		LEAD	ATTENDEES
1	WELCOME AND INTRODUCTIONS	s. 22 - irrelevant to FOI request	All
2	UPDATE ON ACTION ITEMS		All
3	CONSIDERATION OF PROPOSED GOVERNANCE ARRANGEMENTS		All
4	DIBP UPDATE: <ul style="list-style-type: none"> ICSE ACCESS AND TRAINING MOVEMENT RECORDS MOU REPORT ON OUTCOMES OF 457 REFERRALS PAYMENT FOR VISA SPONSORSHIP LEGISLATION 		All
5	FWO UPDATE: <ul style="list-style-type: none"> RISK PROFILING – FWO DATA AND INTEL ASSESSMENTS 457 MONITORING – FUTURE CAMPAIGNS 417 INQUIRY – UPDATE FWO MEETING WITH DIBP RE INPUT TO DIBP PROCESSES REGARDING NEW REQUIREMENTS FOR THE 88 DAY WORK REQUIREMENT OF 417 VISA SE DEBRIEF FWO PUBLICATION OF MONITORING FINDINGS 		All



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6	EQUALISING AND IMPROVING INFORMATION SHARING ARRANGEMENTS	s. 22 - irrelevant to FOI request	All
7	OTHER BUSINESS: <ul style="list-style-type: none">CURRENT AND FUTURE ROLE OF THE SPONSOR MONITORING UNIT		All
Next meeting: TBA			

Invitees

ABF

- s. 22 - [REDACTED], Commander, Immigration Compliance Branch
- irrelevant to [REDACTED], Superintendent, Sponsor Monitoring Unit
- FOI request [REDACTED], Superintendent, National Compliance Programme
- [REDACTED], A/g Superintendent, Sponsor Monitoring Operational Policy
- s. 22 - irrelevant [REDACTED], Inspector, Sponsor Monitoring Unit, SA
- to FOI request [REDACTED], Sponsor Monitoring Unit, NSW (Secretariat)

FWO

- s. 22 - [REDACTED], Executive Director, Dispute Resolution + Compliance
- irrelevant to [REDACTED], Director, Overseas Workers Team
- FOI request [REDACTED], Assistant Director, Overseas Workers Team



FAIR WORK OMBUDSMAN (FWO) / AUSTRALIAN BORDER FORCE (ABF) OPERATIONAL MEETING – MINUTES

Date: 17 August 2015

Venue: FWO, Level 2 148 Frome St, ADELAIDE

Chair: s. 22

Time: 10.30 am – 12.00pm

Attendees: FWO s. 22 - irrelevant to FOI request BF s. 22 - irrelevant to FOI request

s. 22 - irrelevant to FOI request

2

FWO/ABF Memorandum of Understanding (MoU)

1. Outcomes delivered under the MoU

distributed a summary high level report detailing sponsoring activities over the last 2 years. General discussion followed on the outcomes to date. Further discussion ensued on how nominated working hours are reported by both agencies.

to forward via email the reports circulated in hard copy (complete)

2. Review of the MoU?

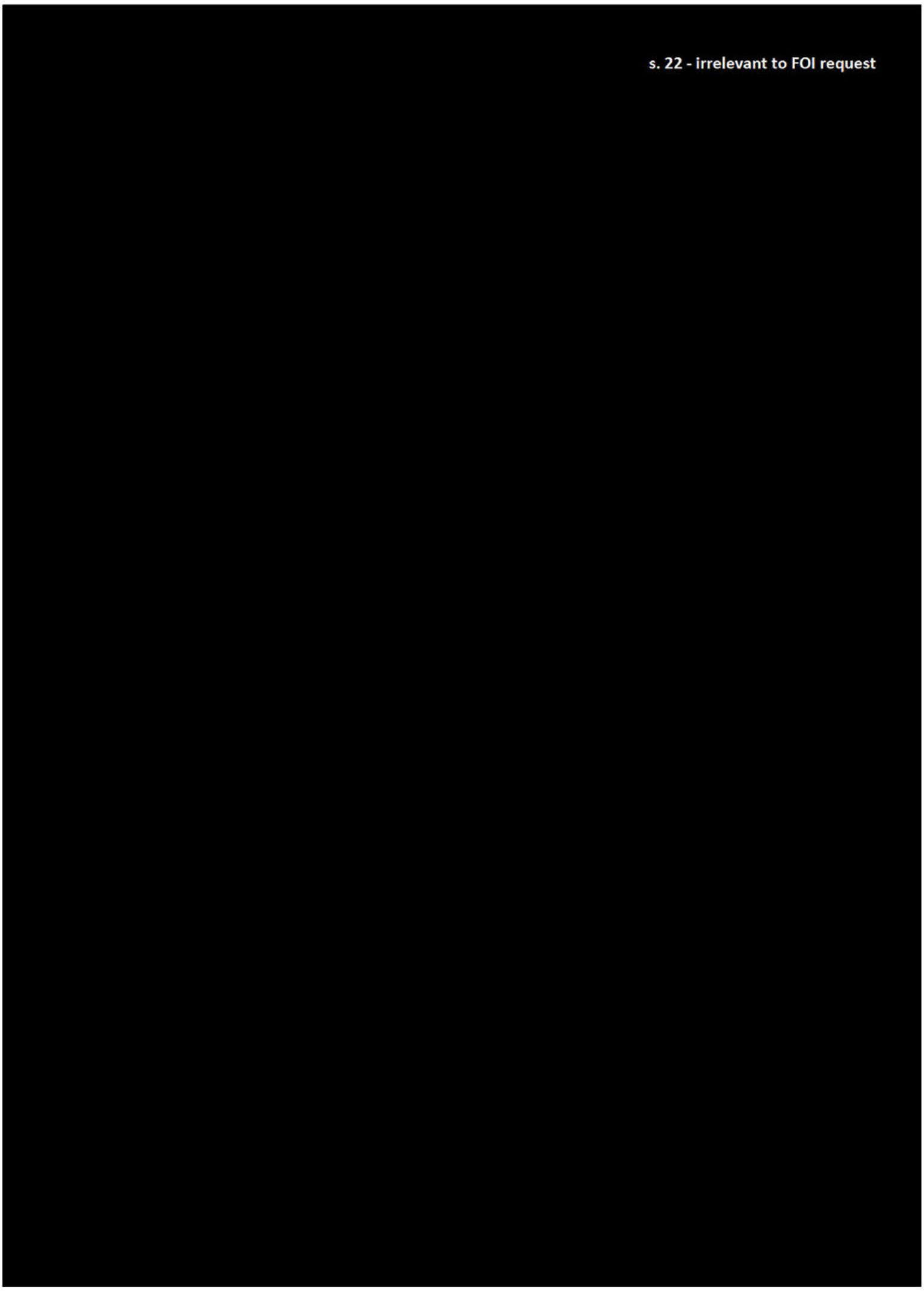
discussed the operating framework of the MoU and general discussion followed on the MoU's operation. It was agreed the MOU did not need any amendments however may benefit from the

will draft a set of principles relating to the flow of information for consideration at the next


	<p>addition of broader principles relating to the flow of information. [REDACTED] will develop draft principles for consideration at the next meeting.</p> <p>3. Publication of the MoU</p> <p>[REDACTED] advised the proposal that we publish the MOU on our respective websites was under consideration s. 22 - [REDACTED]</p>	<p>meeting</p> <p>[REDACTED] will advise FWO Policy & Media team of outcome relating to the publication of the MoU in the next 2 weeks (complete)</p>
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s. 22 - irrelevant to FOI request




s.22 - irrelevant to FOI Scope



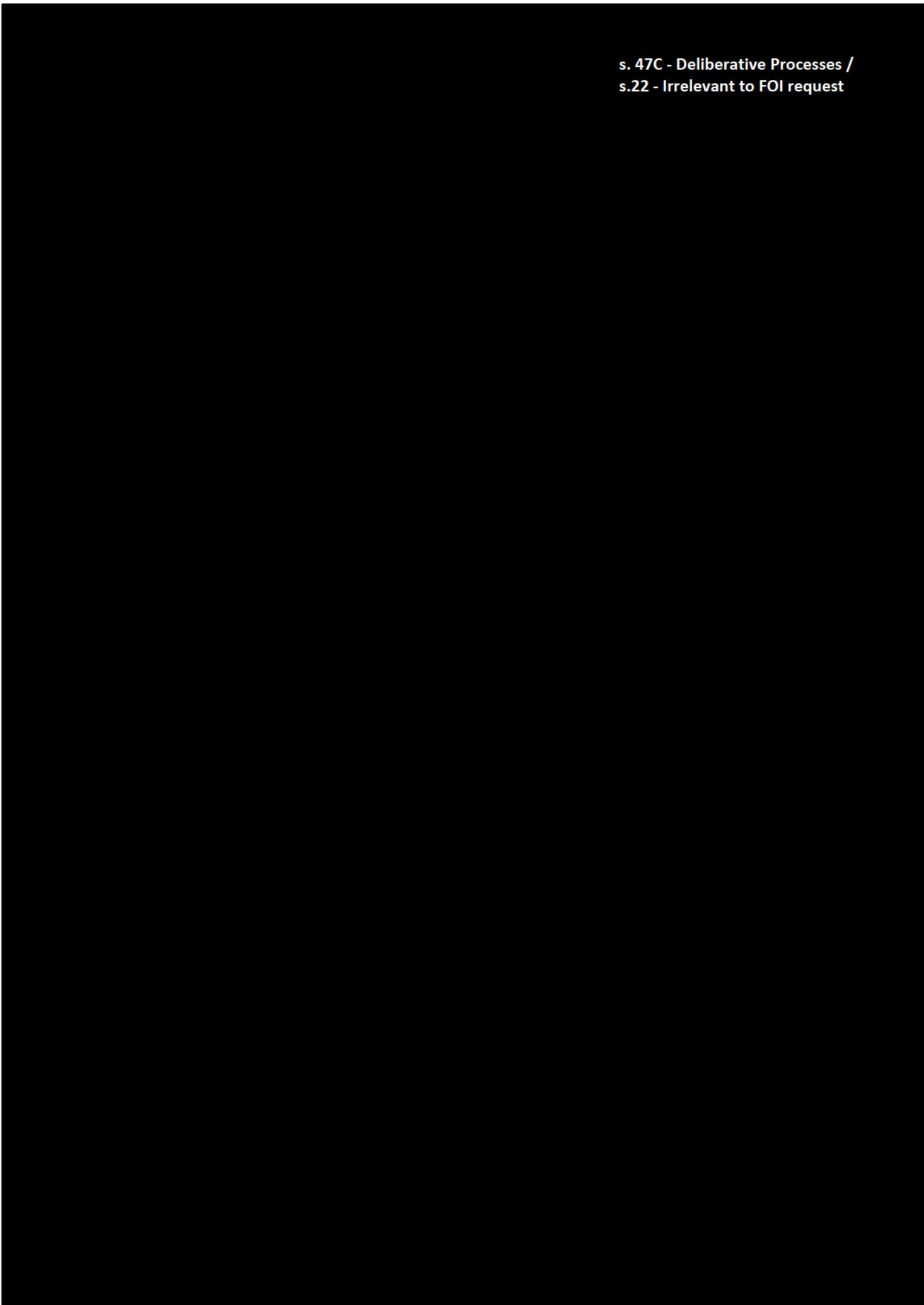
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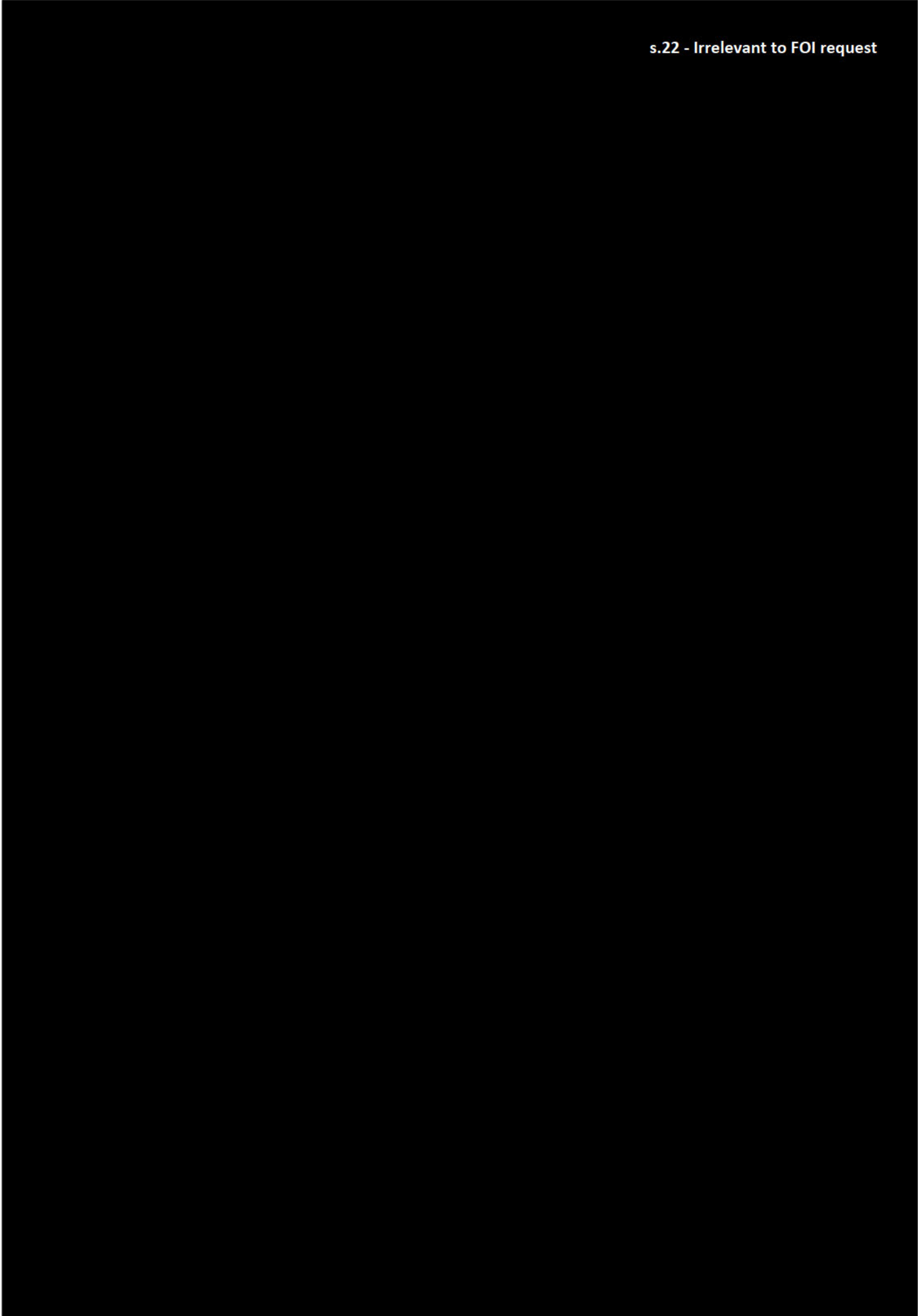


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s.22 - Irrelevant to FOI request



s.22 - Irrelevant to FOI request



**Operational Meeting between Fair Work Ombudsman (FWO) and Department of
Immigration and Border Protection (DIBP)**

Date: 21 March 2017

Time: 2pm – 4pm

Location: FWO OFFICE

Level 2, 148 Frome Street, Adelaide

AGENDA

Chair: [REDACTED]

FWO Attendees: [REDACTED]

s. 22 - irrelevant to FOI

DIBP Attendees: [REDACTED]

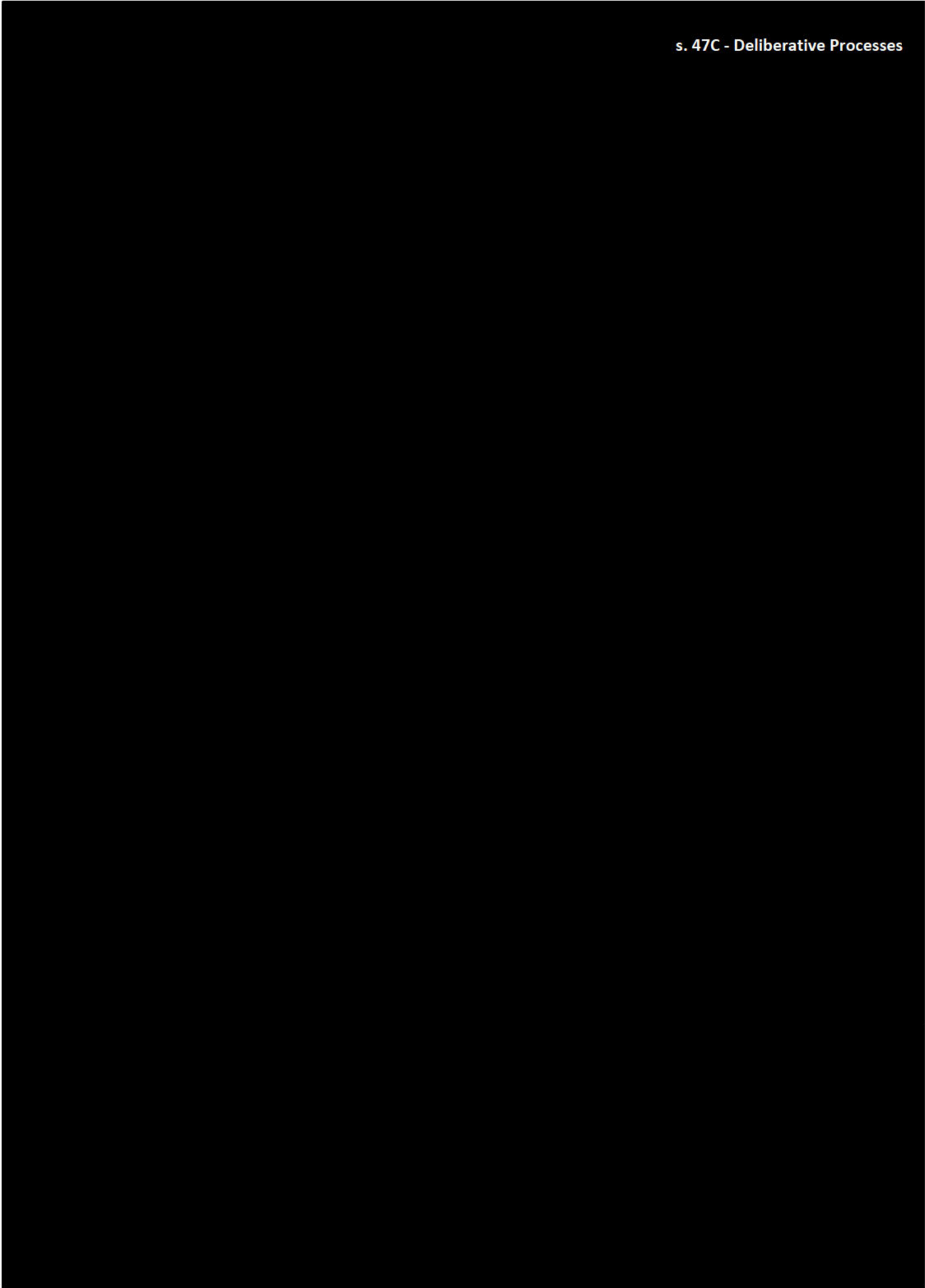
request

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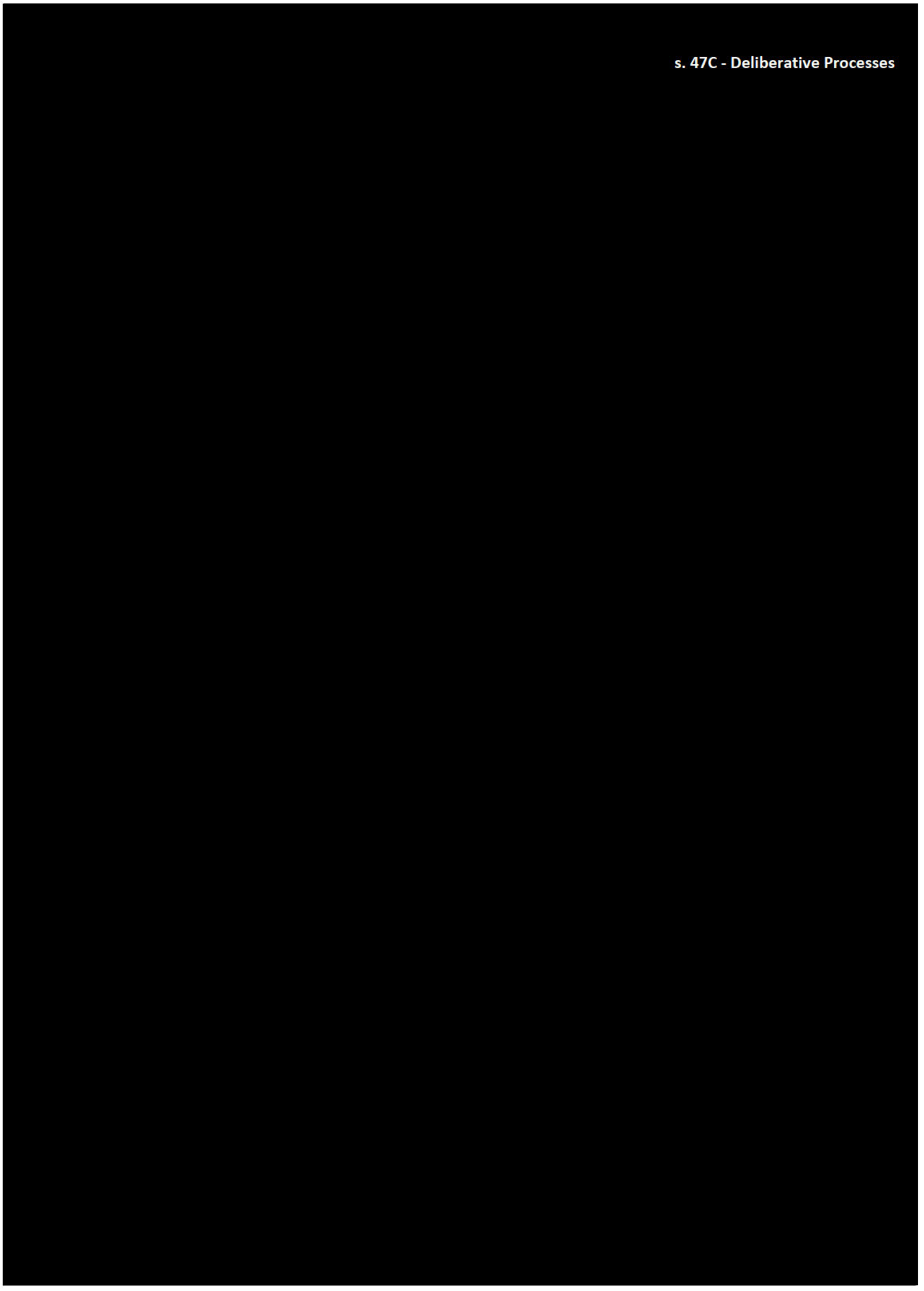
1	Welcome / apologies	s. 22 - irrelevant to FOI request
2	Action items from last meeting <ul style="list-style-type: none"> • Publishing joint monitoring outcomes on FWO and DIBP websites • DIBP position re: placing the FWO-DIBP MoU annexure relating to ICSE access on the DIBP website • FWO request for broader access to ICSE • Legislative conflicts <ul style="list-style-type: none"> ◦ FWO to table a report • Payment for visa sponsorship <ul style="list-style-type: none"> ◦ Checklist / ready reckoner for referrals from FWO - DIBP ◦ FWO training • MoU Annual report (action item to be held over) 	
3	Joint 457 Monitoring activity (April 2017) <ul style="list-style-type: none"> • Summary of subcommittee progress 	
4	Governance protocols review	
5		
6		
7		
8	Any other business	

s. 47C - Deliberative Processes

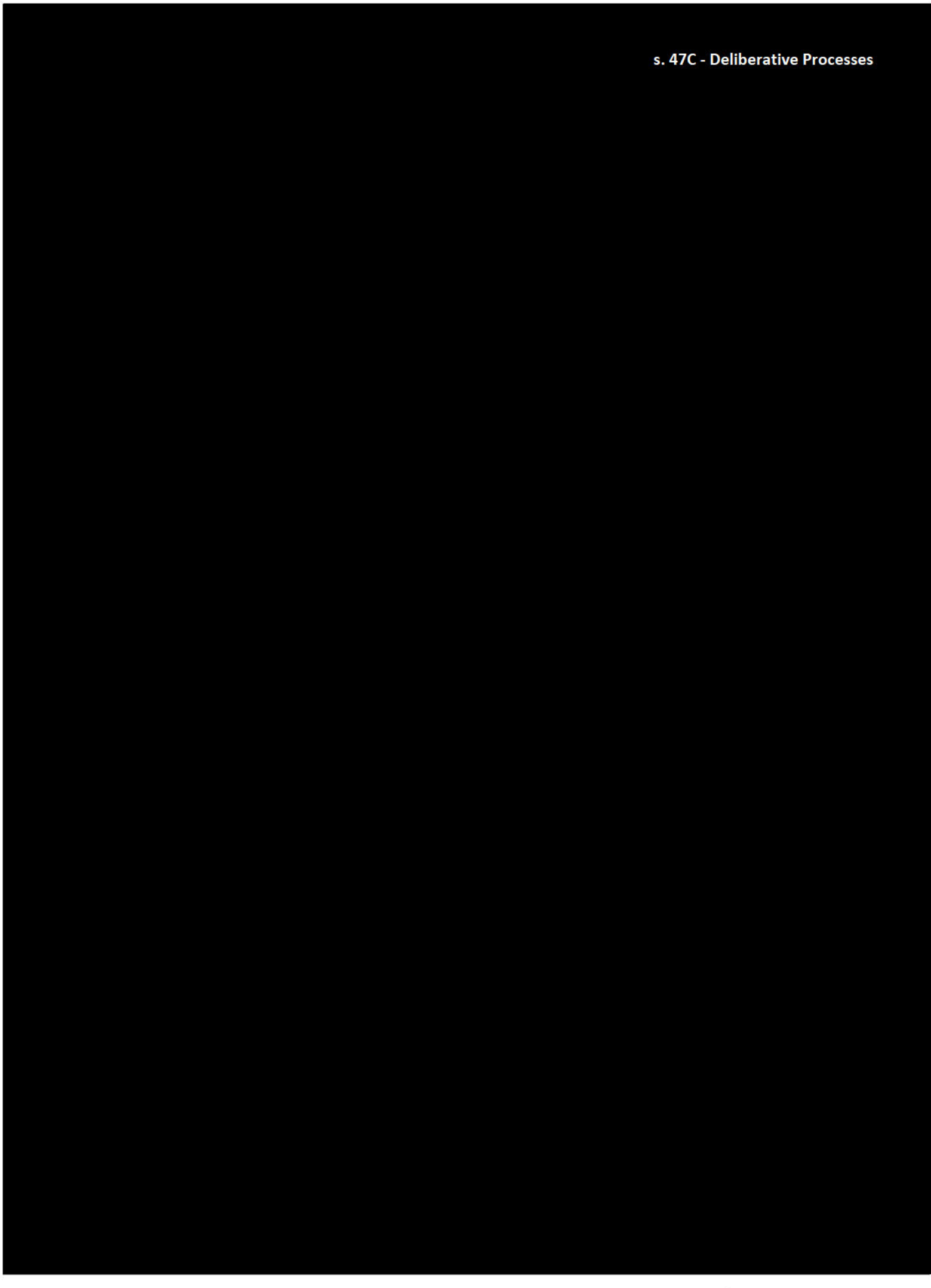
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s. 47C - Deliberative Processes



**Operational Meeting between Fair Work Ombudsman (FWO) and Department of
Immigration and Border Protection (DIBP)**

Date: 21 March 2017

Time: 2pm – 4pm

Location: FWO OFFICE

Level 2, 148 Frome Street, Adelaide

AGENDA

Chair: s. 22

FWO Attendees: s. 22 - irrelevant to FOI request

DIBP Attendees: s. 22 - irrelevant to FOI request

s. 22

1	Welcome / apologies
2	Action items from last meeting <ul style="list-style-type: none"> • Publishing joint monitoring outcomes on FWO and DIBP websites • DIBP position re: placing the FWO-DIBP MoU annexure relating to ICSE access on the DIBP website • FWO request for broader access to ICSE • Legislative conflicts <ul style="list-style-type: none"> ○ FWO to table a report • Payment for visa sponsorship <ul style="list-style-type: none"> ○ Checklist / ready reckoner for referrals from FWO - DIBP ○ FWO training • MoU Annual report (action item to be held over)
3	Joint 457 Monitoring activity (April 2017) <ul style="list-style-type: none"> • Summary of subcommittee progress
4	Governance protocols update
5	s. 22
6	Any other business

s. 22 - irrelevant to
FOI request

ANNEX

to the

MEMORANDUM OF UNDERSTANDING

Between

The Department of Immigration and

Border Protection

And

The Fair Work Ombudsman

In relation to the provision of direct access to the department's
Integrated Client Service Environment (ICSE)

Contents

Purpose and Recitals	2
Commencement and duration of this Annex.....	2
Status of this Annex.....	3
Personnel	3
Provision of direct online access to ICSE	3
Provision of remote access to ICSE	4
Service Delivery Support.....	4
Privacy	5
Costs	6
Security	6

Purpose and Recitals

1. This is an Annex to the Memorandum of Understanding (MOU) that was made by the Department of Immigration and Citizenship (DIAC) and the Office of the Fair Work Ombudsman (FWO) on 2 July 2013 following the appointment of FWO Inspectors as inspectors for the purposes of the *Migration Act 1958* (the 'Head MOU').
2. The purpose of this Annex is to allow Fair Work Inspectors appointed under section 700 of the Fair Work Act 2009 in the performance of their statutory duties as Migration Inspectors and FWO staff supporting their operations and investigations (including FWO IT personnel) and herein referred to as "FWO Officers", access to the Department of Immigration and Border Protection's (DIBP) Integrated Client Service Environment ("ICSE") to verify information such as which businesses are subclass 457 visa sponsors, the number of people that they sponsor and other related details such as salaries and occupations of sponsored persons.
3. This Annex sets out the arrangements between the DIBP and the FWO in relation to providing direct online access to ICSE for FWO Officers.
4. The Parties acknowledge that this initiative is in keeping with the Government's broad information sharing agenda.
5. The information provided by either party to the other party under this Annex to the Memorandum of Understanding is provided in confidence.

Commencement and duration of this Annex

6. This Annex commences on the date it is signed by the last Party to sign it, and continues to apply:
 - (a) for as long as the head MOU remains in effect; or
 - (b) Until terminated by the Parties at any time by mutual agreement, or
 - (c) Until terminated by either Party giving the other a notice of not less than 90 days.

Status of this Annex

7. The MOU, including this Annex, is a voluntary statement of intention of the Parties at the time of signing, and is not intended to create, and does not create, any legally binding obligations between the Parties, nor is it enforceable in any court or tribunal.
8. Nothing in the Head MOU or Annex will affect the statutory duties or obligations of the Parties. Any ambiguity or uncertainty arising out of this Annex is to be resolved in a way that is consistent with the relevant legislation or any other laws. Legislation and other laws, as amended from time to time, take precedence over this Annex, to the extent of any inconsistency.
9. The Parties agree to implement this arrangement in accordance with the terms and conditions set out in both the head MOU and the Annex. In the unlikely event that a conflict arises between the MOU and this annex, the relevant clauses in the Annex – being the more recent document – will take precedence over the MOU, unless otherwise agreed in writing by the MOU Managers of both parties.

Personnel

10. The MOU Managers identified in the 'Personnel' Section of the Head MOU are redefined as incumbents of the following positions:
 - (a) FWO – Deputy Fair Work Ombudsman, Operations
 - (b) Department of Immigration and Border Protection – National Manager, Immigration and Customs Enforcement, Investigations Division
11. The MOU Liaison Managers identified in the 'Personnel' Section of the Head MOU are redefined as incumbents of the following positions:

Role	Functions
Director, Overseas Workers Team	Investigation referrals Requests for information Technical advice requests Joint operations
Director, Programme Integrity Unit	Temporary Work Sponsor Monitoring

s. 22 - irrelevant to FOI request

12. MOU Managers and Liaison Managers will continue to confer and meet on an as-required basis.

Provision of direct online access to ICSE

13. DIBP agrees to provide direct online access to ICSE to FWO officers. It is the responsibility of the FWO to ensure that they have the appropriate systems and infrastructure to enable the access.
14. FWO will submit requests for access to ICSE using the DIBP's Other Government Agency-Access to DIBP Systems s. 47E - , forwarded by email to: s. 47E -
15. Upon receipt of an appropriately completed and authorised s. 47E - , DIBP agrees to provide authorised FWO officers with view/read-only access to ICSE, including the Client Search Portal.

16. FWO officers will not be able to update the database directly.
17. FWO officers will be able to copy data to their desktop hard-drives and/or export data in compatible software formats.
18. FWO agrees to restrict the access and use of the information held in ICSE to authorised FWO officers who require the information for the completion of their duties.
19. Authorised Users will be subject to access controls to protect both Parties. The controls will consist of a:

s. 47E - Certain operations of agencies

20. When a member of FWO Officers resigns or otherwise ceases to undertake duties which require access to ICSE, FWO will Notify DIBP as soon as practicable. DIBP will promptly remove access following Notification.
21. DIBP will provide training and training modules to FWO Officers in the use of ICSE and will nominate DIBP contacts for FWO officers in the event of questions regarding usage of the ICSE system.

Provision of remote access to ICSE

22. This Annex also makes provision, if required in the future, for FWO officers to be able to access ICSE through remote means.
23. The need for remote access will be agreed by MOU Managers of both parties in writing and will be subject to:
 - (a) approval by Department of Immigration and Border Protection IT Security;
 - (b) The FWO agreeing to and meeting appropriate security protocols;
 - (c) The FWO providing appropriate hardware and software to access Department of Immigration and Border Protection systems remotely; and
 - (d) Any other protocols that are agreed to at the time.

Service Delivery Support

DIBP IT Support

24. DIBP will provide a single point of contact for all IT and telecommunications incident, problems and requests. IT Support will provide the following functions:
 - (a) Password resets;
 - (b) Reporting and tracking of technical problems with communication infrastructure;
 - (c) Providing initial Status Reports on problems logged with IT Support;
 - (d) Status Reports on requests for services;
 - (e) Providing information updates on major outages affecting departmental offices Australia-wide; and
 - (f) Resolving problems with the department's IT systems.
25. DIBP will provide IT Support 24 hours a day, 7 days a week. IT Support may be contacted via:

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26. Once an issue is logged with the DIBP's IT Support, the issue will be allocated a severity level and the appropriate IT service provider will be responsible for fixing the issue within the service level timetable allocated to the severity level priority.

27. In instances where the FWO notifies DIBP that it is not satisfied with the service they have received from IT Support, DIBP will follow internal escalation procedures.

28. Apart from password resets, DIBP's IT Support should only be contacted by the FWO's IT Support.

29. DIBP will consult with FWO and provide necessary training for FWO Officers to use ICSE.

30. In addition, DIBP will provide the FWO with copies of relevant learning and development and operational guidance materials upon commencement of this Annex, and as they are created or updated.

FWO IT Support

31. The FWO will provide DIBP with access to FWO's IT Support to ensure the effective operation of the services between the FWO and DIBP. FWO's IT Support will perform the following functions:

- (a) Incident management from the first contact to resolution to meet escalation response and resolution;
- (b) An escalation point for calls not resolved at the first contact; and
- (c) Recording / logging of any incident received out of FWO IT business hours.

32. If a major incident is raised by FWO, DIBP IT Support will provide support, 24 hours a day, 7 days a week, until services are restored. Relevant contact details should be exchanged between FWO and DIBP IT Support service desks.

33. FWO will provide DIBP with IT Support from Monday to Friday, 8.00am to 5.00pm (AEST) weekdays excluding public holidays and the Christmas shutdown period. FWO's IT Support can be contacted via:

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Privacy

34. The Parties acknowledge that DIBP Material contained in ICSE, which may be disclosed to FWO in accordance with this Annex, is subject to the Privacy Act.

35. The Parties acknowledge that they must comply with the Australian Privacy Principles ("APPs") (as amended from time to time) in relation to Personal Information in the Parties' possession or control in connection with this Annex.

36. FWO will, pursuant to its obligations under the Privacy Act, use Personal Information only for the authorised purposes for which it was collected. FWO will:

- (a) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Annex is protected against loss and unauthorised access, use, modification or disclosure;
- (b) comply with the APPs (as amended from time to time) and not perform an act or engage in a practice that would breach the APPs if that act was performed or that practice engaged in by an agency as defined in the Privacy Act (as amended from time to time); and

- (c) comply as far as practicable with any policy guidelines laid down by the Commonwealth or issued by the Office of the Australian Information Commissioner in relation to the handling of Personal Information.

37. Authorised Users may read, examine, reproduce, use or disclose any part of ICSE strictly for business purposes only. Authorised Users must not access records of other persons (for example relatives, associates or friends of the client) unless there is a strict business need to do so that directly relates to that person. Accessing records inappropriately is a breach of the APS Code of Conduct. Compliance with the APS Code of Conduct and any investigations into breaches will be conducted by the FWO.

38. FWO will not act as an information source for people, organisations or agencies that may request information contained in ICSE. FWO will advise any person, organisation or agency making such requests to direct their request to DIBP's Annex Manager set out in the Personnel Section of this Annex.

39. FWO will notify DIBP immediately if it becomes aware of a breach or possible breach of any of the obligations under this Annex, and will take the necessary steps to close any breach as soon as FWO becomes aware of that breach.

40. FWO understands that, when receiving DIBP Material from ICSE pursuant to this Annex, FWO becomes the custodian of that data and will treat that data as Confidential Information. FWO accepts the responsibility to ensure the prevention of unauthorised access, use, disclosure or disposal of DIBP Material received pursuant to this Annex.

41. FWO agrees that DIBP Material that is retained by FWO will be treated in accordance with the *Archives Act 1983* (Cth) and the guidelines of the relevant Government authority for the storage, disposal and archiving of Personal Information.

42. Upon receipt of an FOI request to FWO for information provided under the terms of this Annex to the Memorandum of Understanding FWO will advise DIBP.

43. FWO will process any FOI request it receives for information it holds under the terms of this Annex to the Memorandum of Understanding as it would any other FOI application it receives.

44. DIBP will provide training and written materials to FWO Officers regarding any specific privacy issues that relate to the information provided under the terms of this Annex to the Memorandum of Understanding.

Costs

45. Unless otherwise agreed between the Parties, each Agency will pay its own costs of and incidental to the preparation, negotiation, completion and performance of this Annex.

Security

46. The Parties agree to adhere to the following Commonwealth policies relating to physical, personnel and information security:

- (a) the Protective Security Policy Framework ("PSPF"); and
- (b) the Information and Communication Technology ("ICT") Security Manual ("ISM").

47. FWO shall be responsible for ensuring that DIBP Material will be kept secure and that it is protected by such security safeguards as is reasonable to prevent loss, unauthorised access, unauthorised use, modification, disclosure or other misuse, including unauthorised reproduction by any means.

48. FWO will take appropriate security measures to:

- (a) ensure that FWO's applies the principles contained in the Protective Security Framework when accessing DIBP Materials in ICSE;
- (b) restrict the use of, and access to DIBP Material to FWO Officers who require the information for the completion of their duties as Migration Inspectors and FWO Officers supporting their operations and investigations;
- (c) ensure that only FWO Officers with the appropriate security clearance and delegations will be provided with access to DIBP Material;
- (d) ensure that the DIBP Material is used only for the purposes outlined in this Annex;
- (e) restrict and monitor direct online access to ICSE; and
- (f) ensure that Authorised Users have a unique log on for the work they perform and do not share that log on.

49. If a security incident, risk, threat or vulnerability occurs in connection with access to ICSE data, FWO will Notify DIBP immediately. FWO will then prepare a written report as soon as possible providing the following information:

- (a) a description of the security incident including date, time and person(s) involved and, where appropriate, the actions taken by the agency to manage the incident to prevent its reoccurrence; and
- (b) a description of the perceived security risk and/or vulnerability.

50. FWO will also report the incident to their IT Security Advisor and Agency Security Advisor if physical or personnel security aspects are involved.

51. FWO will provide any other information which DIBP reasonably requires in relation to an incident, including providing full cooperation with DIBP during any subsequent investigation.

52. FWO will maintain records of each Authorised User who is provided with access to ICSE, including their full name, contact details, security clearance details and User ID.

53. FWO will not distribute, share or disseminate information sourced from ICSE to third parties, including to media enquiries or Ministerial offices unless:

- (a) the Material is FWO Material;
- (b) permission has been granted by DIBP;
- (c) it is being provided in accordance with a legal obligation of FWO; and/or
- (d) it is required to be produced under subpoena, notice to produce, court order, or other compulsory process.

SIGNED for and on behalf of:

**The Commonwealth Department
of Immigration and Border
Protection by:**

David Nockels,
National Manager
Immigration and Customs Enforcement Branch
Investigations Division
Immigration-Fair Work Ombudsman MOU Manager

Signed and Dated:

In the presence of (witness):

Witness Signature and Date:

**The Office of the Fair Work
Ombudsman by:**

Deputy Fair Work Ombudsman Operations
Fair Work Ombudsman-Immigration MOU Manager

Signed and Dated:

In the presence of (witness):

Witness Signature and Date:

Released under
Freedom of Information
by the
Fair Work Ombudsman



Australian Government
Department of Immigration
and Border Protection



Australian
BORDER FORCE



Fair Work
OMBUDSMAN

Operational protocols and principles
relating to the effective governance of the

Memorandum of Understanding

Between

The Department of Immigration and Border Protection

And

The Fair Work Ombudsman

Released under the
Freedom of Information Act 1982
by the
Fair Work Ombudsman

1. Introduction

This document sets out the overarching operational protocols and guiding principles which seek to facilitate the effective governance of the MOU between DIBP and FWO entered into on 5 July 2013 and subsequent Annex in relation to the provision of direct access to the Department's Integrated Client Service Environment entered into on 20 May 2015 **agreement**¹;

2. Objectives

The objectives under the agreement are:

- To deliver optimum reasonable and proportionate compliance outcomes in relation to sponsorship obligation breaches through the appointment of Fair Work Inspectors as Migration Inspectors in relation to the three obligations (Regulations 2.79, 2.86 and 2.78 of the Migration Regulations).
- To leverage cross-agency capabilities to enhance education and compliance outcomes under the 457 programme
- Improve awareness of workers' rights and obligations under Australian workplace law among visa holders
- Increase sponsors' understanding of their obligations to ensure compliance

3. Principles

The Governance Committee agrees to the following principles to ensure optimum compliance outcomes are achieved under the agreement:

- Sharing of, and ready access to, operational information and intelligence
 - Evidence based joint agency education and compliance activities
 - Increasing collaboration and skills transfer
- Commitment to regular review and continuous improvement of information exchange, support and training and capabilities transfer

¹ Agreement refers to the Memorandum of Understanding between the FWO and DIBP (signed in July 2013) and the subsequent Annexure (signed in May 2015).

4. Governance Structure

The Governance Structure for this MoU is represented by the following staff:

	DIBP	FWO
MoU Managers	s. 22 Commander Immigration Compliance	s. 22 Executive Direction Dispute Resolution and Compliance
DIBP/FWO Joint Executive Committee	s. 22 Commander Immigration Compliance Branch s. 22 Superintendent Sponsor Monitoring Unit Other areas as required	s. 22 Executive Direction Dispute Resolution and Compliance s. 22 Director Overseas Workers Team s. 22 Assistant Director Overseas Workers Team Other areas as required
DIBP/FWO Operational Committee	s. 22 Superintendent Sponsor Monitoring Unit Referrals Manager Inspector Sponsor Monitoring Unit Other areas as required	s. 22 Director Overseas Workers Team Assistant Director Overseas Workers Team Other areas as required
Liaison Managers	s. 22 Superintendent Sponsor Monitoring Unit	s. 22 Director Overseas Workers Team

5. Roles and Responsibilities of Key Governance Members

5.1 MOU Managers

Primary responsibilities include:

- (i) Managing the overall relationship between the FWO and DIBP in relation to the agreement.
- (ii) Identifying integrity and investigative measures being progressed by each agency to ensure that a coordinated and strategic approach is taken to tackling exploitation of the 457 programme.
- (iii) Providing guidance and direction to the Liaison Managers in relation to strategic and joint operational activities under the agreement

5.2 Liaison Managers

Primary responsibilities include:

- (i) Managing the operational relationship under the agreement
- (ii) Ensuring the obligations under the agreement are fulfilled
- (iii) Reporting on operational performance and outcomes under the agreement
- (iv) Progressing the strategic goals and objectives of the agreement
- (v) Implementing any agreed strategic initiatives and operational joint activities
- (vi) Facilitating sharing of information and intelligence at the operational level to assist the targeting of exploitation within the 457 programme.

6. Committees and Meetings

6.1 DIBP/FWO Joint Executive Committee

The DIBP /FWO Joint Executive Committee (JEC) provides oversight to the agreement and ensures operational and strategic outcomes are achieved. The JEC facilitates the development of the DIBP/FWO relationship in order to achieve broader collaboration and information sharing in relation to tackling exploitation within the 457 programme.

Meetings

The DIBP /FWO JEC will meet quarterly at mutually agreed times. An annual review of the agreement and outcomes achieved will be conducted

Responsibilities

- (i) Chair the JEC meetings on a rotating basis

- (ii) Raise any outstanding issues and provide strategic direction for achieving resolution
- (iii) Provide strategic guidance and direction on joint initiatives and activities

6.2 FWO/DIBP Operations Committee

The FWO/DIBP OC provides operational oversight to the agreement and ensures compliance outcomes are achieved. The OC will foster a cooperative and collaborative approach to information and intelligence sharing and ensure a co-ordinated approach to activities.

Meetings

The FWO/DIBP Operations Committee (OC) will meet monthly at mutually agreed times and on an as needs basis.

Responsibilities

- (i) Chair of the OC meetings on a rotating basis
- (ii) Provide monthly operational reports and input into OC meetings
- (iii) Develop agenda for JEC meetings on a rotational basis, with input from members
- (iv) Arrange, participate and provide input into JEC meetings
- (v) Provide JEC meetings with quarterly reports on operational outcomes
- (vi) Organise secretariat support as required
- (vii) Arrange records of discussion and actions from meetings and distribute within three days of the meeting date as required
- (viii) Progress actions items attributed to them within agreed timeframes

6.3 Annual Review Meeting

A draft annual review report will be prepared prior to the annual review meeting for reference. The annual review meeting agenda will include the following:

- (i) A review of the draft annual report which will include:
 - a) Confirmation of outcomes under the agreement
 - b) Review of joint activities and cooperation under the agreement and outcomes

The meeting will be minuted and the decisions made will be incorporated into the final annual report.

The meeting will be co-chaired and respective teams will provide secretariat support for the annual review meeting and annual review report on a rotational basis.

The following members will be regular attendees of the annual review meeting:

s. 22	, Assistant Commissioner, Border Management Division, ABF
s. 22	, Deputy Fair Work Ombudsman
s. 22	, Executive Direction Dispute Resolution and Compliance, FWO
s. 22	, Commander Immigration Compliance, ABF
s. 22	, Director Overseas Workers Team, FWO
s. 22	, Superintendent Sponsor Monitoring Unit, ABF
Secretariat Support	

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Australian Government
Department of Immigration
and Border Protection

MEMORANDUM OF UNDERSTANDING

DIRECT ACCESS TO MOVEMENT RECORDS

An arrangement for the provision of direct access to the
Movements Reconstruction database between –

the **Department of Immigration and Border Protection
(DIBP)** including its operational arm, the **Australian
Border Force (ABF)**

and

the **Fair Work Ombudsman (FWO)**

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1 PURPOSE OF THIS MEMORANDUM OF UNDERSTANDING

- 1.1 This Memorandum of Understanding (MOU) is made between:
- (a) the Department of Immigration and Border Protection (DIBP); and
 - (b) the Fair Work Ombudsman (FWO);
- herein known as the Participants.
- 1.2 The MOU sets out the arrangements between the Department and FWO in relation to providing direct online access to Movement Records to FWO employees.
- 1.3 The purpose of this MOU is to allow FWO employees (as defined in this MOU) access to the Department's Movement Records Database via the Integrated Client Service Environment ("ICSE") that is owned by the Department.
- 1.4 FWO employees may use the Movement Records stored in DIBP's Movements Reconstruction (MR) Database for the purpose of carrying out their official duties and performing their official functions under the *Fair Work Act 2009* (Cth) or the *Migration Act 1958* (Cth), requiring the:
- (a) Immigration status; or
 - (b) Residence status; or
 - (c) Movement status; or
 - (d) Work rights
- of individuals.
- 1.5 This purpose is in accordance with any lawful authority granted by the Minister for Immigration and Border Protection (or his authorised delegates) pursuant to subsection 488(2) of the *Migration Act 1958* (Cth).

2 ROLES

- 2.1 The DIBP, including its operational arm, the Australian Border Force (ABF), manages a system of border processes that oversee the flow of people and goods to and from Australia.
- 2.2 The FWO promotes harmonious, productive and cooperative workplace relations, and compliance with Australian workplace laws.

3 STATUS AND INTERPRETATION

STATUS

- 3.1 This MOU is a voluntary statement of intention of the Participants at the time of signing and is administrative in nature. This MOU is not intended to create, and does not create, any legally binding obligations between the Participants, nor is it enforceable in any court or tribunal.
- 3.2 Nothing in this MOU will affect the statutory duties or obligations of the Participants. Any ambiguity or uncertainty arising out of this MOU is to be resolved in a way that is

consistent with the relevant legislation or any other laws. Legislation and other laws, as amended from time to time, take precedence over this MOU, to the extent of any inconsistency.

- 3.3 The Participants agree to implement this arrangement in accordance with the terms and conditions set out in this MOU and the other agreements noted at paragraph 16.3 of this MOU. In the unlikely event that a conflict arises between this MOU, or these other agreements, the relevant clauses in this MOU will take precedence over the other documents, unless otherwise agreed in writing by the MOU Contact Officers of both Participants.
- 3.4 Each Participant will ensure that its employees, contractors and all other entities that act on its behalf will comply with the requirements established by this MOU and Annexes made in accordance with it.

DEFINITIONS

- 3.5 Unless the contrary intention appears, a term used in this MOU has the meaning shown in the table below:

Access	means direct online access to Movement Records held in DIBP's Movements Reconstruction database
Annex	means an Annex made in accordance with this MOU
Commonwealth	means the Commonwealth of Australia.
FWO	means the Fair Work Ombudsman
FWO Employee	means an employee of the FWO who is lawfully authorised to read, examine, reproduce by any means, use or disclose by any means the Movement Records held in DIBP's Movements Reconstruction database
Government	means the Government of the Commonwealth of Australia
ICSE	means DIBP's Integrated Client Service Environment, which is a Windows-interfaced software application that records the department's processes and decisions and is a reference point for records of contacts made by clients with the department, whether onshore, offshore or via the Internet
ICT Security Manual	means the Australian Government ICT Security Manual (designated ACSI 33) developed by the Australian Signals Directorate under their role to provide policies and standards for Australian Government agencies to assist in the protection of official government information that is processed, stored or communicated by Australian Government systems
IT Incidents	means events that are not part of the normal operation of an organisation and cause a disruption to its Information Technology

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IT Support	means Information Technology support
Minister	means the Minister for Immigration and Border Protection
Movement Records	means information stored in a notified database, in relation to the entry of persons into, and departure of persons from Australia. The Migration Act places special protections around Movement Records. Section 488 of the Migration Act (Tampering with Movement Records) covers actions and purposes concerning access to Movement Record information. 'Access' to information in this context includes reading, examining, reproducing, using and disclosing Movement Records)
Movements Reconstruction (MR) Database	means information stored in a notified database, in relation to the entry of persons into, and departure of persons from Australia. The Migration Act places special protections around Movement Records. Section 488 of the Migration Act (Tampering with Movement Records) covers actions and purposes concerning access to Movement Record information.
MOU	means this Memorandum of Understanding
Personal Information	has the same meaning it has under the <i>Privacy Act 1988</i> (Cth), as amended from time to time
Protective Security Policy Framework (PSPF)	means Government policy issued to all Australian Government agencies and as amended from time to time. The Attorney-General's Department manages and disseminates the PSPF on behalf of the interdepartmental Protective Security Policy Committee (PSPC)
Sensitive Information	has the same meaning it has under the <i>Privacy Act 1988</i> (Cth), as amended from time to time
Status Reports	means the reports delivered on a regular basis regarding the condition of the link and usage
The Department or DIBP	means the Department of Immigration and Border Protection (or its successor) and the Australian Border Force or the department or agency of the Commonwealth which is from time to time responsible for the administration of this MOU
TRIPS	means DIBP's Travel and Immigration Processing System. This is a collection of mainframe computer systems that support border security and border processing

4 GOVERNANCE ARRANGEMENTS

- 4.1 The Participants acknowledge this initiative is in keeping with the Government's broad information sharing agenda and support the expected processing efficiencies which will result.

CONTACT OFFICERS

- 4.2 For the purposes of this MOU, the Contact Officers are outlined below.
- 4.3 The Department's Contact Officer responsibilities for this MOU will be split between the Movement Records System Owner and the Movement Records Business Owner.
- (a) The Department's Movement Records System Owner Contact Officer for this MOU is the person holding the title or performing the duties of Director, Border Mainframe Systems Support Technical Executive Level 2, or their nominated representative. The Department's System Owner Contact Officer has authority to issue and receive written notifications under this MOU. On the date this MOU is signed, that person is:

s.22 - irrelevant to FOI request

- (b) The Department's Movement Records Business Owner Contact Officer for this MOU is the person holding the title or performing the duties of Director, Operational Performance and Practice Section, or their nominated representative. The Department's Business Owner Contact Officer has authority to issue and receive written notifications under this MOU. On the date this MOU is signed, that person is:

s.22 - irrelevant to FOI request

- (c) The FWO Contact Officer for this MOU is the person holding the title or performing the duties of Director - Overseas Workers - Operations, or their nominated representative. The FWO Contact Officer has responsibility for supervision of this MOU on behalf of FWO and has authority to issue and receive any written notification under this MOU. On the date this MOU is signed, that person is:

s.22 - irrelevant to FOI requests

5 LEGISLATIVE AND POLICY CHANGE

- 5.1 Each agency will assist the other wherever possible in relation to the interpretation of legislation and internal policy requirements necessary for meeting obligations under this MOU.

6 FINANCIAL ARRANGEMENTS

- 6.1 Unless otherwise agreed between the Participants, each Participant will pay its own costs of and incidental to the preparation, negotiation, completion and performance of this MOU.

7 ANNEXES AND TRAINING MATERIAL

ANNEXES

- 7.1 DIBP and FWO may develop a set of Annexes to support this MOU. These Annexes will form part of the MOU when created in accordance with this MOU.
- 7.2 Each Annex will:
- (a) relate to a mutually agreed issue; and
 - (b) set out an approach for the most effective working relationship required to manage each issue.
- 7.3 In accordance with this MOU, an Annex:
- (a) is made under this MOU if it is signed by the Authorised Delegate of DIBP and the Authorised Delegate of FWO or their delegates; and
 - (b) commences, unless otherwise specified, on:
 - (i) the date it is signed by both Participants; or
 - (ii) the date the last Participant signs, where the Participants do not sign the annex on the same day.
- 7.4 Once an Annex has been made, it may be modified or terminated by a written arrangement signed by DIBP and FWO or their delegates. Unless otherwise specified, a modification or termination:
- (a) takes effect from the date the last Participant signs the modification or termination; and
 - (b) has no effect unless endorsed in accordance with this MOU.

TRAINING MATERIAL

- 7.5 DIBP will provide training and training modules to FWO employees in the use of ICSE and will nominate DIBP contacts for FWO employees in the event of questions regarding usage of the MR Database.

8 INTELLECTUAL PROPERTY

- 8.1 Nothing in this MOU is intended to change or affect the ownership of intellectual property of either Participant.
- 8.2 If, at any time, either DIBP or FWO seeks to enter a contractual or other arrangement with a third party which could affect the intellectual property rights of either or both of them, then the agencies will consult with each other before doing so.

9 PROVISION OF DIRECT ONLINE ACCESS TO MOVEMENT RECORDS

- 9.1 The Participants acknowledge that at the time of entering into this MOU, the Minister for Immigration and Border Protection has given appropriate authority under section 488(2) of the *Migration Act* 1958 (Cth) for FWO employees to read, examine, reproduce by any means, use or disclose by any means Movement Records contained in DIBP's Movements Reconstruction (MR) Database. FWO may only access Movement Records for the purposes identified in this MOU and subject to the terms of the relevant instrument or instruments of authorisation that are in force from time to time.
- 9.2 It is the responsibility of the FWO to ensure that they have the appropriate systems and infrastructure to enable the access.
- 9.3 FWO will submit requests for access to Movement Records using the DIBP's Other Government Agency- Access to DIBP Systems form (OGA Systems Access Form – Attachment A), forwarded by email to the following address:
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- 9.4 Upon receipt of an appropriately completed and authorised OGA Systems Access Form, DIBP agrees to provide authorised FWO employees with view/read-only access to Movement Records. The processes for Arranging Access to DIBP Systems and Password Resets/Account Unlocks are at Attachment B.
- 9.5 FWO employees will not be able to update the database directly.
- 9.6 FWO employees will be able to copy data to their desktop hard-drives and/or export data in compatible software formats.
- 9.7 FWO agrees to restrict the access and use of the information held in the MR Database to authorised FWO employees who require the information for the completion of their duties as identified in this MOU.

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- 9.9 When an FWO employee resigns or otherwise ceases to undertake duties which require access to Movement Records, FWO will notify DIBP by email as soon as practicable at the following address:

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- 9.10 DIBP will promptly remove access following notification.

10 PROVISION OF REMOTE ACCESS TO MOVEMENT RECORDS

- 10.1 This MOU also makes provision, if required in the future, for FWO employees to be able to access Movement Records through remote means.
- 10.2 The need for remote access will be agreed by MOU managers of both Participants in writing and will be subject to:
- (a) approval by the Department's IT Security;
 - (b) FWO agreeing to and meeting appropriate security protocols;
 - (c) FWO providing appropriate hardware and software to access DIBP systems remotely; and
 - (d) any other protocols that are agreed to at the time.

11 SERVICE DELIVERY SUPPORT

DIBP'S IT SUPPORT

- 11.1 DIBP will provide a single point of contact for all IT and telecommunications incidents, problems and requests. The Department's IT Support will perform the following functions:
- (a) password resets;
 - (b) reporting and tracking of technical problems with communication infrastructure;
 - (c) providing initial Status Reports on problems logged with IT Support;
 - (d) Status Reports on requests for services;
 - (e) providing information updates on major outages affecting departmental offices Australia-wide; and
 - (f) resolving problems with the Department's IT systems.
- 11.2 DIBP will provide IT Support 24 hours a day, 7 days a week. IT Support may be contacted via:

s.22 - irrelevant to FOI request

- 11.3 Once an issue is logged with the Department's IT Support, the issue will be allocated a severity level and the appropriate IT service provider will be responsible for fixing the issue within the service level timetable allocated to the severity level priority.
- 11.4 In instances where FWO notifies the Department that it is not satisfied with the service they have received from IT Support, the Department will follow internal escalation procedures.
- 11.5 Apart from password resets, the Department's IT Support should only be contacted by

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FWO IT SUPPORT

- 11.6 FWO will provide the Department with access to FWO's IT Support to ensure the effective operation of the services between FWO and the Department. FWO's IT Support will perform the following functions:
- (a) incident management from the first contact to resolution to meet escalation response and resolution;
 - (b) an escalation point for calls not resolved at the first contact; and
 - (c) recording / logging of any incident received out of FWO IT business hours.
- 11.7 FWO will provide DIBP with IT Support from Monday to Friday, 8.00am to 5.00pm (AEST) weekdays excluding public holidays and the Christmas shutdown period. FWO's IT Support can be contacted via:

s. 47E - Certain operations of agencies

12 ACCESS TO, AND USE, DISCLOSURE AND RETENTION OF INFORMATION

- 12.1 Each Participant will comply with Commonwealth legislative and policy requirements in relation to privacy, official disclosure, secrecy and confidentiality and ensure their officers, employees, consultants and contractors are fully aware of their obligations.
- 12.2 In particular, the Participants will adhere to all respective legislative requirements, policy and guidelines concerning access to, collection, use, disclosure and retention of Personal Information and Sensitive Information, including:
- (a) The *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth)
 - (b) The *Privacy Act 1988* (Cth)
 - (c) The *Archives Act 1983* (the "Archives Act")
 - (d) The *Australian Border Force Act 2015* (the "ABF Act")
 - (e) The *Australian Citizenship Act 2007* (Cth)
- 12.3 If a Participant has received information or intelligence obtained under this MOU, that information or intelligence must be:
- (a) handled in accordance with the security handling procedures of the disseminating Participant; and
 - (b) accorded protection from misuse or wrongful disclosure and used only for the purpose for which it was provided or a related purpose; and
 - (c) handled in accordance with the terms of this MOU or the Annexes.
- 12.4 When examining the record of a client for business purposes, FWO must ensure that FWO employees only access the movement record of that particular client. They must not access movement records of other persons who may be associated with the client (such as the client's friends or relatives) unless there is a strict business need to do so that directly relates to that other person. Accessing records inappropriately is a breach of the APS Code of Conduct. Compliance with the APS Code of Conduct and any investigations into

breaches will be conducted by the FWO.

- 12.5 The Participants acknowledge that information provided by DIBP to FWO pursuant to this MOU is confidential information. FWO will follow the procedures set out in the MOU regarding confidentiality, privacy, secrecy and security as well as adhere to any statutory or policy restrictions regarding the use, disclosure and retention of such information.
- 12.6 FWO will not act as an information source for people, organisations or agencies (external to FWO) that may request movement records. FWO will advise any person, organisation or agency making such requests to direct their request to:

s. 47E

- 12.7 FWO agrees that information that is retained by FWO will be treated in accordance with the *Archives Act 1983* (Cth) and the guidelines of the relevant Government authority for the storage, disposal and archiving of Personal Information and Sensitive Information.
- 12.8 Upon receipt of an FOI request to FWO for information provided under the terms of this MOU, FWO will advise DIBP.
- 12.9 FWO will process any FOI request it receives for information it holds under the terms of this MOU as it would any other FOI application it receives.
- 12.10 DIBP will provide written materials to FWO employees regarding any specific privacy issues that relate to the information provided under the terms of this MOU.

13 COSTS

- 13.1 Unless otherwise agreed between the Parties, each Agency will pay its own costs of and incidental to the preparation, negotiation, completion and performance of this MOU.

14 SECURITY OBLIGATIONS

- 14.1 The Participants agree to adhere to the following Commonwealth policies relating to physical, personnel and information security:
- (a) The *Protective Security Policy Framework* (PSPF) and
 - (b) The *Information and Communication Technology (ICT) Security Manual* (ISM)
- 14.2 FWO will be responsible for ensuring that the data received from the Department under this MOU will be kept secure and that it is protected by such security safeguards as is reasonable to prevent loss, unauthorised access, unauthorised use, modification, disclosure or other misuse, including unauthorised reproduction by any means.
- 14.3 FWO will take appropriate security measures to:
- (a) ensure that FWO's protective security framework applies to the delivery of the service;
 - (b) restrict the use of, and access to the Department's information to FWO employees who require the information for the completion of their duties, in line with clause 1 of this MOU;
 - (c) ensure that only FWO employees with the appropriate security and delegations will

be provided with access to the information disclosed by the Department to FWO;

- (d) ensure that the Department's information is used only for the purposes outlined in this MOU; and
- (e) restrict and monitor direct online access to the Department's MR Database.

14.4 In the event there is a breach of security by FWO or FWO personnel, FWO agrees to notify the Department immediately of the breach and take any steps necessary to remedy that breach.

14.5 If a security incident, risk, threat or vulnerability occurs in connection with access to Movement Records data, FWO will Notify DIBP immediately. FWO will then prepare a written report as soon as possible providing the following information:

s. 47E - Certain operations of agencies

14.6 Where DIBP becomes aware of a breach or possible breach of any of the obligations under this arrangement by an FWO employee, DIBP will notify FWO immediately. FWO will take the necessary steps to close any breach. The contact point for suspected breaches is:

Name: s. 22
 Position: Executive Director
 Section: Dispute Resolution and Compliance
 Email: s. 22

14.7 Upon identification of a breach, DIBP will take action it deems appropriate based on the nature of the breach. Any action taken by DIBP will be in consultation with internal DIBP stakeholders and the FWO Contact Officer.

15 DISPUTE RESOLUTION

15.1 DIBP and FWO recognise that it is in their mutual interest to express issues of concern to each other in a professional manner as a method of improving cooperation between them.

15.2 Despite the existence of a dispute, DIBP and FWO will continue to perform their roles under this MOU unless requested not to do so by the other Participant.

15.3 The resolution of disputes arising under this MOU or the Annexes will be based on the following principles:

- (a) the Participants will initially seek to resolve a dispute within the functional areas of the agencies in which the dispute arose;
- (b) each Participant will ensure it has appropriate mechanisms in place:
 - (i) for raising a dispute to higher levels of management in the event that the dispute is not resolved by the functional areas; and
 - (ii) to disseminate information regarding resolution of disputes to other areas in the organisation who would benefit from such information.

15.4 If discussions undertaken by functional areas and higher levels of management fail to

resolve the dispute, the dispute will be referred to the Authorised Delegate of DIBP and the Authorised Delegate of FWO for further direction or final resolution.

- 15.5 Disputes will not be referred to any third party or tribunal.

16 DELEGATIONS

- 16.1 The Authorised Delegate of DIBP may:

- (a) sign this MOU on behalf of DIBP or may appoint a delegate to do so; and
- (b) either generally or otherwise, authorise a person to exercise all or any of his or her powers and functions under this MOU, except the power given in this paragraph.

- 16.2 The Authorised Delegate of FWO may:

- (a) sign this MOU on behalf of FWO or may appoint a delegate to do so; and
- (b) either generally or otherwise, authorise a person to exercise all or any of his or her powers and functions under this MOU, except the power given in this paragraph.

17 COMMENCEMENT, DURATION AND TERMINATION

COMMENCEMENT

- 17.1 This MOU commences on:

- (a) the date it is signed by both Participants; or
- (b) the date the last Participant signs, where the Participants do not sign the MOU on the same day.

DURATION

- 17.2 This MOU remains in effect until it is terminated in accordance with this MOU.

TERMINATION

- 17.3 This MOU commences on the date it is signed by the last Participant to sign it, and continues until:

- (a) terminated by either Participant giving the other a notice of not less than 90 days; or
- (b) either of the following agreements are terminated under their respective termination clauses:
 - (i) the Memorandum of Understanding made by the Department of Immigration and Citizenship (DIAC) and the Office of the Fair Work Ombudsman (FWO) that took effect on 2 July 2013; or
 - (ii) Annex to the Memorandum of Understanding between the Department and the Fair Work Ombudsman in relation to the provision of direct access to the Department's Integrated Client Service Environment (ICSE) that took effect on 21 May 2015

18 VARIATION

- 18.1 Both Participants acknowledge the importance of ensuring the MOU remains relevant to their needs and aspirations. As such, DIBP and FWO will consult one another with the aim of making arrangements for the continuing and effective implementation of this MOU considering possible variations of this MOU as circumstances require.
- 18.2 Where DIBP and FWO mutually determine to vary this MOU, any variation will:
- (a) be made jointly by the Authorised Delegate of DIBP and the Authorised Delegate of FWO or their delegates; and
 - (b) be made by arrangement in writing; and
 - (c) will take effect as specified in paragraph 16.
- 18.3 Unless otherwise stated, a variation to this MOU commences on:
- (a) the date it is signed by both Participants; or
 - (b) the date the last Participant signs, where the Participants do not sign the variation on the same day.

19 REVIEWS

- 19.1 DIBP and FWO will review this MOU every two (2) years from the date on which it commences or within such other period as mutually determined.

FOR OFFICIAL USE ONLY MEMORANDUM: FWO Access to Information Records

SIGNATURES

SIGNED at _____
 for and on behalf of the
 Department of Immigration and
 Border Protection by

Commander Operational Strategies
 Authorised Delegate on

.s.22 - irrelevant to FOI request

20 July 2016
 date

SIGNED at _____
 for and on behalf of the
 Fair Work Ombudsman by

EXECUTIVE DIRECTOR
 Authorised Delegate DISPUTE on
 RESOLUTION + COMPLIANCE

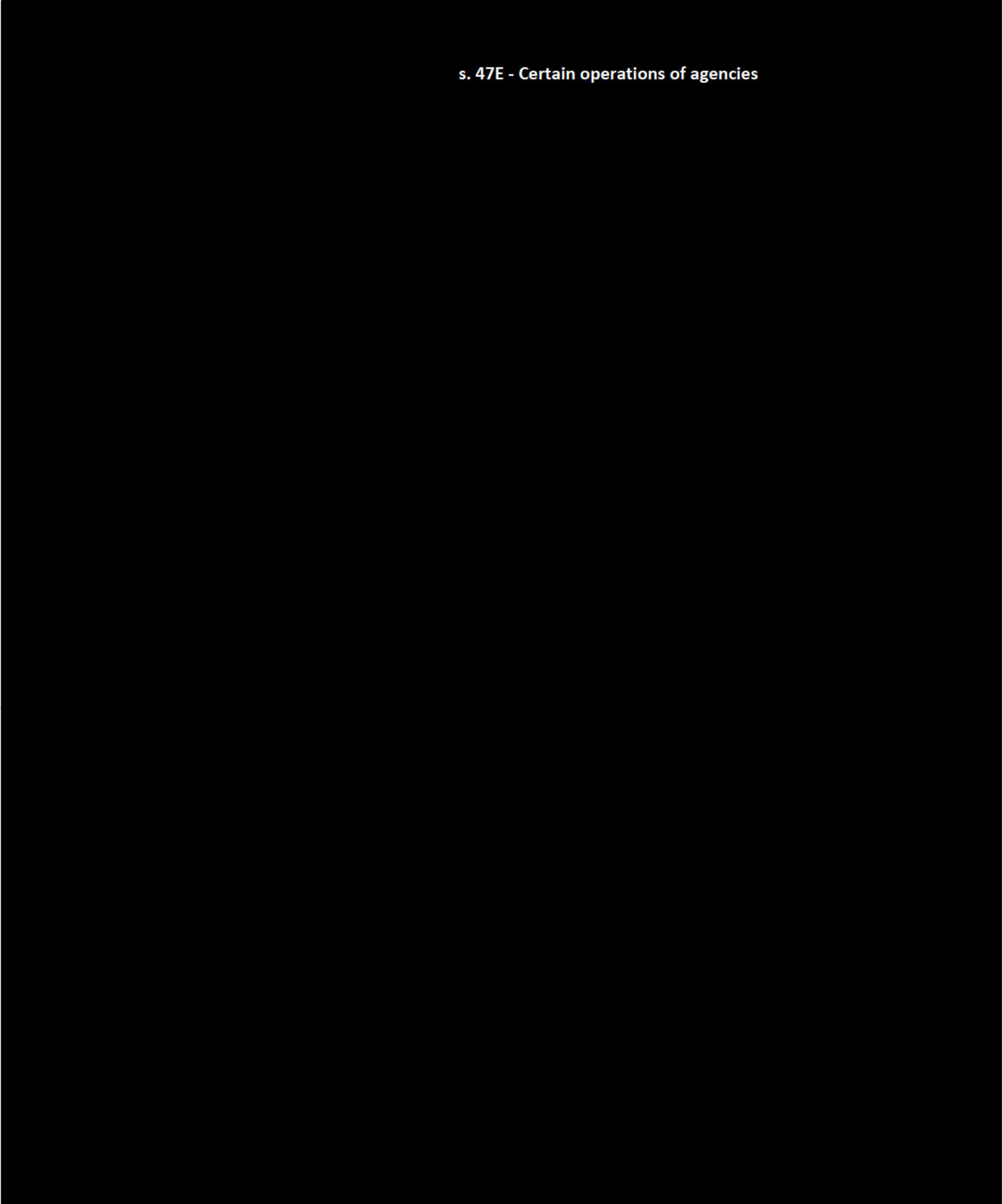
.s.22 - irrelevant to FOI request

13 July 2016
 date

FOR OFFICIAL USE ONLY MEMORANDUM: FWO Access to Movement Records

ATTACHMENT A: OGA ACCESS TO DIBP SYSTEMS FORM

s. 47E - Certain operations of agencies



s. 47E - Certain operations of agencies



FAIR WORK OMBUDSMAN /

ANNUAL REPORT /

2013 – 14 /



Assistance

- › Finalised **25,650 complaints** and **recovered more than \$23 million for 15,483 workers**.
- › Finalised **94%** of complaints **within 90 days**.
- › Finalised **4,567** targeted campaign **audits** recovering more than \$4 million for 7,541 workers.
- › Recovered more than **\$700,000 for 285 workers** who were considering lodging a complaint **through** pilot 'pre-complaint interventions.'
- › Finalised **79%** of complaints through assessment and **dispute resolution processes**.
- › Entered into **partnerships with seven businesses** through proactive compliance deeds.
- › **Assessed** sponsorship obligations of
- › **1,029 employers of 457 visa holders** as part of our expanded visa monitoring role, **referring 243 possible breaches** to the Department of Immigration and Border Protection.

Enforcement

- › Commenced **37 civil penalty litigations** to address serious, wilful and repeated non-compliance.
- › Achieved **court ordered penalties of more than \$3 million** in 39 cases decided.
- › Issued **116 infringement notices** to employers who breached record-keeping or pay slip obligations.
- › Issued **65 compliance notices** to recover unpaid wages.
- › Entered into **15 enforceable undertakings** to address non-compliance issues and put in place preventative measures to avoid future breaches.
- › Initiated **several test cases** to clarify the operation of the *Fair Work Act 2009*.
- › Litigated our **first successful age discrimination** case and **secured a record \$343,860 in penalties** against a cleaning company for deliberately underpaying six workers.

The highest proportion of complaints came from young workers in accommodation and food services (20%), with 21 to 25-year-olds making up 13% of these complaints. Construction received the second highest proportion of young worker complaints (16%).

TABLE 14: YOUNG WORKERS COMPLAINTS AND OUTCOMES

	2013-14	2012-13	CHANGE %
Complaints received	6,257	6,240	0.3
Complaints completed	6,727	6,641	1
% of all FWO complaints completed	26.2%	25.7%	2
Outside the FWO's jurisdiction	5.9%	4.8%	23
Matters proceeding to investigation	1,248	2,859	-56

Overseas workers

Overall, visa holder complaints accounted for more than 10% of all complaints completed in 2013-14. The most common complaints investigated involved subclass 417 working holiday (1,042) and subclass 457 temporary skilled work (404) visa holders.

We recovered more than \$1.1 million for 659 overseas workers, initiated 12 litigations relating to visa holders and executed three enforceable undertakings.

417 working holiday visas

Our experience shows overseas workers, particularly those on working holiday visas, are more vulnerable to exploitation. These workers typically find understanding and exercising their entitlements difficult because of age and language barriers; the remoteness of their working location; and their dependence on employers to obtain eligibility for a visa.

To address these vulnerabilities, we will conduct an inquiry into the wages and conditions received by working holiday visa workers in 2014-15.

457 temporary skilled work visas

Since 1 July 2013, the FWO has had an expanded role in monitoring 457 visa holder sponsorship obligations, with all Fair Work Inspectors appointed as Migration Inspectors under the *Migration Act 1958*.

This role is limited to ensuring that nominated salaries are paid and the visa holder is performing the nominated position approved in their visa. Where employers are not meeting these obligations, the matter is referred to the Department of Immigration and Border Protection.

In 2013-14, a total of 1,029 entities employing 1,902 temporary skilled work visa holders were assessed. We referred 243 to the Department of Immigration and Border Protection due to concerns that wages or position obligations were not being met for 338 employees.

TABLE 15: OVERSEAS WORKER COMPLAINTS AND OUTCOMES

	2013-14	2012-13	CHANGE %
Complaints received	2,527	2,020	25
Complaints completed	2,625	2,018	30
% of all FWO complaints completed	10.2%	7.8%	31
Outside the FWO's jurisdiction	8.7%	6.3%	38
Matters proceeding to investigation	841	1,108	-24

Misclassification

The misclassification of employees as contractors is against the law. If deliberate, it is known as sham contracting.

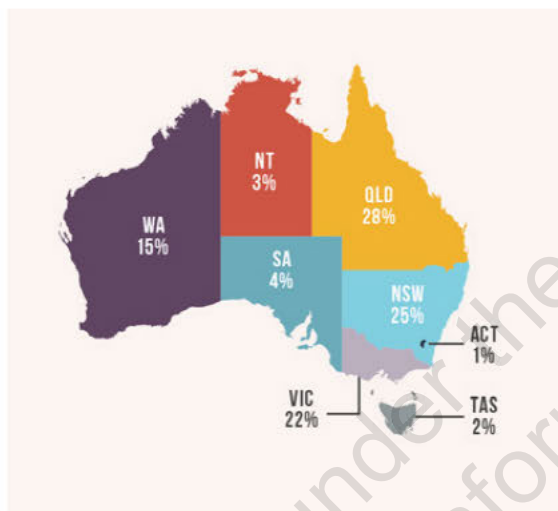
Allegations of sham contracting are taken very seriously. The courts can impose heavy penalties

FAIR WORK OMBUDSMAN

ANNUAL REPORT 2014–15



Figure 10: Overseas worker disputes finalised by state and territory, 2014–15



Of the overseas worker matters finalised: 26% related to the accommodation and food services sector, followed by agriculture, forestry and fishing (15%); administrative and support services (10%); retail trade (8%); and construction (7%).

The top three allegations overseas workers sought assistance with were: wages, including underpayment of hourly rates and time worked (71%); annual leave (5%); and failure to provide payslips in the required time (4%).

We're undertaking an inquiry into the employment experiences of working holiday visa holders and what the drivers of non-compliance are. The inquiry is seeking to identify and address vulnerabilities faced by these workers. This includes: difficulties in understanding and exercising their entitlements because of age and language barriers; the remoteness of their working location; and their dependence on employers to obtain eligibility for a visa.

457 visa holder sponsorship obligations

As well as ensuring 457 visa holders receive their minimum entitlements, the FWO also assists the DIBP in monitoring compliance with other specific sponsorship obligations under the *Migration Act 1958*.

We check nominated salaries are being paid and the visa holder is performing the nominated position approved in their visa. Where employers are not meeting these obligations, the matter is referred to the DIBP for it to assess the appropriate action under migration laws.

Through the year, a total of 702 entities employing 1611 temporary skilled work visa holders were assessed, 223 entities were referred to the DIBP due to concerns that wages or position obligations were not being met for 328 employees.

In 2014–15, 36% of infringement notices issued were for matters involving overseas workers, and 31% of compliance notices also related to this worker cohort.



Fair Work
OMBUDSMAN

2015–16
Fair Work Ombudsman
Annual Report

Released under the
Freedom of Information Act 1982
by the
Fair Work Ombudsman

Compliance priorities

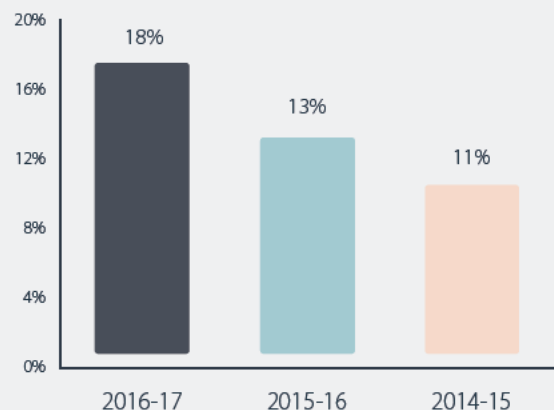
During the year, our intelligence-led compliance activities responded, in particular, to concerns with the following sectors and issues.

Migrant workers

We continue to see an overrepresentation of visa holders in matters at the enforcement end of our activities. Migrant workers make up 6%² of the Australian workforce, however 18% of the workplace disputes we assisted with involved a visa holder. This cohort featured in 49% of the court cases commenced during the year.

Figure 2: Proportion of disputes the FWO helped to resolve by visa holders, 2014–17

Government and community concern about the exploitation



of migrant workers remains high. This is evident in senate inquiry witness statements, media reporting and the 12% of anonymous reports we received during the year which allege workplace exploitation of visa holders.

Migrant workers can be inhibited from exercising their workplace rights or seeking help from government bodies because of a lack of awareness about their options, language and cultural barriers, and concerns about visa status.

² This percentage has been derived by dividing the number of selected visa types with working entitlements by total persons employed. DIBP, Temporary entrants and New Zealand citizens in Australia, as at 30 June 2016, Temporary entrants in Australia (stock data) statistics, p. 3, www.border.gov.au/ReportsandPublications/Documents/statistics/br0169-30-june-2016.pdf, accessed 27 September 2017. Australian Bureau of Statistics (ABS), Labour Force Australia, June 2016, cat. no. 6202.0, Table 1. Labour force status by Sex, Australia - Trend, Seasonally adjusted and Original, www.abs.gov.au/AUSSTATS/abs@nsf/DetailsPage/6202.0Jun%202016?OpenDocument, accessed 27 September 2017.

As part of our commitment to tackle worker exploitation, we developed the FWO Multicultural Access and Equity Plan 2016–19. The plan outlines how we are working to ensure multicultural employers and employees are aware of and educated about workplace rights and responsibilities. It also sets out how we are working to remove barriers of access to FWO advice and services for multicultural communities. Activities completed in 2016–17 include:

- Setting up and promoting an arrangement with the DIBP to support migrant workers to come forward about exploitation. Under the assurance protocol, a breached temporary visa with work rights will not be cancelled where workers request the FWO's assistance³. Facebook posts publicising the assurance protocol to working holiday visa holders and international students were seen over 1.1 million times.
- Introducing a dedicated 'visa' option for callers to the Fair Work Infoline that directs callers to translated website resources and prompts advisers to ensure the caller understands advice given. We also maintained a referral process for community legal centres which enables intermediaries to contact the FWO on behalf of migrant workers.
- Expanding the in-language content on the FWO website to 30 languages and improving content on popular topics (such as pay, leave and ending employment) for the top 16 language groups. New resources include animated in-language storyboards and videos designed to aid understanding of basic workplace rights and obligations. The storyboards and videos were developed in consultation with migrant workers, community organisations and cultural advisers.
- Engaging with the Korean community, including Korean business leaders, media and the Consular General, to develop a tailored strategy to educate this community about workplace rights and responsibilities. This follows a significant number of enforcement outcomes involving employers and employees of Korean background. In 2017, targeted Facebook posts and ads on Korean websites and apps were seen over one million times, and contributed to more than 11 200 visits to Korean language content on the FWO website.
- Continuing to build our relationship with the Chinese business community. We worked together to deliver

³ We have an agreement with DIBP that a person's temporary visa will not be cancelled if they:

- had an entitlement to work as part of their visa
- believe they have been exploited at work
- have reported their circumstances to us
- are actively assisting us in an investigation.

This applies as long as:

- they commit to abiding by visa conditions in the future
- there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).

information on workplace laws as part of our Chinese Engagement Strategy. In 2016, we met with local councils in areas with high Chinese populations across Victoria and NSW. During these meetings we distributed resources for Chinese business operators, demonstrated the FWO website, including our Simplified and Traditional Chinese content, and explored opportunities to increase awareness of workplace laws in their community. We also promoted our Chinese resources via Facebook, Weibo and WeChat (Chinese social media channels) and display advertising on Chinese language websites. Content was seen over 1.7 million times and generated over 12 000 visits to our Chinese language page. Media coverage was also generated through various Chinese language media outlets.

- Administering the Community Engagement Grants Program, which funds community organisations to deliver services, projects and programs of work that supplement our functions under the Fair Work Act, and which are targeted at assisting vulnerable workers. Services facilitated by the program include:
 - JobWatch—general advice and assistance to the most vulnerable workers in Victoria (Vic.), Tasmania (Tas.) and Queensland (Qld), and legal casework services and community legal education for Victorian workers.
 - Growcom—education on compliance with workplace laws, including training, for Queensland horticultural employers to improve the employment experiences of vulnerable workers in the sector.
 - Redfern Legal Centre—free and independent employment law advice and assistance to international students through the NSW International Student Employment Law Service, and development of the employment section of an education app.
 - Employment Law Centre Western Australia (WA)—specialist employment law legal advice service for vulnerable and disadvantaged workers.
 - Northern Territory (NT) Working Women's Centre and Working Women's Centre South Australia (SA)—workplace information, advice and advocacy services for vulnerable female workers as well as outreach and community engagement activities targeted at other vulnerable groups
- Participating in forums and networks that bring together government bodies and key stakeholders to collaborate on best practice solutions including the:
 - Interdepartmental Committee on Human Trafficking and Slavery
 - National Roundtable on Human Trafficking and Slavery

- Labour Exploitation Working Group
- Melbourne Law School's Migrant Worker Campaign Steering Group
- Council of International Students Australia National Conference.
- Assessing whether 457 temporary skilled work visa holders were receiving their nominated salary and/or not performing work in the nominated position in their visa. Five hundred and nineteen entities that employed 741 temporary skilled work visa holders were assessed. One hundred and thirty entities were referred to the DIBP over concerns regarding 160 workers.
- Completing an inquiry into wages and conditions of those working under the 417 Working Holiday Visa Program, which found an environment of unreasonable and unlawful requirements imposed on visa holders by unscrupulous businesses. As a result of the inquiry we recommended a number of measures, including:
 - establishing a federal–state inter-agency working group that examines current and future regulations to develop a holistic compliance and enforcement model
 - exploring opportunities to work with a broader range of stakeholders and extend the channels through which information and support is delivered
 - supporting the establishment of an employer register for employers of 417 visa holders partnering with academics and migration experts.
- Working with the Department of Employment to administer compliance with the Seasonal Worker Programme. In 2016–17, we delivered 53 on-arrival briefings, providing new workers and their employers with information about workplace rights and obligations in Australia. We also finalised a litigation involving one programme employer, and entered into an enforceable undertaking with another to address serious non-compliance.

Young workers

Compounding the issues faced by many migrant workers is their age. Student visa holders account for the largest proportion of temporary entrants to Australia that may choose to look for work. There are around 355 755 student visa holders in Australia⁴, and it's estimated that about half are working or looking for work⁵.

⁴ DIBP, Student visa and Temporary Graduate visa programme bi-annual report ending at 31 December 2016, page 7, www.border.gov.au/ReportsandPublications/Documents/statistics/student-temp-grad-programme-report-dec-2016.pdf, accessed 14 August 2017.

⁵ ABS, Characteristics of Recent Migrants, Australia, Nov 2013, cat. no. 6250.0, Labour Market Outcomes, www.abs.gov.au/AUSSTATS/abs@nsf/alprimarymainfeatures/6FD0ED6668457D86CA25813E0016818F?opendocument, accessed 4 September 2017.



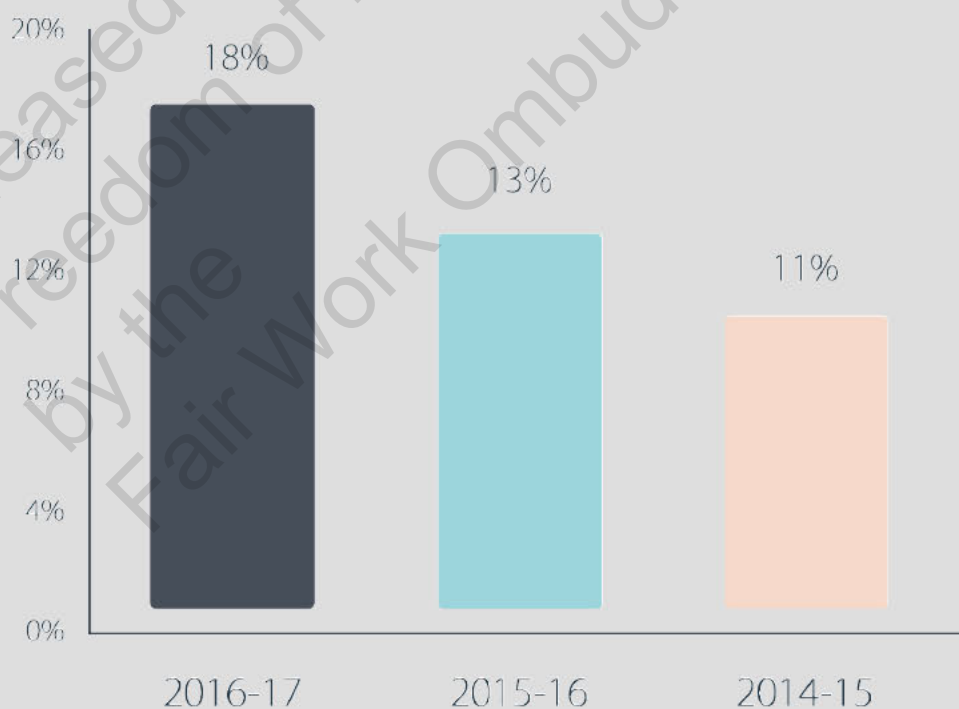
Migrant workers

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