



Muslim Legal Network NSW

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Travelling Overseas: What do I need to know if I am travelling overseas?

This Fact Sheet is prepared by the Muslim Legal Network NSW as a resource for participants who attended the community information night, *Counter-Terrorism Laws and You* on Sunday 6 December 2015. Parts of this Fact Sheet are adapted from the Australian Muslim Civil Rights and Advocacy Network's information leaflet, *Arrivals and Departures: What you need to know*.

This Fact Sheet is **not** intended as legal advice. You should seek legal advice if you or someone you know becomes directly affected by Australia's Counter-Terrorism laws.

The information contained in this Fact Sheet is accurate as of February 2016.

Declared Areas

What is a 'declared' area?

The Minister for Foreign Affairs may 'declare' an area in a foreign country as an area where a listed 'terrorist organisation' is engaged in hostile terrorist activity. You can find a list of the listed 'terrorist organisations' at:

<http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>.

Currently, there are two 'declared areas':

1. Mosul district in the Ninewa province in Iraq; and
2. Al-Raqqa province in Syria.

Please check the National Security and Smart Traveller websites for up to date details about 'declared areas' before making plans to travel overseas. See:

<http://www.nationalsecurity.gov.au/WhatAustraliaisdoing/Pages/DeclaredAreaOffence.aspx> and <http://smartraveller.gov.au/>.

What is a 'declared' area offence?

It is an offence for a person to intentionally enter, or remain in, a 'declared' area in a foreign country where the person knows, or should know (i.e. is reckless), that the area is a 'declared' area. The maximum penalty for this offence is 10 years imprisonment.

This offence applies to anyone who is an Australian citizen, an Australian resident, holds an Australian visa or is voluntarily under the protection of Australia.

It is a defence if a person enters, or remains in, the area solely for 'legitimate purposes'. A 'legitimate purpose' is limited to:

- providing humanitarian aid;
- performing an official duty for an Australian government, or for a foreign government where that duty is not in violation of Australian law, or for the United Nations;
- making a news report of events in the area where the person is acting in a professional capacity as a journalist;

- making a bona fide (i.e. genuine) visit to a family member; and
- appearing before a court or tribunal.

It is the defendant's responsibility to prove to the court that they had a 'legitimate purpose' to travel to the 'declared' area.

It is important to note that visiting friends and travelling for business or religious purposes are **not** included as 'legitimate purposes'. A person who enters, or remains in, a declared area for these purposes could be prosecuted.

Furthermore, there is no process for obtaining pre-approval to travel to a 'declared' area if it is for a 'legitimate purpose'.

Australian Border Force

Who is the Australian Border Force (ABF)?

The Australian Border Force (ABF) was established on 1 July 2015. It integrates the functions of the Department of Immigration and Border and the Australian Customs and Border Protection Service. The ABF is now the department that is responsible for the management of travellers, goods and cargo throughout Australia's borders.

Border Force officers are uniformed and carry firearms. They patrol Australia's airports and seaports, mail and cargo centres and Australia's maritime. They work closely with other government departments to detect and deter unlawful movement of goods and people across Australia's borders.

Who is the Border Force Counter-Terrorism Unit?

The Border Force Counter-Terrorism Unit was established in 2014. It has specialist teams stationed across Australia's eight main airports to deal with 'national security' concerns. They have all the powers of Border Force officers and intercept persons of 'national security' interest.

What is 'national security'?

'National security' is defined very broadly as 'Australia's defence, security, international relations or law enforcement interests'.

'Security' is defined as the protection from such things as politically motivated violence, acts of foreign interference and the promotion of communal violence.

'Law enforcement interests' include such things as avoiding the disruption of national and international efforts relating to law enforcement, criminal investigation and security intelligence, among other things.

What are the powers of the ABF?

Border Force officers have very broad powers, which include powers to stop travellers and ask them questions about a range of matters and examine goods in their possession. Border Force officers can exercise powers under the Commonwealth *Customs Act* 1901 and *Migration Act* 1958, as well as other Commonwealth laws such as the *Crimes Act* 1914 and the *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006.

In addition, under the *Australian Border Force Act* 2015, the Australian Border Force Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of his/her duties. These powers may be delegated to Border Force officers and effectively give Border Force officer powers to do whatever they claim to be connected with their duties.

Can ABF ask me questions? Do I have to answer their questions?

Border Force officers have powers to question passengers at any time before or after boarding a plane or while they are on-board. Those questions must relate to specific breaches of Commonwealth law, such as customs, quarantine, national security or the movement of currency in or out of Australia.

Under the *Customs Act 1901*, Border Force officers can question a passenger about whether they have 'dutiabable, excisable or prohibited goods' in their possession.

'Dutiabable goods' includes all goods in respect of which any duty (i.e. tax) of Customs is payable. 'Excisable goods' are those in respect of which Excise (i.e. tax) is imposed by the Parliament.

'Prohibited goods' are goods that a person is not allowed to carry in or out of Australia, such as dangerous animals or illegal drugs. It is an offence for a passenger to not answer questions about whether they are carrying 'dutiabable, excisable or prohibited goods'. If however, answering such questions will make the person appear guilty of a crime (i.e. 'incriminate' a person), they are not required to answer the questions.

If Border Force officers find something in a passenger's luggage that they reasonably believe is evidence of an offence, then they may interview them further. If a person is interviewed, they will be taken to a private interview room. Border Force officers must caution a person about their rights, including the 'right to silence'. This is the right to not give any information or answer any questions.

What other questions can the ABF ask me?

Under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, Border Force officers have the power to question and search passengers in relation to physical currency and/or bearer negotiable instruments (such as cheques or money orders) they may be carrying. It is an offence for a person to move in or out Australia currency that is \$10,000 or more in Australian dollars or foreign currency without declaring it. Failure to declare currency carries two years imprisonment and/or a fine.

There is no limit on the amount a person can bring in or out of Australia but it must be declared. A passenger is required to declare currency they are carrying as soon as they reach the place where customs examine

passports (if leaving Australia) or examine baggage (if arriving in Australia). A passenger will be required to complete a signed report in which they make a declaration that the information in the report is correct.

It is not uncommon for Border Force officers to ask travellers questions that may be intrusive and may not be directly connected to a legislative power. Border Force officers are trained to ask travellers a range of questions aimed at identifying inconsistencies in their story. You may raise concerns about the questions you are asked, and in particular, whether or not the questions are compulsory. Border Force officers may, however, interpret this reluctance to answer questions as a sign of not telling the truth and ask further questions and conduct a personal search.

Can ABF ask me questions if I am not a passenger?

Border Force officers have the power to ask any person in a 'restricted area' to provide their name, reason for being in the area, and evidence of their identity. It is an offence to fail to answer these questions unless answering such questions will make the person appear guilty of a crime.

A 'restricted area' is displayed by signs. It is an area used by arriving and departing passengers as they undergo processing.

Under the *Migration Act*, Border Force officers also have the power to question and detain anyone they 'reasonably suspect' is a non-citizen and ask them questions relating to their visa status.

Can the ABF search through my luggage and personal effects such as my phone or laptop?

Border Force officers have the power to search and examine goods carried by people entering and leaving Australia. They can search through a person's luggage and personal effects for any 'prohibited', 'restricted' or 'objectionable' item.

'Restricted' items are those that a person can only bring into Australia with permission in writing, such as certain medication, plants, firearms and other products.

'Objectionable' material includes any publication which describes, depicts or deals with child pornography, crime or violence, instruction in crime or violence, or advocates the doing of a 'terrorist act'. This includes any objectionable material contained on an electronic device such as a mobile telephone.

When examining goods, Border Force officers can do anything that is reasonably necessary, including:

- opening a package;
- using an x-ray machine or scanning equipment on the goods;
- testing or analysing the goods;
- reading documents (including with an electronic device); and
- using dogs to help with examining goods.

This means that Border Force officers have the power to read documents contained on a computer or storage device such as a flash drive, look at information stored on a mobile telephone and turn on a computer in order to look at data stored on it. Where a computer is password protected, a person is not obliged to give the password. However, Border Force officers may keep the computer until they determine the password or download its contents so they can examine it.

Can ABF copy and seize my documents?

After examining a document, Border Force officers may copy a document if they are satisfied the document contains information about the import or export of 'prohibited goods' or if the material is significant to 'national security' concerns or the functions of ASIO. This includes information stored on a mobile telephone. The owner of the document is not required to be present when the officer copies it.

Border Force officers also have the power to seize items from a person or from their luggage which they reasonably suspect to be 'prohibited goods' for a period of time after they have left the airport.

Can ABF search my body?

Border Force officers may 'frisk' search a person if they have reasonable grounds to suspect a person is unlawfully carrying a 'prohibited good' on his or her body or for the purpose of finding out if person has with him or her currency of \$10,000 or more. A 'frisk search' occurs where an officer quickly runs their hand over the outer clothing of a person.

Border Force officers also have the power to conduct an 'external' search in certain circumstances. An 'external' search is a search of a person's body and anything that they are wearing at the time. It does not include a search of an internal cavity. An 'external' search must be performed in a private place and by an officer of the same gender.

Border Force officers may also conduct an 'internal' search on a person if they suspect that the person is hiding a suspicious substance. An internal search must be either with the consent of the person or with an Order from a Judge and it must be conducted by a medical practitioner.

Border Force officers can detain a person for the purposes of conducting these searches.

Can I be detained by the ABF?

Border Force officers can detain a person who is in a 'designated place' (i.e. an airport) in the following circumstances:

1. if the officer has reasonable grounds to suspect that the person has committed, is committing or has an intention to commit serious criminal offences under state or federal law; or
2. if the officer has reasonable grounds to suspect that the person intends to leave the designated place and the

person is subject to a warrant for their arrest or bail conditions; or

3. if the officer is satisfied on reasonable grounds that the person is or is likely to be involved in an activity that is a threat to 'national security' or to the security of a foreign country.

Where a person is detained for one of the above purposes, Border Force officers may conduct a search of the person and their clothing and seize any item they reasonably believe is connected to an offence. An officer who detains a person must, as soon as is practicable, advise a police officer of the person's detention and make them available to police to be dealt with according to law.

If a person is detained for more than two hours (or 45 minutes in the case of the detention of a person subject to warrant or bail conditions), Border Force officers must notify the person of their right to contact family to inform them of their detention. In circumstances where there are 'national security' concerns, Border Force officers may refuse to notify the family member.

Can I be detained if I am under 18 years?

Border Force officers can detain minors who are under 18 years of age. Where a minor is detained, Border Force officers must notify the minor of their right to inform their parents or guardian that they are being detained, the place in which they are being held, the place they will be transferred to by police and the reason for their detention.

If, however, a minor is being detained on 'national security' grounds, then they lose their right to be given reasons for their detention and for a family member to be notified of the reasons of their detention.

Can the ABF share my information with other organisations?

Border Force officers work closely with other government and intelligence agencies. Government departments regularly share information.

Other travel-related issues

What are Passenger Cards?

Passenger cards are used to identify travellers, and to provide a record of when they enter and leave Australia. Before a person arrives in or leaves Australia, they are required to complete an Incoming or Outgoing Passenger Card.

It is essential that a person accurately completes the Passenger Card. There are penalties that apply if a person makes a false declaration on their Passenger Card.

It is also an offence to not declare 'restricted' items or 'objectionable' material, and currency of \$AUD 10,000 or more.

What are some tips when travelling overseas?

1. Ensure that you have valid travel documents before arriving at the airport;
2. Ensure that the area you are travelling to is not a 'declared area' or that you have a 'legitimate purpose' (as defined by the law – see above) for travelling to the area;
3. Ensure that you have details of your travel itinerary, including where you will be staying and for how long, and keep those details at hand;
4. Pack your own bag and ensure that you know what is packed in your bag;
5. Ensure that you check-in at least three hours before departure time to allow enough time for border processing and unexpected delays;
6. Ensure that you accurately complete the Passenger Cards before arriving in or leaving Australia;
7. Declare any food, wood material or 'restricted' items you are carrying;
8. Declare Australian or foreign currency that is AUD\$10,000 or more;
9. Know what is stored on your electronic devices, including your mobile telephones and SIM cards;

10. Clear out your telephone storage, including WhatsApp and Facebook threads, and delete any photos or videos that could be misinterpreted as portraying or encouraging acts of violence;
11. Do not carry any 'questionable' images, items or material;
12. Ensure that you do not carry any 'prohibited' or illegal goods;
13. Do not carry goods, including money, for other travellers;
14. Familiarise yourself with items you can carry in and out of Australia. See the Australian Border Force website: <https://www.border.gov.au/Trav/Ent>
15. Keep a record of the names of the Border Force officers you deal with in the event you experience ill-treatment and you wish to make a complaint at a later time.

Can my passport be cancelled?

The Government has powers to suspend the Australian passport of any person for 14 days on grounds that the person may leave Australia to damage Australia's security or the security of a foreign country and the passport should be suspended to prevent them from engaging in such conduct. If an Order for suspension is made, the Government may also require the person to surrender their Australian passport. These laws apply to other travel documents issued by the Government.

The Government can also stop a person from leaving Australia by ordering them to surrender their foreign passport (and other foreign travel documents). The Government can only do this if it thinks that the person is going overseas to damage Australia's security or the security of another country and the passport should be surrendered to prevent the person from engaging in such conduct.

Can my visa be cancelled?

The Immigration Minister has broad powers to refuse or cancel visas of any non-citizen

based on character grounds and when it is considered in the national interest to do so.

The Minister may also cancel the visa of a person who is outside Australia in an emergency situation. If ASIO makes an assessment about a person outside Australia that they might be, directly or indirectly, a risk to security and the assessment contains a recommendation that all visas held by such person be cancelled, the Government **must** cancel a visa held by such person. Such emergency cancellation of visas must be revoked after 29 days unless there is a further assessment by ASIO against the person.

Legal Help in NSW

If you need legal advice, you may contact:

Legal Aid NSW

Tel: 9219 5000

<http://www.legalaid.nsw.gov.au>

Call or visit the website for details of your closest Legal Aid office

Legal Aid Hotline (for under 18s)

Tel: 1800 101 810

Community Legal Centres NSW

Tel: 9212 7333

www.clcnsw.org.au

Call or visit the website for details of your closest Community Legal Centre

Law Society of NSW

Tel: 9926 0333

<http://www.lawsociety.com.au>

Call or visit the website to find a private lawyer located near you



Muslim Legal Network NSW

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