



## INSTRUCTION AND GUIDELINE

### Detained Goods Management Claims for the return of seized goods

**B\_TRD09/2**

**September 2013**

This Instruction and Guideline refers to Practice Statement:

**B\_TRD09 Detained Goods Management**

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**Owner:** National Director Integrity, Security and Assurance Division  
**Category:** Operational Procedures  
**Contact:** National Claims Processing Section  
[national.claims@customs.gov.au](mailto:national.claims@customs.gov.au)

The electronic version published on the Practice Statement Framework SharePoint site, accessible through the Intranet, is the current Instruction and Guideline

# Contents

<b>Contents .....</b>	<b>2</b>
<b>Introduction Statement.....</b>	<b>3</b>
<b>Instruction and Guideline .....</b>	<b>3</b>
<b>1. Overview.....</b>	<b>3</b>
<b>2. Definitions .....</b>	<b>4</b>
<b>3. Claims Process .....</b>	<b>6</b>
3.1 Assessing validity of a claim .....	6
3.2 Time frames.....	6
3.3 Communication.....	7
3.4 Permits and Certificates .....	8
3.5 Re-exportation of goods.....	9
3.6 Business Systems.....	9
<b>4. Condemnation Proceedings.....</b>	<b>10</b>
4.1 Initiation of proceedings .....	10
4.2 Conduct of proceedings .....	11
4.3 Appeals.....	11
<b>5. Recordkeeping.....</b>	<b>11</b>
5.1 Recordkeeping Responsibilities .....	11
5.2 RIMS Recordkeeping Requirements .....	12
<b>6. Related Policies and References .....</b>	<b>12</b>
6.1 Practice Statements.....	12
6.2 Other Instruction and Guidelines.....	12
6.3 Associated Documents .....	13
<b>7. Consultation.....</b>	<b>13</b>
7.1 Internal Consultation .....	13
7.2 External Consultation.....	13
<b>Endorsement.....</b>	<b>14</b>
<b>Approval .....</b>	<b>14</b>

BCS CLASSIFICATION:

FILE NUMBER:

Page 2 of 14

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## Summary of Main Points

This document identifies and outlines the requirements and procedures surrounding the:

- Management of all claims for seized goods made pursuant to Section 205B of the Customs Act 1901 (The Act); and
- Procedures for dealing with detained goods that have had a Claim for return made against them.

### This Instruction & Guideline applies to staff in:

- National Claims Processing Section
- Detained Goods Management Stores
- Work areas that seize goods under Sections 203B(2), 203B(2A), 203CA(3), 203CB(2) and 203A of the Act
- Work areas that conduct actions for the condemnation of seized goods under Section 244(b) of the Act.

## Introduction Statement

The Claim for the Return of Seized Goods (Claim) Instruction and Guideline provides a framework for managing the process for dealing with seized goods that have had a Claim made against them. It will promote accountability and consistency in the operations of the National Claims Processing Section (NCPS). It is important that all policies and procedures promote and reinforce integrity and transparency.

The information contained in this Instruction and Guideline must not be disseminated outside the Australian Customs and Border Protection Service (ACBPS) without direct permission from the NCPS.

## Instruction and Guideline

### 1. Overview

- 1.1.1 Under the *Customs Act 1901* (the Act) and associated Regulations, certain goods are prohibited from importation into, or exportation from, Australia. The controls on the importation or exportation of these goods can either take the form of:
  - an absolute prohibition, which means that an individual is not allowed to import or export the goods in any circumstances; or
  - a restriction, where an individual requires written permission in order to import or export the goods.
- 1.1.2 Where the ACBPS seizes a good on the basis that it is a prohibited good, an individual can seek to have the goods returned to them by lodging a Claim for the Return of Seized Goods form (Form B144) in accordance with section 205B of the Act.
- 1.1.3 An individual may lodge a Claim on the basis that they do not believe the goods meet the relevant criteria as a prohibited good or may have, or seek to obtain, a permit to import/export the goods from the relevant permit issuing

BCS CLASSIFICATION:

FILE NUMBER:

Page 3 of 14

Released by DIBP under the  
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authority. The NCPS is responsible for the management and processing of all Claims. Where line areas receive a Claim directly from the claimant, these should be forwarded to the NCPC and an email sent to the NCPC advising that a Claim has been received.

## 2. Definitions

**Claim** means a claim for the return of seized goods made in writing on an approved form, being the B144 form, pursuant to Section 205B of the Act

**Condemnation Proceedings** means proceedings for the condemnation of seized goods (section 244(b))

**Customs Days** do not include Sundays or public holidays

**Customs Place** refers to a:

1. place owned or occupied by Customs; or
2. port, airport or wharf that is appointed, and the limits of which are fixed, under section 15; or
3. place that is the subject of a permission under subsection 58(2); or
4. boarding station that is appointed under section 15; or
5. place described in a depot licence that is granted under section 77G; or
6. place described in a licence for warehousing goods that is granted under subsection 79(1); or
7. place approved, in writing, by the CEO as a place for the examination of international mail; or
8. place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or
9. place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or
10. section 234AA place that is not a place, or a part of a place, referred to in the above paragraphs.

**Day** refers to a calendar day, i.e.: one 24 hour period.

**Designated Place** refers to a:

1. port, airport or wharf that is appointed, and the limits of which are fixed, under section 15; or
2. place that is the subject of a permission under subsection 58(2) while the ship or aircraft to which the permission relates remains at that place; or
3. boarding station that is appointed under section 15; or
4. place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or
5. place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or

**BCS CLASSIFICATION:**

**FILE NUMBER:**

Page 4 of 14

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6. section 234AA place that is not a place, or a part of a place, referred to in the above paragraphs.

**DGMS** refers to the Detained Goods Management System.

**Forfeited Goods:** Goods described as forfeited to the Crown under:

1. Section 228, 228A, 228B, 229, 229A or 230 of the Act; or
2. Section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*.

**NCPS** refers to the National Claims Processing Section. The NCPS is the work area responsible for managing the Claims process within the ACBPS.

**Seized Goods** means goods seized only under the following circumstance:

- Special forfeited goods or evidentiary material regarding special forfeited goods that have been seized without warrant in a customs place pursuant to Section 203B(2) of the Act
- Special forfeited goods or evidentiary material regarding special forfeited goods that have been seized without warrant in a designated place pursuant to Section 203B(2A) of the Act
- Special forfeited goods seized without warrant on a ship or aircraft in the Protected Zone pursuant to Section 203CA(3) of the Act
- Special forfeited goods seized without warrant near a ship or aircraft in the Protected Zone pursuant to Section 203CB(2) of the Act
- Forfeited goods and special forfeited goods seized under a seizure warrant pursuant to Section 203A of the Act
- Goods detained under the Post Importation Permission (PIP) scheme which have become seized as the importer has not provided a permit within 30 *Customs days*. Date of seizure becomes the 31<sup>st</sup> *Customs day* after the goods were detained.

Claims for goods seized under other powers, with or without warrant, and all narcotic-related goods are not subject to this Instruction and Guideline.

**Seizing area** means the work area that issued the seizure notice for the seized goods.

**Seizing Officer** refers to an officer that has formed a reasonable suspicion that goods are forfeited goods, special forfeited goods or evidential material before making a lawful seizure.

**Special Forfeited Goods** means:

1. Forfeited goods referred to in section 229(1) (a) of the Act that are narcotic goods or consist of a border controlled precursor; and
2. Forfeited goods referred to in section 229(1) (b), (e), (n) or (na) of the Act.

**Storage area** refers to the work area where the seized goods are stored.

**Working day** means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

**BCS CLASSIFICATION:**

**FILE NUMBER:**

## 3. Claims Process

### 3.1 Assessing validity of a claim

#### 3.1.1 A Claim is valid if

- It is made on the *approved form* (Form B144);
- It is made to the *appropriate person*<sup>1</sup>;
- It specifies the grounds on which the Claim is being made;
- It is made within 30 *Customs days* of the day the seizure notice is served on the owner; and
- It is made by the owner of the goods or where the owner does not reside in or have a place of business in Australia, by an agent in Australia appointed by the owner.

3.1.2 If a Claim is accepted by the NCPS, the claimant has been identified as having a legal right to make the Claim. There is no requirement for other line areas to re-identify the owner/importers right to make the Claim.

3.1.3 NCPS shall assess Claims and make any inquiries of the seizing or storage work areas as is necessary to make such assessments. Where inquiries reveal that the goods were incorrectly seized, the NCPS shall request that the seizing area release the goods. Where this creates a dispute between the NCPS and the seizing area, the decision shall be raised up through reporting lines until it reaches a level where agreement is reached.

### 3.2 Time frames

3.2.1 **Service.** If a seizure notice is given to a person, it is taken to be served on the day it is given. Where it is posted, a seizure notice is taken to have been served<sup>2</sup> four *working days*<sup>3</sup> after it has been posted.

3.2.2 **Claim period.** Claims must be made within 30 *Customs days* of a seizure notice being served on the owner of the goods.

3.2.3 **Notification of claim.** The NCPS will advise the seizing and storage areas of a Claim being received within two *working days* so that they can take appropriate action with regard to the storage of the goods.

3.2.4 **Storage of goods.** Unless seized goods are dealt with under s.206 of the Act, all seized goods must be held for a minimum of 42 *days*, not including public

<sup>1</sup> In relation to goods other than narcotic-related goods – to the CEO of Customs or a Regional Director for a state or territory; In relation to narcotic-related goods – to the Commissioner of police or a Deputy Commissioner of Police.

<sup>2</sup> *Acts Interpretation Act 1901* - SECT 29 Meaning of service by post (1) Where an Act authorizes or requires any document to be served by post, whether the expression "serve" or the expression "give" or "send" or any other expression is used, then the service shall be deemed to be effected by properly addressing, prepaying and posting the document as a letter and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

<sup>3</sup> *Evidence Act 1995* - SECT 160 - Postal articles (1) It is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that a postal article sent by prepaid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the fourth working day after having been posted. Note: The Commonwealth Evidence Act 1995 may not apply in all jurisdictions; however for the purpose of clarity and practical necessity, four working days is to be applied.

**BCS CLASSIFICATION:**

**FILE NUMBER:**

Page 6 of 14

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holidays, before disposal action is commenced to allow sufficient time for a valid Claim to be made.

- 3.2.5 **Active claim period.** Once a claim has been received, the owner has 120 *days* to obtain the necessary import permits or police certificates required in order to release the goods.
- 3.2.6 **Commencement of condemnation proceedings.** No later than 120 *days* after a claim has been received, the ACBPS must either commence a condemnation proceeding or, subject to Section 205D (2) of the Act, release the goods.
- 3.2.7 **Appeal period.** If a Court grants an order for condemnation, a claimant has one calendar month<sup>4</sup> in which they can appeal the court's decision. Goods must be retained until any appeals are finalised.

### 3.3 Communication

#### 3.3.1 Communication with work areas

- 3.3.2 The NCPS will endeavour to communicate with work areas at the earliest available opportunity when the status of a Claim changes – i.e. Claim received, Claim withdrawn, permit issued etc.
- 3.3.3 The NCPS will ensure that all correspondence is in writing via email, or if verbal, that it is followed up in writing.

#### 3.3.4 Communication with claimants

- 3.3.5 The NCPS may make contact with a claimant at any time following the receipt of a Claim; however, contact reminders have been scheduled at the following periods:

1. Upon receipt of a Claim;
2. 50 *days* after receipt of a Claim;
3. 80 *days* after receipt of a Claim;
4. 100 *days* after receipt of a Claim; and
5. 110 *days* after receipt of a Claim.

- 3.3.6 Contact will be made for the following reasons:

1. To inform the claimant that their Claim has been received;
2. To request a statutory declaration in circumstances where the seizure notice has been issued to a person (Person A) and the Claim has been made by another person (Person B). The statutory declaration would need to be made by Person A to the effect that Person B is the owner / importer of the goods and that Person A relinquishes or never had any title in the goods;

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<sup>4</sup> Actual time period for appeals in each jurisdiction may vary and can range from 28 days to one calendar month. Advice should be sought from LSB in the case of any appeals. Likewise, if an appeal is to be initiated by ACBPS, this should only be done following advice from LSB.

3. To inform the claimant of the process that will occur during the active Claim period;
4. To ascertain the claimants intent to apply for a permit;
5. To check on the status of permit applications;
6. To seek a withdrawal of the Claim if a permit has been denied or the claimant is ineligible for a permit;
7. To inform the claimant of ACBPS's intention to commence condemnation proceedings; or
8. For any other reason associated with the processing of the Claim.

### **3.4 Permits and Certificates**

3.4.1 The permit or certificate required varies from item to item. A detailed list of items and their permit or certificate requirements is available on the ACBPS Internet website – Home / Import export / prohibited and restricted imports <http://www.customs.gov.au/site/page4369.asp#e1074> and Home / Import export / prohibited and restricted exports <http://www.customs.gov.au/site/page4381.asp>

#### **3.4.2 Lodgement of permits and certificates**

3.4.3 Claimants will be advised to send original import or export permits or certificates for seized goods to the NCPS. In cases where claimants supply permits or certificates directly to Detained Goods (DG) Stores or other work areas, the permits and certificates are to be forwarded to the NCPS, unless prior alternative arrangements are agreed with the NCPS.

3.4.4 The release point for goods may be a Detained Goods (DG) store or a seizing work area depending on the nature of the goods and the method of importation.

#### **3.4.5 Assessments of permits and certificates**

3.4.6 Upon receipt of a permit or certificate (for all items other than Schedule 6 firearms), the NCPS will:

- determine if the permits or certificates meet the relevant statutory requirements;
- send a scanned copy of the permit or certificate to the storage area;
- advise the storage area that the NCPS have the original permit and that, provided the goods meet the description on the permit, the goods can be released. The work area that is the release point for the seized goods must determine if the seized goods match those described in the permits or certificates before releasing the goods. This is in addition to any other specific requirements such as proof of identity, firearms licence etc.



### 3.4.7 Permits and certificates relating to firearms

- 3.4.8 In the case of Schedule 6 firearms, the NCPS will send a scanned copy of the permit or certificate to the DG Firearms officer who shall determine if the permit or certificate meets the requirements for release and send their approval recommendation to the NCPS. The NCPS will, based on the DG Firearms officer's recommendation, make a final decision as to whether the goods will be released.
- 3.4.9 Once a decision has been made, the original permit or certificate will be forwarded to the DG Firearms Officer. DG Firearms officers will retain the original certificates and must acquit these certificates with the relevant issuing police authority.

## 3.5 Re-exportation of goods

- 3.5.1 If a re-export request has been received by the NCPS, they will notify the storage and seizing area via email, with a recommendation regarding the request to re-export and the reasons for such a recommendation.
- 3.5.2 The re-export request should be submitted to the manager of the seizing work area for approval via email. The I and G *Re-Exporting Goods* states that the "manager of the seizing line area" is the delegate for re-export approvals. The NCPS will send any received requests and recommendations to the provided group mailbox for each area for actioning. Any approval for re-export from the "manager of the seizing line" should be sent to the NCPS via email.
- 3.5.3 Where a claimant requests that the goods are re-exported, and the request is approved by the delegate, re-export approval shall be valid for 90 *days* from the date the claim for seized goods was received (as shown in the DGMS).
- 3.5.4 If the goods have not been actually exported by that date, the re-export approval shall lapse and the claimant shall be advised that the goods will go to a condemnation hearing if a permit is not produced or the claim is not withdrawn within 120 *days* of the date that the claim was received.
- 3.5.5 In the case of firearms, parts, magazines and ammunition re-export permission is subject to a Department of Defence Export Permit being issued and an Export Declaration Number (EDN) being lodged with ACBPS – This documentation must accompany the re-export request.

## 3.6 Business Systems

### 3.6.1 LEX Matter Management System

- 3.6.2 All Claims will be recorded and managed through the LEX Matter Management System (LEX). LEX is accessible only to staff within the NCPS and the Legal Services Branch (LSB).

### 3.6.3 Detained Goods Management System

- 3.6.4 When a claim is received, the *Claim Received* and the *Date claim received* fields in the Detained Goods Management System (DGMS) for the relevant item are to be updated by the NCPS.

- 3.6.5 Seizing and/or storage work areas are to update all other fields in DGMS for the item, including noting whether:
- a permit or certificate has been received;
  - a re-export request has been made and approved/not approved;
  - a re-examination of the goods has been requested; and
  - the goods have been released / destroyed.
- 3.6.6 If the seized goods are, or may be, subject to prosecution, the *Prosecution pending* must be noted in the Comments field on the DGMS record by the applicable work area, as condemnation proceedings and a subsequent condemnation order cannot be made for goods subject to a prosecution. All prosecutions relating to goods that have had a claim made on them must be initiated before 120 days after a claim has been received and should include an order for condemnation of goods.
- 3.6.7 In any case where the original permit is provided to the storage or seizing work area, the DGMS record must be updated by that work area to reflect this.

## 4. Condemnation Proceedings

### 4.1 Initiation of proceedings

- 4.1.1 ACBPS must commence condemnation proceedings no later than 120 days after a Claim has been received. If the condemnation proceedings are not commenced within the 120 day period, the goods have to be returned to the owner notwithstanding the fact that they may be prohibited imports. The Court of Summary Jurisdiction may, upon application by an authorised person, extend this 120 day period<sup>5</sup>. If the 120 day period has been missed advice from LSB should be sought as to how to progress the matter prior to returning the goods. s47E(d)
- 4.1.2 If proceedings for an offence involving the goods have been commenced, then the Court cannot make an order for condemnation until after the offence proceedings have been finalised<sup>6</sup>. It is usual for the condemnation order to be sought immediately upon finalisation of the offence proceedings.
- 4.1.3 All condemnation proceedings will be initiated by the NCPS through referral to an LSB Lawyer.
- 4.1.4 The occupant of the position 'Supervisor NCPS' holds a s.245 delegation to commence condemnation proceedings in the name of the CEO for condemnation orders.

<sup>5</sup> Section 205E allows for an authorised person to apply to a Magistrate for an order that goods be retained in certain circumstances

<sup>6</sup> Section 205D(6)

**BCS CLASSIFICATION:**

**FILE NUMBER:**

**Page 10 of 14**

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## 4.2 Conduct of proceedings

- 4.2.1 All condemnation proceedings are conducted in a Court of Summary Jurisdiction (Magistrate's or Local Court).
- 4.2.2 Seizing and storage work areas must provide the NCPS with all statements necessary to the conduct of condemnation action.
- 4.2.3 Seizing work areas shall arrange for chemical analysis of seized goods as required.
- 4.2.4 The LSB will arrange for the collection of other expert evidence as required.
- 4.2.5 The LSB will instruct the legal representative appearing on behalf of the ACBPS to prosecute condemnation cases if necessary.
- 4.2.6 The Court will determine whether the particular item is a prohibited import or export as a matter of law. If the Court determines that the item is prohibited, it must order the condemnation of that item. Once this order has been made, the item becomes condemned as forfeited to the Crown.
- 4.2.7 As part of the application for condemnation, costs should be sought to recover the cost of condemnation proceedings unless there is a compelling reason not to<sup>7</sup>.

## 4.3 Appeals

- 4.3.1 Following on from a condemnation proceeding, each party has one calendar month<sup>8</sup> to appeal the decision made by the Court of Summary Jurisdiction.
- 4.3.2 Unless goods have been previously dealt with under s206, no items are to be destroyed or returned to the owner until after the one calendar month appeal period has expired. NCPS will advise the storage area when the goods can be destroyed or released. If an appeal is commenced, all items must be retained by ACBPS until the appeal is finalised<sup>9</sup>.

# 5. Recordkeeping

## 5.1 Recordkeeping Responsibilities

- 5.1.1 All information, regardless of format, created or received by the ACBPS that is evidence of a business activity is a Commonwealth record. All Commonwealth records, regardless of their physical or electronic format, received or created by the ACBPS must be captured and maintained within the corporate recordkeeping system.

<sup>7</sup> section 263 of the Act provides the Court with a discretion to award costs in a customs prosecution (which includes condemnation proceedings.)

<sup>8</sup> Actual time period for appeals in each jurisdiction may vary and can range from 28 days to one calendar month. Advice should be sought from LSB in the case of any appeals. Likewise, if an appeal is to be initiated by ACBPS, this should only be done following advice from LSB.

<sup>9</sup> section 205D(7) of the Act provides that the goods are not to be returned, or disposed of under s 208D or 208DA, while an appeal may be made, or if it is made, until the completion of the Appeal.

**BCS CLASSIFICATION:**

**FILE NUMBER:**

- 5.1.2 All documents relating to the business activity of this Instruction and Guideline must be placed on a physical Records Information Management System (RIMS) file or electronic file when Electronic Document Management (EDM) is available.
- 5.1.3 National Repository staff are responsible for applying the Administrative Functions Disposal Authority (AFDA) or Customs or Border Protection Records Authority (CRDA) in determining the minimum retention period of each record in consultation with business.
- 5.1.4 The National Archives of Australia (NAA), and other agencies, may on occasion identify current or possible legal proceedings with implications for records controlled by agencies across the Australian Government. In such cases, the Archives may issue a formal 'disposal freeze' to suspend the destruction of records relating to the issues identified.
- 5.1.5 The disposal freeze suspends ACBPS permission to destroy any relevant records. This means that relevant records cannot be destroyed using any agency specific or general records authorities issued by the Archives or through a Normal Administrative Practice (NAP).
- 5.1.6 Questions relating to file titling, file plan/keywords, security classifications or any other recordkeeping subjects are to be forwarded to [RecordsManagement@customs.gov.au](mailto:RecordsManagement@customs.gov.au)

## 5.2 RIMS Recordkeeping Requirements

- 5.2.1 The NCPS will create individual files for any ongoing or complex Claims and for any Claim which presents an original certificate or permit.
- 5.2.2 Simple Claims are to be filed in a monthly file consistent with Instructions and Guideline *File Titling*.
- 5.2.3 When reference to a file ceases within the business area, they are to be returned to the National Repository for storage.

## 6. Related Policies and References

### 6.1 Practice Statements

- B\_TRD09 Detained Goods Management
- C\_IMT04 Recordkeeping

### 6.2 Other Instruction and Guidelines

- Disposal of condemned goods from the store
- Recordkeeping in Customs and Border Protection
- System and records management
- Client Aggression
- Re-exporting goods
- Releasing goods from store

**BCS CLASSIFICATION:**

**FILE NUMBER:**

**Page 12 of 14**

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- Transferring goods internally and externally
- Classification of Schedule 3 and 13 Weapons

### 6.3 Associated Documents

- This Instruction and Guideline has no 'Related Associated Documents'

## 7. Consultation

### 7.1 Internal Consultation

7.1.1 The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Detained Goods Management Policy
- Detained Goods and Firearms
- Compliance Assurance Branch
- Compliance Powers, Policy and Practice
- Passenger Policy and Practice Branch
- Community Protection
- Investigations
- Enforcement Operations
- Cargo Operations
- Cargo Exams
- Legal Services Branch
- Workplace Health and Safety
- Information Services Section
- Financial Services Branch


### 7.2 External Consultation

7.2.1 No external stakeholders were consulted in the development of this Instruction and Guideline:

## Endorsement

Endorsed on	23 September 2013	Signed	
By	 A/g General Counsel, Legal Services Branch		

## Approval

Approved on	24 September 2013	Signed	
By	 ND Integrity, Security and Assurance Division		
Period of Effect	September 2013- 2016	Review Date	September 2014

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FILE NUMBER: