



FA 24/03/00379 - s501 and s116 cancellation and removal

Information relevant to this response.

Australia's *Migration Act 1958* (the Act) provides a number of powers under which non-citizens within Australia's 'migration zone' can have their visas refused or cancelled.

Section 501 of the Act provides a power to cancel or refuse a visa held by a non-citizen if the Minister or a delegate of the Minister determines that the individual does not satisfy the 'Character test'. The Act provides the Minister the power to refuse a visa application or cancel a visa of a non-citizen who does not pass the character test, including, but not limited to, if:

- a non-citizen has a substantial criminal record (that is, the person has been sentenced to death, imprisonment for life, or a term of imprisonment of 12 months or more); or
- a court in Australia or a foreign country has convicted the person of one or more sexually based offences involving a child; or found the person guilty of such an offence; or
- the Minister reasonably suspects that the non-citizen has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and that the group, organisation or person has been or is involved in criminal conduct; or
- the Minister reasonably suspects that the non-citizen has been or is involved in the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern; or
- the person has been assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security (within the meaning of section 4 of the Australian Security Intelligence Organisation Act 1979); or
- an Interpol notice in relation to the person, from which it is reasonable to infer that the person would present a risk to the Australian community or a segment of that community, is in force.

Section 116 of the Act provides a power to cancel a visa held by a non-citizen if the Minister or a delegate of the Minister determines that the individual;

- has not complied with the conditions of the relevant visa;
- their presence in Australia is or may be, or would or might be, a risk to the health, safety or good order of the Australian community or a segment of the Australian community; or the health or safety of an individual or individuals; or
- that the individual should not have been granted the visa based on the facts or circumstances provided

Non-citizens in Australia who do not hold a valid visa (unlawful non-citizens) are expected to depart Australia. Unlawful non-citizens (UNC) who do not depart as required are liable to be detained and removed from Australia.

Section 198 of the Act provides the power under which a UNC can be removed from Australia. The legislation requires the Department to remove a UNC as soon as reasonably practicable.

For the purposes of this response, the statistics are related to non-citizens removed under s198 of the Act. While there is a power under section 200 of the Act to deport non-citizens, it is very rarely used and has not been used for a significant period of time.

1. ***The number of people deported under Section 501 of the Migration Act since 2014 that have subsequently been granted visitor visas to re-enter Australia. Of those people, the number that were New Zealand citizens.***

Between 1 January 2014 and 31 December 2023, 8,200 non-citizens had their visa cancelled under s501 and were subsequently removed from Australia under s198. Of those removed, 888 were NZ citizens.

The information on subsequent Visitor visa grants of individuals who were removed following cancellation of their visa under s501 of the Act, and the number of New Zealand citizens within this cohort, is not readily available in Departmental systems.

2. ***The number of people deported under Section 116 of the Migration Act since 2014 that have subsequently been granted visitor visas to re-enter Australia. Of those people, the number that were New Zealand citizens?***

Between 1 January 2014 and 31 December 2023, 53,382 non-citizens had their visa cancelled under s116 and were subsequently removed from Australia under s198. Of those removed, 3,491 were NZ citizens.

The information on subsequent Visitor visa grants of individuals who were removed following cancellation of their visa under s116 of the Act, and the number of New Zealand citizens within this cohort, is not readily available in Departmental systems.

3. ***The dollar amount that individuals that have been held in immigration detention centres whilst appealing their deportation notices since 2014 are charged for their time spent in the detention centre.***

Individual detention costs are not readily available in Departmental systems and to report on this would require manual extraction for each individual removal.

4. ***The dollar amount that individuals deported to New Zealand under Sections 116 and 501 of the Migration Act are charged for their relocation costs.***

On average, the cost of commercially removing a New Zealand citizen varies anywhere from AUD320.00 to AUD2,000.00. Individual removal costs are not readily available in Departmental systems and to report on this would require manual extraction for each individual removal.

The Australian Government has agreed to waive such debts in relation to eligible New Zealand citizens whose visa was cancelled under s501 of the Act, and request voluntary removal from Australia. This does not apply to those whose visa was cancelled under s116 of the Act.

5. ***The number of people that have been deported from Australia under Section 116 of the Migration Act each year since 2014, and***
6. ***The number of people that have been deported from Australia to New Zealand under Section 116 of the Migration Act each year since 2014?***

As noted above, section 116 is a cancellation power, not a power to remove non-citizens from Australia. In the following table are statistics relating to the number of unlawful non-citizens who have been removed from Australia under section 198 of the Act, following a decision to cancel their visa under section 116.

Removal of unlawful non-citizens under s198, following visa cancellation under s116 of the <i>Migration Act 1958</i> *		
Year	All citizenships (including NZ)	NZ citizens
2014	3,315	9
2015	3,796	29
2016	3,558	41
2017	4,537	107
2018	3,756	152
2019	3,445	131
2020	616	59
2021	222	40
2022	693	62
2023	1,451	42
Total	25,389	672

* Data includes a range of removals conducted by the Department and Australian Border Force under s198 of the Migration Act 1958, including removals from held immigration detention and those refused immigration clearance at the border. As data has been drawn from a dynamic system environment, the information is correct at the time of publication.

7. **The number of people that have been deported from Australia under Section 501 of the Migration Act each year since 2014, and**
8. **The number of people that have been deported from Australia to New Zealand under Section 501 of the Migration Act each year since 2014**

As noted above, section 501 is a cancellation power, not a power to remove non-citizens from Australia. In the following table are statistics relating to the number of unlawful non-citizens who have been removed from Australia under section 198 of the Act, following a decision to cancel their visa under section 501.

Removal of unlawful non-citizens under s198, following visa cancellation under s501 of the <i>Migration Act 1958</i> *		
Year	All citizenships (including NZ)	NZ citizens
2014	74	42
2015	330	233
2016	538	367

2017	594	382
2018	566	364
2019	470	285
2020	365	253
2021	419	198
2022	534	276
2023	424	200
Total	4,314	2,600

** Data includes a range of removals conducted by the Department and Australian Border Force under s198 of the Migration Act 1958, including removals from held immigration detention and those refused immigration clearance at the border. As data has been drawn from a dynamic system environment, the information is correct at the time of publication.*