



Australian Government

Australian Government response to the
Joint Standing Committee on Migration report:

*Review processes associated with visa cancellations made on
criminal grounds*

APRIL 2024

Committee Recommendations

Recommendation 1

The Committee recommends the Australian Government extend the prescribed timeframe for visa holders in Australia to respond to a notice of intention to cancel issued under Section 116 of the Migration Act 1958 to 14 days.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2

The Committee recommends that the Department of Home Affairs conduct a review into the resourcing and processes applied to delegate decision-making on revocation of mandatory cancellations with a focus on:

- **ensuring that the time taken to make these decisions is reduced to three months, with six months seen as the acceptable maximum; and**
- **assessing if there is a need for increased staffing to meet these timeframes.**

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3

The Committee recommends that Ministerial Directions 65 and 63 be revised to include a specific provision allowing the historic special immigration status of New Zealand citizens, and its impact on take up of citizenship in Australia, to be a secondary consideration in reviewing character cancellations.

This consideration should not be taken into account if the applicant has ever been convicted of a serious violent or sexual crime, such as rape, murder, sexual offences involving children, aggravated assault or armed robbery.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4

The Committee recommends that all young people from New Zealand who are living permanently in Australia, and who complete at least four years of their higher

education in Australia, are eligible to access student loans through the Higher Education Loan Program (HELP).

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 5

The Committee recommends that Ministerial Directions 65 and 63 be revised to create a distinction between serious violent offending, and other types of offending, with serious violent crimes more likely to result in visa cancellation or refusal. In line with the Migration Amendment (Strengthening the Character Test) Bill 2018, serious violent crimes includes designated offences such as murder, manslaughter, kidnapping, assault, aggravated burglary, sexual assault, sexual offences involving children, breaching an order made by a court or tribunal for the personal protection of another person, and weapons offences.

The revised Ministerial Directions should state that, in cases of serious violent offending:

- the likelihood of the applicant reoffending is a primary consideration;
- the impact of the applicant's crimes on victims is a primary consideration; and
- the applicant's strength, nature and duration of ties to Australia is a secondary consideration, and is not to be given more weight than consideration of the impact on victims.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 6

The Committee recommends that the Australian Government regulate to guarantee that victims of crime, or their families, are provided with an opportunity to make a written or oral statement as part of the appeals process in the Administrative Appeals Tribunal, and:

- where victims/families provide a statement, this evidence should be a primary consideration, especially if the review applicant poses a continuing threat to victims, their families or the Australian community; and
- where victims/families choose not to provide a statement, the impact on victims should be a secondary consideration.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Dissenting Report Recommendations (Australian Labor Party)

Recommendation 1

Labor Members recommend that the Australian Government commission an independent review into the impacts of Ministerial Direction 65 and Ministerial Direction 63, to be undertaken by someone with expertise in both criminal and administrative law. The review should look at how these Ministerial Directions have impacted the exercise of discretion in visa cancellation on character grounds, particularly in relation to:

- **impacts on New Zealand citizens and other heavily-represented nationalities;**
- **impacts on the number of persons detained in immigration detention and the length of time in detention;**
- **Australia's non-refoulement obligations; and**
- **cancellation and deportation of 'absorbed persons'.**

The findings of the review may be used to inform the drafting of new Ministerial Directions.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.