

Factsheet

WHEN CAN REFUGEES BE REMOVED FROM AUSTRALIA?

Last update: August 2018

Australia has given the Immigration Minister broad powers to cancel visas, deport and 'remove' non-citizens from Australia, and refugees who cannot be safely returned to their home country can be placed in indefinite detention.

Under international law, can Australia remove refugees from the country?

International law prohibits Australia from expelling or returning asylum seekers and refugees to any place where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, and from sending people back to places where they would face a real risk of being arbitrarily deprived of their life, tortured or exposed to other cruel, inhuman or degrading treatment or punishment. This is known as the principle of *non-refoulement*.

Under Australian law, can refugees be removed from Australia?

Federal Parliament can make legislation that conflicts with Australia's international law obligations. Currently, there are two ways in which non-citizens – including people who qualify as refugees under international law – can be deported or removed from Australia.

The most common way in which this can occur is via a process called 'removal'. This allows the Minister for Immigration ('the Minister') to remove any non-citizen – including a refugee – from Australia, if they meet the definition of '[unlawful non-citizen](#)' under the [Migration Act 1958 \(Cth\)](#) (*Migration Act*). The *Migration Act* makes it clear that this can occur even where it would [conflict with Australia's non-refoulement obligations](#). However, [Ministerial Direction 65](#) currently states that Australia will not remove a non-citizen, as a consequence of visa cancellation, where this would conflict with Australia's *non-refoulement* obligations under international law.

The Minister may also order the '[deportation](#)' of a non-citizen – including a refugee – on certain criminal grounds. In this situation, the non-citizen does not have to meet the *Migration Act's* definition of 'unlawful non-citizen'. This power has been used rarely since 2014, when the Minister's powers to cancel a person's visa were significantly expanded.

How can a refugee become vulnerable to removal from Australia?

There are two broad ways in which a person who is a refugee under international law can become an 'unlawful non-citizen' vulnerable to removal from Australia. The first is where the refugee attempts to enter Australia [without a visa authorising them to do so](#). The second is where the refugee held a valid visa, but it was [cancelled](#) by the Minister.

When can the Minister cancel a non-citizen's visa?

The Minister has broad powers to cancel a non-citizen's visa on the basis that they do not pass the 'character test'. The circumstances in which a person is deemed not to satisfy the character test are set out in the *Migration Act*, [s 501\(6\)](#); this list was expanded significantly in 2014. Grounds on which a person is deemed to fail the character test include:

- Where the person has a 'substantial criminal record'. This typically means one or more criminal convictions, with sentences totalling at least 12 months' imprisonment.
- Where the person has been convicted of an offence committed while in detention or during escape from detention.
- Where the Minister reasonably suspects the person is a member, or associated with a group, organisation or person that has been or is involved in criminal conduct.
- Where the Minister considers that a person is not of good character, having regard to the person's past and present criminal or general conduct.
- Where the Minister considers there is a 'risk' that if the person remained in Australia, they would engage in criminal conduct, 'harass, molest, intimidate, or stalk another person in Australia', incite discord, or represent a danger to the community.

In some circumstances the Minister is *required* to cancel a non-citizen's visa on character grounds. This happens where the non-citizen has been sentenced to a single term of imprisonment of 12 months or more, or where they have had a sexual offence against a child proven against them and are serving a sentence of imprisonment on a full-time basis. Visa cancellation on all other character grounds is at the Minister's discretion.

What happens when a refugee has their visa cancelled by the Minister?

When any non-citizen's visa is cancelled, they go from being a lawful non-citizen to an 'unlawful non-citizen' and become liable to detention and removal from Australia.

Cancellation also prevents a non-citizen from [applying for any other Australian visa, except for a protection visa](#). However, if the visa cancelled was a protection visa – as will be the case for many refugees who have their visa cancelled – then it is [not possible to apply for a further protection visa](#), unless the Minister makes a [personal decision to allow this](#).

Because Australia will not remove a non-citizen who has had their visa cancelled in a way that conflicts with *non-refoulement* obligations, many refugees who have their visas cancelled end up in indefinite immigration detention.

If the Department of Immigration decides to cancel a visa, an individual, including a refugee, can apply to the Administrative Appeals Tribunal for merits review of that decision. There are also limited legal grounds for appeal to the Federal Court.