

# Inmate Classification and Placement Corrective Services NSW

## Immigration Matters

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# Immigration Matters

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# 1 Overview

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The policy and procedures within this document must be utilised in conjunction with the [OVERARCHING POLICY - Policy for Inmate Classification and Placement](#).

All staff must be familiar with the overarching policy prior to utilising this document.

The overarching policy and the instructions and procedures within this document apply to all staff involved in the inmate classification and placement processes within NSW correctional centres.

This document applies where inmates in correctional centres in NSW who are not Australian Citizens or hold a current Visa to remain in Australia.

The [Migration Act 1958](#) governs immigration to Australia; it deals with the entry into, and presence in, Australia of non-citizens, and the departure or deportation from Australia of non-citizens and certain other persons. Section 198 of the Act makes provision for the removal/deportation from Australia of unlawful non-citizens. The terms 'removal' and 'deportation' generally refer to two different classes of persons in the migration zone.

Corrective Services NSW (CSNSW) is committed to identifying and referring inmates received into custody in correctional centres in NSW who are not Australian Citizens or hold a valid Visa.

## 2 Related documents

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The policy and procedures within this document must be implemented in conjunction with the relevant sections of the Custodial Operations Policy and Procedures (COPP) and other related documents, including:

- [Management of Public Correctional Centres Services Specifications](#)
- [Custodial Operations Policy and Procedures \(COPP\) 1. Reception](#)
- [PR1 - Procedures for the Reception, Screening, Induction and Orientation of CSNSW Inmates](#)
- [Inmate Classification and Placement - Initial Classification and Placement](#)
- [Inmate Classification and Placement - Reviews](#)
- [Inmate Classification and Placement - Category AA and Category 5 Inmates](#)
- [Inmate Classification and Placement - Return to Custody of HSMC Inmates](#)
- [Inmate Classification and Placement - Classification and Placement of Transgender and Intersex Inmates](#)
- [Inmate Classification and Placement - Escape-risk Classifications](#)
- [Inmate Classification and Placement - MHRT, FPs and CPs](#)
- [Inmate Classification and Placement - Inter Jurisdictional Transfers between YNSW and CSNSW](#)
- [Inmate Classification and Placement - SORC and Subcommittee Managed Inmates](#)
- [Inmate Classification and Placement - Progression to C3/Cat 1, and ELP](#)

## 3 Definitions

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### 3.1 The Department of Home Affairs

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The Department of Home Affairs was created in 2017. The [Home Affairs portfolio](#) brings together a number of different government law enforcement agencies including the immigration functions and border-related functions, working together to keep Australia safe.

### 3.2 The Australian Border Force

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The Australian Border Force (ABF) is Australia's frontline border law enforcement agency and customs service. The ABF is an operationally independent body within the Home Affairs portfolio that are responsible for enforcing customs and immigration laws and protecting Australia's borders. The ABF manages persons subject to possible removal under Section 198 of the Act.

#### 3.2.1 Department previously known as

The ABF replaces the Department of Immigration and Citizenship (also called DIAC) and the former Department of Immigration and Border Protection (DIBP).

#### 3.2.2 Australian Passport

An Australian Passport is an acceptable form of proof of citizenship providing the image on the passport clearly reflects the inmate concerned. Particulars are to be referred to the ABF for verification in cases where clear identification is not possible.

### 3.3 National Character Consideration Centre (NCCC)

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The National Character Consideration Centre (NCCC) is responsible for processing assessments under the character provisions of the Migration Act (section 501) for cancellation of visas. This includes discretionary cancellation considerations, mandatory cancellation considerations and revocation of cancellation considerations.

#### 3.3.1 Mandatory cancellation under s501(3A)

In accordance with s501 of the Act, if an inmate is currently serving a full time sentence of imprisonment and are found to not pass the character test, a lawful non-citizen's visa must be cancelled if the inmate:

- is serving a sentence of imprisonment of 12 months or more (accumulative across all incarcerations); or
- has been found guilty of a sexually based offence involving a child (whether or not it resulted in a sentence of imprisonment).

In these cases the NCCC will issue the inmate with a *Notice of Intention to Consider Cancellation* (NOICC). The visa holder then has a prescribed time in which to respond to that notice. If a decision is made by the NCCC to cancel the visa, the inmate will be notified that their visa has been cancelled. The inmate will then become an unlawful non-citizen.

The ABF may make a decision that a lawful non-citizen will be deported following the expiry of their sentence, this may not occur until close to their earliest possible release date (EPRD). In many cases the decision is not known until within weeks of the EPRD.

### **3.3.2 Decision to cancel Procedures following Visa under s501(3A)**

Where a decision to cancel an inmate's visa in accordance with s501(3A), which may result in the possible deportation of the inmate at the conclusion of their sentence from Australia. The following must be followed:

1. Centre management must ensure the inmate is placed in a secure environment, and
2. Conduct a risk assessment,
  - a. the risk assessment must utilise the [Inmate Review Following Change in Immigration Status](#), tool, and
  - b. must also include a written report detailing the outcomes of the risk assessment.
3. Where required, centre management may refer the inmate for a Review.

Where an inmate has been issued a section 6(2) local leave order, or 26 Local Leave Permit, these must be revoked pending the outcome of the risk assessment.

### **3.3.3 Appeal of decision**

Once the visa is cancelled under the mandatory cancellation provisions, the inmate will have an opportunity to appeal the decision. If an inmate wishes to appeal the decision it must be within the stated timeframe of 28 days.

### **3.3.4 Discretionary cancellation under s501(2)**

An inmate may have their visa cancelled when it has been determined that they have a substantial criminal record and are liable for cancellation under the discretionary cancellation provisions. An inmate who may be liable will be provided a notice of intention to consider cancellation; this allows the inmate the opportunity to provide information to prior to a decision being made.

## **4 Non-citizen designations**

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There are two types of non-citizens managed in correctional centres in NSW:

### **4.1 Lawful non-citizens**

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Inmates who have not been granted Australian citizenship, but have been granted a visa for permanent residency are classified as lawful non-citizens.

Citizens of New Zealand, who held a Special Category Visa, are classified as lawful non-citizens and can be cancelled under section 501 of the [Migration Act 1958](#). See [National Character Consideration Centre \(NCCC\)](#) for further information.

## 4.2 Unlawful non-citizens

Inmates who did not have a valid visa at the time of reception into a correctional centre in NSW are classified as unlawful non-citizens. The ABF will issue these inmates with a visa to cover the period they are in custody. See [What is a Criminal Justice Certificate](#) for further information.

In most cases unlawful non-citizens will be removed from Australia, either directly from a correctional centre, or after being taken into immigration detention following release from CSNSW custody, but some may be eligible to apply for a Visa, these inmates should be referred to the ABF.

Unlawful non-citizens are included in the Public Interest Criteria for the purposes of considering an inmate's consideration for progression to C3/Cat1.

### 4.2.1 Temporary Visa Holders

Temporary visa holders include inmates who are holders of a visitor visa, student visa or other temporary visa's that does not grant permanent residency. For the purposes of this policy and management of inmates in correctional centres in NSW, temporary visa holders are classified as unlawful non-citizens.

## 5 Visas

The Department of Home Affairs has not issued evidence of a visa on passports for a number of years. As a result all visa evidence checking by individuals and organisations are now done online via: [Visa Entitlement Verification Online](#) (VEVO).

The main important facts to know about visas are:

- Is the visa a permanent or a temporary visa?
- What are the conditions of the visa (mainly for temporary visas)?
- If the visa is temporary what is the expiry date?

Common visa types in the justice system include but are not limited to:

VISA	SUBCLASS	CONDITIONS
Resident return visa	155	Allowed to stay in Australia permanently
New Zealand nationals	444	Allowed to stay in Australia
Partner (Migrant) visa (Spouse)	100	Allowed to stay in Australia
Bridging visas	010, 030, 050	Allowed to stay in Australia until a decision is made
Visitor visa (electronically granted).	976	Can stay in Australia for the life of current passport, or 12 months
Student visa	500	Can stay up to 5 years and in line with enrolment
Bridging visa E (BVE)	050, 051	Can stay in Australia whilst arrangements are made to leave only

See [Department of Home Affairs - Visa List](#) for the full list of visa's.

## 6 Roles

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### 6.1 Role of Sentence Administration

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Sentence Administration Branch regularly provides the ABF with a report of all inmates who are in custody. The ABF then assess the report to determine the inmates in custody that may be subject to removal or deportation from Australia.

### 6.2 Role of Senior/Classification and Placement Officer (S/CAPO)

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The responsibility for liaising directly with the ABF in relation to individual inmates for the purpose of clarifying an inmate's status lies with the Senior/Classification and Placement Officer (S/CAPO) at each correctional centre.

The S/CAPO must complete the initial checks via the ABF of all unlawful non-citizen inmates (who are not Serious Offenders). This will allow for correct identification prior to referring it the Pre-Release Leave Committee (PRLC) for determination for progression to C3/Cat 1.

#### 6.2.1 Informing the ABF of incarceration

In the event an inmate is not an Australia Citizen or Visa holder the S/CAPO and/or Classification and Placement Team (CPT) must inform the inmate at the time of Initial Classification and Placement Assessment, or at a subsequent Reviews, that the ABF will be informed of the inmate's incarceration.

The inmate must be informed of the possible exchange of information in order to satisfy the requirements of both the [Privacy and Personal Information Protection Act 1988](#) and the [Privacy Act 1988 \(Commonwealth\)](#).

#### 6.2.2 Clarifying/confirming immigration status with the ABF

When it is known or suspected by CSNSW staff that an inmate will or may be removed or deported at the expiry of the inmate's sentence, any written confirmation from the ABF must be placed on the inmate's warrant file with a copy on the Case Management File (CMF).

Where an inmate's citizenship or visa status is not clear, the S/CAPO must seek the advice of the ABF as to whether the inmate is of interest. Enquires must be made via email:

- [REDACTED] (possible temporary visa or unlawful) , or
- [REDACTED] (possible permanent residents).

Either section will respond directly. All email enquiries should include a brief explanation of why the visa information is required by the officer. When seeking clarification of immigration status requests must include the following:

- What is the visa status of the inmate (i.e. is the inmate an unlawful non-citizen or a lawful non-citizen)?
- What type of visa was the inmate granted?
- What section of the Act was used to cancel the visa?
- Is the inmate subject to mandatory cancellation under section 501?



Sentence Administration staff and or S/CAPO must then enter any information received from the ABF information in the OIMS Alerts screen upon receipt of written advice.

## 7 Progression to C3/CAT1

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Prior to any consideration of progressing an inmate beyond C2/CAT2, the S/CAPO must:

- check OIMS to establish whether the inmate is a person of interest to the ABF. This must be completed via the OIMS Personal Information screen (OIDPINFO),
- check the Personal Information screen includes confirmation from the ABF of the inmates citizenship and visa description, where applicable,
- where an Alert is on OIMS, the S/CAPO must verify the inmates immigration status via the ABF.

Careful consideration must be applied with respect to any inmate who is not an Australian citizen when being considered for classification progression to C3/CAT1 having regard to the potential for additional incentives to escape when facing uncertainty about being removed or deported.

- Inmates who have not been issued with a visa to cover the period that they are in custody must not participate in Unescorted External Leave Programs (ELP's) as they would be liable for detention as soon as they left the correctional centre. Inmates must be issued with a criminal detention bridging visa (BVE) or criminal justice visa prior to being considered for progression to C3/Cat1.
- When the nationality and/or visa status of an inmate is unclear, they must not to be considered for C3/Cat 1 until written confirmation is obtained from the ABF and the Personal Information screen has been updated.

### 7.1 Progression to C3/Cat 1 for SORC/PRLC inmates

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Any C3/Cat 1 application for serious offenders or public interest inmates must include advice from the ABF prior to being referred to the Serious Offender Review Council (SORC), or the Pre-Release Leave Committee (PRLC).

#### 7.1.1 *Exceptional circumstances*

Only if exceptional circumstances exist can an application be considered outside of these guidelines. These must include written support by the Governor of the correctional centre.

### 7.2 Unlawful Non-Citizens including temporary visa holders

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When it is proposed that, an inmate who is an unlawful non-citizen (but who has been issued with a visa to cover the period they are in custody) participates in an unescorted ELP:

- the Commissioner must give approval for progression to C3/Cat 1 through the PRLC for inmates not designated as serious offenders, and
- through SORC for designated serious offenders.

**Note:** The issuing of a Section 6(2) On/Off order is at the discretion of the Governor, or delegate.

### 7.3 Lawful non-citizens

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Inmates who are lawful non-citizens and are Australian permanent residents, including a person issued with a special category visa or spouse visa, but who have not taken Australian citizenship, may be considered by the Governor or delegate, for:

- the issuing of a Section 6(2) or 26 order enabling work or program activity outside a correctional centre, and
- progression to C3/Cat 1 security.

### 7.4 Notification of cancellation by the NCCC

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On notification of the cancellation by the NCCC of a permanent residency visa for a lawful non-citizen, the following procedures must be followed for C3/Cat 1, C2/Cat 2 inmates:

1. Inmate is to be designated as a Public Interest Inmate unless already designated a Serious Offender.
2. The CPT must conduct an Review within 72 hours.
3. The inmate must be regressed in security classification to C2/Cat 2.  
In accordance with [Inmate Classification and Placement - Reviews](#), the recommendation/s of the CPT must be forwarded to the MOS (or delegate) and Governor (or delegate) for consideration.
4. Where centre management do not consider a security risk has increased due to visa cancellation and supports the inmate to return to C3/Cat 1, the S/CAPO must then initiate a Review in accordance with [Inmate Classification and Placement - Reviews](#).
5. The S/CAPO must obtain a BVE, prior to the inmate being able to be considered for progression to C3/Cat 1.
6. The recommendation must then be forwarded to the M/DMCP, who must then support, or otherwise the assessment and refer it to the PRLC.
7. The PRLC must then consider the application, with the final determination to be made by the Commissioner. In accordance with:
  - [Inmate Classification and Placement - SORC and Subcommittee Managed Inmates](#)
  - [Inmate Classification and Placement - Progression to C3/Cat 1, and ELP](#)

### 7.5 Criminal detention bridging visa E - general

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All persons who are in criminal detention and are unlawful non-citizens in Australia are eligible to be granted a criminal detention bridging visa E (BVE). The BVE covers a period a person is in criminal detention which includes if they are serving a term of imprisonment following conviction of an offence, in prison on remand or on a leave of absence from imprisonment.

The criminal detention BVE is not granted or in effect whilst a person is in the community subject to a community based orders, on parole after serving a term of imprisonment or on bail awaiting trial or in home detention.

The criminal detention BVE ceases when the period of criminal detention ends. Upon release from custody a criminal detention BVE holder will become an unlawful non-citizen.

Currently criminal detention BVE's have no conditions imposed. Inmates who are the holders of criminal detention BVE's are lawfully able to participate in work and study release whilst participating in unescorted ELP's.

For the purposes of this policy and management of inmates in correctional centres in NSW, criminal detention BVE holders are classified as unlawful non-citizens.

## 7.6 Current status of criminal detention BVE

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Given the large number of persons in correctional centres in NSW who are unlawful non-citizens, the ABF will prioritise requests from the Department of Justice for Criminal Detention BVE's. All requests and enquires can be made via:

- [REDACTED]
- [REDACTED]

## 7.7 Criminal justice visa

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A Criminal justice visa is permission for a non-citizen to enter (Criminal justice entry visa) and/or remain temporarily (Criminal justice stay visa) in Australia for purposes relating to the administration of criminal justice.

For the purposes of this policy and management of inmates in correctional centres in NSW, criminal justice visa holders are classified as unlawful non-citizens.

## 7.8 Appeal against deportation/removal

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Inmates who have submitted an appeal against a deportation or removal order issued by the ABF must not participate in ELPs whilst the appeal is pending.

# 8 Common questions

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## 8.1 What does 'the administration of criminal justice' mean?

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The administration of criminal justice means:

- an investigation to find out whether an offence has been committed; or
- the prosecution of a person for an offence; or
- the punishment by way of imprisonment of a person for the commission of an offence.

## 8.2 What is a criminal justice certificate?

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A Criminal Justice Certificate is a document issued by a delegated official of a law enforcement agency that requires the entry and/or continued presence of a person in Australia for the purposes of the administration of criminal justice. A Criminal Justice Stay Certificate can only be issued to an unlawful non-citizen.

A Criminal Justice Certificate is not a visa and does not render the client a lawful non-citizen.

### **8.3 Who issues a criminal justice visa**

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To obtain a criminal justice visa it must be issued first by a law enforcement agency – for example NSW Police or the Department of Public Prosecutions for the purpose of the administration of criminal justice in Australia.

Subsequently an officer from the Department of Home Affairs (Criminal Justice Visa Section) determines whether or not a criminal justice visa is granted or not. Criminal justice visas are electronically issued.

### **8.4 How long is a criminal justice visa valid for?**

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There is no set expiry date with this visa. However, a Criminal Justice Certificate must be cancelled by the relevant issuing authority once the visa holder's presence in Australia is no longer required. This automatically cancels any associated Criminal Justice Visa.

### **8.5 Can a Criminal Justice visa holder be held in police custody or in jail?**

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Yes. A Criminal Justice visa holder may be subject to police custody and imprisonment through the course of the administration of criminal justice.

### **8.6 Do criminal justice visa holders have work rights?**

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A Criminal Justice Stay visa holder is permitted to work in Australia.

A Criminal Justice Entry visa holder is not permitted to work.

### **8.7 Do criminal justice visa holders have study rights?**

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The [Migration Act 1958](#) is silent when it comes to study rights for CJV holders. That is, study is not mentioned and therefore CJV holders are not precluded from having study rights.

### **8.8 What happens if the non-citizen is granted parole?**

---

In the case of non-citizens who serve a sentence of imprisonment, the Criminal Justice Stay Certificate must be cancelled if the client receives a parole order. Parole does not fall under the definition of the administration of criminal justice as outlined under section 142 of the [Migration Act 1958](#) for the purposes of Criminal Justice Certificates.

### **8.9 Can a Criminal Justice visa holder be granted bail?**

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The holder of a Criminal Justice visa can be granted bail and reside in the community. A Criminal Justice Certificate holder should not be bailed to immigration detention.

## 8.10 Can a non-citizen be removed because of the visa refusal?

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No. The client cannot be removed while a Criminal Justice Certificate is in place.

## 8.11 Can a non-citizen depart voluntarily?

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Yes. The issuing of a Criminal Justice Certificate and/or Criminal Justice visa does not prevent a person departing voluntarily.

## 8.12 What happens when criminal justice proceedings end?

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The Criminal Justice Certificate must be cancelled when the non-citizen is no longer required for the purpose of that certificate.

The cancellation of the Criminal Justice Certificate causes the immediate cancellation of any associated Criminal Justice visa by operation of law. The non-citizen is then subject to compliance action, including immigration detention and removal.

Any further clarification can be sought from:

- [REDACTED]
- [REDACTED]

## 9 Abbreviations

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ACRONYM	MEANING
ABF	Australian Border Force
BVE	Bridging visa E
CAPO	Classification and Placement Officer
CMF	Case Management File
COPP	Custodial Operations Policy and Procedures
CPT	Classification and Placement Team
CSNSW	Corrective Services New South Wales
DIAC	Department of Immigration and Citizenship
DIBP	Department of Immigration and Border Protection
DMCP	Deputy Manager Classification and Placement
ELP	External Leave Programs
EPRD	Earliest Possible Release Date
MCP	Manager Classification and Placement
NCCC	National Character Consideration Centre
NOICC	Notice of Intention to Consider Cancellation
NSW	New South Wales
PRLC	Pre Release Leave Committee
Review	Classification and Placement Review
SCAPO	Senior Classification and Placement Officer
SORC	Serious Offenders Review Council
VEVO	<a href="#">Visa Entitlement Verification Online</a>

## 10 Document history

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VERSION	DATE	REASON FOR AMENDMENT
1.0	25 October 2019	In line with Case Management Review outcomes
1.1	23 October 2020	General formatting update and improvements
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