



# Criminal Justice Certificate and Visa Factsheet

## Purpose of the Criminal Justice Visa

A Criminal Justice visa is a visa that enables a non-citizen to lawfully enter (Criminal Justice Entry visa) and/or remain temporarily (Criminal Justice Stay visa) in Australia for the purpose of the administration of criminal justice. The grant of a visa is considered by the Department of Home Affairs (Home Affairs).

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.

## Criminal Justice Certificate

A Criminal Justice Certificate (CJC) is a precursor to a Criminal Justice visa (CJV) – once a CJC is issued, the delegated officer may consider whether to grant a CJV. A CJC is issued when the authorised official of a law enforcement agency requires the entry of a non-citizen into Australia and/or continued presence of an unlawful non-citizen in Australia for the purposes of the administration of criminal justice.

For a Commonwealth matter, a CJC can only be issued by the Minister for Home Affairs or their delegate.

For a State/Territory matter, a CJC can only be issued by an authorised official appointed by the Minister for Home Affairs under s144 of the *Migration Act 1958* (the Act). Authorised officials are:

- the State or Territory Directors of Public Prosecutions, or
- the highest ranking member of the police force/service of the state.

State/Territory issued Criminal Justice Entry Certificates must be endorsed by the Minister for Home Affairs or their delegate.

Under the Act, the authority requesting the CJC must undertake to bear all costs associated with bringing to, keeping in, and removing the non-citizen from Australia.

A CJC is a short-term measure to stay immediate involuntary removal action. A CJC for a person to remain in Australia can only be issued where a client is unlawful. A CJC is not a visa and does not render the client a lawful non-citizen. Dependents of CJC holders must be issued CJs in their own right.

### **Criminal Justice Certificate Holders Who Request Voluntary Removal**

Please note that where a non-citizen who holds a CJC enters immigration detention, and subsequently requests removal, the Department is obliged, under section 198(1) of the Act, to commence removal planning as soon as reasonably practicable, notwithstanding the issue of a CJC in respect of the detainee.

In these circumstances, where a detainee has requested removal in writing, if law enforcement agencies wish to ensure that the person remains in Australia for criminal justice purposes, the law enforcement agency will need to deploy alternative management strategies. These strategies may include:

- seeking to have accused non-citizens remanded in criminal custody rather than bailed and held in immigration detention, and/or
- applying to the relevant criminal court for an order staying a non-citizen's removal in the interests of the administration of criminal justice. This may include an application by the law enforcement agency for a court order staying the person's removal.

Given the above, where a detainee who is the subject of criminal proceedings, and in particular the holder of a CJC, requests removal, it is critical for the removal officers planning his/her removal to communicate with the Criminal Justice Programme at Home Affairs ([criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au)). This enables removal plans to be communicated to the relevant law enforcement agencies and alternative management strategies to be implemented for the detainee to remain in Australia.

## **Criminal Justice Visa**

There are two types of Criminal Justice visa:

- Criminal Justice (Entry) visa – for non-citizens who are offshore
- Criminal Justice (Stay) visa – for non-citizens who are onshore

There are five different Criminal Justice Certificates:

- Commonwealth Criminal Justice (Entry) Certificate
- Commonwealth Criminal Justice (Stay) Certificate
- Temporary Criminal Justice (Stay) Certificate issued under s143 of the Act
- State Criminal Justice (Entry) Certificate
- State Criminal Justice (Stay) Certificate

This can be summarised as follows:

Type of Certificate/Visa	CJC Requesting Agency	CJC Issuing Agency	Questionnaire and Costs Undertaking	Type of Visa Considered	Commonwealth Endorsement
<b>Commonwealth Criminal Justice Entry</b>	Commonwealth DPP or Department	Department of Home Affairs	Required	Criminal Justice (Entry)	N/a
<b>Commonwealth Criminal Justice Stay</b>	Commonwealth DPP or Department	Department of Home Affairs	Required	Criminal Justice (Stay)	N/a
<b>Temporary s143 CJC</b>	AFP	AFP	Not required	N/a	N/a
<b>State Criminal Justice Entry</b>	State Police or OPP	State Police or OPP	Required	Criminal Justice (Entry)	Required – issued by Home Affairs
<b>State Criminal Justice Stay</b>	State Police or OPP	State Police or OPP	Required	Criminal Justice (Stay)	N/a

## **Commonwealth CJC (Stay or Entry)**

To obtain a Commonwealth CJC, a completed Criminal Justice visa questionnaire and cost undertaking should be forwarded to the Criminal Justice Programme at Home Affairs for consideration to issue a CJC. Email to [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au).

## **State Criminal Justice Stay Certificate**

Once a State delegate has issued a State Criminal Justice (Stay) Certificate, the completed CJC, costs undertaking and questionnaire should be sent to the Criminal Justice Programme at Home Affairs. Email to [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au).

## **State Criminal Justice Entry Certificate**

Once a State delegate has issued a State Criminal Justice (Entry) Certificate, the completed CJC, costs undertaking and questionnaire should be sent to Home Affairs for consideration to issue a Commonwealth Endorsement Certificate. Email to [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au).

If Home Affairs issues an Endorsement Certificate they will forward a copy to the requesting law enforcement agency. Home Affairs will then consider the grant or refusal of the Criminal Justice visa.

## **Temporary Criminal Justice Stay Certificate**

A commissioned police officer under the *Australian Federal Police Act 1979* (an AFP officer at a rank no lower than superintendent) may issue a Temporary Criminal Justice (Stay) Certificate under section 143(2) of the Act in respect to an unlawful non-citizen at an Australian port for a maximum of five days. This acts to stay the immediate removal of the unlawful non-citizen.

## **The Questionnaire**

The questionnaire or 'Request for a Criminal Justice Certificate' form sets out the purpose for and appropriateness of the unlawful non-citizen entering and/or remaining in Australia. The questionnaire is used by the Home Affairs delegate in the consideration of the grant of a criminal justice visa. For a copy of the questionnaire email [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au).

## **The Cost Undertaking**

By signing a Criminal Justice visa cost undertaking, the requesting law enforcement agency agrees to meet all costs associated with bringing and/or keeping the non-citizen in Australia when the non-citizen has no other means of support. Sections 145(c), 146(1)(b), 147(c) or 148(c) of the Act refer as appropriate.

An underlying principle of the Criminal Justice visa process is that the requesting agency who requires the entry and/or continued presence of a non-citizen in Australia for criminal justice purposes, agrees in the form of a Cost Undertaking to ensure all costs will be met that arise from the non-citizens entry and/or stay that would not have otherwise been incurred by the Department of Home Affairs.

In accordance with section 147(c) of the Act, the authority that requested the issue of the Criminal Justice Certificate or Criminal Justice Stay Warrant (CJSW) is responsible for all aspects of maintaining the non-citizen whilst the associated certificate is in force.

## **Criminal Justice Stay Warrant**

If a law enforcement agency wishes to ensure that a non-citizen remains in Australia for criminal justice purposes, it may apply to the relevant criminal court for an order staying the unlawful non-citizen's removal in the interests of the administration of justice, where the power to do so exists in the legislation of the relevant jurisdiction. Section 151 of the Act has been interpreted as not conferring a power on a court to issue a

CJSW. It is a matter for the relevant law enforcement agency to identify a source of power for the court concerned to issue such a warrant.

The agency who has requested the CJSW is required to send a copy of the CJSW, including a signed cost undertaking and completed questionnaire, to the Criminal Justice Programme at Home Affairs. Email to [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au)

## Consideration of a Criminal Justice Visa

Upon receipt of a signed CJC or CJSW, cost undertaking and Criminal Justice visa questionnaire by the Criminal Justice Programme at Home Affairs, a submission will be prepared for a delegated Home Affairs officer. The delegated officer considers whether or not to grant the unlawful non-citizen a visa, considering the criteria as set out in s158 of the Act.

A Criminal Justice visa may be refused if the Minister (or delegate) decides that the unlawful non-citizen fails to meet one or more of the criteria specified in s158 of the Act. The criteria are:

- A valid CJC or CJSW concerning the non-citizen is in force
- The safety of individuals and people generally
- In the case of a Criminal Justice Entry visa, arrangements to ensure that if the non-citizen enters Australia, the non-citizen can be removed and
- Any other matters that the Minister considers relevant.

If an unlawful non-citizen is refused a Criminal Justice visa they are not able to reside in the community. As they do not hold a valid visa for Australia, they are an unlawful non-citizen and will be subject to immigration detention, unless they are held in criminal custody.

The Criminal Justice visa does not have a set expiry date. However, a CJC/CJSW must be cancelled by the relevant issuing authority once the holder's presence in Australia is no longer required for the administration of criminal justice. Cancellation of the CJC/CJSW cancels any associated Criminal Justice visa by operation of law.

## Responsibilities of the Requesting Agency

In accordance with the signed costs undertaking, the requesting agency is responsible for all aspects of maintaining the non-citizen for as long as the CJC/CJSW is in force.

- The requesting agency is responsible for advising the client of the visa grant or refusal, and the cancellation of the visa
- The requesting agency must maintain regular contact with the non-citizen
- The requesting agency must advise Home Affairs immediately of any change in the non-citizen's circumstances, such as key dates in the criminal justice process, bail conditions, contact details and location
- The requesting agency is responsible for organising the cancellation of the CJC when the non-citizen is no longer required in Australia for the purpose for which the certificate was issued.
- The requesting agency is responsible for maintaining the client financially, should they be granted a Criminal Justice visa and reside in the community.

## Criminal Justice Visa Holder Entitlements

- A Criminal Justice visa holder **cannot** be held in, or bailed into, immigration detention.
- A Criminal Justice visa holder can be held in criminal custody. Standard procedures apply to facilitate the transfer of custody from an immigration detention facility to criminal custody.
- A Criminal Justice visa holder is **not eligible** for Medicare or the Pharmaceutical Benefits Scheme.
- A Criminal Justice visa has no set expiry date. Once the Criminal Justice Certificate is cancelled this automatically cancels any associated Criminal Justice visa.
- A Criminal Justice Stay visa holder is permitted to work in Australia.
- A Criminal Justice Entry visa **does not** allow work.
- The Act is silent when it comes to study rights for Criminal Justice visa holders. That is, study is not mentioned, therefore, Criminal Justice visa holders are not precluded from studying while in Australia.

Confirmation of work rights may be sought at any time using Visa Entitlement Verification Online (VEVO), a free web-based service. To log into VEVO, the passport number and the visa grant number for the non-citizen must be provided.

More information is available at <http://www.homeaffairs.gov.au/Busi/Visa>.

## CJC holders in Immigration Detention

A CJC holder who is in immigration detention can attend court provided they are escorted by an appropriate authority to ensure the unlawful non-citizen does not abscond.

Where an unlawful non-citizen who holds a CJC enters immigration detention, and has signed a request for removal, Home Affairs is obliged to commence removal planning as soon as practicable, notwithstanding the issue of a CJC in respect of the detainee.

Home Affairs has distributed brief submissions to key contacts in law enforcement agencies outlining the operation of the Act and Home Affairs position on s150, where a request for removal has been made by a person in immigration detention and the fact the existence of a prior CJC or the issuing of one after the request does not, of itself, override Home Affairs' obligation to action the request for voluntary removal. Please email [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au) to obtain a copy.

## Cancellation of a CJC - Conclusion of criminal justice proceedings

The CJC or CJSW must be cancelled when the non-citizen is no longer required for the purpose of that certificate or warrant.

In the case of non-citizens who serve a sentence of imprisonment, the CJC or CJSW must be cancelled if the client is released on parole. Parole does not fall under the definition of the administration of criminal justice as outlined under s142 of the Act.

Criminal Justice visas are automatically cancelled by operation of law by the cancellation of an associated CJC/CJSW. If a Criminal Justice Visa holder departs Australia the visa ceases by operation of law. If the non-citizen is onshore then they will be subject to compliance action, including immigration detention and removal from Australia, unless granted another visa.

Criminal Justice Entry Certificates issued to witnesses for whom return travel has been booked by the issuing law enforcement authority should have their Criminal Justice Entry Certificates cancelled after their departure.

For Commonwealth matters, the authority that requested the CJC should contact Home Affairs and request that the CJC be cancelled. In the case of a CJSW the authority that requested the warrant should contact the court that issued the warrant and request that it be cancelled. Once this cancellation has been received by the requesting agency it should be forwarded to Home Affairs for processing.

Under s162 of the Act, prior to cancelling a CJC, the requesting agency is required to notify Home Affairs, within an adequate time (14 days minimum notice where possible) prior to cancellation, as to:

- when the CJC is expected to be cancelled
- the non-citizen's expected whereabouts at the time of cancellation
- the arrangements for the non-citizen's departure from Australia

The action officer for the matter and their contact details is also requested.

Once a Criminal Justice visa is granted, the Minister or delegate has no power to cancel a Criminal Justice visa except under section 501 of the Act. This would be considered only in exceptional circumstances.

## **Departing Australia**

The issue of a Criminal Justice visa does not prevent a person departing Australia. However, non-citizens subject to bail may have bail conditions precluding them from leaving Australia.

Witnesses, subject to a Criminal Justice visa, who are no longer required for the administration of criminal justice and who hold a valid travel document can depart Australia on their Criminal Justice visa. Their visa will cease upon departure, and the issuing agency is required to cancel the associated CJC/CJSW.

## **Further information**

CJC/CJSW and/or CJV holders who have further enquiries should contact the law enforcement agency that requested their CJC. The requesting agency is responsible for case management of the client.

Law enforcement authorities who have further enquiries should contact the Criminal Justice Programme at Home Affairs by emailing [criminal.justice.programme@homeaffairs.gov.au](mailto:criminal.justice.programme@homeaffairs.gov.au).

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