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OFFICIAL INFORMATION ACT



## **CHARACTER**

**For permanent resident visa applications and  
second or subsequent resident visa applications**

# CHARACTER

- There are four different areas of character that need to be taken into consideration for permanent resident visa applications and second or subsequent resident visa applications. They are:
  - Deportation Liabilities
  - RV1.25
  - Section 15/16 of the Immigration Act 2009
  - **A5.25.10 (character waivers)**
- Variation of travel conditions applications or applications from resident visa holders that have renounced their New Zealand citizenship do not have character requirements.



# DEPORTATION LIABILITIES

- Deportation liabilities can arise for many reasons, these are the ones we commonly see/need to be aware of:
  - Person unlawfully in New Zealand (section 154)
  - Person's visa granted in error (section 155)
  - Residence class visa granted due to fraud, forgery, false/misleading information, deception etc (section 158)
  - Breaching visa conditions on a residence class visa (section 159)
  - Being convicted of certain criminal offences on a residence class visa (section 161) – most common
- **Note: as immigration officers, we are not delegated to tell an applicant that they are liable for deportation, but we can tell an applicant that they appear to be liable for deportation and therefore we will pass the matter on to Resolutions for assessment.**
- Deportation liabilities exist for up to 10 years following the date the deportation liability arose (section 167)



# EFFECT OF BEING LIABLE FOR DEPORTATION (SECTION 169)

- A person liable for deportation may not apply for a further visa of a different class or type to the visa they currently hold (note nothing in this prevents varying a visa they currently hold, i.e. granting a variation of travel conditions, but it does prevent the granting of a permanent resident visa if they hold a resident visa as it is of a different type).
- A person who does not have a visa and is outside of New Zealand (such as if they held a resident visa and left New Zealand after the expiry of their travel conditions) is no longer liable for deportation – see RV1.25.



# DEPORTATION LIABILITY SUSPENSIONS

- The Minister (or associate minister, or most commonly a Delegated Decision Maker for the Minister of Immigration/DDM) may cancel or suspend a persons liability for deportation (rather than them being served a deportation order). Suspending a deportation liability is a matter of absolute discretion.
- Deportation liabilities may be suspended for a period of up to 5 years, subject to any conditions the DDM or minister deem appropriate.
- For more information see section 172



# DEPORTATION LIABILITY SUSPENSION PROCESS

1. Resolutions will inform an applicant that they are liable for deportation and ask for comment (also sending a questionnaire). Resolutions will then prepare a document for the Minister or DDM with options as to how to proceed. All documents are available by request from resolutions, and can be helpful when considering future ETIs for SSRVs, or character waivers for PRVs
2. A DDM will consider the deportation liability and determine whether to deport the person, suspend the deportation liability or cancel it. They will send a letter to the person informing them of their decision.
3. Once the suspension period is over, the deportation liability is not automatically cancelled, but needs to be formally cancelled by a DDM or the Minister as per section 174(2)



# APPLICANTS UNLAWFULLY IN NEW ZEALAND – BORDER ISSUE – SECTION 154

- Y3.20.b states that if a former resident visa holder returns to New Zealand without a valid resident visa/after having been outside of New Zealand without valid travel conditions on their resident visa, then border should in the first instance consider granting a single entry residence visa based on the applicant's eligibility for a second or subsequent resident visa (not exactly, but close to it).
- If they would appear to not be eligible for a second or subsequent resident visa (again, not exactly), then they should consider granting a 1-month temporary visa (Y3.20.c).
- There is however a potential for there to be great risks involved in the first point above, and border have obvious time constraints, so for the most part they do not feel comfortable granting single entry residence.



# APPLICANTS UNLAWFULLY IN NEW ZEALAND – BORDER ISSUE

- This leads to many applicants being granted a 1-month visitor visa at border, making applications for permanent resident visas within the currency of their visitor visas, and becoming unlawful while waiting for their applications to be assessed.
- This has been raised as an issue by our team, border, and the section 61 team. The idea of an instructional change to Y3.20 has been raised to allow the grant of a 3-month temporary visa – watch this space.

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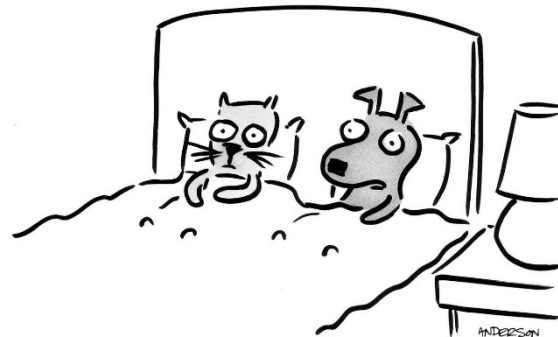
# PRACTICALITIES FOR NOW

- As we are aware of the border issue, where an applicant submits an application for a permanent resident visa after becoming unlawful while waiting for an assessment to occur, email the section 61 team as per the template.
- Where an applicant becomes unlawful before submitting an application, inform them that they will need to request the grant of a visa under section 61. Note, as per section 20, such an application should not be raised as a permanent resident visa.
- Section 169 would prevent the grant of any further visa while they are still unlawfully in New Zealand.



# ADMINISTRATIVE ERROR – SECTION 155 – HOW A DEPORTATION LIABILITY ARISES

- There have been instances of visas such as permanent resident visas having been granted by administrative error, such as through transfer of visa applications.
- If a condition should have been imposed on a resident visa but was not imposed, then the resident visa was granted by way of administrative error. Such as if an applicant applied for residence under a family parent category after 29/11/2010, a sponsorship condition should have been imposed. If it was not, they are liable for deportation.
- These are usually fairly obvious and do not require much digging.



"This was a mistake."



# REMEDIES TO ADMINISTRATIVE ERROR - SECTION 68

- For most cases, section 155 deportation liabilities do not need to be referred to resolutions and are very easy to fix. This is because a person is only actually liable for deportation if we cannot under our absolute discretion remedy the situation by granting a further visa under section 68
- Where a visa has been granted by administrative error we would in the first instance offer the visa the applicant would have received or would be eligible for now had no administrative error occurred. For example, if a sponsorship condition should have been imposed but was not, either an offer of a resident visa with that sponsorship condition with the same travel conditions as were originally held, or a resident visa with more travel conditions as they would also be eligible for a variation of travel conditions, or a permanent resident visa as if the applicant would have been eligible for a permanent resident visa had no error have been made, depending on what the most appropriate alternative would be given the date of application.



# REMEDIES TO ADMINISTRATIVE ERROR - SECTION 68

- The person must agree to the remedy, otherwise the default is a deportation liability under section 155 which would be referred to resolutions.
- Discuss the proposed remedy with a TA before making an offer.
- If the remedy would be what the applicant applied for anyway, the application itself can be taken as consent/agreement, thus no 'offer' needs to be made. It should be noted in the assessment note however that this has occurred and that the grant of a visa is also under section 68.



# DECEPTION – SECTION 158

- A person is liable for deportation if they are either convicted of an offence where it is established that, or the minister determines that, any of the information provided in relation to the person's, or any other persons, application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed (cumulatively henceforth referred to as deception).
- This section is very similar to A5.25.i in character instructions (which is similar to A5.45.b).
- The significance of the deception should be considered – discuss with a TA whether or not the deception did or could have actually changed the outcome of the application had the deception not occurred.



# COMMON SECTION 158 REFERRALS

- Most commonly section 158 referrals are character related, such as:
  - Arrest warrants or convictions in other countries that are not declared (sometimes these do not appear in PCs, however we may still be notified that they exist)
  - Convictions in New Zealand where a person is charged and convicted of an offence after an NZPC is obtained as part of their resident visa application, and the person does not declare this conviction to INZ while their resident visa is being processed. (note: if the conviction happens after they obtain residence they are liable for deportation under section 161).
  - Information provided to Immigration New Zealand as part of an applicant's resident visa application, which is later found to be false and misleading through verification of that information or through new information becoming available after the resident visa is granted.



# NOT MEETING S49 OR S50 CONDITIONS – SECTION 159

- If a person does not meet conditions imposed on their resident visas, they are liable for deportation under section 159. This could for example be due to:
  - Information becoming available that a person has received benefits during a period for which they had been sponsored, confirmed with the agency/department the benefit was received from (very rare).
  - Information becoming available to say that the work conditions of a skilled migrant category resident visa have not been met (check with a TA before drafting a referral).



# CONVICTIONS – SECTION 161

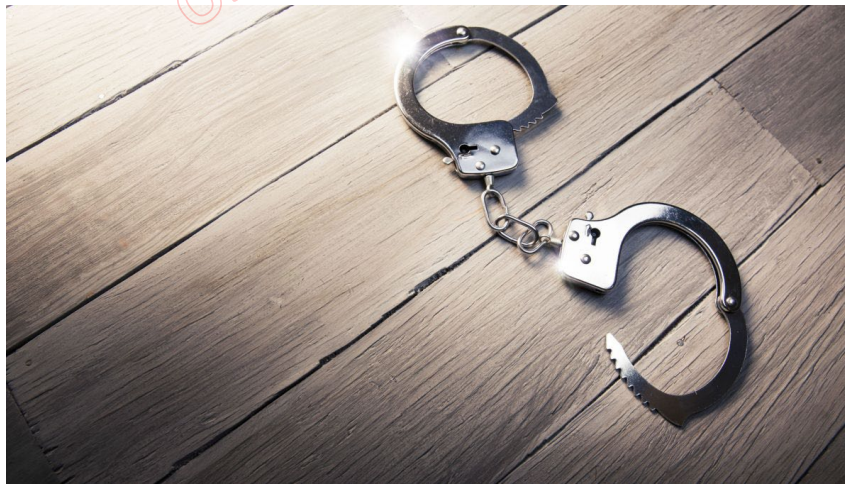
- A residence class visa holder is liable for deportation if they are convicted of an offence in New Zealand or elsewhere:
  - a. of an offence for which the court has the power to impose imprisonment for a term of 3 months or more if the offence was committed at any time:
    - when the person was unlawfully in New Zealand; or
    - when the person held a temporary entry class visa; or
    - not later than 2 years after the person first held a residence class visa
  - b. of an offence for which the court has the power to impose imprisonment for a term of 2 years or more, if the offence was committed not later than 5 years after the person first held a residence class visa
  - c. of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed not later than 10 years after the person first held a residence class visa (we would usually never see this one)





# CONVICTIONS - SECTION 161

- These are by far the most common deportation referral done by the PRV team.
- Note that importantly a deportation liability only lasts up to 10 years from when it arose.
- Note also that it is irrelevant to section 161 what a person was actually sentenced to, however this will likely be taken into account by the DDM that will assess the deportation liability. Make sure you consult the spreadsheet of common crimes and/or [legislation.govt.nz](https://legislation.govt.nz) (which has a good search function) to determine whether or not section 161 applies.



# DEPORTATION REFERRALS PROCESS

- For all deportation referrals **except** referrals under section 161, use the 'Non-Criminal Referral Template':
  - Make sure it has been signed off by you TA or IM before sending it to resolutions
  - Make sure that you include evidence to support the case for a deportation liability, including the resident visa file.
  - Make sure you include any communication about the possible deportation liability that you have had with the applicant.
  - Send the referral to [resolutions.deportationtechnicalspecialist@mbie.govt.nz](mailto:resolutions.deportationtechnicalspecialist@mbie.govt.nz)
- For section 161 referrals:
  - Send an email to your TA, attaching the NZPC/PC showing the applicable conviction, the client number and the application number
  - Your TA will then double check the referral and forward the email to technical specialists, [Arazil Griggs & Torsten Dobbertin-King](#) at resolutions



# Common Crimes and Maximum Terms of Imprisonment (common examples)

Land Transport Act 1998		
Section	Offence	Maximum Imprisonment Term
32	Driving while disqualified / contrary to limited licence / while licence suspended or revoked	First or second offence: 3 months Third or subsequent offence: 2 years
35	Reckless or dangerous driving, failing to stop at accident (operating a vehicle recklessly on the road causing...)	3 months
36	Reckless or dangerous driving causing injury	5 years
36AA	Reckless or dangerous driving causing death	10 years
36A	Racing, unnecessary speed/acceleration/sustained loss of traction causing injury or death	5 years - 10 years (injury - death)
38	Careless driving causing injury or death (operating a vehicle carelessly causing...)	3 months
56	Breath alcohol exceeding 400 micrograms per litre of breath	First or second offence: 3 months Third or subsequent offence: 2 years
56	Blood alcohol exceeding 80 milligrams per 100 millilitres of blood	First or second offence: 3 months Third or subsequent offence: 2 years
57	Breath alcohol exceeding 150 micrograms per litre of breath (person under 20)	3 months
57	Blood alcohol exceeding 30 milligrams per 100 millilitres of blood (person under 20)	3 months
57A	Driving while impaired with blood that contains evidence of use of qualifying druge	First or second offence: 3 months Third or subsequent offence: 2 years
60	Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test	First or second offence: 3 months Third or subsequent offence: 2 years

## Crimes Act 1961

Section	Offence	Maximum Imprisonment Term
<i>Crimes Against Public Order</i>		
86	Unlawful Assembly	1 year
87	Riot	2 years
92	Piracy	14 years
<i>Crimes Against Religion, Morality and Public Welfare</i>		
128B	Sexual Violation	20 years
129	Attempted Sexual Violation	10 years
129	Assault with intent to commit sexual violation	10 years
Note: all the sex crimes have sentences with maximum imprisonment terms of a minimum of 3 years		
145	Criminal nuisance	1 year
150	Misconduct in respect of human remains	2 years
<i>Crimes Against the Person</i>		
154	Abandoning chld under 6	7 years
196	Common assault	1 year
Note: other forms of assault are more serious with higher maximum terms. Other forms of assault have aggravating factors.		
201	Infecting with disease	14 years
202	Setting traps	s 202(1) - 5 years, s 202(2) - 3 years
206	Bigamy	7 years
209	Kidnapping	14 years



# RV1.25

- As was stated earlier, if someone is liable for deportation (or has the deportation liability suspended) but leave New Zealand with expired travel conditions, while they do not hold a residence class visa they are not liable for deportation.
- To prevent people from becoming liable for deportation making them ineligible to apply for a permanent resident visa, going offshore with expired travel conditions, and applying for and obtaining a permanent resident visa, Mike Harvey from resolutions created this instruction in 2014.
- The wording of RV1.25.a - RV1.25.d mirror the aforementioned deportation liability instructions. (D2 Deportation)
- RV1.25 states that “Applications from a person who no longer holds a resident visa, but who is eligible for consideration for a permanent resident visa, or a second or subsequent resident visa, will normally be declined if” the person would be liable for deportation if they still had a resident visa.



# RV1.25 VS A5.25

- Before an application can be declined however, an immigration officer must take certain actions and take certain things into account, which are identical to what must be taken into account for a character waiver – the purpose of both instructions and therefore how they are assessed are different.
- There is a strong interrelationship between these instructions – but it is not guaranteed that the character waiver will be approved just because the ETI is. Practically speaking technical advisor and an immigration manager need to both agree that a visa should be granted in order for that to happen.
- Although it is possible, the grant of a permanent resident visa as an exception to instructions will usually only ever happen if a deportation liability has been previously cancelled.



# RV1.25 VS A5.25

- Because of the strong interrelationships between the two instructions, practically assessing them from the perspective of an immigration officer is quite straight forward, as a request for an exception to immigration instructions will follow a very similar format to that of a character waiver.
- Process:
  - PPI applicant on both instructions at the same time.
  - Contact resolutions to obtain information on the deportation liability suspension (if applicable), or for general advice
  - Request the exception to immigration instructions first from your IM. Send your IM an email in a very similar format/identical to how a character waiver would be written.
  - If the ETI is declined, then you do not need to do the character waiver and can decline the application.
  - If the ETI is granted, do the character waiver and pass it to your TA for consideration.
  - Inform resolutions of any approved visas.



## SIDE NOTE: UNINTENDED CONSEQUENCE

- A person whose deportation liability has been suspended has officially been served a deportation liability notice, but has not been deported due to the suspension.
- Because of the way they are written, RV1.25.e and RV1.25.1.a, state that an application may be automatically declined without further consideration. Practically though this would never happen due to fairness and natural justice, and the same considerations will be had under RV1.25.1 as would be had if the deportation liability notice had not been served.



# S15/S16 – SPECIAL DIRECTIONS

- Section 15 – convictions resulting in imprisonment of more than a certain period (more than 12 months in the past 10 years, or ever been imprisoned for 5 years or more), or any previous deportation/exclusion from NZ or any other country.
- Section 16 – people likely to commit a crime in NZ or to be a threat to security, public order or the public interest – you will almost never see this.
- Almost always, people that fall under section 15 will have had a special direction before – ppi them and recreate the special direction. Make special note of any material change in circumstances, as this might affect your IM's decision on the special direction.





## A5.25.5 – CHARACTER WAIVERS

- People convicted of certain offences will require a character waiver in order to be granted a residence class visa.
- Includes offences related to drugs, sexual offending, dishonesty, violence, providing INZ with false & misleading information, being imprisoned at any time (home detention counts), or driving offences within the last 5 years. – Most convictions fall under A5.25.5 in some way. See A5.25.5 for a full list.
- As of 25/09/2023 a full character waiver process now consists of one combined PPI and an assessment:
  1. We ask the applicant about BOTH the character issue, AND why they want a waiver.
  2. Character waiver assessment – complete Part 1 and relevant sections of Part 2 if applicable and the rest will be completed by your TA.



# FAST-TRACK CHARACTER WAIVERS

- If an applicant had a character waiver completed as part of their residence class visa application, the provisions of A5.25 that applied will likely still apply for their permanent resident visa application, and therefore they would require another character waiver.
- The fast-track process can be used if:
  - A character waiver under A5.25 has been previously completed
  - The applicant has not declared any further the character concerns, and they declared the character concern that requires the character waiver
  - Instructions under which the previous character was granted have not changed since it was granted
  - There is not indication, such as in alerts that the applicant would have any further character concerns
  - The applicant's personal circumstances have not materially changed since the previous character waiver was granted.



# FAST-TRACK CHARACTER WAIVERS

- If you decide an applicant meets the fast-track character waiver process, consult with a TA to see if they agree. If you did not initially request an NZPC, the TA may request you do that before proceeding with the process.
- The TA will then ‘approve’ a character waiver by making a note in AMS, such as:
  - “PRV Character waiver:
  - Applicant has character concerns (Offence of Breath Alcohol Level Over 400 Mcgs/Litre of Breath Blood/Breath = 760, dated 28/02/2015) that falls under A5.25(f) and A5.25(h). The applicant was granted a character waiver for these concerns in their Residence application. A new NZPC was requested and INZ received outcome dated 24/05/2019 - Released with Result (only contained the conviction waived in RV stage). No new information declared in PRV application. I have considered the applicants circumstances, note that we do not have information to suggest they have changed materially since the grant of the previous character waiver and will grant a character waiver.”



- Alerts, Notes, Template Letters, Check PRV Form,
- Family Violence Convictions – request NZPC
- No new info (new info that does not relate to the conviction or doesn't require a character waiver by itself) – Fast Track Character Waiver
- And/or take into consideration anything new that contributes/demonstrates ones character.
- E.g. new police call outs, a new conviction etc. then proceed with normal character waiver process.
- Traffic infringements etc. just make a note, if they haven't been to court we don't need to look further.
- Declined visas for other countries – were they refused? Cancelled? Excluded? → clarify with client, check residence application for any info first.
- Suspended DLN, check when the suspension period ends, not currently eligible for PRV, VOTC, PPI on what they do not meet.
- INZ Declined visas- check for why it was declined? False or Misleading info provided? Note it.

