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# Mandatory visa cancellation kit



# Mandatory Visa Cancellation Kit

This kit is for people who are not Australian citizens, who are serving a prison sentence, and:

- are at risk of having their visa mandatorily cancelled or
- have already had their visa mandatorily cancelled.

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## Acknowledgment

The Legal Services Commission gratefully acknowledges Victoria Legal Aid ([www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)) for originally producing this resource and allowing us to adapt it for use in South Australia.

## Disclaimer

This kit has been prepared as a guide only and it is not a substitute for legal advice.

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## What is a mandatory visa cancellation?

There are laws that mean the Department of Home Affairs (the Department) must automatically cancel a person's visa if they have a 'substantial criminal record'. This means the person is:

- currently serving a full-time prison sentence **and**
  - has been sentenced to imprisonment for 12 months or more (including time already served) **or**
  - has been sentenced to life imprisonment **or**
  - has been sentenced to death **or**
  - has been found guilty of a sexual crime involving a child.

## How does a mandatory visa cancellation work?

There are two main steps:

1. The Department is notified that a person has a substantial criminal record. This will happen while the person is in prison.
2. The Department will give or send the person a letter cancelling their visa. This is called a 'Notice of Visa Cancellation'.

The letter lets the person know that they can apply to revoke the Department's decision. 'Revoke' means asking the Department to reverse its decision to cancel the visa.

While waiting for the Department to consider revocation, the person will continue to be detained, either in prison or immigration detention.

If the Department does not agree to give back the visa, the person must leave Australia as soon as possible after their sentence is completed. If a person has already finished their sentence and is in immigration detention when the Department decides not to give the visa back, they will be removed from Australia as soon as possible.

## Will my visa be mandatorily cancelled?

Yes, if you meet the criteria for mandatory visa cancellation.

You may not be expecting a mandatory visa cancellation because you grew up in Australia and thought you were an Australian citizen. Check your citizenship status with a family member if you do not have an Australian passport.

Even if your visa is not mandatorily cancelled, the Department still has other powers to cancel your visa on 'character grounds' and may send you a letter called a 'Notice of Intention to Consider Cancelling Your Visa'.

If the Department sends you one of these letters, or you think that the Department may cancel your visa, get legal advice immediately. You can contact the Legal Services Commission. See **Where can I get legal help?** on page 10.

## Can I challenge a mandatory visa cancellation?

Yes. The letter will tell you that you can ask for a revocation of this decision.

If you would like to get your visa reinstated (get your visa back), you will need to apply for revocation of the Department's original decision to cancel your visa.



## What are the time limits?

You have strictly **28 days** to apply for revocation from the date of the letter.

If you miss the deadline to apply, your application may be refused. You can be removed or deported from Australia once you finish your prison sentence.

## What will the Department send me?

The Department will send you a 'Notice of Visa Cancellation' as well as:

- a Revocation Request Form
- a Personal Details Form
- a copy of Ministerial Direction 110 (or Ministerial Direction 99, if sent after 3 March 2023 and before 21 June 2024)
- a prepaid envelope addressed to the Department.

## What does the Department look at in my application?

Ministerial Direction 110 is a legal document that sets out what the Department will consider when deciding your revocation application.

There are 5 main areas the Department will investigate:

- whether they need to protect the Australian community from you
- whether your past behaviour involves any family violence
- how long you have lived in Australia and your ties to Australia including whether you have lived in Australia from a young age
- whether you might put a child at risk (for example, do you have contact with a child and is this contact good or not good for the child's upbringing?)
- whether the Australian community would expect a person in your situation to be allowed to stay in Australia.

The Department will also take into account whether you are a refugee, and if there would be significant problems for you in returning to your home country including health issues.

## What do I need to do in my application?

In your application, you will need to:

- fill in forms correctly
- show why you are not a threat to the Australian community or to children
- get your application in on time.

To put together a strong application, follow these 4 steps.

## Step 1: Fill out Revocation Request Form and Personal Details Form

### Revocation Request Form

1. Fill in your personal details on the first page.
2. Fill in your name, sign and date the declaration on the second page.
3. Also on the second page, mark either the 'Yes' or the 'No' box. Yes means you allow the Department to seek information about you and your situation. No means you do not allow the Department to seek information about you and your situation.

The Department needs your consent before it can check any information that you provide. Sometimes the Department will need to contact your family and friends when assessing whether you should get your visa back. For 'Part A – Reasons for requesting revocation' on the third page, you can write a short version of the reasons why you should keep your visa. This is where you need to write about the 5 areas set out in Ministerial Direction 110.

### Personal Details Form

1. Fill out the 'Personal Details Form' in as much detail as you can.
2. Include details of family members you wish the Department to speak to.
3. You should prepare a brief cover letter advising that you will be providing further supporting documents shortly. See **Attachment A – Revocation request letter template** on page 11.

It is important to provide a response letter including a detailed personal statement and further supporting documents you can gather as soon as possible. See 'Step 3' and 'Step 4'.

## Step 2: Send in your revocation request

The National Character Consideration Centre (NCCC) within the Department deals with visa cancellation on character grounds. If you are not sure if your visa has been cancelled, call the NCCC on **1300 722 061**.

Submit your application in the prepaid envelope that was given to you when you received your notice. If this is not possible, you can post your documents to:

NCCC  
PO Box 241  
Melbourne VIC 3001

Keep a photocopy of your revocation application for your records.

If you can respond by email, you can send your application to [nccc@homeaffairs.gov.au](mailto:nccc@homeaffairs.gov.au).

## Important

**You must submit your Revocation Request Form and Personal Details Form within 28 days.**

**If you need more time to provide your response letter including your detailed personal statement and further supporting documents, you can provide these up until a decision is made on your revocation request.**

**However, if you submit your Revocation Request Form and Personal Details Form after 28 days, you will have lost the right to apply for revocation and your visa will remain cancelled.**

### Step 3: Gather supporting documents

Gather support letters and documents that back up what you are saying.

These may include:

- letters or statements of support from family and friends, community members, past and/or future employers
- certificates of any courses completed in custody
- letters from medical professionals if you have any physical and/or mental health conditions
- business or community references
- judge's sentencing remarks from your case
- any material provided to the court on your behalf, for example, a psychological report
- if you had a protection visa, a copy of your protection visa application and supporting documents, including any decisions made by the Department or Administrative Review Tribunal.

See **Attachment B – Supporting documentation** on page 12 for more ideas.

See also **Attachment C – Guide to writing a letter in support** on page 14 that you can give to people (family members or friends) when you ask them to write a letter.

### Step 4: Write a response letter

Your response is your chance to explain why you do not want to, and should not have to, leave Australia. You need to include the following information:

#### A. Primary considerations

##### 1. Protection of the Australian community

The Department must consider the risk of you reoffending, especially if your offending has included violence. Crimes of a violent or sexual nature against women or children and acts of family violence are viewed very seriously, regardless of the sentence imposed.

**a. The nature and seriousness of the conduct**

Under this heading you should explain the circumstances around your criminal offending. List all the offences you have been convicted of and write when you were convicted and what the sentences were.

- Mention any special circumstances which made your sentence shorter than normal.
- Did your offences involve any violence? If no, you should say so, if yes, you should acknowledge this.
- Write how much time there has been between each of your offences and how long it has been since your last offence.
- Were there circumstances that might reduce the seriousness of your offences? For example:
  - drug or alcohol addiction at the time of the offence
  - your age at the time of the offence (if you were young)
  - mental health problems at the time of the offence
  - circumstances in your family background or childhood (for example, a history of violence or abuse against you)
  - other circumstances (for example, you lost your job, had problems in your family or with your partner or children)
  - any information that shows that it was less serious than other examples of the same offence, such as the behaviour of a co-accused.
- Did the judge or magistrate who sentenced you say anything about any of the circumstances above? If they did, include what the judge or magistrate said.
- Here you have a chance to show that you understand the effects of your behaviour on others (for example, the victim, your family) and to explain how you feel about this.
- If you have done something, or tried to do something, to show you are sorry for what you did (for example, apologise or pay compensation to the victim(s) of your offence(s)) explain this here.
- If there is anything else about your offence(s) that you want the Department to understand, explain it here.

**b. The risk to the Australian community**

Under this heading you should provide details about anything you have done or have decided to do to improve your situation. For example, have you completed programs in prison? Do you have evidence of clean drug tests, if relevant? Can authorities within the prison, or anyone else, provide a character reference for you?

You should include evidence that is favourable to you from recent psychological reports, pre-sentence reports, parole assessments or comments from the judge who heard your case. For example, if there are comments from the judge that you are taking steps to turn your life around or that you are generally of good character, these comments should be quoted in your letter.

Think about the situation you were in before you went into prison and what caused you to offend. Explain what you have done to change yourself and your circumstances to reduce the chance that you will re-offend. For example, whether you have:

- done any courses to deal with drug or alcohol problems
- done any courses or had any therapy to deal with mental health problems or behaviour problems (for example, anger management or decision-making)
- done any educational courses (such as literacy or vocational courses) to improve your ability to get a job and be a useful member of the community.
- If you have done any courses, explain how they have helped you.
- If you feel you have made other positive changes, write how you have made those changes and how you are different. Who else has noticed the change and what did they see that was different? Include a letter of support from people who have noticed your changes.
- If you have never breached a court order (for example, parole, bail, bonds, suspended sentences, or other promises to the court) or if your last breach was years ago, you should write this.
- If you have never breached prison rules, or if you have a prison record showing that you have not breached prison rules for a period of time, write this.
- Talk about any good things that you have done in the past for your family, friends, or community. For example, unpaid (or volunteer) community work; coaching sport; caring for a sick or disabled person; caring for children; attending church and/or helping the church community.
- Write who you will live with when you are released.
- Who will help to keep you out of trouble? Explain how they will help you to not offend again.

## **2. Family violence by the visa holder**

The Australian Government is seriously concerned about allowing visa holders who engage in family violence to remain in Australia. Therefore, the Department will consider **all** information and evidence about possible acts of family violence regardless of whether you were convicted of an offence, and regardless of the sentence imposed.

If your past offending has included family violence, it is important to show to the Department that you have accepted responsibility for your conduct, and that you understand the impact of your behaviour on the victim of the abuse and any witnesses, such as children.

You will need to explain how you have tried to change your behaviour and provide evidence of any counselling or relevant programs that you have completed.

## **3. The strength, nature and duration of your ties to Australia**

The Department must consider the effect on your family in Australia if you were deported. Under this heading, you should list all the family members you have in Australia. You should provide details about the nature of your relationship with each member of your family, how they are dependent on you emotionally, financially and physically and the effect it would have on each of them if you were deported.

You should also provide information about any difficulties your family would have visiting you overseas, or adapting to the culture and language of the country to which you may be deported, if they were to leave Australia with you.



You should include letters or statements of support from your family members.

The Department must consider whether you were a child when you began living in Australia, as well as the amount of time you lived in Australia before you were convicted of a criminal offence. Under this heading you should state how long you have been in Australia and how long you were in Australia before being convicted of a criminal offence. This part is especially important if you arrived in Australia at a young age.

Under this heading, you can also outline your level of education, including any efforts you have made to improve your education and contribute to the Australian community. You should also outline your past employment, current employment and future employment opportunities.

#### **4. Best interests of minor children in Australia affected by the decision**

The Department must consider the best interests of your children, if you have any.

Under this heading you should provide as much detail as possible about your children. This includes how many children you have, how old they are, who they live with, your involvement in their lives and how they would be affected if you were deported.

If they would have to leave Australia with you if you were deported, you should let the Department know how you think this would disadvantage them in terms of education or health.

You should provide evidence to support the information you give the Department about your children. This could include, for example, a court order that shows you have contact rights with your children, or letters or pictures from your children.

#### **5. Expectations of the Australian community**

The Department will consider whether the Australian community would expect your visa to be given back, despite your criminal offending. It is presumed that where serious violent or sexual offences have been committed against vulnerable members of the community, the expectation would be that you would not be allowed to remain in Australia.

Write and gather information about the circumstances of your offence that show the community why it is important for you to remain in Australia.

For example, were you a child at the time of the offending? Were you addicted to drugs and are you now rehabilitated? Were you suffering from a mental illness? Are there any other reasons to suggest that the Australian community would expect you to keep your visa?

### **B. Other considerations**

#### **1. Legal consequences of decision**

When considering your application, the Department must be mindful that they are to remove non-citizens as soon as reasonably practicable.

If you got a visa because you were a refugee or if you came to Australia on a refugee or special humanitarian visa, write this and briefly explain what made you (and/or your family) leave your country of origin.

If it is a long time since you left your country of origin but you still fear returning, write this and give reasons.

If you did not come to Australia as a refugee but you fear persecution (serious harm) in your country of origin because of your race, religion, nationality, membership of a particular social group or political opinion, explain this. You should also get legal advice to see if you should apply for a protection visa.

If you fear that you would face other types of harm, for example death, or torture and cruel, inhuman or degrading treatment or punishment in your country of origin, you should write this and explain why you fear this harm. This may be the case if, for example, your country of origin is at war (with another country or there is a civil war) or if you feel that you may face the death penalty for crimes you may have (or may be suspected of having) committed. If you feel that this section applies to you, get legal advice.

## **2. Extent of impediments if removed**

The Department must consider any difficulties you may face if removed from Australia, given your age and health.

If you are elderly and believe you would be unable to access aged care or support in the country to which you may be deported, you should state this. Include any information you have that supports your view.

If you have a disability or your health is not good, you should state this. You should include a report from your doctor, psychologist or other professional about the nature and extent of your disability or health issue. If you believe you would be unable to access disability or health services in the country to which you may be deported, you should provide any information you have that supports your view.

## **3. Impact on Australian business interests**

The Department must consider your ties to business and the community in Australia. Under this heading you should provide information about your business responsibilities, if any, in Australia.

If this consideration applies to you, think about whether there would be an impact on Australian business interests if you are not allowed to remain in Australia. Would it affect the delivery of a major project or delivery of an important service in Australia?

You should also provide information about any community services that you provide or other connections you have to the community.

Include any evidence, such as business or community references.

## **C. Personal Statement**

You should include a personal statement addressing your current circumstances. For example, what are your plans for the future? What will you contribute to the Australian community? What steps will you take to not re-offend? Are you remorseful (do you regret, are you sad) about your offending?

Post or email your response letter, together with the supporting documents you have gathered, to the National Character Consideration Centre (NCCC) as per **Step 2**.

## What happens after I apply?

The Department will send you a letter to let you know that they received your revocation application. The Department will begin assessing whether you should get your visa back. If the Department has any information that may disadvantage your application, they will write to you to ask you to comment on that information.

Once the Department makes its decision, you will be sent a letter telling you what has been decided.

## Can I challenge a decision if my revocation is denied?

Yes. You have 2 options:

- if a staff member of the Department made the decision, you will have **9 days** to apply to the Administrative Review Tribunal (ART)
- if the Minister made the decision, you will not be able to go to the ART. You may have grounds for appealing the Minister's decision to the Federal Court.

Challenging a decision about revocation can be very hard. Get legal advice.

## What happens if I do not get my visa back?

If the Department cancels your visa, and the Department or the Minister refuses your revocation application, you can only stay in Australia if you get another type of visa.

If you do not get your visa back, you will have to leave Australia and go back to the country where you are a citizen. This is usually where you were born.

You will never be able to return to Australia.

## What about parole? Will I be released into the community?

The Department will usually notify the prison when the decision is made to cancel your visa.

It is unlikely that you will be granted parole because you will not be able to abide by any parole conditions once you are taken into immigration detention.

If you are a New Zealand citizen, it may be possible to serve your parole period in New Zealand. This is something you should discuss with your lawyer.

## Where can I get legal help?

### Legal Services Commission

The Legal Services Commission can provide preliminary advice about your rights. You should apply for revocation immediately just in case it takes some time to speak with a lawyer.

If you are in immigration detention, or have family members in South Australia who can call on your behalf, they may telephone:

- our free Legal Helpline on **1300 366 424** or
- our Migration Team on **(08) 8111 5539**.

**In prison:** You can ask your CMC or a social worker to book you an appointment with a Legal Services Commission lawyer from our Migration Team.

## Attachment A – Revocation request letter template

Date: \_\_/\_\_/----

National Character Consideration Centre  
Department of Home Affairs  
PO Box 241  
Melbourne VIC 3001

By facsimile: (03) 9235 3636

or

By email: [nccc@homeaffairs.gov.au](mailto:nccc@homeaffairs.gov.au)

Dear Sir/Madam

**Full name:** \_\_\_\_\_

**Department reference no:** \_\_\_\_\_

### **Revocation request of my mandatory visa cancellation**

I refer to your Notice of visa cancellation dated \_\_/\_\_/----

I enclose my request for revocation of my mandatory visa cancellation.

I will be providing further documents to support my revocation request shortly.

Yours faithfully

(Signature)\_\_\_\_\_

(Print name)\_\_\_\_\_

## **Attachment B – Supporting documentation**

Where possible, you should provide evidence to support the information you give to the Department.

Such evidence could include:

### **Evidence of rehabilitation**

- Pre-sentence reports that include favourable information such as reasons or an explanation for your offending, positive comments on the likelihood of reoffending or the seriousness of the offence
- Parole reports (including a reference from your Community Corrections Officer)
- Psychological or psychiatric reports on your risk of reoffending
- Written references from prison officers, counsellors, official visitors or Chaplains, who can say how you have progressed or improved whilst you have been in prison, that you have been 'rehabilitated' and that you are a 'model' prisoner
- Evidence of any work you have done in prison and reports related to it
- Evidence of any courses or programs you have completed whilst in prison and copies of any certificates
- Details of any medical/psychiatric treatment including any drug or alcohol rehabilitation.

### **Evidence of ties and contribution to the community**

- Statements from your family and friends, especially anyone dependent on you
- Statement from your partner about you and your relationship
- Statements from friends who are Australian citizens or permanent residents
- Evidence of any courses you have completed or attended
- References from past, present and future employers
- Evidence of any guarantee of future work
- Statement from a leader of a community group
- Evidence of any offices held in community or public affairs
- Evidence of membership of Trade Union, Professional Associations etc
- Evidence of membership of social clubs or church groups (give precise details of extent)
- Evidence of any significant contribution to the community (material, financial, cultural, political, religious, community services, etc)
- Evidence of educational qualifications
- Evidence of trade qualifications, skills and experience (details of courses)
- Evidence of employment prior to arrival in Australia
- Any other evidence of your ties with and contribution to the community
- Evidence of attendance at school or tertiary education in Australia



- Evidence of any childhood activities in Australia (e.g. sports clubs, recreational activities, music)
- Evidence of how long you have been in Australia (e.g. tax records, employment, property ownership).

### **Evidence of your family in Australia**

- Birth certificates for all your children
- Citizenship certificates for all family members who are Australian citizens
- Evidence of permanent residence for all family members who are Australian permanent residents
- Evidence of any court orders in relation to your children in Australia
- Evidence of your children's schooling in Australia
- Evidence of the circumstances for your children in the country you would have to return to (e.g. international reports, letters from experts, newspaper articles)
- Any psychological reports of the impact on your children or other dependent family members.

### **Evidence of humanitarian issues**

- Information about life in your country of citizenship (for example country reports), relevant human rights issues and standards, especially if you originally came to Australia as a refugee
- Medical reports about the nature and extent of your health issue(s) (if any)
- Evidence of the lack of medical facilities/treatment/medication in your country of citizenship for any medical conditions you have, and the likely consequences that this will have on your recovery or condition
- Evidence of any disability that affects your ability to argue on your own behalf.

## Attachment C – Guide to writing a letter in support

To: \_\_\_\_\_

My visa has been cancelled and I am applying to get it back. I would be grateful if you could write a letter in support of me getting my visa back. I have only **28 days** to provide all my supporting documents so please prepare this letter as quickly as you can.

Please address your letter to the Minister of Home Affairs, but send it back to me, and I will provide it to the Department together with my other supporting documents.

These are some of the things you could cover in your letter:

### Your relationship with me

Things that you might want to talk about in your letter:

- Who you are and how you know me
- How long you have known me
- Do you know about my background? Have I had a difficult life?
- Despite the criminal charges, why do you still think I am a person of good character?

### Me as a person

Things that you might want to talk about in your letter:

- Am I a good and respectable person?
- Why you believe this criminal offending happened
- Whether this is the type of behaviour that I normally engage in or this is out of the ordinary, or out of character
- What type of person am I normally?
- My employment or other work

### Me as a member of the community

Things that you might want to talk about in your letter:

- What does my local community think of me and how have they reacted to the criminal behaviour?
- What support is there for me within my community?
- What support, if any, can you provide me upon my release from prison?
- Before I went to prison, was I an active and contributing member of the community?
- Why do you think I should be able to stay in Australia?

## Other things

In your letter you can talk about other matters as well. The above matters are just suggestions. You can include anything in your letter that you think is important for the Department to know about me.

Please provide me with your signed letter by \_\_/\_\_/\_\_\_\_\_.

Please include your contact details in the letter in case the Department of Home Affairs wants to contact you about me.

Thank you for taking the time to support my application to get my visa back.

Yours sincerely

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