

Any person in Australia who is not a citizen is at risk of having their visa cancelled and being deported. This includes people on permanent visas, on New Zealand Special Category visas, and even if you were born in Australia and are not a citizen.

Visas may be cancelled for criminal behavior, for giving false information to the government, not following visa conditions, and for not proving your identity. Get urgent legal advice if any of these may apply to you.

If the Department of Home Affairs (DHA) sends you a Notice of Intention to Cancel or a Notice of Cancellation you have a short time to provide information to try to stop the cancellation.

There are different time limits to respond depending on who made the decision and under what section of the Migration Act. The decision letter should say what the time limit is. **See a migration agent/lawyer urgently.**

A person without a visa must by law be detained. If you cannot apply for any other visa you will then be removed from Australia.

FAILING 'CHARACTER TEST'

Permanent and other visas may be cancelled or refused if the non-citizen does not pass 'the character test' under section 501 *Migration Act*, because of:

- 'substantial criminal record' – you have one or more sentences from now, or from before, that add up to more than 12 months prison
- risk of engaging in future criminal or harmful conduct in the Australia community
- past or current criminal or general conduct
- committing an offence or escaping when in immigration detention; association with suspected criminals; suspected of people smuggling or trafficking; sexual offence involving a child; risk to national security; or charged with a serious international crime.

If you have had a visa refused or cancelled on character grounds since you last arrived in Australia the only visa you can apply for is a Protection visa.

If your visa is cancelled on character grounds and all appeals fail, you will be removed from Australia and **never allowed to return** unless the Minister personally grants you a new visa.

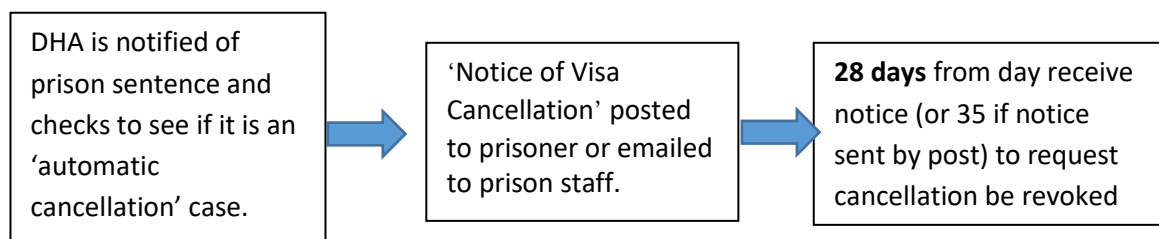
SOME PRISONERS' VISAS CANCELLED AUTOMATICALLY

For some people in prison, their visas will automatically be cancelled and they then have 28 days to argue that the decision to cancel should be reversed (revoked).

The Minister must cancel the visa of a non-citizen who is in prison serving a sentence AND:

- has been sentenced to 12 months or more in prison at any time OR
- has been convicted of a sexual offence involving a child in Australia or another country at any time.

The 12 months is taken from the 'head sentence', not from the time actually served – it does not matter if the sentence is partly suspended or there is an early parole release date.



Request to revoke cancellation

You can ask for the decision to be reversed (revoked) by lodging two forms - Revocation Request form and Personal Circumstances form, with the National Character Consideration Centre. Forms must reach DHA within the time limits above. The time limit cannot be extended. There are no application fees.

Put in as much information covering 'Direction 79 considerations' (see below). Once the forms are lodged, you can put in other information until a decision is made on your request.

Appeals if request to revoke unsuccessful

If DHA refuses the request, you have **9 days to apply** to the AAT (Administrative Appeals Tribunal) to look at your case again. [Click for info online](#). If the AAT does not overturn the cancellation you have 35 days to apply to Federal Court to check if the proper legal process was followed. If not, the Court sends it back to be decided again ('judicial review').

If the Minister or Assistant Minister personally decides to refuse the revocation request, you cannot ask the AAT to review. You can only ask the Federal Court to review the decision.

After criminal sentence is finished

Visa cancellation does not change your parole eligibility or parole release date. If your visa is cancelled, then, upon release from prison, you must go into immigration detention or return to your country of citizenship to await a decision.

TRYING TO OVERTURN 'CHARACTER CANCELLATIONS'

You will get a chance to argue against a visa cancellation but you must give information to DHA within the time limits. Get legal advice urgently.

You will need to provide information to DHA from yourself plus family, friends, employers, and other key people and organisations. It is best if the statements are properly witnessed 'Statutory Declarations' rather than letters.

Under Freedom of Information law, you can request copies of your immigration files, and any prison files, to help you prepare your case.

In deciding character cases DHA looks at these following 'Direction 79 considerations':

MAIN CONSIDERATIONS

The information you provide must cover:

- protection of community – how serious your conduct has been and what risk there is that you will reoffend. Be totally honest about your criminal record and what led to the crimes and how things have changed for the better so that you are no longer a risk to the community.
- best interests of children under 18 – do you have children/grandchildren here and whether you are in a close relationship with them? How will you play a positive role? Will the other parent, and others, write statements supporting you?
- expectations of community - how serious are your offences? Is there information showing there is now less risk that you will re-offend?

OTHER CONSIDERATIONS

Other information you could provide should cover:

- your ties to Australia – how long you've been here, family and social links
- problems and harm you would suffer if returned to your home country
- effect on Australian business
- effect on the community, including on any victims of your crimes.

If the cancellation decision is not overturned, then there are appeals to the Administrative Appeals Tribunal (AAT) and the Federal Court. If the Minister or Assistant Minister personally makes the decision then there is only review to the Federal Court, not the AAT. You will be kept in immigration detention until a decision is made. Get legal advice urgently.

See [Visa Cancellation Kit](#) by Prisoners Legal Service at www.plsqld.com

NON-CITIZENS FACING A CRIMINAL SENTENCE

If you are a non-citizen facing a criminal sentence then before your case is dealt with in court make sure your criminal lawyer knows about possible visa cancellation. Authorise your criminal lawyer to get advice from an experienced migration agent/ lawyer.

Before being sentenced the court should be told about any possibilities that your visa may get cancelled which would lead to immigration detention and removal from Australia. This should include details of any hardship if you were deported, for example, separation from your family, limited employment opportunities in your country of origin, or no access to medical treatment.

OTHER CANCELLATIONS

As well as character grounds, a visa can be cancelled if, you cannot prove your identity, or you gave false information to DHA, or offered a bribe to someone that led to getting your visa.

A temporary visa (but not a permanent visa if you are in Australia) can also be cancelled if you do not obey your visa conditions; or your situation changes (for example, your visa sponsor withdraws the sponsorship); or if the Minister believes you are or may be a threat to the health, safety, or good order of the community.

Responding to Notice of Intention to Cancel

If DHA sends a 'Notice of Intention to Cancel' your visa, you have five working days to respond to them. If however DHA detains you for questioning, you only have four hours to respond before they decide. If cancelled, you can appeal to the AAT unless the decision was made by the Minister personally. There are strict time limits that will be stated in the DHA letter.

The information to provide to try to stop cancellation should cover:

- your ties to Australia – how long here, family and social links
- problems and harm you would suffer if returned to your home country
- effect on you and any family or business in Australia if visa cancelled
- whether you followed visa rules. Whether you can prove DHA have the wrong view.
- what community support you have.

If visa cancelled for 'non-character' reasons

People cancelled for non-character reasons may still be able to apply for protection, partner and bridging visas. If you cannot get any of these visas you must leave Australia and will have a three year ban on applying for another visa unless you can prove there are very strong reasons affecting the interests of Australians not to have the ban

THIS IS NOT LEGAL ADVICE. SEE A MIGRATION AGENT/LAWYER URGENTLY