

Bridging Visa E Cancellation

What Happens

When a person's Bridging Visa is cancelled, they become an unlawful non-citizen and are detained. A decision to cancel a Bridging Visa E (BVE), is not necessarily a final decision of your immigration status.

Why the BVE may be cancelled

Your Bridging Visa may be cancelled because:

- You have been charged with a criminal offence; or
- You have been convicted of a criminal offence; or
- You have breached your visa conditions

If you have been charged or convicted of an offence, the police will send information about the charge or conviction to the Department of Home Affairs (the 'Department').

If this has happened, you will ordinarily receive a letter from the Department inviting you to an interview to explain. The letter should state the particular grounds for cancelling your visa.

How do they decide to cancel my visa?

The decision maker (also called the 'the delegate') is guided by Ministerial Direction 63, which sets out what the delegate should consider before deciding whether or not to cancel your Bridging Visa.

Primary Considerations

Primary considerations will generally be given greater weight than any secondary considerations.

The primary considerations are:

- The need to rigorously apply the prescribed grounds of cancellation in line with Australia's low tolerance of criminal behaviour; and
- The best interests of children under 18 in Australia who would be affected by a cancellation.

Secondary Considerations

The secondary considerations are:

- The circumstances of conviction or charge – including whether it is serious or not, or if there are any mitigating factors;
- The impact of cancellation on the family unit (separation);
- The degree of hardship you would experience if sent to detention, including;
 - Mental physical health problems that would be made worse in detention
 - Financial concerns
 - Disruption to education or job
- Consequences of cancellation such as indefinite detention, especially if you are waiting to lodge a protection visa; and
- Any other relevant matter.

Interview

You want to show that either the ground(s) does not exist for the cancellation or, if it does exist, why the visa should not be cancelled anyway.

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To prepare for the interview you could ask your doctor (psychologist/counsellor) to write a short statement of support.

This statement of support should include:

- The impact of detention on your health, including your mental health;
- What your separation from your family would mean for them;
- Addressing any of the above primary or secondary considerations they are able to comment on.

It is important to remember that this interview is not a criminal trial. However, anything you say could be used against you as evidence if you do have to go to court for a criminal matter.

It is also important to remember that the interview is not a Protection Visa interview. If you talk about your reasons for coming to Australia, you need to make sure any information you provide is consistent with information you have provided or will provide in your protection visa application.

What can I do if my BVE is cancelled?

If your BVE is cancelled, you can appeal to the Administrative Appeals Tribunal (AAT) in the Migration and Refugee Division. You have **2 working days** to lodge the appeal. Working days means Monday to Friday and does not include Saturday and Sunday.

At the AAT hearing you should raise all of the primary and secondary considerations discussed above.

The AAT will have access to all of the information the Department has. They make their decision guided by the same considerations. The hearing will be conducted by a member of the AAT.

After the hearing they will decide whether to:

- Affirm the decision of the Department and cancel the visa; or
- To remit the decision of the Department and reinstate the bridging visa.

If you are considered to be an Irregular Maritime Arrival (IMA), the law prohibits you from lodging any further visa application without the personal intervention of the Minister.

Useful Contacts

Legal Aid ACT

9.00am-4.00pm Monday-Friday

www.legalaidact.org.au

Phone: **1300 654 314**

Migration Agents Registration Authority (MARA)

www.mara.gov.au

Migration Clinic – Legal Aid ACT

www.legalaidact.org.au

Phone: **1300 654 314**

Email: migration@legalaidact.org.au

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This factsheet was originally developed by the Refugee Advice & Casework Service Sydney (RACS) (www.racs.org.au).

This factsheet is a guide only and is not legal advice. While due care has been taken to ensure the accuracy of the material contained in this factsheet, Legal Aid ACT and the Refugee Advice & Casework Service Sydney cannot take responsibility for any errors or omissions.

Complaints & suggestions: If you have any complaints or suggestions about our services, please write to the Chief Executive Officer at our postal address.

Interpreter: If you need an interpreter, please contact Translating and Interpreting Service (TIS) on 131 450.

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