

Mandatory Visa Cancellation

This fact sheet is for people who are not Australian citizens and are serving a prison sentence.

What is a mandatory visa cancellation?

There are laws that mean the Department of Home Affairs, previously the Department of Immigration and Border Protection (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 12 months or more imprisonment. This includes 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:

- **step one** – the Department is notified that a person has a substantial criminal record. This will happen while the person is in prison
- **step two** – 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. The government says it changed the law to ensure that that a person who may be a risk to the community is not released during this time.

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.

Mandatory Visa Cancellation

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.

Can I challenge a mandatory visa cancellation?

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

There are strict time limits:

- if a staff member from the Department handed you the letter, you have only **28 days** to apply for revocation from the date of the letter.
- if the Department sent you the letter in the post, you will have only **35 days** to apply from the date of the letter.

If you miss the deadline to apply, you will **not** be able to apply for revocation. You can be removed or deported from Australia once you finish your prison sentence.

How do I apply for revocation?

See our fact sheet '**What to do when your visa has been mandatorily cancelled**' to guide you through the process of applying to get your visa back.

What happens after I apply?

The Department will send you a letter to let you know that they got 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, it will send you a letter telling you what they have decided.

Can I challenge a decision if my revocation is denied?

Yes. You have two options:

- if a staff member of the Department made the decision, you will have 9 days to apply to the Administrative Appeals Tribunal (AAT)

Mandatory Visa Cancellation

- if the Minister for Home Affairs, or Minister for Immigration and Border Protection (the Minister) made the decision, you will not be able to go to the AAT. 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 deny 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.

I can get parole. Will I be released into the community?

You may be granted parole even if your visa is mandatorily cancelled. However, because you no longer have a visa, you will be immediately taken to immigration detention by officers from the Department.

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

Where can I get legal help?

Legal Aid ACT 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 the ACT who can call on your behalf, the phone number for our Migration Clinic is: **1300 654 314**.

In prison: Ask your Caseworker to contact the Migration Clinic at Legal Aid ACT.

Phone: 1300 654 314.

Email: migration@legalaidact.org.au

Disclaimer

This fact sheet was originally produced by Victoria Legal Aid (www.legalaid.vic.gov.au).

This fact sheet has been prepared as a guide only and it is not a substitute for legal advice. As with any matter concerning a legal issue, you should seek independent legal advice.

The information contained in this sheet is current as at November 2020.