

## Mandatory Visa Cancellation

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

### What is a mandatory visa cancellation?

If you are currently serving a prison sentence and are not an Australian citizen, you may be at risk of having your visa cancelled.

The Department of Home Affairs ('Department') **must** automatically cancel your visa if you:

- Are currently serving a full-time prison sentence **and**
- Have been sentenced to 12 months or more imprisonment (this includes time already served) **or**
- Have been sentenced to life imprisonment **or**
- Have been sentenced to death; **or**
- Have been found guilty of a sexual offence involving a child.

This is called a mandatory visa cancellation.

### 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 ask the Department to consider revoking its decision to cancel the person's visa. To "revoke" a decision means to reverse it, so if the Department revokes its decision to cancel a person's visa, their visa will be given back to them.

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 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.

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 give us a call on 1300 654 314 to discuss your legal options, or email [migration@legalaidact.org.au](mailto:migration@legalaidact.org.au)

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### 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 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?

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 No 110.
- A prepaid envelope addressed to the Department.

In your application, you will need to fill in the forms correctly, show why you are not a threat to the Australian community or to children and get your application in on time.

If you need more assistance, please contact Legal Aid ACT on 1300 654 314 or email us at [migration@legalaidact.org.au](mailto:migration@legalaidact.org.au)

### 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 be disadvantaged by 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 application is denied?

Yes. You have two options:

- If a staff member of the Department made the decision, you will have **nine days** to apply to the Administrative Review Tribunal (ART).
- If the Minister for Immigration, Citizenship and Multicultural Affairs (Minister) made the decision personally, you will not be able to go to the ART. You may have grounds for appealing the Minister's decision to the Federal Court within **35 days**.

Challenging a decision about revocation can be very hard. **Get legal advice.** Give us a call on 1300 654 314.

### 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

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you are a citizen. 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 detention 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.

*This factsheet was originally produced by Victoria Legal Aid ([www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.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 cannot take responsibility for any errors or omissions.*

### Useful Contacts

#### Legal Aid ACT

Monday to Thursday: 8:30am to 7:00pm

Friday: 8:30am to 5:00pm

[www.legalaidact.org.au](http://www.legalaidact.org.au)

Phone: **1300 654 314**

#### Legal Aid ACT

#### Migration Team

Monday to Friday: 8:30am to 5:00pm

[migration@legalaidact.org.au](mailto:migration@legalaidact.org.au)

Phone: **02 6243 3411**