

What to do when your visa has been mandatorily cancelled

This fact sheet is for people who have had their visa mandatorily cancelled.

What are my options?

The Department of Home Affairs, previously the Department of Immigration and Border Protection, has mandatorily cancelled your visa because of your substantial criminal record.

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?

There are strict time limits for applying for revocation:

- 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 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 No. 90
- a prepaid envelope addressed to the Department.

What does the Department look at in my application?

Direction No. 90 is legal document that sets out what the Department will consider when deciding your revocation application. Part C is what you need to concentrate on.

There are four main areas the Department will investigate:

- whether they need to protect the Australian community from you
- whether the conduct engaged in constituted family violence

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- 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. For example, were you a child when you committed the offence?

The Department will also take into account how long you have been in Australia, whether you are a refugee and what connections you have to the country where you are a citizen.

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 the four steps below.

Important

You must submit your application **within 28 days**.

If you need more time to provide supporting letters and information, you are able to provide further documents up until a decision is made on your revocation request.

If you reply after 28 days, you will have lost the right to apply and your visa will remain cancelled.

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.
4. For 'Part A – Reasons for requesting revocation' on the third page, you can either:
 - write a response letter, gather supporting documents and submit a complete application **or**

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- if you need more time to complete your application, you need to write a short version of the reasons why you should keep your visa. This is where you need to write about the four areas in Part 2 set out in Ministerial Direction No. 90. You should include a letter asking for more time to provide further documents.

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.

Step 2: 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 Appeals Tribunal.

See attached '**List of Supporting documentation**' for more ideas.

See also the attached '**Guide to writing a letter in support**' that you can give to people when you ask them to write a letter.

You have the right to request a copy of your corrections file from the Justice and Community Safety Directorate. It may contain helpful information about your risk to the community. You must fill out a Freedom of Information application form and send it to the Justice and community Safety Directorate. This form is available on the Justice and Community Safety. See the attachment below for what to include in this application form.

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Step 3: 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 re-offending, especially if your offending has included violence. Crimes of a violent nature against women or children 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 which might decrease 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 spouse 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, your family, the victim) and to explain how you feel about this.
- If you have done anything, or tried to do anything, 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.

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- 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 scans, 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 was happening to make you offend. Explain what you have done to change yourself and to change your circumstances, so that there is little 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 to improve your ability to get a job and be a useful member of the community (for example, literacy or vocational courses).
- 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.

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- Who are the people who will help to keep you out of trouble? Why will they help you and what will they do that will help you not to offend again?

2. Family violence committed by the non-citizen

If you have been convicted of an offense, found guilty of an offence, or had charges proven howsoever described, that involve family violence and, or if there is information or evidence from independent or authoritative sources that indicate you have been involved in or perpetrated family violence.

When considering the seriousness of the family violence you engaged in, the Department will consider the following factors where relevant.

- a) the frequency of the non-citizen's conduct and/or whether there is any trend of increasing seriousness
- b) the cumulative effect of the repeated acts of family violence
- c) rehabilitation the non-citizen has achieved at time of decision since the non-citizen's last known act of family violence, this includes;
 - a. the extent to which the person accepts responsibility for their family violence related conduct;
 - b. the extent to which the non-citizen understands the impact of their behaviour on the abused and witness of that abuse (particularly children);
 - c. efforts to address factors which contributed to their conduct
- d) whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware by a Court, law enforcement or other authority, about consequences of further acts of family violence, noting that the absence of a warning should not be considered to be in the non-citizen's favour. This includes warnings about the non-citizen's migration status, should the non-citizen engage in further acts of family violence.

3. Best interests of minor children in Australia affected by the decision

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

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.

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

4. 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.

Write and gather information about the circumstances of your offence which helps the community see 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. International non-refoulement obligations

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 if you fear persecution (serious harm) in your country of origin for reasons of your race, religion, nationality, membership of a particular social group or political opinion, you should 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 give reasons why you fear this harm. Examples might be if 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. Strength, nature and duration of ties

The Department must consider the effects 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.

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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.

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, for example, business or community references.

4. Impact on victims

Was there a particular victim of your offence? Are you likely to see them again? What about the victim's family? If not, write that you are unlikely to see them and they are unlikely to know that you have remained in the country.

5. 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 to support your view.

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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 to support your view.

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?

Step 4: Send in your revocation request

The section of the Department that deals with visa cancellation on character grounds is the National Character Consideration Centre (NCCC). Contact the NCCC if you are not sure if your visa has been cancelled. The number is 1300 722 061.

Submit your application in the prepaid envelope that was given to you when you received your notice. Or you can post to:

NCCC
PO Box 241
Melbourne VIC 3001

Keep a photocopy of your revocation application for your records.

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 July 2021.

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Attachment A

Supporting documentation

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

Such evidence could include:

Evidence of rehabilitation

- Pre-sentence reports which include favourable information such as reasons or an explanation for your offending, positive comments on the likelihood of re-offending or the seriousness of the offence
- Parole reports (including a reference from your Community Corrections Officer)
- Psychological or psychiatric reports on the risk of you re-offending
- 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 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)

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- Evidence of educational qualifications
- Evidence of trade qualifications, skills and experience (details of courses)
- Evidence of employment prior to arrival
- 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 originally you came to Australia as a refugee
- Medical reports about the nature and extent of your health issue (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.

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Attachment B

Guide to writing a letter in support

When asking for someone to write you a letter of support, include in your request:

To: _____

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 is this 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?
- Was I an active member of the community, who contributed/contributes to the local community?
- Why do you think that I should be able to stay in Australia?

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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 about me.

Please could you provide me with your signed letter by __ / __ / ____.

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

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Attachment C

Letter for Freedom of Information application

You have the right to request a copy of your corrections file from the Justice and Community Safety Directorate. It may contain helpful information about your risk to the community. You must fill out a Freedom of Information application form and send it to the Justice and community Safety Directorate. This form is available on the Justice and Community Safety: <https://justice.act.gov.au/about-us/freedom-information>

After completing the application form, you will need to post it to:

Freedom of Information requests
Justice and Community Safety Directorate
GPO Box 158
Canberra City, ACT 2601
JACSFOI@act.gov.au

In the form, you can request full access to and copies of the documents as follows:

Offending Behaviour Program File:

1. records of all programs being undertaken and completed.

Individual Management File:

1. records of sentence management meetings
2. case management notes.

Medical Records File:

1. assessment reports
2. progress notes
3. treatment plans
4. referral information authored by medical practitioners
5. medication summaries and prescription sheets.

You can also include in the application form that you are facing cancellation of your visa and make a request for the fees and charges associated with the application be waived because you are a detainee with no significant assets or income.

Date: __/__/____

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

By facsimile: (03) 9235 3636

or

By email: nccc@immi.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)_____