

# MANDATORY VISA CANCELLATION SELF-HELP KIT

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This information kit is for people who are currently in prison and do not have Australian citizenship.



JUSTICE BEHIND BARS

# About this kit

## **This kit explains what you can do if you are facing a mandatory visa cancellation under s501(3A) of the Migration Act 1958 (Cth).**

It explains who is affected by s501(3A) and provides practical information to Queensland prisoners seeking revocation of the decision to cancel their visa. This kit does not provide information about any other type of visa cancellation.

Information within this kit is current as of 13 December 2017. At the time of printing, the information discussed is correct but may be subject to change.

This kit is intended as a general guide to the law. This information should not be used instead of legal advice and we recommend you speak to a lawyer about your individual circumstances.

The addresses for all agencies referred to in this list are listed on the back page.

## **Acknowledgment**

We would like to acknowledge the assistance provided by Legal Aid New South Wales in allowing our service to reproduce extracts of their Visa Cancellation kit. We would also like to acknowledge and thank Terry Fisher and Richard Timpson for their invaluable assistance.

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# Introduction

## Who do the laws apply to?

Section 501(3A) provides that your visa will be automatically cancelled if you:

- are a non-citizen living in Australia; and
- are currently in prison serving a sentence of imprisonment; and
  - have been sentenced to 12 months or more imprisonment; or
  - have been sentenced to life imprisonment; or
  - have been sentenced to death; or
  - have been convicted of a sexual offence involving a child in Australia or another country.

It is important to understand that the laws will apply to the sentence you received, and not the length of time you spend in prison.

The Department of Immigration can consider any sentences or convictions you have received at any time in deciding whether the laws apply to you.

## Who is a non-citizen?

A non-citizen is a person who does not have Australian citizenship. This includes people who:

- Have permanent residency
- Have permanent visas (including protection visas or partner visas)
- Are New Zealand citizens who were automatically granted a visa upon arrival to Australia
- Long-term temporary visas (including student visas or work visas)

If you are not an Australian citizen, you have a visa that can be cancelled under section 501(3A). Please note that you cannot become an Australian citizen while you are in prison.

## What happens if my visa is cancelled?

If your visa is cancelled you cannot remain in Australia unless you get another visa.

You cannot apply for any other type of visa except a protection (refugee) visa or a bridging visa.

Once you are released from prison on parole or at your full-time date, you will be removed from Australia and returned to the country of which you are a citizen. Most of the time, this is the place where you were born.

After you have been removed from Australia, you will never be able to return.

## Important

If your visa is cancelled under section 50 (3A) and you do not successfully challenge the decision, you will never be able to return to Australia.

# Cancelling a visa – How it works in Queensland

## Step One

Australian Border Force (**ABF**) may tell Queensland Corrective Services (**QCS**) that you are a non-citizen and you are “of interest” to them. QCS will put a flag against your name on their computer system. QCS may tell you that you are of interest to ABF.

## Step Two

ABF will decide whether you meet the criteria for automatic cancellation under 501(3A) (see page 4). Your visa can be cancelled at any time while you are in prison.

## Step Three

The Department of Immigration cancels your visa. They will send you a letter advising your visa has been cancelled under section 501(3A). This letter is known as a Notice of Visa Cancellation. The Department of Immigration will either post your Notice to you directly or email it to correctional staff to give to you.

# My visa has been cancelled – What are my options?

## Option One

You can accept the cancellation and be removed from Australia. You will never be able to return.

## Option Two

You can challenge the cancellation and *remain in Australia* until a decision is made on your challenge.

## Option Three

You can challenge the cancellation and *return to your country of origin* until a decision is made on your challenge. This option is not generally recommended.

## Option Four

You can apply for a protection (refugee) visa.

# Frequently Asked Questions

## **I want to leave Australia as soon as possible and return to my country. Is there anything I can do to speed up the cancellation process?**

You can write to the Department of Immigration and ask that your cancellation matter be prioritized so you return home as soon as possible after your release. There is no guarantee that this will speed up your removal from Australia. You can send your request to the National Character Consideration Centre (NCCC) or the Queensland Removals team (see Important Contacts page).

## **If I stay in Australia while a decision is made on my challenge, where will I live?**

Once you are released from prison, you will not be able to live in the community as you do not have a visa. Instead, you will be taken into immigration detention until a decision is made on your challenge. You can be taken into any immigration detention centre in Australia. You can request to be placed in a particular immigration detention centre or State. This will depend on bed availability, your medical needs, behaviour and risk rating.

## **Can I return to my country of origin while I wait for a decision on my challenge?**

You can return to your country of origin while a decision is made on my challenge. If you are successful, you will be allowed to return to Australia. It is possible that you will weaken your chances of getting your visa back by voluntarily removing yourself from Australia.

## **Am I eligible for a Protection Visa?**

You may be granted a protection visa if you are a refugee. Refugees are people who are outside their country of origin and cannot return because they have a well-founded fear of persecution because of their race, religion, political opinion, nationality or because they are a member of a particular social group.

You may also be granted a protection visa if you can show there is a real risk you will suffer significant harm if you are returned to your country. Significant harm includes the death penalty, torture, cruel or inhuman treatment, arbitrary deprivation of life and degrading treatment or punishment.

You must still satisfy the character test to be granted a protection visa. The character test involves consideration of your criminal history and any convictions or sentences you have received in Australia or another country. For further information, please contact the Refugee and Immigration Legal Service (see Important Contacts, page 30).

## **How will this affect my parole?**

Decisions about your parole are made by the Parole Board and are separate to decisions made by the Department of Immigration. This means you can be granted parole or be given a court-ordered parole release date, even if your visa has been cancelled or will be automatically cancelled. However, if you are paroled and your visa has been automatically cancelled, you will not be released into the community as you do not have a visa. Instead, you will be taken into immigration detention.

If you are applying for parole, you will still need to convince the Parole Board that you are a suitable candidate for parole, even if your visa has been or will be cancelled and you are facing removal from Australia.

# How can I challenge the cancellation of my visa?

Once you receive a Notice of Visa Cancellation, the first thing to do is to check the criminal history sent to you is correct and that the laws apply to you (see page 4). If you have any doubts, seek legal advice. Even if you think the information is incorrect, you should still try to challenge the visa cancellation following the process set out below.

Once you receive a Notice of Visa Cancellation, you can apply to the Department of Immigration to revoke the decision to cancel your visa ("revocation request"). "Revoke" means asking the Department to reverse the decision to cancel your visa so that you can stay in Australia.

If you are successful with your revocation request, you will be given back your visa and you can continue to live in Australia. If you are unsuccessful, there are options to legally challenge the decision to refuse your request (see page 28 to 29).

Unfortunately, there is no time by which the Department of Immigration must decide whether to accept or reject your revocation request. Decisions can take between 3 months to 2 years.

## How do I apply?

You need to send your completed Revocation Request form and Personal Circumstances form to the National Character Consideration Centre (NCCC). You will be given copies of these forms with your Notice of Visa Cancellation.

### Important

The National Character Consideration Centre (NCCC) must receive your revocation forms within 28 days of you receiving Notice of Cancellation.

The 28 day timeframe starts running from the day you receive your Notice of Visa Cancellation. The timeframe cannot be extended under any circumstances and any revocation requests received outside the timeframe will not be accepted.

## Practical tips

### **Tip 1: Prepare in Advance**

You don't have to wait to receive your Notice of Visa Cancellation to start preparing your revocation request. You should prepare your revocation forms and supporting documents in advance as much as possible.

### **Tip 2: Email or Fax your Revocation forms**

Once you have received your Notice of Visa Cancellation, you should lodge your revocation forms as soon as possible. The quickest way of sending your forms to the NCCC is by email or fax. You can ask Sentence Management, a councillor or your unit manager for help with this.

### **Tip 3: Further Documents**

You can continue submitting further documents up until a decision is made on your revocation request. If you intend to do this, you should make a note of this on a cover letter when you lodge your revocation forms.

# Challenging the cancellation - how it works

The Department of Immigration will send you a Notice of Cancellation and other documents, including your criminal history. You will be invited to challenge the cancellation by lodging a revocation request.



You need to lodge your Revocation Request form and Personal Circumstances form. The NCCC need to receive these forms within 28 days of you receiving your Notice of Cancellation.



The Department of Immigration will send you an acknowledgement letter confirming they have received your revocation forms and will make a decision once they have considered all relevant material.



The Department of Immigration will decide whether to give you back your visa OR uphold the cancellation decision. If your revocation request is refused, you may be able to appeal the decision to the Administrative Appeals Tribunal.



If a delegate of the Minister for Immigration refuses your revocation request, you can appeal their decision to the AAT. Your application to the AAT must be made within 9 days of you receiving notice of the delegate's decision (see page 28).



If the Minister or Assistant Minister for Immigration personally refuses your revocation request, you cannot appeal their decision to the AAT. You may be able to seek judicial review of their decision in the Federal Court (see page 29).

# What information should I include in my challenge?

This is your chance to tell the Department of Immigration why you should be allowed to stay in Australia. You should aim to address in as much detail as possible all of the factors that will be considered.

The policy the Department of Immigration uses in deciding whether to give you back your visa is in a document called **Ministerial Direction 65**. A copy of this will be provided to you with your Notice of Visa Cancellation. It contains detailed guidelines on what will be taken into account in deciding your challenge. These are called “primary considerations” (which are the most important factors) and “secondary considerations” (which will be considered but are less important than the primary considerations).

## Primary Considerations

The primary considerations which the Department must consider in deciding whether you should be allowed to stay in Australia are:

1. The protection of the Australian community, which includes:
  - (a) The nature and seriousness of your criminal offences; and
  - (b) Your risk of reoffending
2. Whether minor children would be affected by your removal from Australia
3. Whether the Australian community would expect you to be allowed to stay in Australia

## Secondary Considerations

The secondary considerations the Department will consider if they are relevant to you are:

4. Whether you will be at risk of significant harm upon your return to your country of origin
5. Whether you have any ties to Australia and if so, the strength, nature and duration of those ties
6. Whether you will face any difficulties if you are removed from Australia
7. Whether the victim(s) of your crime would be impacted if you remain in Australia
8. Whether your removal would impact on Australian business interests

There is a detailed list of information and supporting documents that can be provided to address the primary and secondary considerations at pages 12 to 18.

The best way to address the primary and secondary considerations is by writing a Personal Statement and addressing each consideration that is relevant to you. If they don't apply to you, leave them out. Pages (20 to 25) provides an example of a Personal Statement.

# How to write a Personal Statement

## (1) Protection of Australian community

### (a) The nature and seriousness of your criminal offending

This factor is about the nature and the seriousness of your criminal offences and your risk of reoffending. The Department of Immigration will have your criminal history so they will know about the types and number of offences you have committed. However, they will not know what was going on in your life at the time you committed the offences. This is your chance to explain the background to your offences.

You should discuss the following where it is relevant to you:

List all of the offences you have been convicted of, when you were convicted and what the sentences were

- Mention any special circumstances which made the judge give you a shorter sentence
- Did your offence involve any violence? If no, you should say so. If yes, you should acknowledge this
- Explain how much time there has been between each of your offences and how long it has been since your last offence
- Discuss why you offended, including what triggered your offending and the effect it had on others (including the victim and your family)
- Explain whether you have done anything, or have tried to do anything, to show you are sorry or feel remorse for what you did (for example – apologise, pay compensation to victim/s of your offences)

Were there any mitigating factors which might reduce 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)
- Did the sentencing judge say anything about any of the mitigating factors? If they did, include what they said.

### Examples of supporting documents that address (1)(a):

- Statement by family member and/or friend who can confirm any mitigating circumstances in your offending
- Sentencing transcript

## **(b) Your Risk of Reoffending**

You should provide information about any steps you have made to address your offending behaviour and reduce your risk of reoffending. You should discuss your plans once you are released from prison and what you've done to make sure you don't reoffend in future.

- Discuss the situation you were in before you went into prison and what happened to make you offend. Explain what you have done to change yourself and to change your circumstances
- Discuss whether you have completed any rehabilitation courses, programs or counselling in prison or in the community to address your offending behaviour, including:
  - Drug and alcohol rehabilitation courses
  - Courses or therapy to address any mental health problems
  - Courses or therapy to address behavioural problems
  - Any educational courses you've done to help you gain employment once released
- Will you be on a parole order when you are released? If so, you should discuss how the conditions of your parole order will help you avoid reoffending
- Discuss any examples when you have previously followed parole orders, bail, suspended sentences or good behaviour bonds
- If you have been of good behaviour in custody, you should mention this and discuss any employment or responsibilities you were given in prison
- If you have a low security classification or you are in the residential area of the prison, you should mention this and explain why the prison placed you there
- Have you got a support network in the community? For example: family, friends, counsellors or psychologists who will help you reintegrate into the community and avoid re-offending
- Discuss where you will live and who you will live with if you are released into the community
- Talk about any good things that you have done in the past for your family, friends or community. For example – volunteer community work, coaching sport, caring for a sick or disabled person

### **Examples of supporting documents that address (1)(b):**

- Program exit reports
- Report of psychologist or psychiatrist assessing your risk of reoffending
- Parole board report
- Letter of support from counsellor
- Relapse prevention plan
- Evidence of your good behaviour in prison (IOMS case notes, security classification and/ or low security placement notices, etc)
- Support Letters from family, friends or support network

## (2) Best interests of minor children in Australia

The Department must consider whether there are any children in Australia under the age of 18 who will be negatively affected if you are removed from Australia. This includes your children (biological, adopted or children by marriage), grandchildren, nieces and nephews or siblings.

You need to show that it is in the best interests of the child for you to remain in Australia. You should discuss the following:

- The name and age of each child and whether they are Australian citizens
- The nature of your relationship with each child (for example: parent, guardian, carer) and whether you have any court orders relating to your access to the child and/or care arrangements
- Whether you are close with the child now. Do you support them financially or in any other ways?
- Whether you lived with the child before you went to prison and the kind of activities you did with them (for example: helped with their homework, took them to the playground on weekends, etc)
- How often you see the child in prison, including how often they visit you or speak to you on the phone
- Whether any of the children have any impairments or disabilities that require your care or assistance
- Whether the child's welfare would be negatively impacted by your removal from Australia, including:
  - Would they be financially affected?
  - Would their education be affected?
  - Would their physical or mental health be affected?
- Would the child be able to have contact with you if you are removed from Australia? Discuss any factors that would limit their contact, including geographical distance, time zones, the cost of phone calls and/or contact and whether they would be able to visit you.
- Would the child be able to leave Australia with you if you are removed? If so, consider how the child would be affected if they were to live in your country of origin, including:
  - Their education
  - Whether their removal would impact their relationships with family, friends and other people in Australia
  - Any language barriers they will face
  - Whether they know the culture in your country of origin
  - Whether they would receive medical care and education in your country of origin

## Examples of supporting documents that address (2):

- Your child's birth certificates or citizenship certificates
- Evidence of permanent residency
- Letters or pictures from the child showing that you still have a relationship with them even though you are in prison
- Any court orders/custody arrangements relating to your care of the child
- Evidence of your child's education
- Statements from the child (if possible)
- Letters of support from any other person with parental or custody rights over the child
- Evidence of your financial support of the child
- Records of any contact while in prison (call or visit records)

### **(3) Expectations of the Australian community**

The Department of Immigration must consider whether the Australian community would expect your visa to be given back, despite your criminal offending. The Department will look at the circumstances of your offending, including any mitigating factors, your risk of reoffending and your ties to the community. You should try to explain why you think the community would expect you to be given back your visa. You should also try to include Support Letters from members of the Australian community who say that they are aware of your criminal history and believe you should be given back your visa.

#### **(4) Risk of significant harm if removed from Australia**

The Department will consider whether you raise any protection concerns or if you are at risk of receiving the death penalty, torture or other cruel, inhuman or degrading treatment if you are sent back to your country of origin. This is relevant to you if:

- You have been granted a protection (refugee) visa at any time; or
- You fear persecution in your country of origin for reasons of your race, religion, nationality, membership of a particular social group or political opinion; or
- You fear you will face significant harm if returned to your country of origin

The types of information you should include are:

- If you have ever been harmed when you lived in your country of origin
- What type of harm you fear (death, torture, indefinite detention, imprisonment, inhuman or degrading treatment)
- Why you will be harmed if you return to your country of origin (because of your religious or political beliefs, race, nationality, sexuality or gender or because they have the death penalty in your country of origin or because your country is at war)

You should get legal advice if this consideration is relevant to you. You should also get legal advice to see if you can apply for a protection (refugee) visa. You can contact the Refugee and Immigration Legal Service (RAILS) for information and advice on protection visas (see page 31 for their contact details).

#### **Examples of supporting documents that address (4):**

- Evidence of your religious or political beliefs (or example: baptism certificates, letters of support from your political/religious group)
- Evidence of the harm you have suffered (for example: counselling reports, medical records, witness statements)

## (5) Strength, Nature and Duration of Ties to Australia

The Department will consider how your removal from Australia might affect the people you are close to in Australia, especially if anyone in Australia relies on you for anything (for example, money or practical help). You should also include any information about your connection to Australia and any links you have to the community.

You should discuss the following where it is relevant to you:

- Discuss the family members you have in Australia (including their names, relationships to you and whether they have Australian citizenship or permanent residency)
- Explain how close you are with your family in Australia, including how often you see them and how important you are to them
- Discuss any assistance you provide to an Australian citizen or permanent resident, including responsibility to care for a person (such as a child, parent or someone with a disability) and whether you support anyone financially in Australia and why
- Explain how your family will be affected if you are removed from Australia
- Discuss how long you have lived in Australia, including whether you arrived in Australia as a child
- Discuss the level of education you achieved in Australia
- Discuss your previous employment in Australia and whether you have any employment opportunities/job offers once you are released
- Discuss any contributions you have made to the community (including volunteering, membership of social and sporting clubs etc)

### Examples of supporting documents that address (5):

- Reference letters from former or future employers
- Education transcripts
- Letters of support from family members describing:
  - Your connection to Australia
  - The difficulties your family would experience if they had to move to your country of origin with you. For example: learning a new language, enrolling children in schools, adapting to a new culture, health considerations
  - The difficulties your family would face if they wanted to visit you if you are removed to your country of origin. For example: financial difficulties, work commitments.

## (6) Extent of Impediments if Removed from Australia

The Department of the Immigration will consider whether you will face any difficulties if you are sent back to your country. You should discuss the following where it is relevant to you:

### Age

- Explain if your age makes it more difficult for you to leave Australia
- If you cannot work or look after yourself, mention if you would get the care or pension/income you need to survive if you have return to your country of origin
- If you are young and living in Australia with a parent or someone else who cares for you
- Whether there is any social, medical and/or economic support available to you in your country

### Health

- Discuss any health problems you have and how they affect you. Include information on the health care you receive in Australia and whether or not you would be able to get the treatment and care you need if you are returned to your country of origin (for example: is the medication you need available in your country of origin, how much does it cost)
- If you can't get the health care you need in your country of origin, explain how this will impact your health

### Hardship

- Discuss whether you have anyone to help or support you if you are removed from Australia. If you have no connections with people in your country of origin.

## Examples of supporting documents that address (6):

- Doctor's reports explaining your health problems
- Psychological reports
- If you believe you are unable to access disability or health services in your country of origin, you should provide information to support this

## (7) Impact on Australian Business Interests

This factor is concerned with whether you have any business ties to Australia and if so, whether your removal will negatively impact your business ties. The Department will only consider this factor if your removal would significant impact "the delivery of a major project or important service" in Australia.

You should provide any information about your business responsibilities and evidence of your business.

## (8) Impact on Victims

The Department of Immigration will consider whether the victim(s) of your crimes will be impacted if you are allowed to remain in Australia, including:

- Was there a particular victim of your crime(s)?
- Are you likely to see them again?
- What about the victim's family?

# Checklist for Personal Statement

Remember: your Personal Statement is your chance to convince the Department of Immigration why you should get your visa back. It is important to say everything that is relevant to you keeping in mind the primary and secondary considerations that will be considered. It is very important to explain why you are no longer a risk to the Australian community and how you will avoid reoffending. The reason for this might be because you have completed rehabilitation programs or because you have a personal and professional support network to help you avoid reoffending.

You can use this checklist to make sure you have discussed all relevant information:

- How long you have been in Australia
- Details of any education or employment you have done in Australia
- Details of your criminal history
- Anything that was going on in your life at the time you committed the offences which might explain why you committed offences
- How you feel about your criminal offences now and whether you regret the things that have happened and why
- Any courses you have done either in prison or in the community
- Why you will not reoffend if you are allowed to stay in Australia
- Whether you have any family in Australia, including children, and how they would be affected if you had to leave
- What would happen to you if you had to go back to your country of origin and whether your family could go with you
- How you will support yourself if you are returned to your country of origin and whether you have a job to go to

## Tip

Where possible, you should include independent evidence from other people that supports what you are saying in your revocation statement. Independent evidence is from other people and sources that backs up what you say.

You should also try to collect as many Support Letters from as many people as possible, including family, friends, employers, community organisations and others. If someone says you are a good person, they should also say they know about your criminal history (see page 27 for an example of a Support Letter). Other Support Letters can be from people who will help you once released by giving you a job or offering you counselling.

# Example – Personal Statement

Please note this is an example only. You will need to write a statement that discusses your own history and circumstances in your own words. Refer back to pages 12 and 18 to remind you of the information you need to include.

National Character Consideration Centre  
DIBP  
PO Box 241  
Melbourne VIC 3001  
SENT BY FAX TO (03) 9235 3626

Douglas Williams  
MIN 234577  
Cessnock Correctional Centre  
PO Box 32  
Cessnock NSW 2325

Dear Sir/Madam

TRENT HUGHES  
Client ID: 80019671  
Palen Creek Correctional Centre  
Private Mail Bag 1  
Rathdowney QLD 4287

RE: Notice of Cancellation under s 501(3A)

This is my response to the Notice of Cancellation of my visa dated 27 June 2016. I accept that, because of my offences, my visa was automatically cancelled under s501(3A) of the Migration Act 1958 (Cth). I would like you to revoke the decision to cancel my visa. Please take the following information into consideration when you make your decision.

## Background

I was born in New Zealand on 1 June 1992. I lived in New Zealand with my mother, Jean Hughes, and two older sisters, Nina and Isobel, until I was 5 years old. I never knew my biological father and have had no contact with him since I was born.

I moved with my family to Brisbane, Australia in 1997. My mum moved us to Brisbane for work, she is currently employed as an emergency room nurse at the Princess Alexandra Hospital. She has worked in this job since 1997. Shortly after we moved to Brisbane, my mother met and married my stepfather, Allan Johnson. Allan runs his own garage in Newmarket. I regard Allan as my real dad. My mum and Allan live in Windsor.

I completed my primary school education at Windsor State School and completed up to year 11 at Kedron State High School. I then did an apprenticeship in plumbing with Foxworks Plumbing. I completed my apprenticeship in 2010 and became a fully qualified plumber. I continued working with Foxworks Plumbing until December 2016 when I came into custody.

My two sisters are married to Australian citizens. Nina's husband, Patrick O'shea, works as a teacher. They live in Newmarket and they have two children, Cameron (5 years old) and Alex (3 years old). Nina works in childcare but is currently on maternity leave as she is 7 months' pregnant. Isobel's husband is and they have two kids, Sam (aged 2 years) and Gwen (aged 6 months). They live on the Sunshine Coast.

In 2008 I met my fiance, Angela McDonald. Angela is an Australian citizen. She works as an accountant and owns and runs her own business. We have one child together, Amy Hughes, who was born on 4 December 2010. Amy is now nearly 7 years old and is in grade two at Albany Creek Primary School. Angela and I were separated for a six-month period in 2016 however we have since reunited and are committed to our future together. We got engaged in March 2017. Angela and Amy live in Albany Creek on the north-side of Brisbane.

## **The Protection of the Australian Community**

### **(a) The Nature and Seriousness of My Criminal Conduct**

I acknowledge that I have committed offences of a serious nature. In December 2016, I was convicted of armed robbery with a dangerous weapon and received a four year sentence with a parole eligibility date in November 2017. I was also convicted of assault occasioning bodily harm in 2009 and received a six-month suspended sentence. I would like to say that I take full responsibility for my offending and I wish they had never happened.

My most recent offence in December 2016 happened at a time in my life when I was addicted to alcohol. My alcohol addiction developed following my separation from my partner, Angela. I believe that I turned to alcohol to help me cope with our relationship problems.

My partner and I were having relationship difficulties because I was working long hours and spending a lot of free time on the weekend drinking and partying with my mates. She was frustrated with my lifestyle and I moved out to live with a couple friends from high school in August 2016. Our daughter Amy continued to live with Angela but I visited her on weekends and after school.

I lived with my mates for around 4 months, during which time I began drinking more heavily, including getting drunk on weeknights after work which I never used to do. My house mates were also big drinkers and this was how we would spend our time together. I began to show up late for work and messed up a couple work contracts. I eventually lost my job at Foxworks Plumbing in October 2016, which meant I didn't have any income. My family were disappointed in me and frustrated by my increasing addiction to alcohol. I isolated myself from them and thought they didn't want to have anything to do with me. This was the worst time in my life.

It was at this time that I committed my armed robbery offence. A man I had met through one of my housemates suggested we rob a local bottle shop. I was drunk at the time he suggested it and acted impulsively, thinking it would solve my money problems for awhile and no one would be hurt. I was drunk at the time of the robbery. I grabbed the cash from the register while my co-offender, who was carrying a knife, told the store person and two other people who were there not to move. As we were leaving the store, the police arrived. I immediately put my hands behind my head. I didn't struggle as the police handcuffed me. They took me to the station and I told the detective who interviewed me that I was guilty.

I plead guilty and received a four year sentence. This is at the lower end of the scale of sentences and the judge considered a lot of the things that were happening in my life at the time of the offence, including my alcohol addiction and my separation from my family. The judge reduced

my sentence because of some of these factors (see sentencing transcript attached). The judge also said that he thought with some rehabilitation around alcohol I would have a good chance of turning my life around and staying out of trouble.

My partner and family supported me through my criminal proceedings and sentencing. I was on bail for a few months up until my sentencing hearing and I moved back in with Angela and Amy. I began doing some rehabilitation counselling at Alcoholics Anonymous. I went to some group sessions once a week until I was sentenced and had to go into prison.

I know I am responsible for my offence. I was just desperate for money and I wasn't thinking at that time about the consequences of my actions for the victims, my family or me. I sincerely regret what I did, not just because of the situation I am in now, but also because of the impact of my offending on my victims. At my sentencing hearing, a statement was read out by one of the victims about the counselling she needed after the robbery and that she had to take time off work. This made me feel terrible that I had caused this. I had written letters to the victims saying how sorry I was to the victims of my crime. These letters were mentioned by the sentencing judge, who said he thought my remorse was genuine (see attached transcript).

For my 2009 conviction for assault occasioning bodily harm, this happened when I was drunk at a pub with some mates. Another person at the pub had a go at one of my friends and pushed him. I went to help my friend out and to push the other guy away but I ended up taking a swing at him. He was knocked unconscious. I received a six-month suspended sentence. This offence did involve personal violence but I believe it was out of character for me and will not happen again.

#### **(b) Risk that I might re-offend**

If I'm allowed to stay in Australia, I will not repeat the mistakes of my past. I am now in a different position to where I was before and with the love and support of my fiancé and family I can succeed. I say that both of my offences took place because of my problems with alcohol. My armed robbery also happened at a time when I had serious personal problems in my life, namely my separation from my fiancé and the loss of my job.

All my family have noticed the huge difference in me since coming to jail and getting help with my alcohol dependence issues. I am also being properly medicated for my depression and I know with their support I will maintain my commitment to the medication and stay away from alcohol and the lifestyle choices that lead me to offend. I used to use alcohol to deal with problems but I know that I don't have to do this anymore. I also recognize that I need to change my lifestyle and stay away from negative influences.

I have attached letters of support from my mother and stepfather, who discuss what I was like at time I committed my armed robbery offence and that they believe I have permanently changed for the better.

I know that I will not reoffend or commit any other offences in Australia. Before my sentencing hearing, I was interviewed by a psychologist who did a pre-sentence report about me that was submitted to the court (see attached). The psychologist said that I had very strong chances of successfully rehabilitating and that I would be very unlikely to reoffend again.

I completed an alcohol course in prison that helped me to review and change beliefs I have always had in relation to drinking (see attached completion report). I completed a relapse prevention plan at the end of this course (see attached) that discusses the steps I will take in the community to avoid relapsing into alcohol use and reoffending.

I have also been receiving assistance and support from one of the prison counsellors. Attached is a report from the counsellor where they say that there has been a genuine and significant improvement in my behaviour and my commitment to staying alcohol free. They believe I have a low risk of reoffending if I maintain my medication and stay away from alcohol.

I have maintained very good behaviour in custody. I haven't been involved in any negative incidents or received any breaches of discipline. I have been employed in the prison store and I'm currently working as a gardener. Queensland Corrective Services (QCS) gave me a Risk of Reoffending (RoR) score of 1, which was based on a comprehensive case management review of my criminal history. This is the lowest score possible and shows they believe I pose a low risk of reoffending once I'm released from prison. After I was sentenced, I had a security classification review and was given a low-security classification (see attached classification review notice). I was transferred to Palen Creek Correctional Centre in August 2017. This is a low-security prison where I'm under very low-level supervision.

I was granted board-ordered parole and will be released into the custody of Australian Border Force (ABF) on my parole eligibility date. This is the earliest date I can be released on parole. QCS prepared a Parole Board Report that recommended me for parole and said I had good insight into my offences and that I have strong supports in the community to help me avoid relapsing (see attached report). Once I'm released, I will be under parole conditions until 2020. I will be under probation and parole supervision. It's a condition of my parole order that I abstain from drinking. I will be required to undergo random and regular breath-testing to make sure I'm not drinking.

As the letters from my partner show, she wants me to come back and live with her when I am released from custody. I have attached a letter from my old boss at Foxworks Plumbing, offering me a full-time job as soon as I'm released. My family have also stood by me and I know they will support me in the community.

## **The Best Interests of my Children**

I believe that it is my daughter Amy's best interests for me to remain in Australia. She is an Australian citizen and has lived her whole life in Australia. Before coming to jail, I lived with Angela and Amy, except for a 6 month period prior to my armed robbery offence. Even when I was separated from Angela, I still visited Amy on the weekends and would telephone her most days.

When I was working I provided for Amy financially and in many other ways. Because I finished work early I would collect Amy from day care and later primary school every day. I would bring her home, bath her and most nights would make dinner so that Angela didn't need to do this when she arrived home. On the weekend we always spent time together as a family, going on picnics or to the pool which is close to our house or play in the park.

Since coming to prison one of the things I miss most about my life is the opportunity to be with Amy. I speak with her most days before school. They have visited me a few times in prison but it is difficult for them to do this regularly as they live a few hours away from the prison. She has sent me some pictures and drawings that she made in school. I have attached some copies of these.

Since coming to prison Angela and I have been worried about Amy, who isn't coping with our separation well. She's been acting up in school and sometimes when we've spoken on the phone she gets upset or angry. I've tried to explain why I can't come home but it's hard to do this in a way she can understand. I'm worried our permanent separation could destabilize her and her well-being would be at risk.

If I had to leave Australia I would not see Amy again, or at least not for a very long time. Angela cannot afford to fly herself and Amy to New Zealand on a regular basis and she has a business to run. Because I would not be allowed back into Australia this would be the end of our relationship. I would be leaving Amy without a father. There is no way I would ask Angela and Amy to leave Australia to come with me. Australia is their home, it is all they know, they are settled and they have lots of friends and support from my family and Angela's family. To remove her from this would be devastating for her.

### **Expectations of the Australian Community**

I believe the Australian community would give me a second chance and would support a decision to give me back my visa. I have taken steps to address the problems that have led me to be imprisoned and I know I am not a risk to the community. There are many who have said I have a strong chance of remaining offence-free and returning to being a positive and contributing member of society.

I came to Australia with my mother and two older sisters when I was only 5 years old. I have lived here for over 22 years and have not been back to my country of birth since first leaving. I see Australia as my home. It is where I grew up and started a family. I completed my education here and have made a positive contribution to the community through my employment as a plumber.

I have attached many letters of support from my family, friends, former co-workers who are members of the Australian community and support my visa being reinstated. They are aware of my criminal history and believe I should be given another chance.

### **Strength, nature and duration of ties**

My primary relationships are with my fiancé Angela and our child. She is an Australian citizen and was born in Australia. We have had some rough times but now are stronger than ever, particularly because I have shown her that I have changed. Although I have not worked for over 12 months, and for a few months before coming to jail, prior to that I worked full time and Sarah relied on my wages to pay the mortgage. She has had to get a second job to keep the house but is relying on me getting out and getting a job so that she can start spending more time with the children. We would eventually like to have another child.

Both my parents, my two sisters and one brother and all their families live in Australia. They are all Australian citizens, I am the only one of the family who is not. I am particularly close to my mother, who is unwell at the moment. She was diagnosed with breast cancer a few months ago and needs to go to hospital regularly. Her doctor has said she has a good chance of beating the cancer. I have attached a letter from her doctor describing the help she needs from her family while she gets treatment. She is very distressed at the thought of me having to leave Australia because she knows that due to her age and bad health she will not be able to travel to New Zealand to see me and this would mean I would not see her ever again. If I were allowed to stay in Australia, I could help support my mum through this difficult time. My stepdad is also devastated by the prospect of having his only son leave permanently. He is not coping well with my mother's illness and I want to be able to provide him with support and help out with my mum's hospital appointments.

I have 2 aunts and 2 uncles living in Australia, as well as 5 cousins, their partners and children. I have 13 nieces and nephews and they all live in Sydney, all in the area where my wife and I live. Of these 13 children, 8 of them are under 18 years of age. I have a particularly special bond with my niece Gwen who is 7 years old and was born in the same week as my own daughter. She has pretty much grown up with my family and spends most of her time with us. She does not know I am in prison because I was too ashamed to tell her, she thinks I have gone on holiday and will be back soon.

## Impediments if Removed from Australia

**Health:** Apart from having been diagnosed with severe depression, I have no other health conditions. Being made to leave Australia will obviously impact on my depression and although I will have access to the medication I need to treat it, without my family and my children I don't know how motivated I would be to keep on it. I fear that I will fall back into my old habits and go off the rails again.

**Ties to New Zealand:** As far as I know I have no close relatives in New Zealand. I have had no contact with anyone in New Zealand since my family moved to Australia many years ago.. I simply do not know what I will do once I arrive there – I don't have a place to live, to work, I don't know my way around, I don't know about social security or the health system or anything like that.

## Conclusion

I don't know what else I can say except that I hope you consider the things contained in this response. My life is my fiancé and my child and I do not want to lose them. I now realise that if I get involved in trouble again I will lose them, and not only because I might be removed from Australia. My fiance has said this is my last chance and if I don't step up this time, that is it. I believe that she means it and I know that I can respond and do the right thing by Australia and my family.

Yours sincerely,

Trent Hughes

### Tip

Use your own words as much as possible and make sure your statement is in chronological order. If you have attached a document or letter in support of what you are saying, you should refer to it in your statement.

# How to write a Letter of Support

At page 27 is an example of a letter of support. Letters of support can be provided by anybody who knows you and will say they support you remaining in Australia. These can be from family members, friends, employers or religious or community representatives.

## **The following factors should be discussed in a letter of support:**

- Who the writer is, what their relationship is with you and how long they have known you
- A description of their relationship with you
  - Is it a close relationship? How often do you see them or talk to them? If they come to visit you in prison, say how often. If they don't visit you, explain why.
- The writer should say that they know about your criminal record
  - They need to show that they know about your offence/s and that they will support you
  - They should explain if they know about anything that was going on in your life at the time of the offence (for example – you were drinking heavily, you had just split up from your partner, your parent had died, etc.) they should write about this
- If you have spoken to them about how you feel about your offences, they should include this in the letter
  - If you have said anything to them about feeling bad about your criminal offences, they should put that in the letter
  - If they think you have changed since committing your offences, they should say how you have changed and why. For example – if you have undertaken a drug and alcohol course in prison or an anger management course
  - It is important to put anything in the letter that shows you are unlikely to reoffend
- What are your good qualities? What contributions have you made to the community?
  - Have you done any community work that the person knows about?
  - They should write about anything that shows you have a good character and are respected by other people
- What support will this person be able to give to you on your release from prison?
  - If they can support you, whether it be financially or emotionally, this should be included in the letter. Include if they can help you find a job or a place to live
- Explain why they think you should be allowed to stay in Australia
  - If they know your family members, they should say how they think your family will be affected if you had to leave Australia
  - They should include any details they know about how your life might be in your country of origin
- If you have spoken to them about how you would feel about leaving Australia, they should include those details

# Example – Letter of Support

National Character Consideration Centre  
Department of Immigration and Border Protection  
PO Box 241  
MELBOURNE VIC 3001

Jean Hughes  
20 Alaska Street  
Windsor QLD 4030

29 August 2017

Dear Sir/Madam,

I am writing this letter of support for my son, Trent Hughes. I am his mother and I arrived in Australia with him in 1997 with my two daughters. I understand that the Department has cancelled Trent's visa because of his criminal convictions and I am writing to ask you to consider the effect his removal from Australia would have on me and my family, including my parents.

I believe Trent's offences were caused by his problems with alcohol and due to his separation from his partner, Angela. I don't think he understood that he had problems with alcohol and how different he was when he drank. I also think he was struggling with depression following his separation from Angela and wasn't receiving the help and treatment he needed. Since he was charged with armed robbery, he has undergone a complete transformation and is like his old self again. He has worked hard to improve himself and address his problems by doing alcohol treatment courses. I do not think he poses any risk to the community.

Just when we heard he had received parole and would be coming home soon, we heard his visa had been cancelled. He has undertaken courses in prison that have helped him to understand the terrible impact alcohol has had on his life, and on the life of his family, as well as the life of the victims of his crimes. He tells me all the time that he is so sorry for the things he did. His young daughter Amy has already been affected by her separation from her father while he has been in prison. I think it would be very detrimental to her well-being Trent were removed from Australia and sent back to New Zealand. She would be deprived of her father.

Trent tells me that he hasn't touched alcohol for more than a year and I can see the positive change this has had on him. I visit him with my two daughters every month and when we cannot visit we telephone regularly. Trent has finally decided to turn his life around and I am certain that with our help he can do so.

I know that Trent can change and go back to being the wonderful person he was before. It would break my heart and destroy our family if he were removed from Australia. If he were removed it would mean that we would never see him again because we cannot afford to travel to New Zealand to visit him. I am receiving treatment at the moment for breast cancer and need to go to hospital regularly. My husband is trying to look after me but I can see he is struggling with our situation and juggling his work commitments. If Trent were released, he could help support us and take me to my hospital appointments and help out around the house.

Jean Hughes

# What happens if I my challenge is refused?

## Merits Review at the Administrative Appeals Tribunal

If your challenge is refused by the Department, you *may* be able to apply for merits review of the decision at the Administrative Appeals Tribunal (AAT). Merits review is a type of review that considers all the circumstances of your case and the decision. The AAT will then decide whether the correct decision has been made.

The AAT is an independent tribunal. They have the power to decide whether the decision to refuse your challenge should stay the same or be changed so you can stay in Australia. The AAT will base their decision on Part C of Ministerial Direction 65. This is the same document the Department will look at in assessing your challenge.

### (a) Can I apply to the AAT for merits review?

You will only be able to apply for review at the AAT if the decision to refuse your challenge was made by a delegate of the Minister for Immigration. A delegate is a person who acts on behalf of the Minister. If the Minister *personally* decides to refuse your challenge, the AAT cannot review the decision. However, you will be able to seek judicial review of the Minister's decision with the Federal Court of Australia (FCA). If the Minister personally refuses your challenge, it will be clearly stated in the letter advising you of the Minister's decision.

### (b) Time Limits and Costs

If you are eligible for AAT review, you must apply to the AAT within 9 days of receiving notice that your challenge was refused. This timeframe cannot be extended. Any applications lodged outside this timeframe will not be considered.

The standard application fee is \$884 (as of 26 August 2016). You are entitled to pay a reduced fee of \$100 if you are in prison or detained in immigration detention. You will need to provide proof of your imprisonment/detention with your application form.

Pay close attention to what your letter from the DIBP says on your review rights period is. Sometimes the DIBP get this wrong in the letter. Similar to the original notification of the cancellation, it is always better to err on the side of caution and seek to exercise your merits review rights within the period indicated. If and when you do so, it is also important that you understand what steps you need to take in terms of bring a valid review application.

### (c) How do I apply?

You can apply for AAT review by:

- Applying online at [www.aat.gov.au/applying-for-a-review/how-to-apply](http://www.aat.gov.au/applying-for-a-review/how-to-apply) or
- Filling out an application form (see Appendix) or
- Writing a letter to the AAT (see back page for contact information) or
- Sending the AAT an email.

## Judicial Review

Judicial review involves a court looking at whether a decision-maker has followed the correct legal process and whether a decision has been made lawfully. This means the court will look at whether relevant laws and procedures have been followed, and not whether a decision is fair or correct.

It is important to understand that judicial review is not an appeal process. The court cannot make a new decision to replace the decision made by the decision-maker. If a decision is found to be unlawful by the relevant Court, they cannot give you back your visa. They can only set the decision aside and send it back to the original decision-maker to remake the decision lawfully. This means that even if you are successful with your judicial review application, your visa may still be cancelled.

### **(a) What decisions can be judicially reviewed?**

You can apply for judicial review if:

1. Your revocation request was refused personally by the Minister. You can apply for judicial review of the Minister's decision to refuse your revocation request.
2. You are unsuccessful with your AAT application. You can apply for judicial review of the AAT's decision to uphold the refusal of your revocation request.
3. You can apply for judicial review if you believe something went wrong with the way your visa was cancelled

### **(b) Time Limits**

Any application to the relevant Court needs to be made within 35 days of receiving notice of the decision you wish to challenge. This timeframe cannot be extended

# Important Contacts

## National Character Consideration Centre (NCCC)

The branch of the Department of Immigration and Border Protection that handles visa cancellation on character grounds and revocation requests.

**Phone:** 1300 722 061  
**Postal address:** NCCC, GPO Box 241, Melbourne VIC 3001  
**Fax number:** (03) 9235 3636 and (03) 9235 3957  
**Email:** nccc@homeaffairs.gov.au and 501Revocations@homeaffairs.gov.au

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## Australian Border Force - Queensland Removals Team

The branch of the Department of Immigration that deals with the removal and deportation of non-citizens in Queensland.

**Postal address:** Removals Team Manager,  
Department of Immigration and Border Protection,  
GPO Box 9984, Brisbane Qld 4001

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## Prisoners' Legal Service Inc

Provides free legal advice to prisoners about prison law matters and mandatory

**Community line:** (07) 3846 5074  
**Prison Advice line:** Use the Arunta phone line available in all Queensland prisons on Tuesdays to Thursdays from 9am to 1pm  
**Postal address:** GPO Box 257, Brisbane Qld 4001  
**Fax number:** (07) 3229 9222  
**Email:** pls@pls.qld.com

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## Legal Aid Queensland

Provides free legal advice to financially disadvantaged Queenslanders about criminal, family and civil law matters.

**Phone:** 1300 65 11 88  
**Postal address:** GPO Box 2449, Brisbane Qld 4001  
**Fax number:** (07) 3238 3014

# Important Contacts

## Refugee and Immigration Legal Service

Provides free legal assistance in immigration and refugee cases to people in need.

**Phone:** (07) 3846 9300  
**Fax:** (07) 3844 3073  
**Address:** PO Box 5143, West End Qld 4101

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## Administrative Appeals Tribunal

Provides independent review of some character decisions of the Department of Immigration.

**Phone:** 1800 228 333  
**Website:** [www.aat.gov.au](http://www.aat.gov.au)  
**Postal Address:** GPO Box 9955, Brisbane QLD 4001  
**Email address:** [generalreviews@aat.gov.au](mailto:generalreviews@aat.gov.au)

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## Translating and Interpreting Service (TIS)

If you need the assistance of an interpreter, contact TIS, tell them what language you speak and they will get a telephone interpreter for you.

**Phone:** 131 450

# LEGAL AID QUEENSLAND OFFICES

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## **BRISBANE**

44 Herschel Street  
BRISBANE Q 4000

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## **BUNDABERG**

2nd Floor, WIN Tower  
Cnr Quay & Barolin Streets  
BUNDABERG Q 4670

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## **CABOOLTURE**

Ground Floor, Kingsgate,  
42 King Street  
CABOOLTURE Q 4510

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## **CAIRNS**

Ground Floor, Equity Central  
46 Spence Street  
CAIRNS Q 4870

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## **INALA**

Level 1, Inala Commonwealth Office  
20 Wirraway Parade  
INALA Q 4077

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## **IPSWICH**

97 Brisbane Street  
IPSWICH Q 4305

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## **MACKAY**

Ground Floor,  
17 Brisbane Street  
MACKAY Q 4740

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## **MAROOCHYDORE**

Ground Floor, M1 Building  
1 Duporth Avenue  
MAROOCHYDORE Q 4558

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## **MOUNT ISA**

6 Miles Street  
MOUNT ISA Q 4825

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## **ROCKHAMPTON**

Ground Floor,  
35 Fitzroy Street  
ROCKHAMPTON Q 4700

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## **SOUTHPORT**

1st Floor,  
100 Scarborough Street  
SOUTHPORT Q 4215

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## **TOOWOOMBA**

1st Floor, 154 Hume Street  
TOOWOOMBA Q 4350

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## **TOWNSVILLE**

3rd Floor, Woodridge Place,  
280 Flinders Street Mall  
TOWNSVILLE Q 4810

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## **WOODRIDGE**

1st Floor, Woodridge Place  
Cnr Ewing Road & Carmody Street  
WOODRIDGE Q 4114

**1300 65 11 88**

*"to enhance access to justice in Queensland"*

[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

# PRISONERS' LEGAL SERVICE

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**GPO Box 257  
Brisbane Qld 4001**

*"justice behind bars"*

[www.plsqld.com](http://www.plsqld.com)



JUSTICE BEHIND BARS