



# **MANDATORY VISA CANCELLATION INFORMATION KIT**

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

# 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 prisoners in Queensland seeking revocation of the decision to cancel their visa to stay in Australia. This kit does not provide information about any other type of visa cancellation.

**Information within this kit is current as of August 2023.** At the time of printing, the information in this kit is correct but may be subject to change.

This kit is intended as a general guide to the law. This information is not a substitute for 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.

## Acknowledgement

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# CONTENTS

02	Introduction
04	Cancelling a visa - how it works in Queensland
05	My visa has been cancelled - what are my options?
06	Frequently Asked Questions
08	How can I challenge the cancellation of my visa?
10	Practical Tips
11	Challenging the cancellation - how does it work?
12	What information should I include in my revocation request?
14	How to write a personal statement
26	Checklist for personal statement
27	Example - personal statement
35	How to write a letter of support
37	Example - letter of support
39	What happens if my revocation request is refused?
42	Important Contacts

# INTRODUCTION

## Who cancels a visa?

The Department of Home Affairs ('the Department') is the commonwealth government organisation that can cancel a person's visa. A decision to cancel a visa can be made by the Minister for Home Affairs; the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs or one of their delegates. A delegate is a person who acts on behalf of the Minister.

## 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
- You are currently in prison serving a sentence of imprisonment; and
  - You have been sentenced to a term of 12 months or more imprisonment; or
  - You have been sentenced to life imprisonment; or
  - You have been sentenced to death; or
  - You 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**. For example, if you are sentenced to a term of 12 months imprisonment or more but the term has been partly suspended and you only need to serve 6 months in prison, you will still receive a Notice of Visa Cancellation under s501(3A).

The Department of Home Affairs 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. A non-citizen includes people who:

- have permanent residency
- have permanent visas (including protection visas or permanent partner visas)
- are New Zealand citizens who were automatically granted a visa upon arrival to Australia
- have long-term temporary visas (including student visas or work visas)
- have any other type of temporary visa

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 (Subclass 866) visa ('Protection visa') or some types of Bridging visas.

Once you are released from prison, either on parole or at your full-time release date, you will usually be transferred from prison to immigration detention. How long you spend in immigration detention will depend on a number of different factors, including whether or not you challenge your visa cancellation.

Generally, if you are unsuccessful in challenging your visa cancellation, 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 you were born ('country of origin').

However, if you are a refugee, there may be rules stopping the Department from returning you to your country of origin. This can mean that you are not removed and instead spend an indefinite period of time in immigration detention (see pages 22-23).

After you have been removed from Australia because of a mandatory visa cancellation, you will never be able to return.

### Important

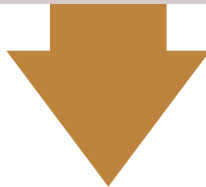
**If your visa is cancelled under section 501(3A) and you do not successfully challenge the decision, you will never be able to return to Australia.**

# CANCELLING A VISA: HOW IT WORKS IN QUEENSLAND

## Step One

The Department of Home Affairs ('the Department') 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 the Department.

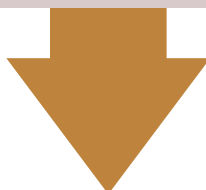
Sometimes QCS may notify the Department when you enter prison, if QCS believes you are a non-citizen.



## Step Two

The Department will decide whether you meet the criteria for automatic cancellation under 501(3A) (see pages 2-3).

Once you are found to meet the criteria, your visa can be cancelled at any time while you are in prison.



## Step Three

If the Department cancels your visa, they will send you a letter advising you that your visa has been cancelled under section 501(3A). This letter is known as a Notice of Visa Cancellation. The Department will usually email the Notice to QCS staff who will then give it to you by hand but they are also permitted to send the Notice via post.

# 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 by submitting a 'revocation request' and remain in Australia until a decision is made about your revocation request.

## Option Three

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

## Option Four

You can apply for a Protection visa.

# FREQUENTLY ASKED QUESTIONS

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

If you want to go back to your country of origin, you can notify the Department and ask that your cancellation matter is prioritised, 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 do this by writing to the Department or notifying an officer when you are being assessed in immigration detention. You can send your written request to the Department's National Character Consideration Centre (NCCC) or the Queensland Visa Office (see important contacts, page 40).

## **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, which means you might be moved outside Queensland. You can request to be placed in a particular immigration detention centre or State, though this will depend on bed availability, your medical needs, behavior, risk rating and gender.

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

You may be able return to your country of origin while a decision is made about the challenge of your visa cancellation. 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 if you voluntarily remove yourself from Australia. If you wish to remain in Australia, we recommend you do not return to your country of origin if your visa is cancelled.



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

You may be eligible for a Protection (Subclass 866) 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 of origin. 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.

You may also be excluded from applying for a Protection visa if you have been sentenced to three years imprisonment or more for an offence involving violence against another person and the Department considers you to be a risk to the Australian community.

If you want to apply for a Protection visa and have concerns about your eligibility, you should seek legal and/or migration advice. The Refugee and Immigration Legal Service (**RAILS**) may be able to provide you with further information (see Important Contacts, page 43). Prisoners' Legal Service does not provide advice about this issue.

## **How will a visa cancellation affect my parole?**

Decisions about your parole are separate to decisions made by the Department. 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 granted parole 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 transferred from prison into immigration detention.

If you are applying for parole, you will still need to convince the Parole decision maker 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?

The first thing to do is to check the documents about your criminal history sent to you are correct and that the mandatory cancellation laws apply to you (see page 2-3). If you have any doubts, seek legal advice.

Even if you think the information about your criminal history is incorrect, if you want to stay in Australia, we recommend you still start 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 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, your original visa will be reinstated, and you can continue to live in Australia. If you are unsuccessful, your visa remains cancelled and there are options to legally challenge the decision to refuse your revocation request (see page 39 to 40).

Unfortunately, there is no time by which the Department must decide whether to accept or reject your revocation request.

## How do I make a revocation request?

In the Notice of Visa Cancellation, the Department will invite you to make a revocation request. You make a revocation request by completing and submitting the Revocation Request Form and Personal Circumstances Form that will be attached to the Notice. You can also submit any other supporting documents that help explain why your visa should be given back.

You must send your completed Revocation Request Form, Personal Circumstances Form and any supporting documents to the National Character Consideration Centre ('NCCC'). The NCCC's contact details are contained in Important Contacts (see page 42) but you should read your notice carefully as this will tell you precisely where to send your revocation request.

## Important Information - Time Limits

**You must make your revocation request to the Minister within 28 days after you are given the Notice of Visa 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. Any revocation requests made out to the Department outside of this timeframe will not be accepted and you will lose your right to challenge the visa cancellation.

If the Department emails the notice to QCS to be given to you 'by hand', you are deemed to have received the notice on the date it is handed to you by QCS staff. If the notice is posted directly to you, you are taken to have received the notice 7 working days after the letter was dated and posted.

You are considered to have made the revocation request when you have completed the forms and taken the steps required to dispatch the post from prison. This means that you should complete the Revocation Request Form and Personal Circumstances Form, attach a cover letter and place them in the prison post as soon as possible within the 28 day time frame. Please see practical tips about making a revocation request below (pages 10-11).

**If you put your revocation request in the prison post after the 28 days, your revocation request will not be accepted by the Department.**

# 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 can prepare the information that you need for the revocation forms and the supporting documents in advance. If your head sentence is 12 months or more, we recommend you try to start preparing information and gathering supporting documents as soon as possible after you are sentenced.

## Tip 2: Prioritise completing the Revocation Request Forms first

You should focus on first completing the Revocation Request Form and Personal Circumstances Form as best you can and place these in the prison post box so that they can be sent to the Department as soon as possible. This way, you will not lose your right to challenge the visa cancellation.

If you want to include supporting documents, you should include a cover letter with your forms that states you will be sending further documents and information to support your revocation request as soon as possible. In your cover letter, you should declare the date you are putting documents in the prison post. This will help the Department to determine that you have made the revocation request in time. It is important that you are truthful about this.

## Tip 3: Do not wait until the 28 day time frame is about to expire

To avoid any risks that the Department will not accept your revocation request, you should complete and post your Revocation Request and Personal Circumstances Form with a cover letter as soon as possible within the 28 day time frame.

## Tip 4: Send further documents to the Department

You can continue submitting further documents up until the Department makes a decision about your revocation request (see examples of supporting documents at pages 14-26).

# CHALLENGING THE CANCELLATION: HOW DOES IT WORK

The Department will send you a Notice of Visa Cancellation and other documents, including documents that show your criminal history. You will be invited to challenge the cancellation by making a revocation request. The Department will supply you with you a blank Revocation Request Form and Personal Circumstances Form.



You must complete your Revocation Request Form and Personal Circumstances form and put them in the prison post within 28 days after receiving the Notice of Visa Cancellation. We recommend you do this as soon as possible and attach a cover letter declaring the date that you are putting the forms in the post and that you will submit further information and documents as soon as possible.



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



If a delegate of the Minister 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 pages 39-40).

If the Minister for Immigration or Minister for Home Affairs 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 41).

# WHAT INFORMATION SHOULD I INCLUDE IN MY REVOCATION REQUEST?

Your revocation request is your chance to tell the Department 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 the decision-maker will consider.

The relevant considerations the Department uses in deciding whether to give your visa back are in a document called **Ministerial Direction no. 99**. A copy of this Direction will be provided to you with your Notice of Visa Cancellation and it is important that you read it carefully. It contains detailed guidelines on what will be taken into account in deciding whether to accept or refuse your revocation request. These are called 'primary considerations' (which are the most important factors) and 'other considerations' (which will still be considered but are less important than the primary considerations).

## Primary Considerations

The five main factors which the Department must consider when 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 you have engaged in any conduct that can be classified as family violence
3. The Strength, nature and duration of any ties you may have to the Australian community
4. Whether any children under the age of 18 would be affected by your removal from Australia
5. Whether the Australian community would expect you to be allowed to stay in Australia

## **Other Considerations**

The other factors the Department will consider if they are relevant to you are:

1. Whether you are a refugee or will otherwise be at risk of significant harm upon your return to your country of origin
2. Whether you will face any difficulties if you are removed from Australia
3. Whether the victim(s) of your crime would be impacted if you remain in Australia
4. Whether your removal would have an impact on Australian business interests

Detailed examples of supporting documents that can be provided to address the primary and other considerations are contained in pages 14 - 25.

# HOW TO WRITE A PERSONAL STATEMENT

The best way to address the primary and other 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 27 to 34 provide an example of a personal statement. If you can, try to collect evidence that backs up what you say.

It is very important that the information you provide in your personal statement is as accurate as possible because the Department may make a negative judgement about your truthfulness if they do not believe your statement.

## Primary Considerations

### 1. Protection of the Australian community

#### (a) The nature and seriousness of your criminal offences or other 'serious' conduct

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

The Department can take into account the entirety of your criminal history, including offences committed outside Australia, when they make a decision about your visa, not just the charges that triggered the visa cancellation.

Under Ministerial Direction no. 99, offences that involve violence or sexual crimes; crimes of a violent nature against women or children, family violence and crimes against vulnerable community members or government representatives (eg police, health workers, correctional officers, elderly people) are considered to be very serious.

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 yes, you should acknowledge this and explain how you are taking responsibility for your actions now.



- 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 how you have taken responsibility for the offence (for example - pleading guilty).
- 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 at the time of the offence (for example - you had lost your job, you had problems in your family or with your children, you were experiencing homelessness, you were experiencing domestic and family violence).
- Did the sentencing judge say anything about any of the mitigating factors? If they did, include what they said by referring to the sentencing transcript.

### Examples of supporting documents that address primary consideration 1 (a)

- Statement by family member and/or friend who can confirm any mitigating circumstances in your offending.
- Sentencing transcript.
- Doctor's reports or letters from support workers submitted at your sentence.

### (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 explain the steps you have taken, or plan to take, to reduce the chance that you will commit further offences or return to prison.

- Discuss the situation you were in before you went into prison and what happened to make you commit the offences. 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 behavior, including:
  - Drug and alcohol rehabilitation courses
  - Courses or therapy to address any mental health problems
  - Courses or therapy to address behavioural problems (such as anger management or decision-making); and
  - Any educational courses you've done to help you gain employment once released.
- Explain what you have learned through attending any relevant courses and how they have assisted you to recognise or address your needs, triggers or behaviors.
- If you will be on a parole order when you are released, you should discuss how you plan to meet your parole obligations and how the conditions of your parole order will support you to remain in the community without committing further offences.
- Discuss any examples when you have previously followed parole orders, bail, suspended sentences, probation orders or good behaviour bonds.
- If you have been of good behaviour in prison, 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 returning to prison.
- Discuss where will you live and who will you 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 - 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.

### Examples of supporting documents that address primary consideration 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 from your case notes.
- Support letters from family, friends or support network.

## **2. Conduct involving family violence**

The Department must consider whether you have engaged in any conduct that involves family violence and assess the seriousness of any family violence you have engaged in. This consideration will be relevant to you if:

- a) you have been convicted of a breach of a Domestic Violence Order ('DVO');
- b) you have been convicted of another domestic violence specific offence;
- c) you have been convicted of an offence that the Department considers to also involve an act of family violence; or
- d) the Department has other information or evidence to show that you have engaged in conduct that amounts to family violence, even if you haven't been convicted or received a criminal sentence.

### **What does family violence mean?**

The Department considers any violent, threatening or other behaviour that causes a member of your family to be controlled, forced to act in a particular way or become afraid to be an act of family violence. This doesn't just involve committing acts of a violent or sexual nature but can also include acts such as stalking, damaging property, withholding financial support from a family member, repeatedly insulting or degrading a family member by any form of communication and stopping them from communicating with their other family members.

### **What information will the Department Consider?**

Under Ministerial Direction no. 99, the Department can consider evidence relating to any acts of family violence that you have been involved in, regardless of whether you have been convicted or received a criminal sentence. Therefore, if you have ever been a respondent in a DVO or Police Protection Order ('PPO'), but haven't been criminally charged, this primary consideration may be relevant to you.

The Department will provide the information they have about your family violence conduct in their Notice of Visa Cancellation, so read the Notice and attachments carefully. The Department can gather further information and rely on this throughout the revocation request process. If this happens, they are supposed to give you a letter and extra time to respond to the additional information.

If you have no criminal convictions but have been the respondent in a DVO or PPO or are otherwise unsure whether this primary consideration applies to you, we strongly suggest you seek legal advice before you prepare your personal statement.

## What should I discuss?

If this primary consideration is relevant to you, you should consider discussing the following:

- Address the amount of family violence related conduct the Department has identified and how much time there has been between any family violence related conduct. For example, if there has been a single incident, you should mention this.
- Explain what steps you have taken to ensure that you don't engage in further family violence (participating in a course, receiving counselling or therapy, demonstrating a change in your behaviours etc.).
- Explain how you feel about your family violence related conduct now and what you have learnt (for example, discuss whether you regret your conduct and understand how your behaviour has impacted your family).
- Explain whether you have done anything, to show you are sorry or feel remorse for what you did (for example, apologise, change the way you treat your family members etc.).
- If you have been sentenced for your family violence conduct, mention if the Judge made any comments about your circumstances and any remorse you showed for your conduct. For family violence related offences, the Department will consider it a serious offence even if you received a short sentence, so a sentencing transcript may not always be useful. However, if the Judge made comments about your remorse and your understanding of your actions, you should mention this.
- If the Department has information that you are or have been a respondent in a DVO you should explain the circumstances that lead to the DVO. If you have complied with the DVO and there have been no breaches, you should mention this.

### Examples of supporting documents that address primary consideration 2

- Certificates for any relevant courses or programs you have completed (example: men's behaviour change program, anger management course, any other family violence specific courses).
- Support letters from any professionals that have provided you with support to address your family violence related behaviours (letters from counsellors, social workers etc.).
- Sentencing transcripts that demonstrate your remorse and your understanding about family violence.

### 3. The 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).

The Department will also consider any links you have to the the Australian community generally. Therefore, 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 how long you have lived in Australia, including whether you arrived in Australia as a child.
- 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 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 primary consideration 3

- Letters of support from family 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; and
  - 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.
  - Any emotional impacts your family would experience if you were removed from Australia.
- Letters of support from close friends or other people who can talk about your connection to the Australian community.
- Reference letters from former or future employers.
- Copy of your CV/resume if you have lengthy work experience in Australia.
- Education transcripts.

#### 4. Best interest of minor children in Australia

The Department must consider whether there any children in Australia under the age of 18 who will be negatively affected if you are removed from Australia. This includes your own children (biological, adopted or children by marriage) or your grandchildren, nieces and nephews or siblings. You need to show that it is in the best interest 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.
- If the child is not an Australian citizen, address whether they are permanent residents and how long they have been living in Australia.
- The nature of your relationship with each child (for example: parent, guardian, carer).
- 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 them 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 the child has 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 they 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 primary consideration 4

- 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).

### 5. Expectations of the Australian community

The Department must consider whether the Australian community would expect your visa to be given back, despite your criminal history. The Department may look at the type of your offending, circumstances of your offending, your risk of reoffending and your ties to the Australian 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.

Under Ministerial Direction no. 99, the Department provides that there is an Australian community expectation that a person's visa should be cancelled if they have committed a serious crime. Serious crimes include acts of family violence, violent or sexual crimes against women, children or other members of the community. Serious character concerns can also be considered through conduct in Australia or elsewhere, such as forced marriage, human trafficking and worker exploitation.

If you have committed a 'serious' offence it may still help you to try to explain why you think the community would expect you to be given back your visa. If you have support letters from members of the Australian community who say that they are aware of your 'serious' criminal history and believe you should be given back your visa, you should supply these.

## Examples of supporting documents that address primary consideration 4

- Letters of support from the Australian community.
- Sentencing transcripts that discuss the non-serious nature of your offending and mitigating factors that were used to reduce your sentence.



## Other Considerations

### 1. Risk of significant harm if removed from Australia

The Department is required to consider whether you have raised any protection concerns or any concerns about risk of significant harm you may face if you are returned to your country of origin. The Department refers to this as a consideration of their 'non-refoulment obligations'. The Department will assess this consideration differently depending on which type of visa you held before it was cancelled.

#### **If you held a protection visa:**

- If you held a protection (subclass 866) visa, there are rules which generally stop the Australian Government from returning you to your country of origin except for in limited circumstances.
- This means that you may spend a long period of time in immigration detention in Australia if you are not given your visa back.
- In deciding whether or not to accept your revocation request and give your visa back, the Department must consider whether you may be held in immigration detention for a long time because the Australian Government owes you protection and cannot return you.

#### **If you held any other type of visa:**

- If your visa that was cancelled was not a protection (subclass 866) visa, you can still raise protection concerns or concerns about risk of significant harm with the Department. If you raise these concerns, the Department must consider them.
- However, the Department is not required to consider your protection concerns in as much detail when deciding whether or not to accept your revocation request. This is because you may be eligible to apply for a protection visa which involves an assessment of these concerns.
- This consideration will especially be relevant to you if you have ever held a refugee or humanitarian visa of some kind that was given to you when you were outside of Australia.

If you hold protection concerns or concerns about significant risk of harm, the types of information you should include in your revocation request are:

- If you have ever been granted a protection (subclass 866) visa
- If you have ever been granted a refugee or humanitarian related visa;
- Whether you fear that you would be harmed if sent back to your country of origin, including the type of harm you fear, who would harm you and why; and
- If you would be unable to relocate to another part of the country to avoid being harmed or persecuted, you should explain why



We recommend you 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 (subclass 866) visa.

Even if you think you can apply for a protection visa, we recommend you still consider submitting a revocation request within the 28 day time frame so you do not lose your right to challenge your visa cancellation.

You can contact the Refugee and Immigration Legal Service (RAILS) for information and advice on protection visas (see the 'Important Contacts', page 43 for their contact details).

### Examples of supporting documents that address other consideration 1

- Evidence that you held a protection (subclass 866) visa. You may also consider providing copies of any statements or supporting information you provided to support your protection concerns when you applied for that visa.
- Evidence that you have held any other visa related to being a refugee or facing significant harm. For example, a refugee (subclass 200) or global special humanitarian visa.
- Evidence of your religious or political beliefs (for 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).
- Evidence that demonstrates the harm you will face if you return to your country of origin (for example: news articles or reports that show people are facing significant harm for the same reason you fear returning to your country of origin).

## 2. Extent of Impediments if Removed from Australia

The Department will consider whether you will face any difficulties if you are sent back to your country of origin. They will particularly take into account the following:

- a. Your age and health;
- b. Whether you face any language or cultural barriers if you return to your country of origin; and
- c. Whether you have any social, medical and/or financial support available to you in your country of origin.

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

- If you can't speak the language in your country, you should say this and explain how it will prevent from getting work or otherwise effect your quality of life in that country.
- 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, explain what would happen if you were separated from this person and whether you can look after yourself.
- Whether there is any social, medical and/or economic support available to you in your country.
- 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.
- Discuss whether you have anyone to help or support you if you are removed from Australia. If you have no family members or no other person to help or support you in your country of origin, you should say this.

### Examples of supporting documents that address other consideration 2

- 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.
- Support letters from any organisations that you receive ongoing support from in Australia.

### **3. Impact on Victims**

The Department 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?

### **4. 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 significantly 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.

# CHECKLIST FOR YOUR PERSONAL STATEMENT

**Remember: your personal statement is your chance to convince the Department 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 being charged with further offences or otherwise returning to prison. 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.
- Anything you have done to contribute to the Australian community (working, volunteering etc.).
- 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 information 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 37 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. It is important that you are providing truthful and accurate information. If the Department questions your truthfulness this will increase the chances that your revocation request will not be successful. **Refer back to pages 14 to 25 to remind you of the information you need to include.**

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

Dear Sir/Madam

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

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

This is my response to the Notice of Visa Cancellation 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, Marty McDonald works as a tiler and they have two kids together, Sam (aged 2 years) and Gwen (aged 6 months). They live on the Sunshine Coast.

In 2008 I met my fiancée, 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 that it 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 of reoffending**

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.

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

As I mentioned above, I have lived in Australia since 1997 and completed schooling in Australia up until grade 11. I have significant ties to the Australian community through my family. My primary relationship is with my fiancé, Angela, who I have been in a relationship with for over 9 years. 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 a year, prior to that I worked full time and Angela relied on my income to support her business and our family. She has had to get a second, part-time job to keep her business going but is relying on me getting out and working with Foxworks Plumbing so that she has more

time with Amy and to focus on her business. We would eventually like to have another child.

Both my parents, my two sisters and all their families live in Australia. With the exception of my younger sister, they are all Australian citizens. 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 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 4 nieces and nephews and they all live in Brisbane. All of them are under 18 years of age. I have a particularly special bond with my nephew Cameron, who is 5 years old. He gets on well with Amy and spends a lot of time at our place on the weekends. Sometimes I help out with his soccer team and run training sessions and coach them at weekend games. I am also tied to the community through my work as a plumber. I have worked in this job for over 6 years and can go back to this job once I'm released.

### **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 to watch and 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 because of the nature of my offending, my strong ties to Australia and the steps I have taken to address the problems that have lead me to be imprisoned.

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.

My criminal history includes one charge of armed robbery with a dangerous weapon and another charge for assault occasioning bodily harm. I take complete responsibility for my offending in the past and understand that this behaviour was wrong. I believe that my addiction to alcohol and my personal circumstances at the time contributed to my offending and I have taken many steps to address my addiction and make sure that I do not commit any more offences in the future.

I have attached many letters of support from my family, friends and 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.

### **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 take drugs or get involved in trouble again I will lose them, and not only because I might be removed from Australia. My fiancé 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 37** is an example of a letter of support. Support letters can be provided by any person 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.

You should collect letters of support from as many people as possible, including family, friends, employers and others. If someone is saying that you are a good person and you deserve to be given back your visa, they should also say that they know about your crimes.

The following information should be included in a letter of support:

- Who the writer is (including their full name, age and employment), what their relationship is with you and how long they have known you
- A description of the writer's relationship with you, including the following details (if relevant)
  - Is it a close relationship?
  - How often do they see or talk to you? 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, the writer should include this in the letter. For example:
  - 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?
  - They should write about anything that shows you have a good character and are respected by other people
  - They should explain why they think you are of good character despite your criminal history
- 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

## Practical Tips

All letters of support should be dated and signed by the writer of the letter.

If the writer of the letter of support is a family member, friend or any other person writing a letter for you in their personal capacity, they should attach a copy of their formal photo identification (drivers licence or passport). This will help to ensure that the Department considers the information contained in the letter. The Department will want to make sure that the letter is truthful and has actually been written by the person who has signed the letter.

# EXAMPLE: LETTER OF SUPPORT

Jean Hughes  
20 Alaska Street  
Windsor QLD 4030

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

29 August 2015

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 if 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.

Yours sincerely,  
Jean Hughes



# WHAT HAPPENS IF MY REVOCATION REQUEST IS REFUSED?

## Merits Review at the Administrative Review Tribunal

If your revocation request is refused by a **delegate of the minister** 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 revocation request should stay the same or be changed so you can stay in Australia. The AAT will base their decision on Ministerial Direction no. 99. This is the same document the Department uses to assess your revocation request.

### (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 revocation request was made by a delegate of the Minister. A delegate is a person who acts on behalf of the Minister. If the Minister personally decides to refuse your revocation request, the AAT cannot review the decision. However, you may be able to seek judicial review of the Minister's decision in the Federal Court of Australia. If the Minister personally refuses your revocation request, it will be clearly stated in the letter advising you of the 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 revocation request was refused. This timeframe cannot be extended. Applications lodged outside this timeframe cannot be considered. The AAT considers an application to be 'lodged' at the date the AAT receives your application. This means that the AAT must receive your application for review within 9 days after you receive the Notice of Visa Cancellation from the Department.

The standard application fee is \$1,082 (as of 1 August 2023). You are entitled to pay a reduced fee of \$100 if you are in prison or immigration detention. You need to provide proof of your imprisonment or detention with your application form.

If your revocation request is refused, you will receive a letter from the Department advising you of this decision. Pay close attention to what this letter says about your right to review their decision and the timeframe they have provided for applying for review.

Sometimes, the Department can make an error and provide wrong details about how to apply for review. Similar to the original Notice of Visa Cancellation, it is always better to err on the side of caution and seek to exercise your merits review rights within the timeframe indicated in the letter. If and when you do so, it is also important that you understand what steps you need to take in terms of bringing a valid review application.

### **(c) How do I apply?**

You can apply for AAT review by:

- Applying online at <https://www.aat.gov.au/apply-for-a-review/migration-and-refugee/character-related-visa-decisions/how-to-apply>; or
- Filling out an application form; or
- Writing a letter to the AAT at:  
GPO Box 9955,  
Brisbane QLD 4001; or
- Sending an email to the AAT at [mrdivision@aat.gov.au](mailto:mrdivision@aat.gov.au).

Please note these contact details may change, so if possible, you should try to double check these details before you apply to the AAT for merits review.

When you apply for review, you must also send the AAT a copy of the Department's decision to refuse your revocation request. If you write the application by letter, you should also include details of the date you received the decision and brief reasons why you want the decision to be reviewed.

## **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 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 remain 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 or Assistant Minister. You can apply for judicial review of this 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 believe something went wrong with the way your visa was cancelled.

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

Any application to the court must be made within 35 days of the date of the decision you wish to challenge. This is usually a strict timeframe and to avoid missing the chance to apply for judicial review, you should lodge your application as soon as possible within the 35 day timeframe.

The court may extend the time limit if you apply for an extension of time in writing and the court is satisfied that it is in the interests of justice to extend the time limit. However, this decision is up to the court and they are permitted to refuse your request for an extension.

We recommend you seek legal advice if you wish to apply to the court for judicial review.

# IMPORTANT CONTACTS

## National Character Consideration Centre ('NCCC')

The branch of the Department of Home Affairs that handles visa cancellation on character grounds and revocation requests.

Phone: 1300 722 061  
Postal address: NCCC, GPO Box 241, Melbourne VIC 3001  
Email: [nccc@homeaffairs.gov.au](mailto:nccc@homeaffairs.gov.au) and  
[501Revocations@homeaffairs.gov.au](mailto:501Revocations@homeaffairs.gov.au)

## Queensland Visa and Citizenship Office - Brisbane

The branch of the Department of Immigration that deals specifically with Visa applications in Queensland. If you have a request to be removed from Queensland, you may wish to also send it to this office.

Postal address: Visa and Citizenship Office - Brisbane  
Department of Home Affairs  
GPO Box 9984, Brisbane QLD 4001

## 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

## 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

## Administrative Appeals Tribunal

Provides independent review of some character decisions of the Department of Home Affairs.

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) or  
[mrdivision@aat.gov.au](mailto:mrdivision@aat.gov.au)

## 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

## Sisters Inside

If you identify as a woman, you may consider contacting Sisters Inside. The migration agent at Sisters Inside may be able to provide you with information, advice or assistance with your immigration issue.

Phone: (07) 3844 5066  
1800 003 242 (Free call)

Postal Address: PO Box 3407  
South Brisbane Qld 4101