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# Visa Cancellation Section 501 Migration Act

## LEGAL INFORMATION KIT

\* RAILS and IARC do not guarantee the accuracy of any information contained in this information kit. It contains general information and is not a substitute for legal advice. Visa cancellation under s501 is extremely serious and will result in permanent exclusion from Australia. Therefore you must seek expert legal advice about your specific circumstances as soon as possible if you are faced with the possibility of cancellation under s501.



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## CONTENTS

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1. About this Kit
2. When can my visa be cancelled or refused?
  - 2.1 Character test
  - 2.2 Automatic cancellation
3. Do I fail the character test?
  - 3.1 Substantial criminal record
  - 3.2 Offences while in Immigration Detention
  - 3.3 Association with criminals
  - 3.4 Involvement with certain criminal activity
  - 3.5 Past and present conduct
  - 3.6 Significant risk of future conduct
  - 3.7 Other cases where you will not pass the character test
4. I fail the character test, but can I still show that my visa should not be cancelled or refused?

Or

My visa has been automatically cancelled under subsection 501(3A), can I ask for the decision to be revoked?

  - 4.1 Primary considerations
    - 4.1.1 Protection of the Australian community
    - 4.1.2 The best interests of a child in Australia
    - 4.1.3 Expectations of the Australian community
  - 4.2 Other considerations
    - 4.2.1 International *non-refoulement* obligations
    - 4.2.2 Strength of ties to Australia
    - 4.2.3 Impact on business
    - 4.2.4 Impact on victims
    - 4.2.5 Extent of impediment
5. If my visa is cancelled or refused, or if DHA refuses to revoke a mandatory cancellation of my visa, can I appeal that decision?
  - 5.1 Administrative Appeals Tribunal (AAT)
  - 5.2 Federal Court

5.3 Cancellation by Minister

5.4 Appealing an AAT decision to the Federal Court

6 What happens if my appeal fails?

7 Where can I get help?

7.1 Queensland

7.2 New South Wales

ATTACHMENT A: Template Response, discretionary cancellation

ATTACHMENT B: Template Response, Mandatory cancellation

ATTACHMENT C: Blank Statutory Declaration

ATTACHMENT D: Information about the AAT

## 1. ABOUT THIS KIT

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This Kit is intended for use by visa holders, visa applicants, and people who might be supporting them.

**This Kit is not legal advice.** This Kit provides general information only.

The purpose of this Kit is to provide information about possible visa cancellation or refusal on character grounds.

The power to cancel or refuse a visa on character grounds is found in section 501 of the Migration Act. Section 501 is only about the character of the visa holder, or the visa applicant. There are many other reasons why a visa might be cancelled or refused. This Kit does not consider any of those other reasons.

Section 501 gives a ‘decision maker’ the power to cancel a person’s Australian visa, or to refuse to grant a visa. In certain circumstances the law requires the mandatory cancellation of a person’s visa but gives them the opportunity to request that the cancellation be revoked. A decision-maker can be either the Minister for Immigration, or an officer of the Department of Home Affairs (DHA). While it is possible for the Minister to personally make this decision - it is usually done by DHA. This Kit will refer to DHA making the decision.

Cancelling a visa, and refusing to grant a visa, are two different decisions. Some of the rules that apply to those decisions are not the same. Where there is a difference, this Kit will make that clear. If the Kit does not say that there is a difference, the same rules apply to both visa cancellation and visa refusal.

The things that DHA must consider when it decides whether or not to cancel or refuse your visa are listed in **Ministerial Direction No. 79**. If you received a letter from DHA advising that it intends to consider cancelling or refusing your visa, you should also have received a copy of Ministerial Direction No 79. This Kit does not include a copy of that Ministerial Direction.

If a decision-maker wants to cancel or refuse your visa, we strongly suggest that you have an experienced migration agent or migration lawyer assist you.

In Australia, people who provide migration assistance must be registered with the Office of the Migration Agents Registration Authority (Office of the MARA) or (after 21 March 2021) be lawyers with unrestricted practising certificates.. You can find a registered migration agent on the MARA website – [www.mara.gov.au](http://www.mara.gov.au) and lawyers

through your State Law Society or community legal centres. Make sure the practitioner has experience in visa cancellation cases .

Section 7 of this Kit provides a list of organisations that might help you with legal advice or assistance.

## 2. WHEN CAN MY VISA BE CANCELLED UNDER SECTION 501?

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2.1 Your visa (including your permanent residency) may be cancelled if the Minister reasonably suspects that you do not pass the “**character test**” and you do not satisfy the Minister that you do.

You fail the character test if:<sup>1</sup>

- (1) you have a **substantial criminal record** – see section 3.1 of this Kit; or
- (2) you have escaped from **immigration detention**, or you committed an offence while you were in immigration detention – see section 3.2 of this Kit; or
- (3) you have an **association** with an individual, group or organisation which is suspected of being involved in criminal conduct – see section 3.3 of this Kit; or
- (4) you are suspected of people smuggling, trafficking of persons or a crime that is of serious international concern; - see section 3.4 of this Kit; or
- (5) you are not of good character having regard to past and present criminal or **general conduct**; - see section 3.5 of this Kit; or
- (6) you are a risk of engaging in **future, unacceptable conduct** - see section 3.6 of this Kit.
- (7) you have been convicted, or found guilty, or had a charge against you proven despite not receiving a conviction by a court in Australia or a foreign country of a sexually based offence involving a child – see section 3.7 of this Kit; or
- (8) you have, whether in Australia or a foreign country, been charged with or indicted for a serious international crime; see section 3.7 of this Kit; or
- (9) you have been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security; see section 3 – see section 3.7 of this Kit; or
- (10) it is reasonable to infer that you would present a risk to the Australian community or a segment of that community because an Interpol notice in relation to you is in force – see section 3.7 of this Kit.

If you fail the character test your visa is not automatically cancelled or refused. The Department of Home Affairs (**DHA**) will consider whether or not to cancel or refuse your visa. DHA can waive the requirement that you pass the character test.

When you reply to DHA’s letter, you need to explain, and give evidence to show:

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<sup>1</sup> The character test is defined in s 501(6) of the *Migration Act 1958* (Cth), discussed in 2.1.

- Why you pass the character test (if this is possible) – see section 3 of this Kit.

Or, if you fail the character test:

- Why DHA should not cancel or refuse your visa anyway – see Section 4 of this Kit.

2.2 Your visa (including your permanent residency) will be automatically cancelled if you:

- have been sentenced to death or sentenced to a term of imprisonment of 12 months or more (including life); or
- have had a sexually based offence involving a child found proven against you by an Australian or foreign court (this can include a conviction, a finding of guilt, or a finding that the charges against you have been proven despite you being discharged without a conviction)

AND

You are serving a sentence of imprisonment, on a full-time basis, for an offence against a law of the Commonwealth, a State or a Territory.

If your visa is automatically cancelled you will have 28 days after you are taken to have received the notice to request revocation of the decision. This timeframe **cannot** be extended.

When you reply to DHA's letter, you need to explain, and give evidence to show that the decision should be revoked – see section 4 of this Kit:

### 3. DO I FAIL THE CHARACTER TEST?

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If DHA has written to you, it should explain why it thinks that you fail the character test.

Below, we list the reasons why people fail the character test.

**If you think that DHA is wrong, and that you should pass the character test, you can challenge DHA's assessment. This must be done in writing, within 28 days of receiving DHA's letter. You should write to DHA and state that you think that you pass the character test, and explain why.**

#### 3.1 SUBSTANTIAL CRIMINAL RECORD

**IF YOU HAVE A SUBSTANTIAL CRIMINAL RECORD, YOU FAIL THE CHARACTER TEST. IF THIS IS YOU, YOU DO NOT NEED TO READ ANY MORE OF THIS SECTION.**

**IF YOU DON'T WANT YOUR VISA TO BE CANCELLED OR REFUSED, GO TO SECTION 4.**

A substantial criminal record means that you have:

- received a **head sentence of 12 months or more**; or
- received **two or more head sentences** (whether at the same time or separately) that add up to **12 months or more**; or
- been acquitted on the grounds of either **unsoundness of mind or insanity** and you have been detained in a facility or institution; or
- been sentenced to death or **life imprisonment**; or
- you have been found by a court to be not fit to plead *and* the court has nonetheless found that you have committed the offence and, as a result, you have been detained in a facility or institution.

If you do not have a substantial criminal record, continue reading this section for other reasons that you might fail the character test.

#### 3.2 OFFENCES DURING IMMIGRATION DETENTION

You fail the character test if you were convicted of escaping from immigration detention.<sup>2</sup>

You also fail the character test if you were convicted of an offence that was committed:

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<sup>2</sup> Under s197A of the *Migration Act 1958* (Cth).



- while you were in immigration detention; or
- when you escaped from immigration detention but before you were taken back into immigration detention again.

**IF YOU DID ANY OF THESE THINGS, YOU FAIL THE CHARACTER TEST. YOU DO NOT NEED TO READ ANY MORE OF THIS SECTION.**

**IF YOU DON'T WANT YOUR VISA TO BE CANCELLED OR REFUSED, GO TO SECTION 4.**

### **3.3 ASSOCIATION**

DHA may decide that you do not pass the character test if they reasonably suspect that you have had an association with a person, group or organisation that DHA reasonably suspects was or is involved in criminal conduct.

**If you have failed the character test for this reason, and you think that DHA's decision is wrong, you must respond to DHA within 28 days of receiving DHA's letter. You should write to DHA and state that you think that you pass the character test, and explain why.**

**We suggest that you get detailed advice from a migration agent or migration lawyer. Information on how you can contact someone in Queensland or New South Wales is in section 7 of this Kit.**

DHA will consider:

- the nature of your association
  - Did you associate with these people for reasons not related to crime? If this is the case, you could provide details about whether you were friends, or mere acquaintances, or family.
- the degree and frequency of the association
  - How close was your relationship to this person or group? How often did you see them? Why did you see them?
- the length of time that you were associated with this person or group.
- whether or not you were sympathetic to, or supportive of, or involved in, the criminal conduct
  - Can you get statutory declarations (written statements) from people who know about your situation? Could they state that you didn't know about the criminal conduct? What your attitude was to the criminal conduct? Is there any evidence that you spoke or took action *against* the criminal conduct?
- whether you actually participated in the criminal offences, or only had knowledge of them

- Did you help others to commit their crimes? Did you know about the crimes, but not help to commit the crimes?
- whether your information regarding this association puts you in danger
  - Is the information that you could give to DHA dangerous to you? DHA can be made aware that you require information to be kept confidential.

**If you accept that you fail the character test because of your associations with people involved in criminal activity, you do not need to read any more of this section.**

**IF YOU DON'T WANT YOUR VISA TO BE CANCELLED OR REFUSED, GO TO SECTION 4.**

### **3.4 INVOLVMENT IN CERTAIN CRIMINAL ACTIVITY**

**If you have failed the character test for this reason, and you think that DHA's decision is wrong, you must respond to DHA within 28 days of receiving DHA's letter. You should write to DHA and state that you think that you pass the character test, and explain why.**

**We suggest that you get detailed advice from a migration agent or migration lawyer. Information on how you can contact someone in Queensland or New South Wales is in section 7 of this Kit.**

The DHA may find that you do not pass the character test if they reasonably suspect that you have been involved in:

- People smuggling or trafficking;
- The crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern.

You do not need to have been convicted of the offences to fail the character test on this limb. It is sufficient that the DHA reasonably suspects that you have been involved in them.

**IF YOU DID ANY OF THESE THINGS, YOU FAIL THE CHARACTER TEST. YOU DO NOT NEED TO READ ANY MORE OF THIS SECTION.**

**IF YOU DON'T WANT YOUR VISA TO BE CANCELLED OR REFUSED, GO TO SECTION 4.**

### 3.5 PAST AND PRESENT CRIMINAL OR GENERAL CONDUCT

#### Criminal Conduct

**If you have failed the character test for this reason, and you think that DHA's decision is wrong, you must respond to DHA within 14 days of receiving DHA's letter. You should write to DHA and state that you think that you pass the character test, and explain why.**

**We suggest that you get detailed advice from a migration agent or migration lawyer. Information on how you can contact someone in Queensland or New South Wales is in section 7 of this Kit.**

DHA may decide that you are not of good character because of your past and present criminal conduct.

DHA will look at:

- the nature, severity and frequency of your offences;
- how long since you were last involved in criminal activity;
- how often you committed offences, and if it has become more or less frequent;
- the cumulative effect if you have committed more than one offence;
- whether the crime was violent or sexual in nature;
- whether the victim of the crime was a vulnerable person such as a child under the age of 18, an elderly person, a mentally or physically disabled person;
- your record since the offence;
  - DHA will be concerned if there is evidence of recidivism (reoffending), ongoing criminal associations, patterns of similar offences, or blatant disregard or contempt of the law.
- any circumstances surrounding your offence that could explain your conduct, and that is set out in a judge's comments, parole reports or similar offences;
  - You can provide an explanation of these. For example, drug or alcohol problems that you have since addressed, personal circumstances (such as temporary mental illness, family problems, dynamics of a relationship that you are no longer in) and/or your age when the offence was committed.
- any good acts since the offence that indicate that you may have reformed. For example, treatment for drug/alcohol dependency, community services,

new relationships, counselling/treatment programs, new employment/training;

- if you have been charged with an offence in another country besides Australia, what you did will be considered to see if it impacts on your character.
  - You should provide an explanation of the offence, its seriousness, and any extenuating circumstances.

### General Conduct

**If you have failed the character test for this reason, and you think that DHA's decision is wrong, you must respond to DHA within 14 days of receiving DHA's letter. You should write to DHA and state that you think that you pass the character test, and explain why.**

**We suggest that you get detailed advice from a migration agent or migration lawyer. Information on how you can contact someone in Queensland or New South Wales is in section 7 of this Kit.**

DHA may also decide you are not of good character because of your past and present general conduct. Generally this will not form the basis for a cancellation of a visa. However, in considering this DHA will look at:

- whether you have been involved in activities that indicate contempt or disregard for the law or human rights, which could include: terrorist activity, trafficking or possession of drugs, political extremism, extortion, fraud, a history of serious breaches of immigration law, or war crimes or any other crimes against humanity;
- whether you have been removed or deported from Australia in the past, or from another country;
- whether you have been dishonourably discharged, or discharged early from another country's armed forces as a result of a disciplinary action because you did something, that in Australia would be regarded as serious;
- whether there are any court cases against you in Australia or any other country that have not been decided yet because you have not been present in that region;
- whether you have any recent good behaviour:
  - You can show the minister that since the bad and/or criminal behaviour you have shown good behaviour such as community involvement, to show that you have 'good character'.

**If you accept that you fail the character test because of your past and present conduct, you do not need to read any more of this section.**

**IF YOU DON'T WANT YOUR VISA TO BE CANCELLED OR REFUSED, GO TO SECTION 4.**

### 3.6 RISK IN REGARDS TO FUTURE CONDUCT

DHA may decide that you do not pass the character test if there is a risk that you would do anything listed below, if you were allowed to enter or remain in Australia. That means there is a risk that you would:

- engage in criminal conduct in Australia; or
- harass, molest, intimidate or stalk another person in Australia. This includes conduct that potentially places children in danger (unwelcome and/or inappropriate approaches) and conduct that would reasonably cause someone to be severely apprehensive, fearful, alarmed or distressed regarding your behaviour towards them (or towards their property); or
- vilify a segment of the community, incite discord, or represent a danger through involvement in disruptive and/or violent activities. This includes:
  - extremist views (such as a belief in the use of violence as a means of political expression); or
  - encouraging disregard for law and order (for instance, when addressing public rallies); or
  - engaging, or threatening to engage, in conduct incompatible with a multicultural society (for example, advocating political, social or religious values outside those generally acceptable in Australia which, if adopted, might lead to discord within or between groups); or
  - participating in, or promoting, politically motivated or criminal violence and would be likely to propagate or encourage such action in Australia; or
  - provoking civil unrest in Australia because of the combination of intended activities, and planning the presence of another individual, group or organisation that holds opposing views.

DHA must be satisfied that there is a risk that you would engage in the conduct in the future. Therefore, if you have been involved in any of this conduct in the past, you would need to provide an explanation, and evidence where possible, that there is either no risk, or a minimal/trivial risk, that you would engage in this conduct in the future.

It might be useful to provide to DHA evidence of your reform, or extenuating circumstances as discussed in relation to 'Past and present criminal conduct' in section 3.5 of this Kit.

If your conduct was a form of free expression, you could bring this to the attention of DHA because it might weigh in your favour.

**If you accept that you fail the character test because there is a significant risk, but you do not want your visa to be cancelled or refused, GO TO SECTION 4.**

If you have failed the character test for this reason, and you think that DHA's decision is wrong, you must respond to DHA within 14 days of receiving DHA's letter. You should write to DHA and state that you think that you pass the character test, and explain why.

We suggest that you get detailed advice from a migration agent or migration lawyer. Information on how you can contact someone in Queensland or New South Wales is in section 7 of this Kit.

### **3.7 CASES WHERE YOU WILL NOT PASS THE CHARACTER TEST**

You will not pass the character test if:

- A court in Australia or in a foreign country has found you guilty or convicted you of one or more sexually based offences involving a child. You would also fail the character test if the charges against you were proven despite you being discharged without a conviction. The penalty or orders are irrelevant. These offences include (but are not limited to):
  - child sex abuse;
  - indecent dealing with a child;
  - possession or distribution of child pornography;
  - internet grooming;
  - Other non-contract carriage service offences
- You have been charged with or indicted for one or more of the following:
  - The crime of genocide;
  - A crime against humanity;
  - A war crime;
  - A crime involving torture or slavery;
  - A crime that is otherwise of serious international concern;
- You have been assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to the protection of Australia, and its people, from:
  - Espionage;
  - Sabotage;
  - Politically motivated violence;
  - Promotion of communal violence;
  - Attacks on Australia's defence system;
  - Acts of foreign interference;
  - Australia's territorial and border integrity
- If there is an Interpol notice in relation to you in force and it is reasonable to infer from that notice that you would present a risk to the Australian community or a segment of that community.

If you accept that you fail the character test because there is a risk, but you do not want your visa to be cancelled or refused, GO TO SECTION 4.

If you have failed the character test for this reason, and you think that DHA's decision is wrong, you must respond to DHA within 14 days of receiving DHA's

letter. You should write to DHA and state that you think that you pass the character test, and explain why.

We suggest that you get detailed advice from a migration agent or migration lawyer. Information on how you can contact someone in Queensland or New South Wales is in section 7 of this Kit.

#### **4. I FAIL THE CHARACTER TEST, BUT CAN I STILL SHOW THAT MY VISA SHOULD NOT BE CANCELLED OR REFUSED?**

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If you fail the character test, but do not want your visa to be cancelled or refused, **you must respond to DHA within 28 days** of receiving the 'Notice of Intention to Consider Cancellation.'

**If you need more time to prepare a complete response, then you can write to DHA to ask for more time, and explain why you need it.** For example, you might need to apply to a Government Department to access some documents. That will usually take more than 28 days.

#### **I AM IN PRISON AND HAVE HAD MY VISA CANCELLED BECAUSE I HAVE BEEN SENTENCED TO A TERM OF IMPRISONMENT OF 12 MONTHS OR MORE, OR BECAUSE I HAVE HAD A SEXUALLY BASED OFFENCE INVOLVING A CHILD. CAN I REQUEST THAT THE DECISION TO CANCEL MY VISA BE REVOKED?**

If your visa has been **automatically cancelled** under subsection 501(3A) you will have 28 days after you are taken to have received the notice to request revocation of the decision. This timeframe **cannot** be extended.

#### **WHAT WILL DHA CONSIDER?**

When DHA is deciding whether to cancel or refuse your visa, or when you have asked them to revoke the cancellation of your visa under subsection 501(3A), there will be **primary considerations** and **other considerations**.

Primary considerations are the most important ones for DHA. These are explained below in section 4.1 of this Kit.

Other considerations are explained below in section 4.2 of this Kit.

If there are other reasons not mentioned in this Kit as to why you think your visa should not be cancelled or refused you should mention those as well.

## WHAT CAN I INCLUDE?

### Letter to DHA

Generally, it is useful to begin with a letter to DHA explaining how each of the primary considerations and other considerations apply to you. Your letter can also list what evidence you can provide to support your arguments.

An example of how you might set out your letter is **Attachment A** to this Kit.

### Statutory Declarations and other written statements

One of the most useful pieces of evidence that you can provide is a detailed written statement. This can include your personal knowledge about each of the considerations described below.

You can also provide written statements of support from family, friends, employers, or professional people.

DHA will give more weight to any written statement if it is in the form of a Statutory Declaration. A blank statutory declaration form is **Attachment B** to this Kit.

When you make a statutory declaration, you are declaring that the statements in it are true. It must be in the specified form, and be witnessed by a qualified person. If you intentionally make a false statement in a declaration, you can be charged with an offence. The maximum penalty for making a false statement in a statutory declaration is four years imprisonment.

All statements of support should also include evidence of the writer's Australian citizenship or permanent residency – that is, a certified copy of their Australian passport, birth certificate, or Citizenship Certificate; or evidence of their Australian permanent residence visa.

### Other evidence

The rest of section 4 of this Kit provides detailed information about DHA's considerations.

## **4.1 PRIMARY CONSIDERATIONS**

DHA will consider:

- protection of the Australian community from criminal or other serious conduct; and
- the best interests of children under 18 years old in Australia; and
- expectations of the Australian Community.



You should address each of these points and provide supporting evidence where possible.

#### **4.1.1 PROTECTION OF THE AUSTRALIAN COMMUNITY**

DHA will consider two things:

1. The nature and seriousness of your conduct up to now; and
2. The risk to the Australian community if you commit further offences or engage in other serious conduct in the future.

##### ***(a) Nature and seriousness of your conduct***

The first thing that you need to argue is that your offences are not so serious that the Australian Government should cancel your visa.

DHA will need to consider whether cancelling your visa is necessary to protect the Australian community. This includes protecting individual people in the community.

One of the things that DHA must consider is whether you have provided false or misleading information. For example, if you did not tell DHA about your criminal record. DHA can access your criminal record, so there is no value in trying to mislead DHA. You should also advise DHA if there are any outstanding charges that are yet to be finalised.

##### **You should be aware that:**

- violent and sexual crimes are viewed very seriously; and
- crimes committed against vulnerable members of the community (such as children, the elderly, and the disabled) are serious; and
- crimes of violence against women and children are serious, regardless of the sentence imposed; and
- crimes committed against government officials are serious; and
- crimes committed while in immigration detention are serious.

Generally, a crime will be considered 'abhorrent' to the Australian community if it was an offence involving violence that was committed against vulnerable persons such as children, elderly or disabled persons.

If you have been convicted of violent or sexual offences you should not try to minimise the seriousness of your offence. Instead, it is better to focus on your rehabilitation.

### **DHA will consider:**

- The sentence imposed by the courts; and
- Whether there has been repeated offending; and
- How often you have offended; and
- The frequency of your offending; and
- Whether there is any trend of your crimes getting more serious; and
- Whether you have provided false or misleading information to the department, including by not disclosing prior criminal offending; and
- Whether you have previously been warned or made aware about the consequences of further offending in terms of your visa status; and
- Whether the offence or conduct that was committed in another country would be classified as an offence in Australia (this is not relevant if DHA are considering revoking the mandatory cancellation of your visa).

You can try to put your offending into context by explaining any circumstances that contributed to the offending. If those circumstances have now changed you should clearly explain how.

### **You MIGHT provide:**

- Information or evidence that provides some context to your offending. Otherwise, DHA will usually only have your criminal record, and the sentence you received.

For example:

- In your written statement, explain the reasons for your offending.
  - Why did you commit the crime?
  - Would you commit your offences again?
  - Details of any co-offenders. For example, did they pressure you into committing the crime?
  - Did you cooperate with authorities?
  - What was your reaction to your conviction and sentence?
- Judge's comments on your case;
- Professional psychiatric or psychological reports;
- Pre-sentence reports for the courts;
- Parole assessments.
- Explain any mitigating factors for the offences, and provide evidence where possible.

For example, mitigating factors might be:

- drug or alcohol dependence that is now being addressed;
- your age at the time of offending;
- personal factors that are outside your control, or that have now changed;
- any medical or psychiatric treatment you have received in Australia or overseas.

If the offence was committed overseas, explain whether it would be classified as an offence in Australia.

For example:

- Were you imprisoned as a result of religious, political or ethnic persecution?
- Would a lighter sentence be imposed in Australia?
- Have you received a pardon?

***(b) The risk to the Australian community should you commit further offences or engage in other serious conduct***

**You should be aware that** tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases.

That means that if you have a history of committing serious crimes (violent or sexual crimes; or crimes against vulnerable people) then you should try to show that you will definitely not offend again.

**DHA will consider:**

What harm would there be to individuals or the Australian community if you engage in more criminal or other serious conduct; and

How likely it is that you will engage in more criminal or other serious conduct. DHA will consider any evidence of your rehabilitation and your conduct in the community since your most recent offence.

## You MIGHT provide:

- In your written statement, explain how your circumstances and behaviour have changed since you offended;
- If you have been released into the community, you should highlight how long you have lived in the community without re-offending;
- Sentencing reports that include positive information such as:
  - mitigating circumstances,
  - positive comments on the unlikelihood of re-offending, or
  - comments that the offending was not of the most serious kind;
- Parole reports (including a separate reference from the parole officer);
- Probation reports;
- Psychiatric assessment indicating the risk of you re-offending;
- Written references from prison counsellors, who might say that you have been “rehabilitated” or that you are a “model prisoner”;
- References from prison officers;
- Evidence of any work, study, or other programs that you have done in prison;
- Reference from the prison chaplain;
- Documentation supporting your prospects of rehabilitation;
- Details of any medical or psychiatric treatment received overseas or in Australia, including any drug or alcohol rehabilitation.

**DHA will not delay its decision to give you time to complete rehabilitation courses.**

### **4.1.2 THE BEST INTERESTS OF A CHILD IN AUSTRALIA**

Another primary consideration for DHA is the ‘best interests of minor children in Australia affected by the decision’.

This means DHA will consider whether cancellation is, or is not, in the best interests of a child or children. This usually only applies if:

- you have children, grandchildren, adopted children or a partner’s children, living in Australia; and
- the child is under 18 years old.

If there are other children that you have a very close relationship with, you should include this in your written statement.

You will need show DHA why cancelling your visa is not in the best interests of the child or children.

**DHA will consider:**

The nature and duration of the relationship between the child and you.

You MIGHT provide:

- In your written statement, you should try to answer the following questions:
  - Are you the parent or guardian of the child?
  - Are you and the child biologically related? Or is the child a step-child or adopted?
  - How long have you had a relationship with the child?
  - How long have you been separated from the child?
  - How much meaningful contact do you have with the child?
  - Are there any court orders about the child?
- A copy of any court order about the child.

**DHA will also consider:**

The past impact of your conduct and behaviour on the child.

You MIGHT provide:

- In your written statement, you can explain what you think the impact of your previous conduct has been on the child. Acknowledging that your past behaviour has not been positive can help to show that you know that your behaviour needs to change, and that you intend to make that change.

**DHA will also consider:**

While the child is under 18 years old, how likely is it that you will have a positive role in the child's life?

You MIGHT provide:

- In your written statement, you can explain how you will play a positive role in the child's future;
- Written statements from other care-givers describing your positive influence on the child's life;
- Evidence of any courses, programs, or counselling that will help you to be a positive part of the child's life – for example, parenting courses; anger management courses; seeing a psychologist or psychiatrist.

**DHA will also consider:**

The likely effect on the child of separating you and the child.

Please note that DHA is considering the effect that your removal from Australia would have on the child. DHA is not considering what effect its decision would have on you.

**You MIGHT provide:**

- In your written statement, explain why being separated from you would be bad for the child. Explain if it would be difficult for the child to stay in contact with you if you had to leave Australia.
- Written statements from family members or other people explaining:
  - Their relationship to you or the child; and
  - What they know about your relationship with the child; and
  - What they think the likely impact on the child would be if you have to leave Australia.

**DHA will also consider:**

Whether there are other people who fill the role of parent to the child.

**You MIGHT provide:**

- In your written statement, you can explain how other people may not be able to fill the role of parent to child;
- Written statements from other people who can describe your unique relationship with the child.

**DHA will also consider:**

Any known views of the child.

**You MIGHT provide:**

- If the child is old enough, you might include a written statement from the child about whether they want you to stay in Australia (this should not be a statutory declaration, because the child is under 18 years old);
- If the child previously made a statement to the Court in any family law matters, you might include that;
- If the child has been seeing a counsellor or support person, that person might provide a written statement.

**DHA will also consider:**

Any evidence that you have abused or neglected the child in any way. This includes physical, sexual or psychological abuse or neglect.

You MIGHT provide:

- If you have abused or neglected the child, you will need to provide evidence showing why this will not happen again.
- For example, evidence of any treatment, education or training programs that you have done to try to change the behaviour that previously harmed the child.

**DHA will also consider:**

Any evidence that your conduct has caused the child to suffer or experience physical or emotional trauma (harm).

You MIGHT provide:

- In your written statement, describe any steps that you or other people have taken to protect the child from emotional or physical harm;
- If the child has experienced emotional or physical harm because of you, you should try and show why this will not happen again. In your written statement or your letter to DHA, you could explain why all of the information and evidence that you are providing supports your view that the child will not be harmed by you being in its life in the future.

### 4.1.3 EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

**The final primary consideration is the ‘expectation of the Australian community’.**

When DHA is considering whether or not to cancel your visa they will have regard to:

1. whether there is an unacceptable risk of you re-offending; or
2. whether the nature of your crime is such that the Australian community would expect that you should not continue to hold a visa.

**You should be aware that:**

- Australians expect people to obey the law;
- Risk of further offending would be regarded as a breach of trust;
- The nature of your offence may mean the Australian community would expect that you should not continue to hold a visa.

You will need to establish that your offending was not serious enough to warrant cancellation and that there is a very low or no risk that you will offend again.

**DHA will consider:**

What was the type and seriousness of your crimes. They will consider the sentence imposed by the courts, how many offences you committed and over what time period, whether there is a trend that your crimes got more serious and the impact of your crimes on other people.

How likely is it that you will offend again.

YOU MIGHT PROVIDE:

Follow the YOU MIGHT PROVIDE advice in 4.1.1 of this kit (Protection of the Australian community).

## 4.2 OTHER CONSIDERATIONS

There are other considerations that might be relevant to your case.

For DHA, other considerations are less important than the primary considerations that were covered in section 4.1 of this Kit.

If you think that any of the following considerations are very important in your particular case, we suggest that you get detailed legal advice.

**DHA will consider:**

- International *non-refoulement* obligations (see 4.2.1);
- Strength, nature and duration of ties (see 4.2.2);
- How cancellation would impact on Australian business interests (see 4.2.3);
- How cancellation would impact on members of the Australian community;
  - Note that this includes any victims of your crimes and their family members (see 4.2.4);
- Any difficulties you will face in establishing yourself and maintaining a basic standard of living in your home country, because of:
  - Your age and health;
  - Substantial language or cultural barriers; or
  - Whether there is insufficient social, medical and/or economic support available to you in that country (see 4.2.5).

You MIGHT provide:

- In your written statement, include details about any of these that apply to you;
- Evidence to support what you have put in your written statement.



### 4.2.1 INTERNATIONAL *NON-REFOULEMENT* OBLIGATIONS

A consideration is ‘international *non-refoulement* obligations’.

Australia has obligations not to return people to places where their life or freedom would be threatened – this is called ‘*non-refoulement*’. DHA must consider this issue if you raise these obligations with them, or if they are clear from the facts of your case.

**This is a very complex area of the law. If you think that this applies to you, we strongly suggest you get detailed legal advice before responding to DHA.** Section 7 of this Kit has the contact details of some organisations that might be able to help you.

**DHA will consider:**

- Whether Australia has a ‘*non-refoulement*’ obligation to not return you to your country of origin.

There are two ways Australia might have a ‘*non-refoulement*’ obligation:

1. Australia owes obligations to you as a refugee;  
OR
2. If there are good reasons for believing that as a result of returning you to your home country, you will suffer ‘significant harm’.

#### Definition of a Refugee

A refugee is a person who:<sup>3</sup>

Owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his or her habitual residence, is unable, or, owing to such fear, is unwilling to return to it (Article 1A(2) of the *Refugees Convention*).

If you think that this definition applies to you, Australia might have an obligation not to return you to your home country.

**You MIGHT provide:**

- In your written statement and letter to DHA, tell DHA that you are afraid to return to your home country and ask for protection in Australia;

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<sup>3</sup> See *Migration Act 1958* (Cth) s36(2)(a).

- A detailed written statement about why you think you are a refugee;
- Supporting evidence that shows that your fears are well-founded; and
- Information from your home country, like news reports or official reports, that support your claims.

#### Definition of significant harm

‘Significant harm’ includes:<sup>4</sup>

- arbitrary deprivation of your life, or
- the death penalty, or
- torture, or
- cruel or inhuman treatment or punishment, or
- degrading treatment or punishment.

If you think that you would face significant harm if you were returned to your home country, Australia might have an obligation not to force you to return.

You MIGHT provide:

- In your written statement and letter to DHA, tell DHA that you are afraid to return to your home country and ask for protection in Australia;
- A detailed written statement about why you think you would face significant harm;
- Supporting evidence that shows that your fears are well-founded; and
- Information from your home country, like news reports or official reports, that support your claims.

**Important:** Even if Australia owes you protection obligations, DHA might still cancel your visa. We strongly suggest that you get detailed legal advice. Section 7 of this Kit has the contact details of some organisations that might be able to help you.

#### **4.2.2 STRENGTH, DURATION AND NATURE OF YOUR TIES TO AUSTRALIA**

Another issue DHA will look at is the, ‘strength, duration and nature of your ties to Australia’.

**You should be aware that:**

- The longer you have spent in Australia without offending, the more weight will be given to the ‘strength, duration and nature of your ties to Australia.’

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<sup>4</sup> *Migration Act 1958* (Cth) s36(2a).

**DHA will consider:**

1. How long you have lived in Australia (including whether you came as a young child).

**You MIGHT provide:**

Documents to show how long you have lived and worked in Australia:

- In your written statement, explain how and why you came to live in Australia;
- A copy of your passport to show the date that you entered Australia as a resident;
- Tax records and PAYG summaries;
- School records and graduation certificates;
- Evidence of extra-curricular activities while at school – sport, music, clubs etc;
- Employment records, payslips, and references from employers;
- Property ownership – car registration, home or business ownership;
- Other documents that show you have lived in Australia for a long period of time.

**DHA will also consider:**

- Positive contributions you have made to Australian society.

**You MIGHT provide:**

- In your written statement, describe how you have contributed to Australian society;
- evidence of membership of social clubs or church groups (in your statutory declaration, give details of how involved you have been involved with these);
- evidence of membership of a Trade Union or Professional Association;
- evidence of any offices held in community or public affairs;
- any other evidence of your ties with, and contributions, to the community.

**DHA will also consider:**

- Strong relationships you have with Australian-based family members; and
- Social ties you have with other Australians; and
- Ties you have to the Australian community.

### You MIGHT provide:

- Written statements from your family and friends, especially anyone who depends on you;
- Written statement from your partner about your relationship, and their intentions about the future of that relationship;
- Written statements from friends who live in Australia;
- Evidence of any guarantee of future work;
- Statement from a leader of a community group;
- Statements of support from other Australian citizens or permanent residents.

#### **4.2.3 IMPACT ON AUSTRALIAN BUSINESS INTERESTS**

The DHA may also take into account the impact on Australian business interests if your visa is cancelled. This would generally only be relevant where the cancellation of your visa would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

#### **4.2.4 IMPACT ON VICTIMS**

The DHA will also consider the impact on members of the Australian community, including any victims, or the family of the victims, of your criminal conduct if your visa is not cancelled.

#### **4.2.5 EXTENT OF IMPEDIMENT TO YOU IF REMOVED**

It is important that you mention the extent of any detriment you may face if your visa is cancelled and you are returned to your country. This can include the difficulty you may face establishing yourself and maintaining basic living standards. Your age, health, any substantial language or cultural barriers, and any social, medical, and/or economic support that may be available, may be relevant.

It is important to remember that Direction 79 does not prevent you from raising other issues which might help your case. This may include, but is not limited to: the impact visa cancellation may have on your partner or family in Australia; or whether the cancellation of your visa may result in you spending an unacceptable time in immigration detention because there is no other country that will accept you.

## 5. IF MY VISA IS CANCELLED OR REFUSED, OR IF A DELEGATE OF THE MINISTER DECIDES NOT TO REVOKE THE CANCELLATION OF MY VISA, CAN I APPEAL THE DECISION?

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### 5.1 ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

If DHA decides to cancel your visa or to not revoke a cancellation, you can apply to the AAT for a review of that decision.

#### Applying to the AAT

**You must apply to the AAT within 9 days of being notified that your visa has been cancelled or refused under section 501 of the Migration Act.** If the 9th day after notification is a Saturday, Sunday or Public Holiday, you can lodge an application on the next working day.

The 9 day time limit is strict – it cannot be extended.

However, if you did not receive DHA’s notice when you should have, or if DHA’s notice to you was defective, you can apply to the AAT after the 9 day time limit.

You will need to explain why you have lodged the application after the 9 day time limit, and provide evidence to show that DHA’s notice was either defective or delayed in reaching you.

The AAT will then decide if it has the power to hear your application.

#### The role of the AAT

The AAT will reconsider all of the circumstances of your case and decide if DHA made the correct decision to cancel your visa. It will consider all of the same points described in Sections 3 and 4 of this Kit.

The AAT is adversarial. That means that the Minister for Immigration will be represented by a lawyer who will be arguing that DHA’s decision to cancel or refuse your visa was the correct decision. You or your representative will have to argue against them.

If you are applying to the AAT, we strongly suggest that you get detailed legal advice. Section 7 of this Kit has contact information for organisations that might give you legal advice. You could also contact the Law Society in your state for help to find a legal representative.

**Attachment D** to this Kit has more information about the AAT.

## 5.2 FEDERAL COURT

**There are limited grounds to appeal to the Federal Court. Cases should not be appealed to the Federal Court unless there are legal grounds to do so. We strongly suggest that you get detailed legal advice before beginning any action in the Federal Court.**

Section 7 of this Kit has contact information for organisations that might give you legal advice. You could also contact the Law Society in your state for help to find a legal representative.

## 5.3 CANCELLATION OR REFUSAL BY THE MINISTER FOR IMMIGRATION

If the Minister for Immigration personally cancels or refuses your visa, this will be clearly stated in the letter advising you of that decision.

If this happens to you, you have no right of review to the AAT. You will only have limited rights to appeal to the Federal Court of Australia. **You must apply to the Federal Court within 35 days of being notified of the decision.**

## 5.4 APPEALING AN AAT DECISION IN THE FEDERAL COURT

If you applied to the AAT and your case failed, then you might be able to appeal to the Federal Court. **You must apply to the Federal Court within 35 days of being notified of the AAT decision.**

## 6. WHAT HAPPENS IF MY APPEAL FAILS?

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Cancellation or refusal of a visa under s501 of the Migration Act has the following effects:

- any undecided visa applications made by you are taken to have been refused;
- any other visas held by you are taken to have been cancelled;
- you cannot apply for other visas while you remain in Australia except for Protection visas and Bridging visas in some circumstances;
- you will have to pay your deportation costs, including:
  - any costs of moving prior to removal or deportation from Australia;
  - the daily maintenance costs of your detention; and;
  - fares and other costs associated with transporting you from Australia.
- if your spouse or children are also removed or deported, you have to pay their removal or deportation costs;

- if you have an airline ticket, this may be used towards your removal or deportation with or without your consent; and
- any valuables belonging to you may potentially be used to pay for your departure;
- **once you leave Australia you will be permanently excluded from Australia.**

## 7. WHERE CAN I GET HELP?

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### 7.1 QUEENSLAND

#### Law Right

Law Right may be able to refer your case for pro bono legal assistance:

Postal: PO Box 3631 SOUTH BRISBANE BC QLD 4101

Telephone: (07) 3846 6317

Facsimile: (07) 3846 6311

E-mail: [admin@lawright.org.au](mailto:admin@lawright.org.au)

Website: <http://www.gpilch.org.au>

#### Prisoners Legal Service

Prisoners Legal Service provides free advice to prisoners.

Telephone: (07) 3846 5074 (In prison, use Arunta phone line)

Facsimile: (07) 3229 9222

E-mail: [pls@plsqld](mailto:pls@plsqld)

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

#### RAILS (Refugee and Immigration Legal Service)

RAILS can only provide advice and limited assistance on such matters and does not have the resources to represent applicants at the AAT or at the Federal Court:

Postal: PO Box 5143, West End QLD 4101

Telephone: (07) 3846 9300

Facsimile: (07) 3844 3073

Email: [admin@rails.org.au](mailto:admin@rails.org.au)

Website: [www.rails.org.au](http://www.rails.org.au)

#### LEGAL AID QUEENSLAND

Legal Aid may be able to provide advice or assistance in relation to your matter, including Federal Court appeals:

Freecall: 1300 65 11 88

Email: [mailbox@legalaid.qld.gov.au](mailto:mailbox@legalaid.qld.gov.au)

## 7.2 NEW SOUTH WALES

### LEGAL AID

Legal Aid may be able to provide advice or assistance in relation to your matter, including

Federal Court appeals:

Postal: Ground Floor, 323 Castlereagh Street, 323 Castlereagh Street, Haymarket NSW 2000

Telephone: (02) 9219 5000

Fax: (02) 9219 5935

### IARC ( Immigration Advice and Rights Centre)

IARC can only provide advice and limited assistance on such matters and does not have

the resources to represent applicants at the AAT or at the Federal Court:

Postal: Immigration Advice and Rights Centre, PO Box Q1283, Queen Victoria Building NSW 1230

Telephone: (02) 9279 4300

Facsimile: (02) 9299 8467

## 7.3 FURTHER RESEARCH

You can research cases heard by the Federal Court or AAT that may be similar to your own at <http://www.austlii.edu.au/au/cth>.



## ATTACHMENT A: TEMPLATE RESPONSE

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### By Registered Post

[Date]

[Case Officer's name]

[Case officer's section]

Compliance

Department of Home Affairs

[Address]

Dear Mr /Ms .....

**Re: [NAME] (DOB: .....)**  
**Notice of Intention to Cancel under s501(2)**  
**File reference: .....**

I received a Notice of Intention to Cancel dated ..... My response is set out below.

*[If you have a substantial criminal record insert the following text:]*

I understand that I do not pass the character test as set out in s501(6) of the *Migration Act 1958*. However, I know that cancellation is discretionary and I provide the following information to show why my visa should not be cancelled.

*[If you do not have a substantial criminal record you should set out why you pass the character test in light of:*

- *your associations as discussed in section 3.3 of this legal Kit*
- *your past and present criminal or general conduct as discussed in section 3.5 of this legal Kit, and*
- *whether there is a significant risk that you would engage in conduct as discussed in section 3.6 of this legal Kit.*

*Then include the following text:]*

If you do not accept that I pass the character test, I would like to provide the following information to show why my visa should not be cancelled under the discretionary provisions.

## PRIMARY CONSIDERATIONS

### **1. The protection of the Australian community from serious criminal and other harmful conduct**

#### ***(a) The seriousness and nature of the offences***

I understand that I committed offences of a serious nature in *[insert year]*, namely *[insert details of the offence(s)]*. However, I submit that the offence is not one that is “abhorrent” to the Australian community for the reasons set out below.

I would like you to take into account the mitigating factors relating to the offences as set out below.

*Set out details of any mitigating circumstances (eg drug or alcohol dependence that is being/has been addressed; your age at the time of the offence; mental health issues; your personal situation at that time). Include quotes from any documents referring to these mitigating circumstances and how they no longer apply.*

I would also ask that the information below be taken into account.

*Include a statement about your remorse for the offence(s); details about the time that has lapsed since the most recent offence; details of the period between offences.*

*If the offence is not one that is listed in those considered serious by the Minister (see 4.1.1(a) of this legal Kit), you should point this out. If the offence did not involve any vulnerable persons such as children, elderly or disabled persons, this should be pointed out. Include quotes from any documents that discuss the nature and seriousness of the offence in a positive light.*

#### ***(a) The likelihood that the conduct may be repeated***

If given a chance to remain in Australia, I will not repeat the mistakes of my past. As supported by the information below, I have learnt from my mistakes. Therefore there is no significant risk that my past conduct will be repeated.

#### **(b.1) Rehabilitation**

*Include a statement about what rehabilitation you have achieved and the prospect of any further rehabilitation. Include quotes from any documents which refer positively to your rehabilitation.*

#### **(b.2) Family and community support**

*Set out details of any family and community support that will assist to prevent you from repeating the previous conduct, including who you will live with, how you will support yourself.*

(b.3) Prison conduct

*Include a statement about any positive prison conduct, including any training, employment or education that you undertook and quoting from any documents that refer positively to your conduct in prison.*

(b.4) Possibility of visa cancellation

*Include a statement about the affect that the possibility of your visa being cancelled has had on you and how it may impact on your future behaviour.*

(b.5) Contribution to community

*Include a statement about how you think you could contribute positively to the community in the future.*

**2.. The best interests of the child or children**

I have ..... children in Australia.

<b>Name</b>	<b>Status in Australia</b>	<b>Age</b>

*Include details of any other children in Australia who would be impacted by you having to leave Australia eg foster children, grandchildren, adopted children, children with whom you have a parental relationship.*

*Include details of how it would impact on each child if you had to leave Australia, including whether they would go with you and the impact of this (eg what access they would have to education/health care in the other country; whether they speak the local language; what cultural difficulties they would have).*

*Include details of any rights or obligations you have in relation to each child, what contact you have with them, what role you plan to play in their lives in the future,*

**OTHER RELEVANT CONSIDERATIONS**

**3. Age when I arrived in Australia**

*If you arrived in Australia as a minor, include a statement about how old you were when you arrived, what schooling you had in Australia, what activities you did in Australia as a child, what friends you had in Australia, how you feel about Australia (eg whether you consider yourself to be Australian and whether you consider this to be your home).*

### 3.1 Length of time I have been resident in Australia

*Include a statement about the length of time that you have been in Australia.*

### 4.2. Convention and Protocol relating to the status of refugees

*If you have any refugee claims, include a detailed statement of what these are, quoting from any supporting documents.*

### 4.3. Non-refoulement obligations

*If you would face a risk of violation of your rights, torture, cruel, inhuman or degrading treatment or the death penalty if returned to the other country set out details of this.*

### 5. Relationship

*Set out details of any relationship (eg marital or de facto) with an Australian citizen, permanent resident or eligible New Zealand citizen, including the nature and duration of the relationship, degree to which they are financially, physically or psychologically dependent on you, the impact of separation from you, whether they could accompany you overseas.*

### 6. My family

The following table summarizes my family members living in Australia who would be directly affected if I had to leave Australia.

<b>Name</b>	<b>Relationship</b>	<b>Status in Australia</b>	<b>Age</b>

*Give details of how they will be affected, including whether they are able to travel overseas to visit you, the nature of the relationship between you and the immediate family members, whether immediate family members are in some way dependant on you for support which cannot be provided elsewhere, degree of contact before and during sentence .*

## **7. Rehabilitation and recent good conduct**

*Set out details of any rehabilitation and recent good conduct that would support your assertion that you are of good character and can contribute to society.*

## **8. Disruption to my business and other ties to the Australian community**

*Set out details of your ties to the Australian community, including your employment (especially if your employer is reliant on you), any assets, savings or investments in Australia, involvement in any community organisations or activities.*

## **9. Compassionate circumstances**

*Refer to any other compassionate circumstances such as your age, medical conditions, health, people dependent on you.*

## **10. Links to [name of country to which you would return]**

*You should set out details of what links you have to your country to which you would return, including:*

- *whether you have family or friends there*
- *whether you speak the language*
- *how long you lived there previously*
- *any difficulties you had there*

## **11. Previous warnings**

*If you have been formally advised in the past by an officer of DHA about conduct which brought you within the deportation provisions at section 200/201 of the Act or the visa refusal and cancellation provisions at section 501, you will need to provide an explanation of why you did not heed the warning.*

*If you have not be warned previously you should point this out.*

## **Conclusion**

*Write a conclusion to your letter*

Yours sincerely,

[NAME]

**Attachments to this letter**

1. Statutory declaration by ....., dated .....
2. Certified copy of the Australian birth certificate of .....
3. Letters of support from .....
4. Letter of support from .....
5. etc. ....

## ATTACHMENT B: TEMPLATE RESPONSE – MANDATORY CANCELLATION

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### By Registered Post

[Date]

[Case Officer's name]

[Case officer's section]

Compliance

Department of Home Affairs

[Address]

Dear Mr /Ms .....

**Re: [NAME] (DOB: .....)**  
**File reference: .....**

I received a Notice of Visa Cancellation under Subsection 501(3A) of the Migration Act 1958 notifying me that my Visa has been mandatorily cancelled.

I request the Minister to revoke the cancellation of my visa.. The reasons my visa should not be cancelled are set out below:

*[You will have received a form called Request for Revocation of a Mandatory Visa Cancellation Under Section 501(3A) and a 7 page form headed 'Personal Details Form'. They mainly contains biographical and historical data about you and your circumstances. You should complete them as best you can.*

*You should also take the chance to give detailed reasons why the cancellation should be revoked in this letter format. Follow the suggestions in Section 4 of this Kit in so far as they apply to your case and are relevant. You can use the format of the letter in Attachment A Template and attach all relevant documents. Refer to your letter in the box 'Reasons for Revocation' on the third page of the first Form from DHA]*

**ATTACHMENT C: BLANK STATUTORY DECLARATION**

Commonwealth of Australia  
STATUTORY DECLARATION  
Statutory Declarations Act 1959

I ..... of ..... do  
solemnly and sincerely declare:

1. *Outline all the details in numbered paragraphs*
- 2.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

Declared at .....on .....

Before me .....

*(Must be witnessed by a person authorised to witness statutory declarations)*



## **ATTACHMENT D: INFORMATION ABOUT THE AAT**

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**General Contact details –phone 1800 228 333 ; email [mrdivision@aat.gov.au](mailto:mrdivision@aat.gov.au)**

### **Contact details – AAT Sydney**

Monday to Friday 8.30 a.m. to 5.00 p.m.

Street Address: Level 6, 83 Clarence Street, Sydney NSW 2000

Postal Address: GPO Box 9955, Sydney NSW 2001

Telephone: 1800 228 333

Fax: (02) 9283 4881

Internet: [www.aat.gov.au](http://www.aat.gov.au)

### **Contact details – AAT Brisbane**

Monday to Friday 8.30 a.m. to 5.00 p.m.

Street Address: Level 6, 295 Ann Street, Brisbane QLD 4000

Postal Address: GPO Box 9955, Brisbane QLD 4001

Telephone: 1800 228 333

Fax: (07) 3052 3069

Internet: [www.aat.gov.au](http://www.aat.gov.au)

### **Information from the AAT about review of s501 Character cancellations**

<http://www.aat.gov.au/applying-for-a-review/visa-cancellation-on-character-grounds>

### **How do I lodge a review application?**

An application to review a s 501 decision is done in the General Division of the AAT.

You can lodge the form in person, by mail or by fax.

Go to: <http://www.aat.gov.au/applying-for-a-review/how-to-apply>

You will also need to pay an application fee of \$920 (at January 2019). The application fee could be reduced to \$100 if:

- you are in prison or lawfully detained in a public institution (including immigration detention);
- you are receiving legal aid for your application;
- you hold a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Families, Housing, Community Services and Indigenous Affairs or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions;
- you are under 18 years of age; or
- you are receiving youth allowance, Austudy or ABSTUDY.

**If you fall into one of these groups, inform the AAT and provide proof as soon as possible. The AAT can advise you about what type of proof you should provide.**

An application for review must be accompanied by the following documents:

- a copy of the notice under s501G(1) of the *Migration Act* notifying you of the decision; and
- one of the sets of documents given to you at the time you were notified of the decision.

### **Do I need a migration agent or lawyer?**

It is difficult to succeed in an appeal at the AAT.

The AAT is an adversarial tribunal. That means that Minister for Immigration will be represented by a lawyer, who will argue that the decision to cancel or refuse your visa was correct. You should seek expert advice in relation to your specific matter.

If you do not have a migration agent or lawyer, you can contact the AAT directly as it can provide information and assistance to unrepresented applicants.

### **What is the process once I lodge my appeal?**

The AAT will send a letter acknowledging receipt of the application within 2 working days of lodgement and will hold a Telephone Directions Hearing approximately 3 weeks after receiving the application. The Tribunal Member will call you and a DHA officer at a designated time. An interpreter will be used if required.

The purpose of the Telephone Directions Hearing is to allow the AAT and the parties to discuss the issues in the application, to explore prospects for settlement and to plan the further progress of the application. It is important that you have with you the set of documents that the Department gave to the applicant when the applicant was notified of the decision. The Member of the AAT will talk about what is in these documents.

The following issues may be raised at the Telephone Directions Hearing:

- the adequacy of the material before the AAT and any further information the AAT may require to consider the merits of the case;
- any further information the parties intend to provide to the AAT;
- whether the AAT will hold a Hearing or determine the application on the papers;
- the effect of the provisions of the *Migration Act* that require disclosure of material that supports the applicant's case before a Hearing;
- the witnesses each party intends to call at a Hearing;
- any requests to have the evidence of a witness taken by telephone or video;
- any requests for a confidentiality order under section 35 of the *Administrative Appeals Tribunal Act 1975*; and
- the date by which the AAT must give its decision.

Any directions that the Member makes at the Telephone Directions Hearing will be recorded in writing and a copy will be provided to each party. If necessary, the Member may list a further Telephone Directions Hearing. Following the Telephone Directions Hearing, a Hearing may be held.

### **Will there be a hearing?**

The hearing will take place on the day and at the time set out in the letter sent acknowledging receipt of the application. The *Migration Act* contains special rules relating to the disclosure of material that supports an applicant's case prior to any Hearing. You must follow these rules if you want the AAT to take this material into account when it makes its decision.

- Oral evidence  
The AAT cannot have regard to any information presented orally in support of the applicant's case unless the information was set out in a written statement and given to the Minister at least 2 business days before the AAT holds a Hearing: section 500(6H) of the *Migration Act 1958*.
- Documents  
The AAT cannot have regard to any document submitted in support of the applicant's case unless a copy of the document was given to the Minister at least 2 business days before the AAT holds a Hearing: section 500(6J) of the *Migration Act 1958*.

You can fax any written statements or documents to the Director of Litigation, Department of Home Affairs on **(02) 6264 1401**. Alternatively, you can send the documents to the following address:

Director of Litigation  
Legal Branch  
DHA  
PO Box 25  
BELCONNEN ACT 2616

Please fax or send copies of anything you send to the Department to the AAT.

### **When will I get a decision?**

A strict time limit applies to the finalisation of an application for review of a decision under section 501 of the *Migration Act 1958*. The AAT must make a decision on the application within **12 WEEKS** after the day on which the person was notified of the decision or the AAT will be taken to have affirmed the decision under review.

The AAT will give its decision either at the end of the Hearing or reserve its decision and publish it at a later date. If the AAT reserves its decision, the AAT will contact you when the decision is ready. You can come and collect the decision or the AAT will send it to you.

The AAT's decision is a public document once it has been published. If you have concerns about any of the information that may appear in the reasons for decision being publicly available, you can request under section 35 of the *Administrative Appeals Tribunal Act 1975* that the AAT prohibit or restrict publication of:

- the name of the applicant or any witnesses; or
- evidence given before the AAT or matters contained in documents lodged with, or received in evidence by, the AAT.

The AAT will make such a direction if it considers there are good reasons for doing so. Any request for such a direction under section 35 should be made at the Hearing.

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