

Visa Cancellations Under s 116: Information for Affected Individuals



Who might be affected?

Most visa holders – temporary and permanent – can have their visa cancelled under s.116. Permanent visa holders in Australia have some protections. In some cases, cancellation is mandatory, but mostly it is discretionary.

Visa holders with charges pending, or histories of criminal offending or dishonesty, are most likely to be affected.

When might character issues lead to cancellation?

- The Minister thinks your presence might be a risk to the health, safety or good order of the community or a part of it – for example, you have been charged with an offence
- Certain assessments about you have been made by the Foreign Minister, ASIO, Interpol or under particular sanctions legislation
- You are suspected of committing a migration-related offence
- You hold a temporary visa and have been convicted of an offence
- You hold a bridging 'E' visa and have charges pending against you, or certain Australian agencies are investigating you

When else might a s 116 cancellation occur?

- You cannot establish your identity
- You were never, or are no longer, eligible for that visa
- Fraudulent conduct in obtaining the visa is suspected
- Visa conditions have not been complied with
- You gave incorrect information as part of the application process
- The grant was otherwise unlawful
- You hold a student, visitor, transit or temporary business or work visa, and the Minister thinks you are not genuine in your declared intentions, or are acting in the wrong manner.
- Your sponsor was paid in some manner to sponsor you, or they are not complying with their obligations
- You request that your visa be cancelled

What should I do?

Keep your contact details updated with the Department so you can be sure you will receive correspondence. Otherwise, you might miss an opportunity to respond, or to seek review.

If you think you might be affected, or if you receive a notice, seek advice from a reputable lawyer.

If you are faced with cancellation, you need to argue that **the ground for cancellation does not exist, or there is a reason why your visa should not be cancelled**. See below for suggestions about what might be relevant.

The timeframe for response is strict. If you are in Australia, you will have five working days to respond, although a short extension may be granted. If you are given notice in person, your visa can be cancelled on the spot. Ask for adequate time to respond and present as many arguments as you can, supported by evidence.

If your visa is cancelled, you will become unlawful. Depending on your decision about what steps to take, you will need to apply for a bridging 'E' visa. If that application is refused, you will likely be detained.

Can I appeal?

In most cases, if you are in Australia, you can appeal to the Administrative Appeals Tribunal for review of a cancellation decision. You must do so within strict timeframes, or you will lose the opportunity to have your case reviewed.

How do I seek help?

Visa cancellation is a serious matter, and it is wise to seek legal advice as early in the process as possible. The Law Institute of Victoria has a list of Accredited Specialists in immigration law, and there are a number of reputable law firms that can assist you. If you are facing financial difficulties, you can contact Legal Aid Victoria, Justice Connect, Refugee Legal, the Asylum Seeker Resource Centre, or Salvos Legal for referrals or assistance.

Issues to consider when making a case that your visa should not be cancelled

- Can you prove or otherwise demonstrate that the ground does not exist? For example, what ways could you prove your identity, or that your intentions have been genuine?
- Do you have a compelling reason for travelling to, or staying in, Australia?
- Have you complied with your visa conditions?
- Are you, or your family members, likely to face financial, psychological, emotional or other hardship as a result of cancellation?
- In what circumstances did the ground for cancellation arise? What should the delegate understand about the situation? Was it beyond your control that the ground arose?
- Does Australia have any international obligations that might be breached as a consequence of cancellation? For example, do you fear persecution in your home country, or is there a child who would be affected?
- Have you formed strong family, business or other ties in Australia?
- If you have been charged, might the charges be dropped? What are you pleading? Ensure you take responsibility for things that you have done.
- If your visa is cancelled, will any family members also face cancellation?
- Have you been a victim of family violence or trauma?
- How have you behaved toward the Department in the past? Have you been truthful and cooperative? Have you engaged voluntarily?
- What are the consequences of cancellation? Would you become unlawful? Could you be detained, or removed from Australia? Might you be removed to danger in your home country?
- Are there important parts of your story a decision-maker should know about? Is there something compassionate in your background that is important for their consideration?
- Would the community, or members of it, support you in remaining in Australia?