

Visa Cancellation Australia: How to Avoid and Respond to Cancellation Letters (2026)

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Published: 20 March 2026

Series: MyVisa Immigration Law Commentary

Category: Visa Cancellations

Online version: <https://myvisa.com.au/immigration-guides/visa-cancellation-a-guide-for-avoiding-and-responding-to-cancellation-letters>

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Receiving a letter from the Department of Home Affairs that mentions visa cancellation can be one of the most stressful experiences a person can face. After more than 27 years as an immigration lawyer, I have seen firsthand the anxiety and uncertainty this causes. A Notice of Intention to Consider Cancellation (NOICC) or a decision to cancel your visa can feel like your world is falling apart. However, it is crucial to understand that you have rights, and in many cases, you have the opportunity to respond and fight for your visa.

This guide is designed to give you a clear understanding of the visa cancellation process in Australia. We will cover what a NOICC means, the most common legal

grounds for cancellation under sections 116 and 501 of the *Migration Act 1958*, how to prepare a strong response, your review options at the Administrative Review Tribunal (ART), and the final possibility of Ministerial Intervention. My goal is to empower you with the knowledge to navigate this challenging situation effectively.

What is a Notice of Intention to Consider Cancellation (NOICC)?

A Notice of Intention to Consider Cancellation, or NOICC, is a formal letter from the Department of Home Affairs. It is not a cancellation decision itself. Rather, it is a notification that the Department has concerns about your visa and is considering cancelling it. The NOICC will state the reasons why cancellation is being considered and will invite you to provide a response.

Think of it as your opportunity to be heard. The Department is legally required to give you a chance to present your case before a final decision is made. The notice will specify a timeframe within which you must respond. These time limits are extremely strict and can be as short as five working days, so it is absolutely critical to act immediately upon receiving a NOICC.

Grounds for Visa Cancellation: Understanding the Law

The Department's power to cancel a visa is primarily found in two key sections of the *Migration Act 1958*: Section 116 and Section 501. Understanding which section is being used is vital, as it dictates the nature of the allegations and the strategy for your response.

Section 116: General Cancellation Powers

Section 116 provides the Minister for Home Affairs (or their delegate) with broad, discretionary powers to cancel a visa on several grounds. This is one of the most common provisions used for visa cancellations. The Minister may cancel a visa if they are satisfied that one of the following circumstances applies:

Ground for Cancellation	Explanation
Changed Circumstances	The decision to grant your visa was based on a fact or circumstance that is no longer true (e.g., you are no longer in a relationship with your sponsoring partner).
Incorrect Information	The visa was granted based on incorrect information you provided, even if it was an unintentional mistake.
Non-compliance with Conditions	You have failed to comply with one or more of your visa conditions (e.g., working more hours than permitted on a student visa).
Risk to the Community	Your presence in Australia is, or may be, a risk to the health, safety, or good order of the Australian community or an individual.
Visa Granted in Error	The visa should not have been granted in the first place because its grant was in contravention of the Migration Act or another law.
Not a Genuine Student	For student visa holders, if you are not considered to be a genuine student or are engaging in conduct not contemplated by the visa.

Responding to a s116 notice requires you to directly address the specific grounds cited by the Department and provide evidence to the contrary.

Section 501: The Character Test

A visa cancellation under Section 501 is extremely serious and relates to the “character test.” Failing the character test can lead to visa refusal or cancellation and can result in a permanent ban from Australia. The Minister has the power to cancel a visa if they reasonably suspect a person does not pass the character test and are satisfied the cancellation is in the national interest.

A person can fail the character test for several reasons, including:

- **Substantial Criminal Record:** This is defined in the Act and generally includes being sentenced to death, life imprisonment, or a term of imprisonment of 12 months or more.
- **Association with Criminal Conduct:** Being a member of or associated with a group or person involved in criminal conduct.

- **Risk of Engaging in Criminal Conduct:** If there is a risk you might engage in criminal conduct in Australia.
- **Sexually Based Offences Involving a Child:** A conviction or even a finding of guilt for such an offence.
- **Not of Good Character:** A general provision based on your past and present conduct.

In some circumstances, such as when a person has a substantial criminal record and is serving a full-time prison sentence, the cancellation is **mandatory** under section 501(3A) of the Act. These are the most difficult cases to fight.

How to Respond to a NOICC: A Step-by-Step Guide

Your response to the NOICC is your single most important tool in preventing a visa cancellation. A well-prepared, evidence-based submission is critical.

1. **Check the Deadline:** The first thing you must do is identify the response deadline in the NOICC. Missing this deadline will almost certainly result in your visa being cancelled. Note whether the timeframe is in calendar days or working days.
2. **Understand the Allegations:** Carefully read the NOICC to understand exactly why the Department is considering cancelling your visa. Identify the specific section of the Act (e.g., s116, s501) and the factual basis for their concerns.
3. **Gather Supporting Evidence:** Collect all documents that can support your case. This could include:
 - Character references from employers, friends, and community members.
 - Evidence of your ties to Australia (family, property, employment).
 - Medical or psychological reports.
 - Evidence to disprove the Department's claims (e.g., proof of compliance with visa conditions).
 - A personal statement explaining your circumstances.
4. **Draft a Detailed Submission:** Your written submission should be clear, detailed, and directly address the issues raised. You should explain why the grounds for

cancellation are not met, or, if they are, provide compelling reasons why the Minister should exercise their discretion not to cancel the visa. This is where you can highlight any mitigating factors, the impact of cancellation on you and your family, and your positive contributions to the Australian community.

After the Decision: Your Review Rights

If, after considering your response, the Department decides to cancel your visa, you may have the right to have that decision reviewed.

The Administrative Review Tribunal (ART)

In mid-2024, the Administrative Appeals Tribunal (AAT) was replaced by the Administrative Review Tribunal (ART). For most visa cancellation decisions made within Australia, you can apply to the ART for a “merits review.” This means the ART will take a fresh look at the facts, law, and policy and decide if the Department made the correct decision.

It is important to note that not all decisions are reviewable by the ART. For example, if the Minister personally decides to cancel your visa under section 501, you generally cannot apply for a merits review. Strict time limits apply for lodging an application with the ART, so you must act quickly.

Ministerial Intervention

In a small number of cases, where you have no other appeal rights, you may be able to request that the Minister for Home Affairs personally intervene in your case. The Minister has public interest powers to substitute a more favourable decision if they believe it is in the public interest to do so. These powers are used only in unique and exceptional circumstances.

What Should You Do Next?

Navigating a visa cancellation is a complex and high-stakes legal process. The information in this guide provides a general overview, but every case is different. The best course of action is to seek professional legal advice from an experienced

immigration lawyer as soon as you receive any communication from the Department about a potential cancellation.

I have been helping clients with visa cancellation matters for over 27 years. If you have received a NOICC or a cancellation decision, I invite you to **book a consultation** with me to discuss your situation. We can quickly assess your case and provide you with clear, strategic advice on the best steps to take to protect your future in Australia.

The Consequences of Visa Cancellation

A visa cancellation has severe consequences that extend beyond simply having to leave Australia. If your visa is cancelled while you are in Australia, you will become an unlawful non-citizen. You will be liable for detention and removal from Australia. Furthermore, a cancellation can result in a re-entry ban, preventing you from being granted another visa to Australia for a specific period (often three years) or, in some cases, permanently.

This is why it is so important to treat any communication from the Department about cancellation with the utmost seriousness. The long-term implications can affect your ability to travel, work, and reunite with family in Australia in the future.

A Deeper Look at the ART Review

When you apply to the Administrative Review Tribunal for a merits review, the ART member is not simply checking if the Department followed the correct procedure. They are stepping into the shoes of the original decision-maker and making a new decision. This is a crucial distinction. You have the opportunity to present new evidence and arguments that may not have been available or were not provided to the Department initially.

The ART process typically involves a hearing where you can give oral evidence and present your case directly to the Tribunal member. You can have a lawyer or migration agent represent you at the hearing. The ART will consider all the information before it, including the Department's file and any new information you provide, and will decide whether to:

- **Affirm** the decision to cancel your visa.

- **Vary** the decision.
- **Set aside** the decision and substitute a new decision (e.g., to reinstate your visa).
- **Remit** the matter back to the Department for reconsideration with specific directions.

The Reality of Ministerial Intervention

While Ministerial Intervention is a potential last resort, it is essential to have a realistic understanding of this pathway. The Minister is not obligated to consider your request, nor are they obligated to intervene. The guidelines for what constitutes “unique and exceptional circumstances” are narrow. Generally, these requests are only successful where there are compelling and compassionate circumstances that were not fully considered during the visa and review process, and where there are strong compassionate factors that would cause significant harm to an Australian citizen or permanent resident if the person were to be removed from Australia.

My team and I have successfully handled numerous Ministerial Intervention requests over the years, but it is a challenging and uncertain path. It should never be considered a primary strategy but rather a final plea when all other legal avenues have been exhausted.

About the Author

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