



PROTECTION VISA CANCELLATIONS

This fact sheet answers questions about an AAT review of a Department of Home Affairs (the Department) decision to cancel a protection visa.

What does the AAT need to decide?

The AAT will need to decide whether the grounds for cancelling the visa are made out and if so whether the visa should be cancelled.

A protection visa might be cancelled under a number of different provisions. This fact sheet provides information about a protection visa that is cancelled on the basis of:

- **non-compliance** with Migration Law requirements to give the Department correct information (e.g. in visa applications and passenger cards) and genuine documents, OR
- certain **situation specific grounds** where the visa was temporary, such as:
 - a visa granted on a particular fact or circumstance that did not or does not exist
 - not complying with a condition of the visa
 - where you are a risk to the health, safety or good order of the Australian community, or the health or safety of individuals, or are a security risk.

Note: This fact sheet does not apply to a review of a decision to cancel a protection visa on character test grounds.

How does the AAT decide if my visa should be cancelled?

First stage: The AAT must decide whether the grounds for cancellation are made out.



Second stage: If the AAT is satisfied that the grounds for the cancellation are made out, the AAT must consider whether your visa should be cancelled.

The Department should have first provided you with a notice of intention to consider cancellation, inviting you to respond before cancelling your visa. In deciding whether the grounds for cancellation are made out, the AAT will consider your response to this notice. Non-compliance with Migration Law can also occur if you provided incorrect information or a bogus document in your response.

Matters that the AAT might look at include:

Where your visa is cancelled due to incorrect information/bogus documents (non-compliance).

- the correct information
- the content of any genuine document
- whether the decision to grant the visa was based on incorrect information/ bogus document you gave, and if so the circumstances it was given, and the time that has passed since
- your circumstances now.
- any breaches of the law while you have held the protection visa
- any contribution you have made to the community
- any harm you would suffer if returned to your home country
- hardship to your family if visa is cancelled.

This fact sheet provides general information only. It is not legal advice about your case. If you have a question about the law or how it applies to your case, you should seek legal advice.

Where the visa is cancelled due to situation-specific grounds:

- why you came to Australia and why you lodged your application for a protection visa
- whether you have complied with your visa conditions and been truthful and co-operative with the Department
- degree of hardship for you and your family if the visa was cancelled
- the circumstances of the case.

In all cases:

- any mandatory legal consequences or consequential visa cancellations
- whether any international obligations would be breached if you are removed to your home country
- any other relevant matters.

The Department decision letter may assist you to identify the types of matters the AAT might consider when deciding whether to cancel the visa.

What information can I give the AAT to support my review?

You can give us information that supports your case. You are not limited to the information listed below, and the information you give us will depend on your individual circumstances.

Evidence means any relevant documents that support your claims. This includes statements by you or from other people, such as family members.

Examples of helpful information to give us might include:

- evidence that you did not give incorrect information or bogus documents
- evidence that the reasons for cancelling the Protection visa are incorrect
- evidence supporting any claims as to why the visa should not be cancelled by addressing the matters the AAT will look at
- submissions by you or your representative.

When should I give my information to the AAT?

You should give us information as soon as possible, preferably when you lodge the application. If the AAT is satisfied with the information you give us, a favourable decision might be possible without the need for a hearing.

Giving evidence at a hearing

If you are required to attend a hearing, an AAT Member will ask you about your application and consider all of the information that you present. Generally, this will include the documents you have given us about your case. You should give us any information no later than 7 days before the hearing or if you have been requested to provide information by a particular date, by the date specified.

Any information you present to the AAT Member is important evidence. Preparing this evidence well in advance of the hearing can assist you to present your case and help the AAT Member to make a decision.

CONTACT US IF YOU HAVE ANY QUESTIONS

- Telephone: **1800 228 333**
- Email: mrdivision@aat.gov.au
- www.aat.gov.au
- National Relay Service www.relayservice.gov.au
- Translating and Interpreting Service (TIS): 131 450

When this Fact Sheet refers to "You" it means the applicant, and includes his or her nominee, representative or support person. When it refers to "We" or "Us" it means the AAT.

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