

Fact Sheet: Bridging Visa E Cancellations

This fact sheet is for people who may be facing cancellation of their Bridging Visa E.

The Minister may cancel a visa if its holder has not complied with a condition of the visa or if a prescribed ground for cancellation exists.

When a person's bridging visa is cancelled, they become an unlawful non-citizen and are detained.

Why have I been invited to an interview with the department?

Your bridging visa may be cancelled because:

- You have been charged with a criminal offence;
- You have been convicted of a criminal offence; or
- You have breached your visa conditions.

If you have been charged or convicted of an offence, the police will send information about the charge or conviction to the Department.

If this is the case, you would ordinarily receive a letter from the Department inviting you to an interview with the Compliance Section. The letter may not tell you the purpose of the interview.

If you are invited to an interview, it is important to know what you should raise if the interview is about the cancellation of your visa.

How do they decide whether to cancel my visa?

The decision maker (called the 'delegate') is guided by Ministerial Direction 63, which sets out what the delegate should consider before deciding whether or not to cancel your bridging visa. The delegate will weigh up all of these considerations to make a decision.

1. Primary considerations

The decision maker will give greater weight to primary considerations, which include:

- The need to rigorously determine whether there should be a cancellation of the visa in line with Australia's low tolerance of criminal behaviour; and
- The best interests of any children who are under 18 in Australia who would be affected by a cancellation.

If you have any children in Australia who will be impacted by your detention, you should raise this with the decision maker and describe the impact a visa cancellation would have on the children.

2. Secondary considerations

Other things that the decision maker will take into account include:

- Whether your family (including a spouse or partner) will be separated and impacted by a cancellation;
- Any hardship you would experience if you were sent to detention, which could include:
 - Mental or physical health problems that would be made worse in detention

- Financial concerns for example if you need to keep paying rent
- Disruption to your education or job;
- The circumstances surrounding the charge or conviction – including whether it is serious or not or if there are any mitigating factors;
- Consequences of the cancellation such as the amount of time you could be detained for, especially if you are still waiting to lodge a protection visa; and
- Any other matter that is relevant.

If you are able to, to prepare for the interview, you could do a number of things. You could ask your doctor to write a short letter about the impact of detention on your health, including your mental health.

If you are seeing a counsellor, psychologist or psychiatrist, you could ask them to write a short letter of support addressing any of the above primary or secondary considerations they are able to comment on.

If your detention would mean you would be separated from your family members, they could write a statement about what that separation would mean for them.

This interview is not a criminal trial; but remember that anything you say could be used against you as evidence if you do have to go to court for a criminal matter.

It is also important to remember that the interview is not a protection visa interview. If you talk about your reasons for coming to Australia, you need to make sure any information you provide is consistent with information you have or will provide in relation to your protection visa application.

If my bridging visa is cancelled by the Department, what can I do?

If your bridging visa is cancelled, it is important to act quickly as time limits apply.

Bridging visa cancellations can be appealed to the Administrative Appeals Tribunal (AAT) in the Migration and Refugee Division. You can lodge an application for review online at <https://tribunalonline.mrt-rrt.gov.au/> or by post or fax. If you are in a detention centre, you have the right to access the internet or a fax in order to lodge your appeal.

It is important to know that you have a limited time to appeal: only **2 working days**. If your bridging visa is cancelled on the Monday, you need to have lodged with the AAT by the Wednesday. The AAT needs to receive your application for review within this time frame.

The AAT should have access to all of the information that the Department did, and they make their decision guided by the same considerations.

The hearing will be conducted by a member of the AAT. After the hearing they must decide whether to affirm the decision of the Department and cancel the visa, or to remit the decision of the Department and reinstate the bridging visa.

At the AAT hearing you should raise all of the primary and secondary considerations discussed above.

Please note: This factsheet contains general information only. It does not constitute legal or immigration advice. RACS is independent of the Department of Immigration. This factsheet was prepared in December 2015.