

VISA CANCELLATION kit

If you have received a letter from the Department of Immigration telling you that your visa might be cancelled, then this kit is for you.

About this kit

If you have received a letter from the Department of Immigration telling you that your visa might be cancelled then this kit is for you.

This kit explains what to do if the Department of Immigration and Citizenship (DIAC) is considering cancelling your visa, or has already cancelled your visa, because of a criminal record. It also provides practical assistance in circumstances where a visa is being considered for refusal.

Disclaimer:

This publication is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.

At the time of printing, the information shown is correct but may be subject to change.

For more information contact LawAccess NSW on 1300 888 529.

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Acknowledgement

Many prisoners face the prospect of their visa being cancelled. This kit aims to assist prisoners who are in this situation and has been written on the basis of the work that has been done assisting hundreds of prisoners facing visa cancellation. In particular, contributions from Penny Adams and Philippa Martin, and especially Lyn Payne's exceptional editorial leadership, helped to put this kit together.

Visa cancellation kit

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Introduction

Any type of visa (permanent or temporary) may be *cancelled* by the Department of Immigration and Citizenship (DIAC) if you do not pass the “character test”. The character test is defined in section 501(6) of the *Migration Act 1958* (the Migration Act). Applications for a visa can also be *refused* if you do not pass the character test.

You will not pass the character test if you:

- (1) have a “substantial criminal record” (see below for definition); or
- (2) have an association with an individual, group or organisation which is suspected of being involved in criminal conduct; or
- (3) are not of good character having regard to your past and present criminal or general conduct; or
- (4) are at significant risk of engaging in future, unacceptable conduct.

What is a substantial criminal record?

A person will have a substantial criminal record if they have been:

- Sentenced to a *period of imprisonment* of 12 months or more;
- Sentenced to a number of shorter periods of imprisonment (at the same time or at different times) that add up to 2 years or more; or
- Found not guilty due to mental illness and detained.

If you have a substantial criminal record you fail the character test and DIAC may cancel your visa.

TIP

When calculating a “*period of imprisonment*”, DIAC will include parole periods, suspended sentences, time spent in periodic detention, or time spent in drug rehabilitation or mental health facilities *if they were ordered as a sentence by a court*. Sentences received for juvenile offences can also be included.

What happens if my visa is cancelled?

- If your visa is cancelled you cannot remain in Australia unless you get another type of visa.
- You cannot apply for any other visa except a protection (refugee) visa or a bridging visa.
- Once you have finished your prison sentence, you will be removed from Australia and returned to the country of which you are a citizen. Most of the time this is the place you were born.
- After you have been removed from Australia you will never be able to return.

Cancelling a visa – how it works

STEP 1

DIAC is notified that you have a *substantial criminal record*. This usually happens while you are in prison. DIAC will generally not start the cancellation process until the last six months of your sentence. However DIAC can consider cancelling your visa at any time either while you are in prison or after you have been released.

STEP 2

DIAC sends you a **Notice of Intention to Consider Cancellation**.

This Notice means DIAC is considering cancelling your visa. No final decision has been made at this stage. You will be given a chance to tell DIAC why your visa should not be cancelled.

The Minister for Immigration and Citizenship can also cancel your visa. This means the Minister makes the decision personally and not an officer of DIAC. The Minister will not follow the same process described in this kit and there is no appeal to the AAT for this type of cancellation. You should get legal advice (see page 38) if the Minister is considering cancelling your visa.

STEP 3

DIAC cancels your visa and sends you a **Notice of Visa Cancellation**.

This means a decision has been made to cancel your visa. You need to act quickly (see page 12).

IMPORTANT

The section of the Department of Immigration and Citizenship that deals with visa cancellation on character grounds is the National Character Consideration Centre (NCCC). Contact the NCCC if you are not sure if your visa has been cancelled. The number is 1300 722 061.

If you receive a Notice of Intention to Consider Cancellation (“Notice”)

1. DIAC will send you this Notice plus other documents such as your criminal record. DIAC will ask you to comment on the information.
2. You should write to DIAC explaining why you think your visa should not be cancelled (see page 17).
3. DIAC will then prepare an *Issues Paper*. It will include all the relevant information DIAC has collected from you and others. The *Issues Paper* is given to a *decision-maker*.
4. The decision-maker will consider the *Issues Paper* and decide to either cancel your visa **OR** give you a warning.
5. DIAC will write to you to tell you what they have decided. You will receive either a **Notice of Visa Cancellation** letter or a warning letter.
6. If your visa is not cancelled, and you only receive a warning, you still might be cancelled in the future if you are convicted of other offences.
7. If your visa is cancelled you can appeal to the Administrative Appeals Tribunal (AAT) (see page 12).

How to respond to a Notice of Intention to Consider Cancellation

The Notice asks you to respond to two questions:

Question 1: "Do you pass the character test?"

You have 14 days from the date of the Notice to answer this question.

Question 2: "Should your visa be cancelled?"

You have 28 days from the date of the Notice to answer this question.

Question 1: "Do you pass the character test?"

Firstly, check that the criminal record sent to you is correct. If you have been sentenced to more than 12 months in prison or at least two separate prison terms totalling more than 2 years, then you will have a "substantial criminal record" and fail the character test. In this case you do not have to write to DIAC to tell them that you do not pass the character test. However, you still need to write to tell DIAC why your visa should not be cancelled. See Question 2 for further instructions.

If the information is not correct, write to DIAC and explain why the information is wrong – perhaps the list includes offences which are not yours (they belong to a person with the same or similar name) or perhaps the sentences are incorrect. You should attach evidence to support what you say. You may be able to get the lawyer who represented you at your criminal trial to help you get this information.

If you are appealing your sentence or conviction, and your appeal has not been heard, tell DIAC this. It is common for DIAC to put off making a decision until all appeals have been finalised.

Remember: You have 14 days to tell DIAC if your criminal record is not correct or incomplete, unless you get an extension (see Time Limits section on page 10.)

Question 2: "Should your visa be cancelled?"

This is your chance to tell DIAC why you think your visa should not be cancelled.

Your response should give reasons why, even though you have a criminal record, your visa should not be cancelled. Tell your side of the story in your own words. See page 26 for an example response to DIAC. If you can, collect evidence to back up what you say in your response.

If you are able to do so, it is useful to do a statement about your life to try and explain the circumstances of your offending, your background, your childhood etc. See page 31 for an example of a statement.

You do not have to send all the information at the same time – you can keep sending more information until the due date. You can even send information up until the time the decision is made about your visa – sometimes this is after the due date. If you are not sure ring DIAC and ask them if you can send more information.

If you are unsure about what to include in your response, see page 38 for information about who you can ask for advice.

Remember: you have 28 days to answer this question, unless you get an extension (see *Working out time limits* section on page 16).

Your side of the story

DIAC does not *have* to cancel your visa if you fail the character test. DIAC will look at factors such as the risk of harm to the Australian community if you stay and the consequences for you and your family if you have to leave Australia.

The policy that DIAC uses in deciding whether or not to cancel your visa is in a document called *Ministerial Direction 41*. A copy of this will be provided to you with the Notice. It contains detailed guidelines about what DIAC might take into account when it is thinking of cancelling your visa. These are called "primary considerations" (which DIAC **must** take into account) and "secondary considerations" (which DIAC **may** take into account).

Primary considerations

The *primary considerations* which DIAC **must** consider are:

1. The protection of the Australian community which includes:
 - (a) The seriousness and nature of the criminal offence(s); and
 - (b) The risk that you might re-offend.
2. Whether you came to Australia as a child.
3. The length of time you have lived in Australia prior to committing an offence.
4. Australia's human rights obligations.

These are considered in more detail below.

1(a) *The seriousness and nature of the criminal offence(s)*

DIAC will have your criminal record so will know about the types and number of offence/s you have committed. However, they will not know what was going on in

your life at the time you committed the offences so this is your chance to explain the background to your offence(s). Some things you can cover here include:

- what type of offence you have committed;
- the sentence(s) you received;
- the amount of time between each offence;
- the amount of time that has passed since your most recent offence;
- whether or not your offence is on the list of "serious offences" in *Ministerial Direction 41* (if it is not on this list you should point this out).

DIAC will consider any information (or mitigating factors) which gives some background to why you committed the offence. This includes information about what was happening in your life at that time.

"Mitigating factors" are things that might make an offence less serious or help explain it, and might include:

- a drug or alcohol addiction at the time of the offence;
- your age at the time of the offence;
- any mental health problems at the time of the offence;
- circumstances in your family background or childhood, for instance a history of violence or abuse against you; or
- other personal circumstances, for instance, losing your job, you had problems in your family, with your husband/wife or children.

IMPORTANT

It is important to show that you understand the seriousness of the offence, particularly the consequences for the victim(s).

1(b) The risk that you might re-offend

Here you should provide information about the steps you have taken toward rehabilitation, and your plans for when you are released from prison. You will need to show that the steps you have taken, or plan to take, will reduce the chances that you will commit another offence. For example, you might say that you are planning to go into a rehabilitation program, or that you have a job lined up.

You should also list the ties you have to the community, how you have contributed to your community in the past, and if you plan to contribute in the future. For example you might have coached a local football team, or have been involved in a church community.

The kinds of information you can use to support your response are:

- evidence of any drug and alcohol courses, anger management courses, or education you have done since your last offence;
- whether a significant period of time has passed since your last offence and you have been living in the community during that time;
- that you have never breached a court order (such as bail, parole or a bond), or that your last breach was a long time ago;
- that you have never breached correctional centre rules, or that your last breach was a long time ago;
- anything positive that a judge or magistrate or other professional (such as a psychologist or parole officer) has written about your rehabilitation;
- information about people in the community who can support you and help you avoid any further offending,

explaining who they are, how you know them, and how they will help you; and

- examples of ways that you have helped your community, including your friends, family, church, sports club, or other people in the community (for example, volunteer work, coaching a sports team, caring for someone who needed help).

2. Whether you came to Australia as a child

In this category you can provide information about how long you have lived in Australia and when you arrived. If you came to Australia when you were under 18 years of age, and spent what is known as your "formative years" in Australia this is important to point out. Your "formative years" are generally between the ages of 8 and 15.

The kinds of details you might include are:

- how old you were when you started living in Australia;
- that you grew up and went to school in Australia; and/or
- that you have never/not often returned to your country of origin.

3. The length of time you have lived in Australia

If you have lived in Australia for a long time it is important to point this out. Include here things like:

- if you have been in Australia for, say, longer than 10 years;
- how long you were in Australia before committing any offences;
- how many of your family members live in Australia and how close you are to them;
- whether you have a partner in Australia and whether they are an Australian citizen.

4. Australia's human rights obligations

Australia has agreed to meet certain human rights standards by signing a number of documents called International Conventions. These include the Convention on the Rights of the Child (CROC), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the Refugee Convention. DIAC must consider whether cancellation of your visa would breach any of these Conventions.

(a) Children

A very important international obligation is contained in the Convention on the Rights of the Child (CROC). DIAC must consider whether any children (less than 18 years old) would be affected if you were removed from Australia. This includes your own children or other children you have looked after or are close to and might include nephews and nieces, or even your brothers and sisters. DIAC must take into account principles such as the rights of children to grow up with their family and to have a relationship with their parents and other carers. This is known as deciding what is in the best interests of the child.

The kinds of information you can provide include:

- whether you have children in Australia and their ages;
- whether they are Australian citizens;
- what relationship you have with those children - parent, guardian, carer, aunt/uncle;
- how close the relationship is (What kind of care have you given to the children? Did you live with them before you went to prison? How often do you see them now?); and

- how your children would be affected if you were sent away from Australia (What would happen to them if they were separated from you? Would they be able to go with you and start a new life in another country? How would this affect them – would they know the language, would they be able to go to school, get health care etc.?).

(b) Refugee claims

Another international obligation DIAC must consider is whether you would be at risk of persecution, torture, or other cruel, inhumane or degrading treatment if you were sent back to your country of origin. This is particularly important if you came to Australia as a refugee.

You should include information about whether you:

- came to Australia on a refugee visa;
- fear that you would be harmed if you had to return to your country of origin, including who would harm you and why; and
- fear that you would be killed or at risk of serious harm or other mistreatment if you had to return to your country of origin.

Secondary considerations

The *secondary considerations* which DIAC **may** consider are:

1. Family ties to Australia
2. Your age and health
3. Links to your country of origin
4. Hardship to you or your family
5. Your level of education
6. Any warnings from DIAC you have received in the past.

Under secondary considerations, you can provide information about the

difficulties you might face if you have to leave Australia and go to your country of origin. You can also talk about how your family would be affected.

The kinds of information you can provide include:

- a. whether you will have any support in your country of origin from family or friends;
- b. whether you will have access to social security or health care or education;
- c. any health problems that could be affected if you had to leave Australia – what sort of treatment or services you need and whether you will be able to get these in your country of origin;
- d. whether you will be able to communicate with people or find the help you need including whether you speak the language; and
- e. your level of education and whether you can read and write in English and the language/s of your country of origin?
- h. whether you support anyone financially in Australia and why;
- i. if your family members would have to leave Australia with you, the difficulties they would face to settle in your country of origin; and
- j. examples of help or work you have done in the community such as for any community groups or volunteer work like coaching a sports team.

You can include information about how your removal from Australia might affect the people you are close to in Australia, especially if anyone in Australia relies on you for anything (for example, money or practical help). You can also include any links you have to the Australian community or a particular community group. Examples of this kind of information you can include are:

- f. whether you have a wife, husband or de facto or girlfriend/boyfriend in Australia, including whether he or she is an Australian citizen;
- g. any responsibility you have to care for an Australian citizen (such as a child, a parent, someone with a disability);

"INDEPENDENT EVIDENCE"

Independent evidence is information from other people or sources which supports what you say. Where possible, try to include independent evidence.

Include documents like reports by doctors or psychologists, parole and pre-sentence or pre-release reports, and other letters or reports by qualified people. See pages 17 to 22 for more information about what evidence to provide with your response letter.

Collect letters of support from as many people as possible – these can be from friends and family, as well as employers, community leaders and others. If someone is saying that you have a good character they should also say that they know about your criminal record. Other letters of support can be from people who will help you (by giving you a job or a place to live) when you get out of prison.

An example of a letter of support is at page 36.

Time limits

If you do not know how long you have to respond to the Notice of Intention to Cancel your visa, call the National Character Consideration Centre (NCCC) and they will tell you. The phone number is 1300 722 061.

If you cannot provide your response within the time allowed, ask for more time. To do this contact the NCCC. Do not wait until the last minute. You should ask for more time as soon as you know that you will need it. See page 37 for an example of a letter asking for more time.

Even if you send in information after the time limit has expired, DIAC must still take that information into account if they have not yet made a decision. This means that if the time limit for you to respond to the Notice has ended and DIAC has refused to give you more time, *you can still send in information* and hope that it is received before DIAC makes the decision. HOWEVER you should always try to provide any information within the time limit you are given.

Sometimes DIAC will find out more information about you *after* it has sent you the Notice. When this happens, it will send you a copy of this additional information and give you some more time to respond to it.

IMPORTANT – HOW TO CALCULATE THE TIME LIMIT

To calculate your time limit to respond to a Notice of Intention to Consider Cancellation, look at the date on the last page of the Notice letter and add 7 working days if it was posted to you. Then add another 28 days (including weekends). If the Notice was faxed or emailed to you, add 28 days (including weekends) from the date on the letter (not the date you received it, unless this was the same day). See page 16 for an example of how to work out time limits to respond to a Notice of Intention to Cancel.

Waiting for a decision

After you have sent your response to DIAC, the best way to know what is happening with your visa is to keep in contact with the National Character Consideration Centre (NCCC). You can also give someone else permission (an "authority") to speak to the NCCC on your behalf. This does not need to be a lawyer.

IMPORTANT

If you are released from custody before you get a decision, you should contact the NCCC to give them your new postal address and telephone number. Otherwise, they might not be able to find you to notify you of the decision, and you might miss out on your right to appeal the decision if your visa is cancelled.

Can I be put into immigration detention without warning when I am released from prison?

Yes. DIAC will usually notify the prison by telephone or fax when the decision is made to cancel your visa, but this information may not be given to you immediately. If you are taken to immigration detention and not released, it means that your visa has been cancelled.

Can I be put in immigration detention to wait for a decision after I have finished my sentence?

No. If DIAC has not cancelled your visa by the time your sentence has ended you will be released. If DIAC is still only *considering* whether or not to cancel your visa, then your visa is still valid and there is no reason to detain you.

If your visa has been cancelled, go to the next page of this kit.

My visa has been cancelled

– what can I do?

Applying to the Administrative Appeals Tribunal (AAT) to review the decision

If your visa has been cancelled by DIAC, you can apply for a review of the decision at the AAT. There are very strict time limits. **You must apply for review within 9 days.** To work out the exact date you must apply to the AAT see page 13. For an example of how to calculate the time limits see page 16.

The steps you will need to take are:

1. Complete an **Application for Review of Decision Form**. You can ask the AAT to send you this form. You can send it to the AAT by post or fax.
2. Prepare your documents. It is best to send with your Application to the AAT a copy of:
 - a. the Notice of Visa Cancellation; and
 - b. all of the other documents that DIAC sent you with your Notice of Visa Cancellation.It is important that you keep copies of everything you send to the AAT.
3. Pay the application fee of \$100 – by cheque, money order or credit card. You can send the Application Form to the AAT and ask a friend or family member to pay the fee for you. All they need to do is ring the AAT with their details. If you do not pay the fee the application to the AAT will not be valid.
4. Seek legal advice or assistance. It is possible to represent yourself at the AAT, but you can try to get some helpful tips from a lawyer beforehand. If you are not confident speaking English, you can also ask the AAT for an interpreter.

Calculating the time limit to apply for a review in the AAT

There is a very short and strict time limit to apply for a review to the AAT (9 days).

The time limit of 9 days is from the date you were *deemed to be notified* of the decision. It is important to know that this is not always the date that you received your Notice of Visa Cancellation or heard about it.

The amount of time you have to lodge your application depends on how you received the Notice of Visa Cancellation. It will depend on the date you are *deemed to have been notified* of the decision to cancel your visa. This may be different to the date on the Notice. An example of how to calculate time limits is at page 16.

If the Notice of Visa Cancellation was **posted** to you:

- The date you are *deemed to have been notified* of the decision is 7 **working** days (don't count Saturday and Sunday or any public holiday) from the date on the Notice;
- You then have 9 days (including Saturday and Sunday) from the date you are *deemed to have been notified* to lodge your Application to the AAT. If this date falls on a weekend or public holiday, then you can lodge your application on the next working day.

If you received the Notice of Visa Cancellation by **hand, fax or email**:

- The date you are *deemed to have been notified* of the decision is the day after it was handed, faxed or emailed to you;
- You have 9 days (including Saturday and Sunday) from the date you are *deemed to have been notified* to lodge your Application to the AAT. If this date falls

on a weekend or public holiday, then you can lodge your application on the next working day.

You cannot ask for extra time to make an application for review, *unless* there was something wrong with the Notice of Visa Cancellation itself or the way that you received it.

This does not happen very often but if you think it might have happened to you get legal advice immediately.

Going to the AAT

You will be given a File Number by the AAT when you lodge your Application for review. It will have the year when you lodged your application and another number – for example: **2011/1234**. You should give your file number whenever you contact the AAT. This will make it easier for them to find out about your case.

After you have lodged your Application, there are very strict time limits for you to provide more evidence or information to support your appeal. It is very difficult to get extensions. This is because the AAT must make a decision within 84 days of the date you are *deemed to have been notified* of the decision to cancel your visa. If the AAT does not make a decision within the 84 days, the decision to cancel your visa will automatically be “affirmed”. This means that the AAT will not be able to change DIAC's decision and your visa will remain cancelled.

The directions hearing

The first thing that will happen is a *directions hearing*.

At the directions hearing, an officer of the AAT will:

- explain the process;
- make sure you understand what you need to do to get ready for the final hearing;
- make sure you understand when you need to provide your written evidence; and
- set a date for the final hearing.

The directions hearing will probably be held by telephone and is usually short. Sometimes there are legal issues that also need to be dealt with at the directions hearing. DIAC will be represented by a lawyer at the AAT. You should get the contact details of DIAC's lawyer so that you can send your evidence to them.

At the directions hearing it is important for you to write down:

1. the dates of your final hearing; and
2. the date by which you need to give your evidence to the AAT and DIAC.

The final hearing

The final hearing is where the AAT will consider all the evidence. It is advisable to attend the hearing. You might be able to do this by telephone if you cannot go in person, but it is best to attend in person.

The AAT will either:

1. affirm (or confirm) the decision to cancel your visa; or
2. overturn the decision, and give you back your visa.

The AAT must make its decision within 84 days of the date you are **deemed to have been notified** of the decision.

IMPORTANT TIP

The AAT can provide an interpreter for you at the hearing. If you need an interpreter, contact the AAT (or ask someone else to contact the AAT for you) a few days before your hearing to make sure an interpreter is organised for you. You can also get an interpreter for any of your witnesses.

Providing evidence for the final hearing

Evidence can be in the form of documents including statements, affidavits, letters of support, medical and other reports. It can also be the information you provided to DIAC when you responded to the Notice to Consider Cancellation of your visa. You might have prepared a statement at the DIAC stage, so there is no need to do another statement. See the example of a statement on page 31. An example of a letter of support that you may wish a family member or friend to write for you is at page 36.

You must give all your evidence to the AAT and copies to DIAC. This must be done no later than **2 working days before the hearing**. If you do not give your evidence to the AAT and to DIAC at least 2 working days before your hearing the AAT cannot look at it and take it into account.

A statement made by you or a witness should include the facts you want to tell the AAT, signed and dated at the end.

You or any witness can also give evidence at the hearing.

If you or someone else wants to give evidence at the hearing, a statement or letter **must** be given to the AAT and DIAC within the 2-day time limit. If a witness does not give a statement they cannot give evidence at the hearing.

IMPORTANT TIP

You must give the AAT and DIAC all your evidence at least 2 working days before the hearing.

When can I be removed from Australia?

If you do not have a valid visa you must be “removed” or deported as soon as possible. This means that if your visa is cancelled and you have completed the custodial part of your sentence, DIAC can take steps to send you back to your country of citizenship. This means the country that issued you your passport. You can be removed even if you have not finished your parole period. However, if you have applied to the AAT, you cannot be removed until the AAT makes a decision.

If you have not applied to the AAT or the AAT has “affirmed” the decision to cancel your visa, there is usually nothing else you can do to remain in Australia. Sometimes you can go to court to challenge the decision of the AAT but this is very difficult to do.

What happens If I am removed from Australia?

If you are removed from Australia because your visa is cancelled, you will be taken to your country of citizenship. You may be given “post return support” which means that you might be given some money, some help with accommodation, transport and/or clothing costs. However, you will owe the Australian government money for your immigration detention and for the costs of your removal. Most importantly, you will never be able to return to Australia.

Working out time limits

RESPONDING TO THE NOTICE

If the Notice of Intention to Cancel was dated 11 January 2011

And

It was **posted** to you

Add 7 **working** days starting from the next day, 12 January

12, 13, 14, 17, 18, 19, 20 January

THEN

Add another 28 days

21 January to 17 February 2011

SO

Your response to a Notice dated 11 January 2011 is due 17 February 2011

APPLYING TO THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

If the date of the letter from DIAC telling you your visa is cancelled is 7 March 2011

And it was **posted** to you

Add 7 **working** days starting from the next day, 8 March

8, 9, 10, 11, 14, 15, 16 March

THEN

Add another 9 days

17 to 25 March 2011

SO

Your application to the AAT is due 25 March 2011

Instructions

How to write a response to a Notice

At page 26 is an example of a response to a Notice of Intention to Cancel.

It follows the structure of Direction 41, which is the policy that DIAC looks at when deciding whether your visa should be cancelled, or whether you should just get a warning.

You should address each of the matters that is relevant to your circumstances – some will be more relevant than others. If they don't apply to you, leave them out.

1. THE PROTECTION OF THE AUSTRALIAN COMMUNITY

(a) The seriousness and nature of the conduct

- ☒ List all the offences you have been convicted of and write *when* you were convicted and *what* the sentences were.
- ☒ Mention any special circumstances which made your sentence shorter than normal.
- ☒ Did your offences involve any violence? If no you should say so, if yes, you should acknowledge this.
- ☒ Is your offence on the list of serious offences in Ministerial Direction 41? If the answer is no, say so.
- ☒ Write how much time there has been between each of your offences and how long it has been since your last offence.
- ☒ Were there "mitigating" circumstances which might reduce the seriousness of your offences? **For example:**
 - drug or alcohol addiction at the time of the offence;
 - your age at the time of the offence (if you were young);
 - mental health problems at the time of the offence;
 - circumstances in your family background or childhood (e.g. history of violence or abuse against you);
 - other circumstances (e.g. you lost your job, had problems in your family or with your spouse or children);
 - any facts of the offence that show that it was less serious than other examples of the same offence.

- ☒ Did the judge or magistrate who sentenced you say anything about any of the mitigating factors? If they did, refer to those comments.

Other relevant information

- ☒ Here you have a chance to show that you understand the effects of your behaviour on others (e.g. your family, your victim) and to explain how you feel about this.
- ☒ If you have done anything, or tried to do anything, to show you are sorry for what you did (e.g. apologise or pay compensation to the victim/s of your offence/s) explain this here.
- ☒ If there is anything else about your offence/s that you want the decision-maker to understand, explain it here.

(b) The risk that you might re-offend

- ☒ Think about the situation you were in before you went into prison and what was happening to make you offend. Explain what you have done to change yourself and to change your circumstances, so that there is little chance that you will re-offend. For example, whether you have:
- done any courses to deal with drug or alcohol problems;
 - done any courses or had any therapy to deal with mental health problems or behaviour problems (e.g. anger management or decision-making);
 - done any educational courses to improve your ability to get a job and be a useful member of the community (e.g. literacy or vocational courses).
- ☒ If you have done any courses, explain how they have helped you.
- ☒ If you feel you have made other positive changes, write how you have made those changes and how you are different. Who else has noticed the change and what did they see that was different? Include a letter of support from people who have noticed your changes.
- ☒ If you have never breached a court order (e.g. parole, bail, bonds, suspended sentences, or other promises to the court) or if your last breach was years ago, you should write this.
- ☒ If you have never breached prison rules, or if you have a prison record showing that you have not breached prison rules for a period of time, write this.
- ☒ Talk about any good things that you have done in the past for your family, friends, or community. For example, unpaid (or “volunteer”) community work; coaching sport; caring for a sick or disabled person; caring for children; attending church and/or helping the church community.

- ☒ Write who you will live with when you are released (or who you are living with now)
- ☒ Who are the people who will help to keep you out of trouble? Why will they help you and what will they do that will help you not to offend again?

2. AGE WHEN YOU BEGAN LIVING IN AUSTRALIA AND HOW LONG YOU'VE BEEN HERE

- ☒ Write how old you were when you arrived.
- ☒ If you came to Australia with your family, and/or if you had family already in Australia when you arrived, you should explain this. Give the names of your family members.
- ☒ Give a brief history of where you have lived and what you have done since you came to Australia – include the schooling and other studies you have done and the jobs you have had.
- ☒ If you have lived in Australia for less than 10 years but you have strong connections (or “ties”) with people in Australia and the Australian community, you should write this, and give details of those ties.
- ☒ Write how you feel about Australia – do you feel like an Australian, do you feel that Australia is your home? If yes, write this.

3. INTERNATIONAL OBLIGATIONS

(a) **The best interests of the child – this is about your children in Australia, or other children you are close to and have a relationship with**

- ☒ Write how many children you have in Australia – give their names, ages, and whether they are Australian citizens. It is particularly important if they are under the age of 18, but you should still include them even if they are over 18.
- ☒ Write how often you see your children. If you are in prison, write how often they visit or how often you speak to them on the telephone or have other kinds of communication with them.
- ☒ Write what kind of relationship you have with your children now - Are you close? Do you support them financially or in other ways?
- ☒ Write whether you lived with your children before you went to prison and write about what kind of things you did with them.
- ☒ Are you close to any *other* children in Australia (e.g. step-children, foster children, grandchildren, adopted children, children who are not yours but who you treat as your own). Give their name, age, and relationship to you, how often you see them, what kind of support you give them.

- ☒ Write how long each child has lived in Australia and how strong their connection to Australia or people in Australia is. For example, are they doing well in school? Do they have friends? Are they attached to other people who live in Australia?
- ☒ Explain how each child would be affected if you had to leave Australia, including whether or not the child would leave Australia with you.
 - If the child/children would leave Australia with you, how would this affect them? (e.g. write about the effect on their schooling, friends, relationships with other people, could they speak the language in the other country, would they know the culture, could they get the medical care and education they need in the other country?)
 - If the child/children would stay in Australia, how would the separation from you affect them?
 - Is there anyone else with parental responsibility for the child/children?
- ☒ If the child/children have said anything about not wanting you to leave Australia, write what they said.
- ☒ Write what role you want to play in the lives of your children in future. Write how you think you will be able to do this.

(b) Refugee or protection claims – this applies to people who are at risk of persecution if returned to their home country and might include people who came on a refugee or humanitarian visa

- ☒ If you got permanent residence because you were a refugee or if you came to Australia on a refugee or special humanitarian visa, write this and briefly explain what made you (and/or your family) leave your country of origin.
- ☒ If it is a long time since you left your country of origin but you still fear returning, write this and give reasons.
- ☒ If you did not come to Australia as a refugee but if you fear persecution (serious harm) in your country of origin for reasons of your race, religion, nationality, membership of a particular social group or political opinion, you should explain this. You should also get legal advice to see if you should apply for a protection (refugee) visa.

(c) Other international obligations

If you fear that you would face other types of harm, for example death, or torture and cruel, inhuman or degrading treatment or punishment in your country of origin, you should write this and give reasons why you fear this harm. Examples might be if your country of origin is at war (with another country or there is a civil war) or if you feel that you may face the death penalty for crimes you may have (or may be suspected of having) committed. If you feel that this section applies to you, get legal advice.

4. OTHER CONSIDERATIONS

Family ties and other relationships

- ☒ Give information about any partner (husband, wife or de facto partner) you have in Australia. Write if they are an Australian citizen or permanent resident. Explain:
 - how long you have known each other and how long you have been together;
 - whether your partner is financially and/or physically dependent on you;
 - how your offences and prison time have affected your relationship;
 - what would happen to the relationship if your visa was cancelled and you had to leave Australia. Would your partner go with you or would they stay in Australia?
- ☒ List all the family you have in Australia, including all your relatives you have contact with. Give details of how close you are to them, how often you see them, how important they are to you.
- ☒ Write how your family will be affected if your visa was cancelled and you had to leave Australia.

Age

- ☒ Explain if your age (young or old) makes it more difficult for you to leave Australia.
- ☒ If you are an older person and you cannot work or look after yourself, write if you would get the care or pension/income you need to survive if you have to return to your country of origin.
- ☒ If you are young and living with a parent (or someone who cares for you like a parent).
- ☒ Explain what you think might happen to you if you had to leave Australia and be separated from this person. How would you survive on your own?

Health

- ☒ Explain any health problems you have and how they affect you.
- ☒ Make sure you give information about:
 - any kind of care or help you need because of your health problems;
 - the likelihood that you will recover from your health problems or whether they can only get worse;
 - whether or not you would be able to get the treatment and care you need if you are returned to your country of origin (e.g. is the medication you need available in your country of origin, how much does it cost, is free health care available?);
 - the likely effect on you if you cannot get the treatment or care you need.

Ties to the country that you will be returned to if your visa is cancelled

- ☒ If you have no connections, or not many connections, with people in your country of citizenship, explain this here.
- ☒ If you will have no-one to help or support you if you are deported, explain this here.
- ☒ If you can't speak the language, explain how you will cope.

Hardship likely to result from deportation

- ☒ How bad would it be for you if you were deported? What do you think would happen to you?
- ☒ Would the people you are close to in Australia be able to travel to the other country to visit you?
- ☒ How bad would it be for the people you are close to if you are deported? Explain the effect your deportation would have on those people, especially if they are dependent on you for some kind of help or support that they cannot get from anyone else.

Level of education

- ☒ If you have a good level of education and can make a positive contribution to the Australian community through work or other activities, explain this here.

5. CONCLUSION

Attachments (here, you should list the documents you are using as evidence to support what you write in your letter. List each report, letter, statement, certificate for example).

IMPORTANT TIP

Use your own words as much as possible.

How to write a statement

At page 31 is an example of a statement. You can do a statement at the Ministerial stage (before your visa is cancelled) or at the AAT stage (after your visa has been cancelled).

If you are preparing a statement for the AAT remember that you must include everything in your statement that you want to talk about at the AAT. If it is not in your statement, you can't talk about it at the AAT hearing.

It is important in your statement to say everything that is relevant and that you want DIAC to know about you. Usually you should include the following:

- ☒ How long you have been in Australia
- ☒ When you came to Australia
- ☒ Whether you have any family in Australia, including children, and how they would feel if you had to leave
- ☒ Whether you have any relatives in your country of origin
- ☒ What would happen to you if you had to go back to your country of origin, including whether your partner and children could go with you
- ☒ Details of any medical or health issues you have
- ☒ Details of your criminal record
- ☒ Anything that was going on in your life at the time you committed the offences which might explain your crime/s
- ☒ How you now feel about your crime/s – whether you regret the things that have happened and why
- ☒ Any courses you have done either in prison or outside
- ☒ Why you will not re-offend if you are allowed to stay in Australia
- ☒ Who you will live with if you are allowed to stay in Australia
- ☒ How you will support yourself – and whether you have a job to go to.

This statement is your chance to tell DIAC the history surrounding your offending behaviour. It is also really important to tell DIAC why you are no longer a risk to the Australian community – this means telling them why you will not re-offend.

The reasons for this might be, for example, that you have undergone a drug and alcohol rehabilitation course in prison and you no longer take drugs; you have a strong, supportive family/partner and they will help to keep you out of trouble; you have children and you do not want to take the risk of having to leave them.

IMPORTANT TIP

Use your own words as much as possible and make sure your statement is chronological – that is, make sure things are in date order.

How to write a letter of support

At page 36 is an example of a letter of support. It can be used by anyone who knows you and who wants to say they support you staying in Australia. It can be used by family members, friends, employers, religious or community representatives. It can be used at any stage in the cancellation process – while DIAC is considering cancelling your visa or after DIAC has cancelled your visa and you are appealing to the AAT. Remember that if a person gives you a letter of support to be used at the AAT they may have to give evidence at the hearing.

The main reason to get letters of support is so you can prove to DIAC that you are of good character, that you have support in Australia, and that you are not a threat to the Australian community.

IMPORTANT TIP

Use your own words as much as possible.

The following are some of the things a letter of support should include:

☒ **Who they are and what their relationship is with you. How long they have known you.**

☒ **A description of their relationship with you.**

Is it a close relationship? How often do you see them or talk to them? If they come to visit you in prison, say how often. If they don't, say why.

☒ **The person should tell DIAC/AAT that they know about your criminal record.**

They need to show that they know about your offence/s and that they will support you. If they know about anything that was going on in your life at the time of the offence (for example, you were drinking heavily, you had just split up from your partner, your parent had died, etc), they should write about this.

☒ **If you have spoken to them about how you feel about your offence/s, they should include this in the letter.**

If you have said anything to them about feeling bad about your criminal offence/s, they should put that in the letter. It is important to put anything in the letter that you have said or anything that they know about that shows you are unlikely ever to break the law again. If they think that you have changed since committing your offence/s, they should say how you have changed and why. For example, if you have undertaken a drug and alcohol course in prison, or an anger management course.

☒ **What are your good qualities? What contributions have you made to the community?**

If you have cared for anybody, like a child or a sick relative or friend, or supported someone financially, they should include something about that here. Have you done any community work that the person knows about? Do you have a good record of employment? They should write about anything that shows you have a good character and are respected by other people.

☒ **What support will the person be able to give you on your release from prison?**

If they are able to support you – financially or emotionally – this should be included in the letter. Maybe they can help you find a job, or a place to live.

☒ **Say why they think you should be allowed to stay in Australia.**

If they know your family members, they should say how they think they might be affected if you had to leave Australia. They should include any details they know about how your life might be in your country of citizenship. If you have spoken to them about how you would feel about leaving Australia, they should include those details.

Examples

Example of a response to a Notice

This is an example only. You will need to write about your own situation and circumstances in your own words. Refer back to pages 17 - 22 to remind you what information you need to include. Your response may be a long one, like this example, or it could be shorter, depending on your situation.

Douglas Williams
MIN 234577
Cessnock Correctional Centre
PO Box 32
Cessnock NSW 2325

National Character Consideration Centre
DIAC
PO Box 241
MELBOURNE VIC 3001

SENT BY FAX TO (03) 9235 3626

29 August 2011

Dear Sir/Madam

DOUGLAS WILLIAMS
MIN 234577

Notice of Intention to Cancel under s 501(2)

This is my response to the Notice of Intention to Cancel my visa dated 27 June 2011.

I accept that I have a substantial criminal record and do not pass the character test. I would like you to exercise your discretion and not cancel my visa. Please take the following information into consideration when you make your decision.

1. The Protection of the Australian community

(a) The Seriousness and Nature of the Conduct

I acknowledge that I have committed offences of a serious nature. My criminal record is relatively long and it includes some offences which are "serious" offences, and some which also have some aspect of violence. The most recent offence is one of aggravated robbery and this happened in 2009. Before 2009 I had been convicted of a number of other offences, all of these connected somehow to my drug and alcohol dependence. I started committing offences when I was 20 years of age and I have been convicted of a few offences since then. Some were less serious, like the drink driving charge in 2007.

For the most recent offence of aggravated robbery I received a sentence of 2 ½ years with a non-parole period of 14 months. This is at the lower end of the scale of sentences and the judge took into account a lot of the things that were happening in my life at the time of the offence and reduced my sentence. The judge also said that he thought with some rehabilitation I would improve my chances of staying out of trouble.

At that time I was living on the streets, and had a drug and alcohol problems. My wife and two children had left me because of my drug habit and this made things even worse for me. All my family – my parents, my brothers and sisters – all live in Australia and even though we are now very close at the time they didn't want anything to do with me. I had no support, no assistance, no motivation to rehabilitate so I just kept taking drugs. No one would employ me and although I have qualifications as a panel beater I couldn't hold down a job anyway because of my drug habit and drinking.

Around this time I was arrested for a breach of bail and I spent some time in prison. It was at this time that I was diagnosed with severe depression and started receiving treatment. I felt much better and everything seemed to be improving for me but when I got bailed and got out of gaol, I found out that my wife left me. I stopped my medication and started using again. This is when I committed the offence of aggravated robbery.

When I was arrested I just pleaded guilty straight up. I knew I had done the wrong thing by the victim, who was just a taxi driver, doing his job. I was just desperate for money and desperate for drugs and I wasn't thinking at that time about the consequences of my actions for me, or him, or my family. I feel ashamed about the way I hurt this man.

(b) Risk that I might re-offend

This offence is clearly not my first one but all of them are related to my own problems, some with drugs and alcohol, some of them personal problems that have come about because of my own background.

I now feel ashamed about the way I have behaved in the past and deeply regret the hurt I have caused to my wife and kids, my parents and brothers and sisters, as well as the various victims of my crimes.

If I am permitted to remain in Australia I will not repeat the mistakes of my past. I am now in a different position to where I was before and with the love and support of my wife and children and wider family I can succeed.

All my family have noticed the huge difference in me since coming to gaol and getting help with my drug and alcohol dependence issues. I am also been properly medicated for my depression and I know with their support I will maintain my commitment to the medication and stay off drugs. I used drugs and alcohol to deal with problems but I know that I don't have to do this anymore.

I have done a lot of courses in gaol, like the DAAP, as well as receiving assistance and support from the prison psychologist. Attached is a report from the psychologist where they say that there has been a genuine and significant improvement in my behaviour and commitment to staying drug free and based on their observations they believe I

have a low risk of reoffending, if I maintain my medication and stay away from drugs and alcohol.

As the letters from my wife and kids state, they want me to come back and live with them when I am released from gaol. My wife works full-time and the children, who are 5 and 7 years of age, are at school. My kids now respond to me better than ever, because they can see that I am a different man. I speak to the kids everyday before they go to school and they come and visit me once a week with their mother. As for my own work, my former boss has said he will re-employ me as soon as I get out of gaol. I am attaching a letter from him which says he is offering me a job.

My parents lost confidence in me when I was on drugs and committing offences and they didn't want anything to do with me because they thought I couldn't change. Their letter of support which is attached shows how they feel about me now. My sister has also written a letter of support and that is attached.

2. Age when I came to Australia and how long I've lived in Australia

I came to Australia with my mother, father and two older sisters and one brother when I was 15 years of age. Many of my aunts and uncles from both my father's and mother's family were already living in Australia. I have lived in Australia since that time, and have never been back to the country of my birth.

I did one year of school here and then left to get an apprenticeship as a panel beater. I worked at the same place for 5 years, until I had to give it up because of my drug issues. When I was at school I was a pretty good rugby player and I played for my school as well as club rugby on the weekends. Through out my apprenticeship I continued to play rugby every weekend and this kept me busy because I also had to train twice a week. I'd really like to get back into rugby when I am released from gaol and intend to do that. The friends I have at rugby don't drink lots and don't take drugs so I am more likely to stay away from bad influences if I surround myself with these friends.

3. The best interests of my children

I have two daughters, aged 5 and 7. They are both Australian citizens and have lived their whole lives in Australia. Before coming to gaol I lived with both the children and my wife, except for a short period just prior to this most recent offence. Even when I wasn't living with the children I used to telephone them most days.

When I lived with my family I was working and provided for the children financially and in many other ways. Because I finished work early I would collect both my daughters from day care and school every day. I would bring them home, bath them and make dinner so that my wife didn't need to do this when she arrived home. On the weekends we always spent time together as a family, going on picnics or to the pool which is close to our house, or the watch or play sport.

Since coming to prison one of the things I most miss about my life is the opportunity to be with my children. I still speak with them everyday before school and I see them

most weeks when they come to visit but it is not the same as seeing them every day and having that level of contact. I realise I have let them down by my behaviour and I will not do this again.

If I had to leave Australia I would not see my children again, or at least for a very long time. My wife cannot afford to fly herself and the children to England and as I would not be allowed back into Australia this would be the end of our relationship. I would be leaving my children without a father. There is no way I would ask my wife and children to leave Australia to come with me. Australia is their home, it is all they know, they are settled and happy at school, they have lots of friends and support from my family and my wife's family.

I am very close to my parents and siblings, and they live close by to us, and the children have grown up around my family. My family, and my daughters, would be devastated if they had to leave their grandparents. They are also very close to my wife's family and would find it very difficult if they couldn't see them again.

4. Family ties and other relationships

My primary relationship is with my wife, Sarah, who I have been married to for over 10 years.

We met when we were at school and started going out when I was 17, just after I started working. She is an Australian citizen and was born in Australia. We have had some rough times but now are stronger than ever, particularly because I have shown her that I have changed. Although I have not worked for over 12 months, and for a few months before coming to gaol, prior to that I worked full time and Sarah relied on my wage to pay the mortgage. She has had to get a second job to keep the house but is relying on me getting out and getting a job so that she can start spending more time with the children. We would also like to have another child.

Both my parents, my two sisters and one brother and all their families live in Australia. They are all Australian citizens, and I am the only one of the family who is not.

I am particularly close to my mother, who is suffering ill health at the moment. She is very distressed at the thought of me having to leave Australia because she knows that due to her age and bad health she will not be able to travel to England to see me and this would mean I would not see her ever again. My father is also devastated by the prospect of having his eldest son leave permanently.

I have 2 aunts and 2 uncles living in Australia, as well as 5 cousins, their partners and children. I have 13 nieces and nephews and they all live in Sydney, all in the area where my wife and I live. Of these 13 children, 8 of them are under 18 years of age. I have a particularly special bond with my niece Olivia who is 7 years old and was born in the same week as my own daughter. She has pretty much grown up with my family and spends most of her time with us. She does not know I am in gaol because I was too ashamed to tell her, she thinks I have gone on a holiday and will be back soon.

5. Health

Apart from having been diagnosed with severe depression, I have no other health conditions. Being made to leave Australia will obviously impact on my depression and although I will have access to the medication I need to treat it, without my family and my children I don't know how motivated I would be to keep on it. I fear that I will fall back into my old habits and go off the rails again.

6. Ties to England

As far as I know I have no close relatives in England. I have had no contact with anyone in England since my family moved to Australia many years ago. My aunts and uncles on both sides of my family live here, or in New Zealand. I simply do not know what I will do once I arrive there – I don't have a place to live, to work, I don't know my way around, I don't know about social security or the health system or anything like that.

7. Conclusion

I don't know what else I can say except that I hope you can take into account the things contained in this response. My life is my children and my wife and I do not want to lose them. I now realise that if I take drugs and get involved in trouble again I will lose them, and not only because I might be removed from Australia. My wife has said this is my last chance and if I don't step up this time, that is it. I believe that she means it and I know that I can respond and do the right thing by Australia and my wife and my children.

Yours sincerely,

Douglas Williams

Example of a statement

This is an example only. You will need to write about your own situation and circumstances in your own words. Refer back to page 31 to remind you what information you need to include in your statement. Your statement may be a long one, like this example, or it could be shorter, depending on your situation.

STATEMENT

I, Glen Afu Baker of John Morony Correctional Centre, the Northern Road, Windsor, in the State of New South Wales:

1. I was born on 13 August 1978 in Auckland, New Zealand. My parents are originally from the Cook Islands. I am a New Zealand citizen.
2. I have three brothers and two sisters. I am the third eldest of six children.
3. I have been with my partner Sabrina for about 15 years. We have two children - Daniel born on 11 December 2002 and Chloe born on 13 August 2005. Sabrina and the kids are Australian citizens.
4. When was I around 4 years of age my parents moved to Australia and have lived here since that time. All of my siblings live in Australia.
5. All of my uncles and aunties from my mother's side live in Sydney. Some of my uncles from my dad's side also live in Australia, in Melbourne.
6. I have not left Australia since arriving in 1982.
7. I have no relatives that I know of in New Zealand. I have some extended family members in the Cook Islands but I don't know any of them and haven't had any contact with them ever.
8. I attended Prescott Primary School in Merrylands. From there I went to Merrylands High School. I didn't do very well at school because I played up a lot and got into trouble. I was more interested in sport and was pretty good at rugby league.
9. I left school at the end of Year 10 and started an apprenticeship as a motor mechanic with a friend of my father. I was doing OK, living at home, working hard, going out on the weekends with my friends.
10. It was at this time that I met Sabrina and we have been together ever since.

11. When we first got together she moved into my house with my parents and one of my brothers and both sisters. It was pretty crowded so eventually we moved out into a unit at Blacktown. I continued to work and Sabrina got a job too.
12. Outside of work I spent lots of time playing footy. It was around this time I started drinking fairly heavily, mostly after training or football with my mates. I started turning up to training drunk, or not turning up at all. After a few suspensions for failing to turn up or showing up drunk I was kicked out of the Club.
13. This was really important to me and I went off the rails after this. I kept drinking, and started turning up to work drunk. My boss was a good bloke and tried to give me advice but I didn't listen. Eventually I got sacked.
14. Sabrina was still working but I had no job, no footy, no nothing so I started hanging around with a bunch of guys who were into drugs. I had lots of time on my hands.
15. I started drinking more and more but eventually alcohol stopped having any effect on me. It was then that I started to smoke cannabis, around the age of 18. By the age of 19 I was smoking everyday.
16. Because I wasn't working I had to do something to get money to buy drugs. Sabrina was working long hours and I wasn't contributing anything to the rent or food. I couldn't tell her about my drug habit, because she would have been really angry, so I couldn't get money from her.
17. I started doing petty crime, things like stealing car stereos, then got into stealing cars and other robberies. I eventually got done for these offences. I got lots of fines and suspended sentences. I can't remember how many.
18. When I was about 20 years of age I first smoked heroin. A few of my mates used to smoke and inject it and would offer it to me all the time. I was smoking pot and drinking but didn't want to touch heroin, thinking that was a drug only junkies took. I was hooked.
19. It was from that point on that I started smoking heroin regularly. I had to support my drug habit and the only way to get sufficient money was to steal. I committed a lot of robbery, burglary and stealing offences and also got done for possession a few times.

20. From about the age of 22 I have been in and out of gaol. When I wasn't in prison I was living with Sabrina.
21. In 2002 Sabrina found out she was pregnant. I was really happy about the pregnancy but it didn't register that I needed to straighten up. I continued getting into trouble and eventually went back to prison. Daniel was born in December 2002 and I was luckily out of prison at the time of his birth.
22. In 2007 Chloe was born. I was in prison at the time of her birth and she has spent much of her life seeing me in prison which is something I'm really ashamed of.
23. For the entire time that I was in prison, Sabrina made sure that I saw her and the kids regularly. Even when I was in a prison outside of Sydney she would make the trip down on the bus.
24. On the days that she and the kids couldn't visit I would ring them. I spoke to Sabrina every single day, often more than once a day. When Daniel and Chloe were old enough I spoke to them as well.
25. My family also came to visit me as often as they could but it was hard for them because I spent much of my time in regional prisons like Goulburn, Junee and Lithgow and it was expensive to travel there.

TIME IN PRISON

26. Since coming to prison I have had time to think about my life. I am clean and on a methadone program and I'm in a different place in my head. I no longer want to live the life I was living. I put my transformation down to the access I have had to professional help which helped me realise the mistakes I was making. Now I realise this I'm doing everything I can to straighten up my life.
27. My prison record shows that I had lots of breaches when I was in prison. Most of these were committed before I got onto the methadone program. From the time I got onto the program I stopped getting into so much trouble. I also got a job in the prison and worked in that position for over 2 years. Although I wasn't earning much I paid \$27.00 a week in child support and this helped a bit with expenses for the kids.

28. I have done lots of courses in prison, including drug and alcohol counselling, relapse prevention and a mental fitness module of study covering stress, anger, control and planning for the future. There were other courses I would have done but they were run at the time I was working so I couldn't attend.
29. Justice Health have recommended that I attend a rehab program when I am released. This is a rehabilitation program for people with substance abuse problems and runs four days a week for about 12 weeks. I wanted to get off methadone but have been told its best at this stage for me to stay on it, until I have adjusted to life outside.
30. I haven't been a good father to my kids, or a good partner to Sabrina. Since I got off drugs and started on methadone I have come to realise this. I can't say I'm a dad because I've missed so much of their life and I realise that being a dad is something more than just being related to someone.

MY CURRENT SITUATION

31. I truly believe I am a different person now. The reason I have changed my life is my kids and Sabrina. Without them I'd be nothing and I'd have nothing to look forward to.
32. Sabrina and I have been together for about 15 years and she has stuck with me all that time, even when I was in prison. Apart from the times I have spent in custody, we have lived together that whole time and if I get out that is where I want to be living.
33. I used to tell my son when he was younger that I was in the army, and that's why he had to come and visit me and I couldn't live with him at home. I didn't want him to think that I was a bad person.
34. At school he does really well academically and is involved in lots of sports. He plays soccer as well as football, and although I have never seen him play Sabrina tells me he has real talent which makes me really proud. He knows that I used to play footy really well and we talk about it all the time.
35. Even though I couldn't be there with the kids, Sabrina made sure that I was involved in all the decisions relating to them, like where they went to school, whether it was a good idea to put them into child-care, issues about discipline.

36. I have missed so much in the lives of both of my kids. I missed Daniel's first day of school, first teeth, first footy game. Although I wasn't in prison when Chloe started school I was in and out for the first year of her schooling and missed so much. The kids are so excited that I'm getting out soon and tell me all the things we are going to do together, just simple things like watch the TV, go to the park, eating breakfast together. These are all the things I won't be able to do with the kids if I have to leave Australia.

37. Sabrina and I have talked about what will happen if I am deported. She doesn't want us to be separated, and desperately wants the kids to have their dad because she grew up without her dad and she doesn't want this for our kids. On the other hand she has a life here and so do the kids. She is very close to her mother and her brothers. She is the only daughter in the family and doesn't want to leave her mum. The kids are also really close to their grandmother.

38. The kids have a strong bond with my family too and if they were to leave this would also deprive the kids of my family, including my parents.

39. If I were to leave Australia there is no way Sabrina and the kids could ever afford to visit me in New Zealand. Sabrina doesn't work because she's got the kids and money is tight.

40. If I left this would be the end of our relationship. It would mean that I could never play a real parental role in the life of my kids and this is the only thing that has kept me going for the last couple of years - the prospect of getting out and being a real father. For the first time in my life I can say I have a goal and that goal is to be a real dad.

41. Sabrina has been through a lot with me, and given me lots of chances. She says, and I believe her, that if things aren't different when I get out this time the relationship is over. I know she is serious and I don't want to lose her or the kids.

42. It's finally registered in my head that it's time for me to pay back to Sabrina and step up and be a real man and a real dad. I also need to be the son my mum and dad once had. I just want a chance to live a happy, honest, normal life with Sabrina and my kids and the rest of my family.

Yours sincerely,
Glenn Afu Baker

13 August 2011

Example of a letter of support

Louise Williams
20 Newtown Street
Oatley NSW 2223

National Character Consideration Centre
DIAC
PO Box 241
MELBOURNE VIC 3001

SENT BY FAX TO (03) 9235 3626

29 August 2011

Dear Sir/Madam

I am writing this letter of support for my brother, Douglas Williams. I am Doug's youngest sister and I arrived in Australia with him in 1970 with my parents and our other brother and sister.

I understand that DIAC is thinking of cancelling Doug's visa because of his criminal convictions and I am writing to ask you to consider the effect his removal from Australia would have on me and my family, including my parents.

Doug has had a lot of trouble with the law in the past. However, I believe his difficulties were caused by his drug addiction. He tried many times to stop taking drugs but has not been able to stop until he was sent to prison. He has undertaken courses in prison that have helped him to understand the terrible impact drugs have had on his life, and on the life of his family, as well as the life of the victims of his crimes. He tells me all the time that he is so sorry for the things he did.

Doug tells me that he has been clean for more than 9 months and I can see that he is now a different person. I visit him with my parents every month and when we cannot visit we telephone regularly. Doug has finally decided to turn his life around and I am certain that with our help he can do so. I have invited Doug to come and live with me and my family when he gets out of prison and I have spoken to his former employer who says he would be very happy to give Doug a job. I am enclosing a letter from his former employer confirming that Doug will have employment on his release from prison.

I know that Doug can change and be a better person. It would break my heart and destroy my mother if he were removed from Australia. If he were removed it would mean that we would never see him again because we cannot afford to travel to England to visit him. My parents are also very elderly and do not have the strength to travel. If he were removed it would mean the end of our relationship.

Yours sincerely,

Louise Williams

Example of a letter seeking extra time to respond to a Notice

Phillip Morris
John Morony Correctional Centre
Locked Bag 655 Post Office
South Windsor NSW 2756

National Character Consideration Centre
DIAC
PO Box 241
MELBOURNE VIC 3001

SENT BY FAX TO (03) 9235 3626

18 August 2011

Dear Sir/Madam

Extension for Comments in Response to Notification of Intention to Consider Cancelling my Visa

Client ID: 1447245911

I am writing to request an extension of time to give you my comments in response to the Notice of intention to consider cancelling my visa dated 1 August 2011.

If possible I would like an extension of 4 weeks so that I can get more information for you to consider.

Please write to me and let me know whether I can have an extension and if I can please tell me what date you need all the information.

Yours sincerely,
Phillip Morris

Important contacts

Legal Aid NSW

Provides free legal advice and assistance in visa cancellation matters.

1300 888 529 (*LawAccess NSW*) to contact your nearest Legal Aid office

www.legalaid.nsw.gov.au
www.lawaccess.nsw.gov.au

Prisoners Legal Service

The Prisoners Legal Service (PLS) is a state-wide specialist service of Legal Aid NSW. PLS provides advice, minor assistance and representation to prisoners. Our service is free and confidential.

8688 3888 (*reverse charges*)
or **1800 806 913** (*toll free*)

Immigration Advice and Rights Centre

Provides free immigration advice for holders of most visa types, temporary and permanent.

9262 3833

www.iarc.asn.au

Refugee Advice and Casework Service (RACS)

Provides advice and assistance to people seeking asylum in NSW both in the community and in immigration detention.

9114 1600

www.racs.org.au

Kingsford Legal Centre

Provides free advice and minor assistance in visa cancellation matters.

9385 9566

www.law.unsw.edu.au/centres/klc
legal@unsw.edu.au

PILCH NSW (Public Interest Law Clearing House)

PILCH NSW provides advice and assistance through its solicitor and barrister members in visa cancellation matters.

9114 1793

www.pilchnsw.org.au

New South Wales Bar Association

The Legal Assistance Referral Scheme provides referral services to barristers who may be able to assist on a free or reduced fee basis.

9232 4055

www.nswbar.asn.au

National Character Consideration Centre (NCCC)

The section of the Department of Immigration and Citizenship that deals with visa cancellation and refusal on character grounds.

1300 722 061

www.immi.gov.au
nccc@immi.gov.au

Administrative Appeals Tribunal

Provides independent review of some character decisions of the Department of Immigration and Citizenship.

9391 2400

(Sydney metropolitan area)

1300 366 700

(country areas – for the cost of a local call)

www.aat.gov.au

Sydney.Registry@aat.gov.au

Migration Review Tribunal

Provides independent review of some cancellation decisions of the Department of Immigration and Citizenship.

9276 5000

(Sydney)

1300 361 969

(country areas – for the cost of a local call)

www.mrt-rrt.gov.au

enquiries@mrt-rrt.gov.au

Translating and Interpreting Service (TIS)

If you need the help of an interpreter call TIS, tell them what language you speak, and they will get a telephone interpreter for you.

131 450

Terms used in this kit

DIAC	Department of Immigration and Citizenship
NCCC	National Character Consideration Centre (part of DIAC)
AAT	Administrative Appeals Tribunal
Notice of Intention to Consider Cancellation	Notice
Formative years	Between the ages of 8 and 15
Country of origin	Usually the country you were born in
Country of citizenship	The country whose passport you travel on
Removed	Leaving Australia involuntarily, similar to deported
Notice of Visa Cancellation	Letter from DIAC telling you your visa has been cancelled