

Act	Cancellation Power	Grounds	NOICC(Time Limit)	Appeal (Time Limit)
109	<p>Incorrect Information</p> <p>Discretionary</p>	<p>101 – incorrect answers (visa application);</p> <p>102 – incorrect answers (passenger card); 103 – bogus document;</p> <p>104 – failure to notify change of circumstances; 105 – failure to notify incorrect answers (incl 107 response)</p> <p>NB: Only applies to holders in Australia & after immigration cleared</p> <p>NB: If they have not been immigration cleared or outside Australia, then s116(1)(d) is to be used instead.</p>	<p>Reasonable period – TR bc no period is prescribed by Regs: s107(1A)(a)</p> <p>14 calendar days – PR: s107(1A)(b)</p>	<p>s338(3) AAT juris</p> <p>7 working days: s347(1)(b)(i) & r4.10(b)</p> <p>s411(1)(d) AAT juris</p> <p>28 days – PV or 7 days if in detention: s412 & r4.31</p>
116	<p>General Powers</p> <p>s117 – STATES THAT:</p> <ul style="list-style-type: none"> For everyone who are in & out of Aus. s116(1) cannot be used for PR are in Aus. HOWEVER, s116(1AA), (1AB), (1AC) may be used to cancel PR when holder is in Australia. <p>Key Features</p> <ul style="list-style-type: none"> Used before immigration clearance s116(3) always discretionary unless specified 	<p>s116(1)(a) circumstances no longer exist; (1)(aa) circumstances did not exist; (1)(b) primary breach visa conditions; (1)(c) dependents breach visa conditions; (1)(d) before immigration clearance, holder breaches grounds for 109; (1)(e) risk to community public health, safety or good order; (1)(f) visa grant contravened law (eg. holder needed to be outside Aus for grant but wasn't); (1)(fa)(i) not genuine student; (1)(fa)(ii) conduct not contemplated by the visa (eg. plagiarism, selling essays, receive payment to attend classes for others)</p> <p>r2.43 Prescribed Grounds under s116(1)(g)</p> <p>r2.43(1)(a) foreign minister personally determines contrary to Australia foreign policy or associated with proliferation of weapons of mass destruction; (1)(aa) declared under Autonomous Sanctions Regs; (1)(b) assessed by ASIO; (1)(e) child custody concerns on Tourist Visas; (1)(ea) non-genuine 601; (1)(f) unaccompanied minors on Tourist Visas; (1)(g) holder request to cancel; (1)(h) guardian/parent request to cancel minor's TR; (1)(i) non-genuine 600 business visitor stream; (1)(ia) non-genuine temporary work & activity visa holders (eg. 400, 407, 408, 488, etc); (1)(j) non-genuine 600; (1)(ja) non-genuine 600 frequent traveller stream; (1)(k) non-genuine 976 (old ETA); (1)(ka) non-genuine 651; (1)(kb) non-genuine 457 holders granted before 18 March 2018; (1)(kc) non-genuine 482 holders; (1)(l) sponsor of 457/482 that gave misleading info or breach SBS; (1)(lc) sponsor barred or cancelled or breach obligations for holders of 401, 402, 407, 408, 416, 488; (1)(ld) sponsor has not listed secondary applicant in nom for 401, 402, 407, 420, 457 or 482; (1)(le) sponsor paid for return flight; (1)(m) minister reasonably suspects holder breached 232A, 233, 233A, 234 or 236; (1)(n) visa granted bc of systems malfunction; (1)(o) visa obtained as a result of fraudulent conduct; (1)(oa) TR holder convicted of State or Cth crime (does not apply to 050, 051, 444); (1)(ob) holder subject to Interpol notice that holder committed crime outside Aus and is likely to commit a similar offence (does not apply to 050, 051, 444); (1)(p) 050 or 051 holder convicted or charged of offence in Aus or any country; (1)(q) agency advises Minister holder should not hold 050 or 051; (1)(r) 771 holder did not or cease to have intention to transit (within 72 hours).</p> <p>s116(1AA) Not satisfied as to identity; s116(1AB) incorrect information outside visa application; s116(1AC) cash for visa</p>	<p>s121(2) – No Interview:</p> <ul style="list-style-type: none"> 5 working days if visa holder is in Australia: r2.44(2)(a) 5 working days if visa holder is outside Australia and cancellation is being considered by the post in the country in which the visa holder currently resides: r2.44(2)(b)(ii) 28 days if DM is in Australia or outside the country they reside: r2.44(2)(b) <p>s121(5) – Interview:</p> <ul style="list-style-type: none"> No prescribed period, so within reasonable period, eg. 10 mins is reasonable at airport. <p>s121(4) – Extension of Time: 5 working days: r2.44(3)</p>	<p>s338(3) AAT juris</p> <p>7 working days: s347(1)(b)(i) & r4.10(b)</p> <p>s411(1)(d) AAT juris</p> <p>28 days – PV or 7 days if in detention: s412 & r4.31</p>
128	<p>Cancellation Outside Australia</p>	<p>Grounds under s116 (PR or TR). Mandatory & no discretion. Cancellation w/o notice. Holder must be outside Australia.</p>	<p>s129: Requesting Revocation: s130 & r2.46</p> <p>28 days or 5 mins if holder is in Australia</p>	<p>Cancellation Decision & Decision Not to Revoke Cancellation are <u>not</u> merits reviewable</p>
133A	<p>MI personally cancel on s109 grounds</p>	<p>Natural Justice: s133A(3) & s133C(3) natural justice does not apply when unless DM already issued NOICC, then natural justice applies: s133A(1) & s133C(1). NB: (1)s for both Cancellation Powers occur when delegate issued NOICC and made a decision not to cancel, Minister sets aside decision. (3)s occur when Minister directly 'cancels' regardless</p> <p>Revocation: holders cancelled under s133A(3) or s133C(3) can request Minister to revoke cancellation under s133F.</p> <p>Appeal: s338(3) any decision made personally by the Minister will not be merits reviewable & s411(2)(aa) in the case of PV.</p>	<p>If Min request for information under s133A(1) & s133C(1) – 28 days: s133D & r2.49(1).</p> <p>To revoke cancellations under s133A(3) & s133C(3) – 28 days: s133F & r2.49(2)</p>	<p>Cancellation Decision & Decision Not to Revoke Cancellation are <u>not</u> merits reviewable</p>
133C	<p>MI personally cancel on s116 grounds</p> <p>Applies to s128 Cancellations</p>	<p>Revocation: holders cancelled under s133A(3) or s133C(3) can request Minister to revoke cancellation under s133F.</p> <p>Appeal: s338(3) any decision made personally by the Minister will not be merits reviewable & s411(2)(aa) in the case of PV.</p>	<p>If Min request for information under s133A(1) & s133C(1) – 28 days: s133D & r2.49(1).</p> <p>To revoke cancellations under s133A(3) & s133C(3) – 28 days: s133F & r2.49(2)</p>	<p>Cancellation Decision & Decision Not to Revoke Cancellation are <u>not</u> merits reviewable</p>

134	<p>Business Visa Cancellation</p> <p>©Clock-start date is the date the initial visa granted (if in Aus) or when holder entered with business visa</p>	<p>134(1)(a) has not obtained substantial ownership interest in an eligible business; (1)(b) is not utilizing his/her skills in actively participating at senior level in day-to-day management of that business; (1)(c) does not intend to perform (1)(a) and (1)(b); (3A) cease to hold investment)</p> <p><u>Time Limitation</u>: s135(4): if the time given to holder to respond to NOICC is later than 3 years from the clock-start date, a decision to cancel must be made within 90 days, otherwise if more than 90 days, then delegate cannot proceed with cancellation. If response to NOICC is due within 3 years of clock-start date, no prescribed period. Decision must be made w/in reasonable period.</p>	<p>s135(1): 28 days if notice is given in Australia; 70 days if notice is given outside Australia.</p>	<p>s25(6) AAT Act 1975 states that an enactment (“MA”) may provide manner, including time: s29 AAT Act. Therefore, MA states 28 days to AAT (General Division) s134(7) & (8).</p>
	<p>Consequential Cancellation on MOFU: s134(4)</p> <p>Mandatory unless <u>cancellation</u> results in extreme hardship: s133(5)</p>			
134B	Emergency Cancellation on Security Grounds	Holders outside Australia assessed by ASIO. Mandatory . Applies to TR & PR.	s134C: Requesting Revocation: 28 days s134C(5)	
137I	Students breach	Automatic cancellation for students given s.20 notice. (No longer used). Mandatory.	<i>No longer in use</i>	<i>No longer in use</i>
137Q	RSMS breach	Did not commence employment (w/in 6 months) or terminates within 2 years . Discretionary .	s137R: 28 days if notice is given in Australia; 70 days if notice is given outside Australia.	s338(3) AAT juris 7 working days: s347(1)(b)(i) & r4.10(b)
137T	Consequential Cancellation s137Q	MOFU who holds visa because of primary cancelled under s137Q is also cancelled by operation of law. Mandatory .	<i>No NOICC & no revocation: s137T even if extreme hardship may result.</i>	<i>Not merits reviewable</i>
140	Consequential Cancellation	s140(1) – Applies to secondary holders . Does not require decision (by operation of law) if primary cancelled under 109, 116, 128, 133A, 133C or 137J; s140(2) – Applies to holders that got their visa because of a person who was cancelled. Discretionary ; s140(3) – Cancels by operation of law , a child granted visa by birth under s78.	s140(1) & (3) can only be revoked if primary’s cancellation is revoked. This is automatic. s140(2) – NOICC not required	Only s140(2) is reviewable under s338(3): 7 working days: s347(1)(b)(i) & r4.10(b) ; For PV: s411(1)(d) AAT juris, 28 days or 7 days if in detention: s412 & r4.31
500A	TSHV Cancellation	(1)(a) Cancel holder if associated with criminal conduct; (1)(b) past and present criminal and general conduct; (1)(c) significant risk to Australia; (1)(d) threat to national security; (1)(e) prejudice Australia’s international relations	No pathway to this visa at the moment, therefore no literature.	No pathway to this visa at the moment, therefore no literature.
501	Character Cancellation	s501(2) – failing character test ;	28 days (s501D, r2.53)	9 days: s500(6B)
s501(3) Minister personally cancels;		s501C allows request to revoke within 7 days: r2.52(2)	<i>Not reviewable</i> FC has juris: s476A within 35 days: s477A	
s501(3A) Mandatory Cancellation because in jail and (6)(a) has a substantial criminal record for being sentenced (7)(a) to death ; or (7)(b) to life ; or (7)(c) to one term of 12 months or more (<i>cannot count 2 terms</i>); or (6)(e) sexually based offences involving a child .		s501CA allows request to revoke within 28 days: r2.52(2)	s500(6B): 9 days from decision not to revoke	
501A	Minister Set Aside Decision “not” to Refuse/Cancel	Minister personally sets aside a non-adverse decision of delegate or AAT in relation to s501(1) or s501(2) and cancel the visa if the Minister is personally not satisfied that the person passes character tests and it is in the national interest . He may choose whether to give or not to give natural justice .	NOICC under s501A(2) 28 days (s501D, r2.53); But if cancelled <u>without natural justice</u> under s501A(3), then application for revocation under s501C can be made within 7 days: r2.52(2)	<i>Not reviewable</i> FC has juris: s476A within 35 days: s477A
501B	Minister set aside and substitute adverse decision	Power to set aside and substitute an adverse decision made under s501(1) or s501(2). Minister personally uses this to prevent appeals to AAT. Say delegate decided to cancel and it is on appeal to AAT, before or at AAT , Minister can come in and cancel using his personal powers to prevent AAT from having jurisdiction.	<i>No NOICC & No revocation</i>	<i>Not reviewable</i> FC has juris: s476A within 35 days: s477A
501BA	Minister set aside decision to revoke cancellation	Minister personally sets aside the decision of delegate or AAT to revoke cancellation under s501CA, if he is not satisfied that the person passes character tests for having a substantial criminal record (6)(a) where the sentence is death (7)(a); or life (7)(b); 12 months or more (<i>cannot count 2 terms</i>); (7)(c); or sexually based offences involving a child : (6)(e)	<i>No NOICC & No revocation</i>	<i>Not reviewable.</i> FC has juris: s476A within 35 days: s477A
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