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Status Resolution Officers and Cancellations

Procedural Instruction

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s. 22(1)(a)(ii)

Discretionary considerations when making a decision about whether or not to cancel

When a cancellation is being considered by an SRO and where discretion is available in regards to a cancellation ground, SROs must consider the following:

- Has grounds for cancellation, consistent with legislation, regulations and departmental policy, been identified? Is more than one cancellation power available?
 - Which visa cancellation power is the most appropriate (the easiest option may not be the most appropriate)? Refer to the *choosing which cancellation power to use* section in the [General visa cancellation powers \(s109, s116, s128, s134B and s140\) - PI \(VM-991\)](#).
- The visa holder's capacity to understand and engage: In all cases particular care should be exercised if there is evidence that a visa holder lacks the mental capacity or there are indicators of mental health issues, to understand and engage in the cancellation process. In these circumstances, it may be inappropriate or even unlawful to cancel the visa. Delegates should seek legal advice through the Migration and Citizenship Law section [s. 22\(1\)\(a\)\(ii\) @homeaffairs.gov.au](#) about such cases before issuing a section 107 non-compliance notice.

If required, SROs should contact the cancellation support helpdesk for urgent assistance via [s. 22\(1\)\(a\)\(ii\) @homeaffairs.gov.au](#) or [s. 22\(1\)\(a\)\(ii\) @homeaffairs.gov.au](#).

SROs must ensure that other relevant legislation, policy and procedures are applied, as per the [General visa cancellation powers \(s109, s116, s128, s134B and s140\) - PI \(VM-991\)](#) and other relevant instructions in LEGEND. This includes (but is not limited to):

- Australia's international obligations - the identification of international obligations may not prevent a cancellation in some cases. Obligations that must be considered include:
 - *non-refoulement* obligations;
 - family unity obligations to consider the wellbeing of children (refer to the [Child safeguarding](#) page on the Intranet);
- mandatory legal consequences to a cancellation decision, for example;

- that the person no longer holds a visa to lawfully remain in Australia, or
- that there are provisions in the Act which prevent the person from making a valid application, such as a BVE holder who has their visa cancelled for a failure to comply with condition 8566, they will be unable to make a valid application for a further BVE because of Schedule 1, item 1305(3)(f). Refer to [Sch4/4022 – The code of behaviour requirement - Policy Statement \(BC-758\)](#).
- any other relevant matters (including the degree of hardship that may be caused to the visa holder and other family members);
- non-citizen's circumstances in which the ground for cancellation arose (whether there were any extenuating circumstances beyond the control of the visa holder); and
- consequential cancellations under section 140.

s. 22(1)(a)(ii)

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