

## THE MINISTER'S INTERVENTION POWERS

<b>Section of the <i>Migration Act 1958</i></b>	<b>Description of the power</b>
<b>Sections 417, 351, 391 and 454</b>	These powers enable the Minister to substitute a decision of the Refugee Review Tribunal and the Migration Review Tribunal and certain decisions of the Administrative Appeal Tribunal, with a decision more favourable to the applicant, if the Minister thinks that it is in the public interest to do so. The Minister may grant a visa to the applicant under these powers. Decisions by the Minister as to the exercise of these powers are non-reviewable.
<b>Sections 501J</b>	This power allows the Minister to substitute a decision of the Administrative Appeals Tribunal to cancel or refuse a protection visa because of "character concerns", with a more favourable decision if the Minister thinks it is in the public interest to do so.
<b>Section 195A</b>	This power allows the Minister to grant any visa to a person who is in detention, where the Minister thinks it is in the public interest to do so.
<b>Section 197AB</b>	Essentially this power allows for a detainee to be in "community detention" rather than in an immigration detention centre. This power allows the Minister, if he thinks it is in the public interest to do so, to make a residence determination that one or more specified persons are to reside at a specified place instead of a place covered by the definition of "immigration detention" (which includes an immigration detention centre). However, a person subject to a residence determination is still in immigration detention. The Parliament has affirmed as a principle that a minor shall only be detained as a measure of last resort. This reference to a minor being detained does not include a minor residing at a place in accordance with a residence determination.
<b>Section 197AD</b>	This power allows the Minister to revoke or vary a residence determination. (Note that a person the subject of a residence determination is still in immigration detention).
<b>Section 48B</b>	This power allows the Minister, if he thinks it is in the public interest, to determine that the s48A bar does not apply to prevent a non-citizen from applying for a protection visa.
<b>Section 72</b>	This section allows the Minister to determine that a person is an eligible non-citizen which then allows them to apply for a Bridging E Visa if they meet other requirements for making a valid application. This allows certain Protection Visa applicants held in immigration detention to apply for a Bridging E Visa. This power only applies in a narrow range of cases as set out in the Act.
<b>Section 91F</b>	This power allows the Minister to make a determination that a person covered by the Comprehensive Plan of Action, or in relation to whom there is a safe third country, may lodge a valid visa application.

<b>Section 91L</b>	This power allows the Minister to make a determination that the holder of a temporary safe haven visa who has not left Australia may make a valid visa application.
<b>Section 91Q</b>	This power allows the Minister to make a determination that a person who can avail themselves of protection from a third country may lodge a valid visa application.
<b>Section 137N</b>	The Minister may revoke the automatic cancellation of a student visa (under section 137J) on his own initiative.
<b>Section 501(3)</b>	Section 501(3) enables the Minister to refuse to grant a visa or cancel a visa where the Minister reasonably suspects that the person does not pass the character test and such a decision is in the national interest. This power is not subject to merits review but is subject to judicial review.
<b>Section 501A(2)</b>	The Minister may set aside a decision of the delegate or the Administrative Appeals Tribunal to grant a visa or not to cancel a visa, and may then refuse to grant a visa or cancel a visa, if the Minister reasonably suspects the person does not pass the character test, and the person does not satisfy the Minister that the person passes the character test, and the Minister is satisfied that the refusal or cancellation is in the national interest.
<b>Section 501A(3)</b>	The Minister may set aside a decision of the delegate or the Administrative Appeals Tribunal to grant a visa or not to cancel a visa, and may then refuse to grant the visa or cancel a visa, if the Minister reasonably suspects the person does not pass the character test, and the Minister is satisfied that the refusal or cancellation is in the public interest
<b>Section 501B(2)</b>	<p>The Minister may set aside a decision of the delegate to refuse to grant a visa or to cancel the visa of a person. The Minister may then refuse to grant the visa or cancel the visa if the Minister reasonably suspects the person does not pass the character test, and the person does not satisfy the Minister the person passes the character test, provided that the Minister is satisfied that the refusal or cancellation is in the national interest.</p> <p>The practical result of the exercise of this power is that merits review by the AAT will not be available in relation to the refusal or cancellation decision of the Minister where the national interest is at stake. AAT review would have been available in relation to a refusal or cancellation decision of a delegate. Review by the Federal Court is still available.</p>
<b>Section 501C(4)</b>	The Minister may revoke his own decision to refuse to grant a visa or to cancel a person's visa under section 501(3) or 501A(3) where the person makes representations in accordance with the Minister's invitation and the person satisfies the Minister that the person passes the character test.