

## APPENDIX 7

### THE MINISTERIAL DISCRETION IS LAID OUT IN S 417 OF THE *MIGRATION ACT 1958:*

#### **Minister may substitute more favourable decision**

(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 415 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.

(2) In exercising the power under subsection (1) on or after 1 September 1994, the Minister is not bound by Subdivision AA [Applications for visas for non-citizens] or AC [Grant of visas for non-citizens] of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act. [This means that the Minister is not bound by the health or public interest criteria in the Regulations. Therefore, applicants who have been granted a protection visa under s 417 are not required to meet the health and public interest criteria].

(3) The power under subsection (1) may only be exercised by the Minister personally.

(4) If the Minister substitutes a decision under subsection (1), he or she must cause to be laid before each House of the Parliament a statement that:

- (a) sets out the decision of the Tribunal; and
- (b) sets out the decision substituted by the Minister; and
- (c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.

(5) A statement made under subsection (4) is not to include:

- (a) the name of the applicant; or
- (b) any information that may identify the applicant; or
- (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.

(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year – 1 July in that year; or
- (b) if a decision is made between 1 July and 31 December (inclusive) in a year – 1 January in the following year.

(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.