

Ministerial Powers under the Migration Act

Section 351. Minister may substitute more favourable decision

351. (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 349 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), the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (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 is to 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) 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.
- (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.

Section 417. Minister may substitute more favourable decision

417. (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 or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (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.

Subdivisions AA and AC in the Act

1. Subdivisions AA and AC in the Act are entitled 'Applications for visas' and 'Grant of visas' respectively. Subdivision AA provides for the mechanics of making valid visa applications and includes provisions on the following:

- How a visa application must be made in order for it to be a valid visa application; and
- That the Minister must consider a valid visa application but cannot consider a visa application that is not a valid visa application.

2. Subdivision AC provides for the mechanics of how a visa is granted and includes provisions on the following:

- What the Minister must consider in making a decision to grant or to refuse to grant a visa (s 65, which provides that the Minister must consider the criteria prescribed in the Regulations); and
- The way a visa is to be granted; and
- When a visa is granted.

3. Therefore, in making a decision under s 351 or s 417 of the Act, the Minister is not legally bound by the requirements in the Act about the making of a valid visa application or the matters that must be considered in making a decision about a visa. The Minister is not precluded from taking those requirements into account when making a decision under s 351 or s 417, but is not legally bound to consider them.

Section 33(7) – Special Purpose visas

Section 33 was inserted into the Act with effect from 1 September 1994 by the *Migration Legislation Amendment Act 1994*.

Under s 33(2)(b), the Minister may declare that a non-citizen is taken to have been granted a Special Purpose visa or that persons of a class, of which a non-citizen is a member, are taken to have been granted special purpose visas. If the Minister does make such a declaration, the Minister must table a statement to Parliament in respect of that declaration.

- (6) If the Minister makes a declaration under paragraph (2) (b), he or she is to cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the contents of the declaration; and
 - (b) sets out the Minister's reasons for the declaration.

- (7) A statement under subsection (6) is not to include:
 - (a) the name of the non-citizen; or
 - (b) 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.

Section 46A – Visa applications by offshore entry persons

Section 46A was inserted into the Act with effect from 27 September 2001 by the *Migration Amendment (Excision from Migration Zone) Act 2001*.

Under s 5(1) an 'offshore entry person' is defined as follows:

offshore entry person means a person who:

- (a) entered Australia at an excised offshore place after the excision time for that offshore place; and
- (b) became an unlawful non-citizen because of that entry.

Section 46A provides as follows:

- 46A. (1) An application for a visa is not a valid application if it is made by an offshore entry person who:
 - (a) is in Australia; and
 - (b) is an unlawful non-citizen.

- (2) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to an offshore entry person, determine that subsection (1) does not apply to an application by the person for a visa of a class specified in the determination.
- (3) The power under subsection (2) may only be exercised by the Minister personally.
- (4) If the Minister makes a determination under subsection (2), the Minister must cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that the Minister's actions are in the public interest.
- (5) A statement under subsection (4) must not include:
 - (a) the name of the offshore entry person; or
 - (b) any information that may identify the offshore entry person;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) must be laid before each House of the Parliament within 15 sitting days of that House after:
 - (a) if the determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination 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 (2) in respect of any offshore entry person whether the Minister is requested to do so by the offshore entry person or by any other person, or in any other circumstances.

Section 46B – Visa applications made by transitory persons

Section 46B was inserted into the Act with effect from 12 April 2002 by the *Migration Legislation Amendment (Transitional Movement) Act 2002*.

Section 5(1) defines 'transitory person' as follows:

"transitory person" means:

- (a) an offshore entry person who was taken to another country under section 198A; or
- (b) a person who was taken to a place outside Australia under paragraph 245F(9)(b); or

- (c) a person who, while a non-citizen and during the period from 27 August 2001 to 6 October 2001:
- (i) was transferred to the ship HMAS Manoora from the ship Aceng or the ship MV Tampa; and
 - (ii) was then taken by HMAS Manoora to another country; and
 - (iii) disembarked in that other country;

but does not include a person who has been assessed to be a refugee for the purposes of the Refugees Convention as amended by the Refugees Protocol.

Section 46B provides as follows:

- 46B. (1) An application for a visa is not a valid application if it is made by a transitory person who:
- (a) is in Australia; and
 - (b) is an unlawful non-citizen.
- (2) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a transitory person, determine that subsection (1) does not apply to an application by the person for a visa of a class specified in the determination.
- (3) The power under subsection (2) may only be exercised by the Minister personally.
- (4) If the Minister makes a determination under subsection (2), the Minister may cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that the Minister's actions are in the public interest.
- (5) A statement under subsection (4) must not include:
- (a) the name of the transitory person; or
 - (b) any information that may identify the transitory person; 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) must be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination 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 (2) in respect of any transitory person whether the Minister is requested to do so by the transitory person or by any other person, or in any other circumstances.

Section 48B – Minister may determine that section 48A does not apply to non-citizen

Section 48B was inserted into the Act with effect from 18 September 1995 by the *Migration Legislation Amendment Act (No. 6) 1995*.

Section 48B provides as follows:

- 48B. (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 48A does not apply to prevent an application for a protection visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.
- (2) The power under subsection (1) may only be exercised by the Minister personally.
- (3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (4) A statement under subsection (3) is not to include:
- (a) the name of the non-citizen; or
 - (b) any information that may identify the non-citizen; 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.
- (5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination is made between 1 July and 31 December (inclusive) in a year - 1 January in the following year.
- (6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

Section 72 – Interpretation

Sections 72(1)(c), (2), (3), (4) and (5) were inserted into the Act with effect from 15 September 1995 by the *Migration Legislation Amendment Act (No. 5) 1995*.

Section 72 of the Act defines the term 'eligible non-citizen'. A person's status as an eligible non-citizen will determine what sort of Bridging (Class WE) visa, if any that the person might be eligible to be granted. Generally, where a person is an unlawful non-citizen and is not an eligible non-citizen, that person will be taken into immigration detention. Section 72 provides as follows:

72. (1) In this Subdivision:
- eligible non-citizen**
means a non-citizen who:
- (a) has been immigration cleared; or
 - (b) is in a prescribed class of persons; or
 - (c) the Minister has determined to be an eligible non-citizen.
- (2) The Minister may make a determination under paragraph (1)(c) that a non-citizen is an eligible non-citizen if:
- (a) the non-citizen was an unlawful non-citizen when he or she entered the migration zone; and
 - (b) the non-citizen made a valid application for a protection visa after he or she arrived in Australia; and
 - (c) the non-citizen has been in immigration detention for a period of more than 6 months after the application for a protection visa was made; and
 - (d) the Minister has not made a primary decision in relation to the application for a protection visa; and
 - (e) the Minister thinks that the determination would be in the public interest.
- (3) The power to make a determination under paragraph (1)(c) may only be exercised by the Minister personally.
- (4) If the Minister makes a determination under paragraph (1)(c), he or she is to cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, 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 any non-citizen who is the subject of the determination; or
 - (b) any information that may identify the non-citizen; 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 the 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 determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination 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 make a determination under paragraph (1)(c) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or any other person, or in any other circumstances.

Section 91F – Minister may determine that section 91E does not apply to non-citizen

Section 91F was inserted into the Act with effect from 15 November 1994 by the *Migration Legislation Amendment Act (No. 4) 1994* and s 91F(1) was substituted in its present form with effect from 17 February 1995 by the *Migration Legislation Amendment Act (No. 2) 1995*.

Section 91E provides that certain persons to whom Subdivision AI in Division 3, Part 2, of the Act applies cannot make valid applications for certain visas. Subdivision AI applies to persons who were able to seek protection in safe third countries. Section 91F provides as follows:

- 91F. (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine:
- (a) that section 91E does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given; or
 - (b) that section 91G does not apply to an application for a visa made by the non-citizen during the transitional period referred to in that section.
- (2) The power under subsection (1) may only be exercised by the Minister personally.
- (3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (4) A statement under subsection (3) is not to include:
- (a) the name of the non-citizen; or
 - (b) any information that may identify the non-citizen; 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.
- (5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination is made between 1 July and 31 December (inclusive) in a year - 1 January in the following year.
- (6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

Section 91L – Minister may determine that section 91K does not apply to a non-citizen

Section 91L was inserted into the Act with effect from 20 May 1999 by the *Migration Legislation Amendment (Temporary Safe Haven Visas) 1999*.

Section 91K provides that certain persons to whom Subdivision AJ in Division 3, Part 2, of the Act applies cannot make valid applications for certain visas. Subdivision AJ applies to persons who hold, or who have not left Australia since last holding, temporary safe haven visas. Section 91L provides as follows:

- 91L. (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 91K does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given.
- (2) The power under subsection (1) may only be exercised by the Minister personally.
- (3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (4) A statement under subsection (3) is not to include:
- (a) the name of the non-citizen; or
 - (b) any information that may identify the non-citizen; 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.

- (5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:
 - (a) if the determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination is made between 1 July and 31 December (inclusive) in a year - 1 January in the following year.
- (6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

Section 91Q – Minister may determine that section 91P does not apply to a non-citizen

Section 91Q was inserted into the Act with effect from 16 December 1999 by the *Border Protection Legislation Amendment Act 1999*.

Section 91P provides that certain persons to whom Subdivision AK in Division 3, Part 2, of the Act applies cannot make valid applications for certain visas. Subdivision AK applies to persons who are able to access protection in third countries. Section 91Q provides as follows:

- 91Q
- (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 91P does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given.
 - (2) For the purposes of subsection (1), the matters that the Minister may consider include information that raises the possibility that, although the non-citizen satisfies the description set out in subsection 91N(1) or (2), the non-citizen might not be able to avail himself or herself of protection from the country, or any of the countries, by reference to which the non-citizen satisfies that description.
 - (3) The power under subsection (1) may only be exercised by the Minister personally.
 - (4) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
 - (5) A statement under subsection (4) is not to include:
 - (a) the name of the non-citizen; or
 - (b) any information that may identify the non-citizen; 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 determination is made between 1 January and 30 June (inclusive) in a year - 1 July in that year; or
 - (b) if the determination 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 non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

Section 137N – Minister may revoke cancellation on his or her own initiative

Section 137N was inserted into the Act with effect from 4 June 2001 by the *Migration Legislation Amendment (Overseas Students) Act 2000*.

Student visas are automatically cancelled under s 137J where a non-citizen student receives a notice under s 20 of the *Education Services for Overseas Students Act 2000* and does not comply with the requirement in that notice to attend an officer of the Department to explain any non-compliance with the conditions attached to their visa. The notices are issued in relation to the attendance and the satisfactory academic performance of the student.

Section 137N provides as follows:

- 137N. (1) The Minister may, on his or her own initiative, revoke the cancellation under section 137J of a particular non-citizen's visa, if the Minister thinks that it is in the public interest to do so.
- (2) The Minister must give the relevant non-citizen written notice of a decision under subsection (1) to revoke a cancellation.
 - (3) The power in subsection (1) may only be exercised by the Minister personally.
 - (4) The Minister does not have a duty to consider whether to exercise the power in subsection (1), whether or not the non-citizen or anyone else requests him or her to do so, or in any other circumstances.
 - (5) A cancellation is revoked under this section by the Minister causing a record of the revocation to be made.

Sections 501 to 501C – Character provisions

These Sections were inserted into the Act with effect from 1 June 1999 by the *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998*. There were some technical amendments to s 501A with effect from 1 October 2001 by the *Migration Legislation Amendment Act (No. 1) 2001*.

These sections provide for a number of powers that may only be exercised by the Minister personally. They are relevantly provided as follows:

Section 501. Refusal or cancellation of visa on character grounds

Decision of Minister or delegate - natural justice applies

501. (1) ...

Note: **Character test** is defined by subsection (6).

(2) ...

Decision of Minister - natural justice does not apply

- (3) The Minister may:
- (a) refuse to grant a visa to a person; or
 - (b) cancel a visa that has been granted to a person;
- if:
- (c) the Minister reasonably suspects that the person does not pass the character test; and
 - (d) the Minister is satisfied that the refusal or cancellation is in the national interest.

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

(5) The rules of natural justice, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, do not apply to a decision under subsection (3).

Section 501A. Refusal or cancellation of visa - setting aside and substitution of non-adverse decision under subsection 501(1) or (2)

501A. (1) This section applies if:

- (a) a delegate of the Minister; or
 - (b) the Administrative Appeals Tribunal;
- makes a decision (the original decision):
- (c) not to exercise the power conferred by subsection 501(1) to refuse to grant a visa to the person; or
 - (d) not to exercise the power conferred by subsection 501(2) to cancel a visa that has been granted to a person;

whether or not the person satisfies the delegate or Tribunal that the person passes the character test and whether or not the delegate or Tribunal reasonably suspects that the person does not pass the character test.

Action by Minister - natural justice applies

- (2) The Minister may set aside the original decision and:
- (a) refuse to grant a visa to the person; or
 - (b) cancel a visa that has been granted to the person;
- if:
- (c) the Minister reasonably suspects that the person does not pass the character test (as defined by section 501); and
 - (d) the person does not satisfy the Minister that the person passes the character test; and
 - (e) the Minister is satisfied that the refusal or cancellation is in the national interest.

Action by Minister - natural justice does not apply

- (3) The Minister may set aside the original decision and:
- (a) refuse to grant a visa to the person; or
 - (b) cancel a visa that has been granted to the person;
- if:
- (c) the Minister reasonably suspects that the person does not pass the character test (as defined by section 501); and
 - (d) the Minister is satisfied that the refusal or cancellation is in the national interest.
- (4) The rules of natural justice, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, do not apply to a decision under subsection (3).
- (4A) Under subsection (2) or (3), the Minister may cancel a visa that has been granted to a person even if the original decision under subsection (1) was a decision not to exercise the power conferred by subsection 501(1) to refuse to grant a visa to the person.

Minister's exercise of power

- (5) The power under subsection (2) or (3) may only be exercised by the Minister personally.
- (6) The Minister does not have a duty to consider whether to exercise the power under subsection (2) or (3) in respect of the original decision, whether or not the Minister is requested to do so, or in any other circumstances.

Decision not reviewable under Part 5 or 7

- (7) A decision under subsection (2) or (3) is not reviewable under Part 5 or 7.

Section 501B. Refusal or cancellation of visa - setting aside and substitution of adverse decision under subsection 501(1) or (2)

- 501B. (1) This section applies if a delegate of the Minister makes a decision (the original decision) under subsection 501(1) or (2) to refuse to grant a visa to a person or to cancel a visa that has been granted to a person.

- (2) The Minister may set aside the original decision and:
 - (a) refuse to grant a visa to the person; or
 - (b) cancel a visa that has been granted to the person;
 - if:
 - (c) the Minister reasonably suspects that the person does not pass the character test (as defined by section 501); and
 - (d) the person does not satisfy the Minister that the person passes the character test; and
 - (e) the Minister is satisfied that the refusal or cancellation is in the national interest.
- (3) The power under subsection (2) may only be exercised by the Minister personally.
- (4) A decision under subsection (2) is not reviewable under Part 5 or 7.
- (5) To avoid doubt, the Minister may set aside the original decision in accordance with subsection (2) even if the original decision is the subject of an application for review by the Administrative Appeals Tribunal.

Section 501C. Refusal or cancellation of visa - revocation of decision under subsection 501(3) or 501A(3)

- 501C. (1) This section applies if the Minister makes a decision (the original decision) under subsection 501(3) or 501A(3) to:
- (a) refuse to grant a visa to a person; or
 - (b) cancel a visa that has been granted to a person.
- (2) For the purposes of this section, relevant information is information (other than non-disclosable information) that the Minister considers:
- (a) would be the reason, or a part of the reason, for making the original decision; and
 - (b) is specifically about the person or another person and is not just about a class of persons of which the person or other person is a member.
- (3) As soon as practicable after making the original decision, the Minister must:
- (a) give the person, in the way that the Minister considers appropriate in the circumstances:
 - (i) a written notice that sets out the original decision;
 and
 - (ii) particulars of the relevant information; and
 - (b) except in a case where the person is not entitled to make representations about revocation of the original decision (see subsection (10)) - invite the person to make representations to the Minister, within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision.

- (4) The Minister may revoke the original decision if:
- (a) the person makes representations in accordance with the invitation; and
 - (b) the person satisfies the Minister that the person passes the character test (as defined by section 501).
- (5) The power under subsection (4) may only be exercised by the Minister personally.
- (6) If the Minister revokes the original decision, the original decision is taken not to have been made. This subsection has effect subject to subsection (7).
- (7) Any detention of the person that occurred during any part of the period:
- (a) beginning when the original decision was made; and
 - (b) ending at the time of the revocation of the original decision;
- is lawful and the person is not entitled to make any claim against the Commonwealth, an officer or any other person because of the detention.
- (8) If the Minister makes a decision (the subsequent decision) to revoke, or not to revoke, the original decision, the Minister must cause notice of the making of the subsequent decision to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the subsequent decision was made.
- (9) If the person does not make representations in accordance with the invitation, the Minister must cause notice of that fact to be laid before each House of the Parliament within 15 sitting days of that House after the last day on which the representations could have been made.
- (10) The regulations may provide that, for the purposes of this section:
- (a) a person; or
 - (c) a person included in a specified class of persons;
- is not entitled to make representations about revocation of an original decision unless the person is a detainee.
- (11) A decision not to exercise the power conferred by subsection (4) is not reviewable under Part 5 or 7.