



**Migration Legislation Amendment
(Strengthening of Provisions relating to
Character and Conduct) Act 1998**

No. 114, 1998

**An Act to amend the *Migration Act 1958*, and for
other purposes**

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**An Act to amend the *Migration Act 1958*, and for
other purposes**

[Assented to 11 December 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment
(Strengthening of Provisions relating to Character and Conduct)
Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on a day to be fixed by Proclamation.
- (2) If item 10 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998* does not commence before the day fixed under subsection (1) of this section, items 12 and 29 of Schedule 1 to this Act commence immediately after the commencement of item 10 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Migration Act 1958

Migration Act 1958

1 Paragraph 46(1)(d)

Omit “or 195 (detainees)”, substitute “, 195 (detainees) or 501E (visa refused or cancelled on character grounds)”.

2 Subparagraph 48(b)(i)

Omit “bridging visa”, substitute “refusal of a bridging visa or a refusal under section 501, 501A or 501B”.

3 Subparagraph 48(b)(ii)

Omit “, 134 (business visas) or 501 (special power to refuse or cancel)”, substitute “or 134 (business visas)”.

4 At the end of section 66

Add:

(5) This section does not apply to a decision under section 501, 501A, 501B or 501F to refuse to grant a visa to a person.

Note: Sections 501C and 501G provide for notification of a decision under section 501, 501A, 501B or 501F to refuse to grant a visa to a person.

5 Paragraph 118(f)

After “501”, insert “, 501A or 501B”.

6 Subsections 192(1) and (4)

After “Division 3”, insert “or section 501 or 501A”.

7 After subparagraph 193(1)(a)(iii)

Insert:

(iv) because of a decision the Minister has made personally under section 501, 501A or 501B to refuse to grant a

visa to the person or to cancel a visa that has been granted to the person; or

8 Paragraph 198(2)(a)

Omit “subsection 193(1)”, substitute “subparagraph 193(1)(a)(i), (ii) or (iii) or paragraph 193(1)(b) or (c)”.

9 After subsection 198(2)

Insert:

(2A) An officer must remove as soon as reasonably practicable an unlawful non-citizen if:

- (a) the non-citizen is covered by subparagraph 193(1)(a)(iv); and
- (b) since the Minister’s decision (the *original decision*) referred to in subparagraph 193(1)(a)(iv), the non-citizen has not made a valid application for a substantive visa that can be granted when the non-citizen is in the migration zone; and
- (c) in a case where the non-citizen has been invited, in accordance with section 501C, to make representations to the Minister about revocation of the original decision—either:
 - (i) the non-citizen has not made representations in accordance with the invitation and the period for making representations has ended; or
 - (ii) the non-citizen has made representations in accordance with the invitation and the Minister has decided not to revoke the original decision.

Note: The only visa that the non-citizen could apply for is a protection visa or a visa specified in regulations under section 501E.

10 Subsection 198(3)

After “subsection (2)”, insert “or (2A)”.

11 Subsection 198(4)

After “subsection (2)”, insert “or (2A)”.

12 Section 339

Repeal the section, substitute:

339 Conclusive certificates

The Minister may issue a conclusive certificate in relation to a decision if the Minister believes that:

- (a) it would be contrary to the national interest to change the decision; or
- (b) it would be contrary to the national interest for the decision to be reviewed.

13 Subsection 411(3)

Repeal the subsection, substitute:

- (3) The Minister may issue a conclusive certificate in relation to a decision if the Minister believes that:
 - (a) it would be contrary to the national interest to change the decision; or
 - (b) it would be contrary to the national interest for the decision to be reviewed.

14 After subsection 496(1)

Insert:

- (1A) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Minister.

15 At the end of section 496

Add:

- (5) Subsection (1A) does not limit subsection 499(1).

16 Subsection 499(1)

Repeal the subsection, substitute:

- (1) The Minister may give written directions to a person or body having functions or powers under this Act if the directions are about:
 - (a) the performance of those functions; or
 - (b) the exercise of those powers.

- (1A) For example, a direction under subsection (1) could require a person or body to exercise the power under section 501 instead of the power under section 200 (as it applies because of section 201) in circumstances where both powers apply.

Note: The heading to section 499 of the *Migration Act 1958* is altered by omitting “**general policy**”.

17 After subsection 499(2)

Insert:

- (2A) A person or body must comply with a direction under subsection (1).

18 At the end of section 499

Add:

- (4) Subsection (1) does not limit subsection 496(1A).

19 Paragraph 500(1)(b)

After “of”, insert “a delegate of”.

20 Subsection 500(4)

Repeal the subsection, substitute:

- (4) The following decisions are not reviewable under Part 5 or 7:
- (a) a decision under section 200 because of circumstances specified in section 201;
 - (b) a decision under section 501;
 - (c) a decision to refuse to grant a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2).

21 After subsection 500(6)

Insert:

- (6A) If a decision under section 501 of this Act relates to a person in the migration zone, section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to the decision.
- (6B) If a decision under section 501 of this Act relates to a person in the migration zone, an application to the Tribunal for a review of the decision must be lodged with the Tribunal within 9 days after the day on which the person was notified of the decision in accordance with subsection 501G(1). Accordingly, paragraph 29(1)(d) and subsections 29(7), (8), (9) and (10) of the *Administrative Appeals Tribunal Act 1975* do not apply to the application.
- (6C) If a decision under section 501 relates to a person in the migration zone, an application to the Tribunal for a review of the decision must be accompanied by, or by a copy of:
- (a) the document notifying the person of the decision in accordance with subsection 501G(1); and
 - (b) one of the sets of documents given to the person under subsection 501G(2) at the time of the notification of the decision.
- (6D) If:
- (a) an application is made to the Tribunal for a review of a decision under section 501 of this Act; and
 - (b) the decision relates to a person in the migration zone;
- section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to the decision.
- (6E) If:
- (a) an application is made to the Tribunal for a review of a decision under section 501 of this Act; and
 - (b) the decision relates to a person in the migration zone;
- the Registrar, a District Registrar or a Deputy Registrar of the Tribunal must notify the Minister, within the period and in the manner specified in the regulations, that the application has been made. Accordingly, subsection 29(11) of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to the application.
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(6F) If:

- (a) an application is made to the Tribunal for a review of a decision under section 501 of this Act; and
- (b) the decision relates to a person in the migration zone;

then:

- (c) the Minister must lodge with the Tribunal, within 14 days after the day on which the Minister was notified that the application had been made, 2 copies of every document, or part of a document, that:
 - (i) is in the Minister's possession or under the Minister's control; and
 - (ii) was relevant to the making of the decision; and
 - (iii) contains non-disclosable information; and
- (d) the Tribunal may have regard to that non-disclosable information for the purpose of reviewing the decision, but must not disclose that non-disclosable information to the person making the application.

(6G) If:

- (a) an application is made to the Tribunal for a review of a decision under section 501 of this Act; and
- (b) the decision relates to a person in the migration zone;

the Tribunal must not:

- (c) hold a hearing (other than a directions hearing); or
- (d) make a decision under section 43 of the *Administrative Appeals Tribunal Act 1975*;

in relation to the decision under review until at least 14 days after the day on which the Minister was notified that the application had been made.

(6H) If:

- (a) an application is made to the Tribunal for a review of a decision under section 501; and

- (b) the decision relates to a person in the migration zone;

the Tribunal must not have regard to any information presented orally in support of the person's case unless the information was set out in a written statement given to the Minister at least 2

business days before the Tribunal holds a hearing (other than a directions hearing) in relation to the decision under review.

(6J) If:

- (a) an application is made to the Tribunal for a review of a decision under section 501; and
- (b) the decision relates to a person in the migration zone; the Tribunal must not have regard to any document submitted in support of the person's case unless a copy of the document was given to the Minister at least 2 business days before the Tribunal holds a hearing (other than a directions hearing) in relation to the decision under review. However, this does not apply to documents given to the person or Tribunal under subsection 501G(2) or subsection (6F) of this section.

(6K) If:

- (a) an application is made to the Tribunal for a review of a decision under section 501 of this Act; and
- (b) the decision relates to a person in the migration zone; and
- (c) the Tribunal is of the opinion that particular documents, or documents included in a particular class of documents, may be relevant in relation to the decision under review;

then:

- (d) the Tribunal may cause to be served on the Minister a notice in writing stating that the Tribunal is of that opinion and requiring the Minister to lodge with the Tribunal, within a time specified in the notice, 2 copies of each of those documents that is in the Minister's possession or under the Minister's control; and
- (e) the Minister must comply with any such notice.

(6L) If:

- (a) an application is made to the Tribunal for a review of a decision under section 501 of this Act; and
- (b) the decision relates to a person in the migration zone; and
- (c) the Tribunal has not made a decision under section 42A, 42B, 42C or 43 of the *Administrative Appeals Tribunal Act 1975* in relation to the decision under review within the period of

84 days after the day on which the person was notified of the decision under review in accordance with subsection 501G(1);

the Tribunal is taken, at the end of that period, to have made a decision under section 43 of the *Administrative Appeals Tribunal Act 1975* to affirm the decision under review.

22 At the end of section 500

Add:

(8) In this section:

business day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory; or
- (d) a public holiday in the place concerned.

23 Section 501

Repeal the section, substitute:

501 Refusal or cancellation of visa on character grounds

Decision of Minister or delegate—natural justice applies

(1) The Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test.

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

(2) The Minister may cancel a visa that has been granted to a person if:

- (a) the Minister reasonably suspects that the person does not pass the character test; and
- (b) the person does not satisfy the Minister that the person passes the character test.

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).

Character test

- (6) For the purposes of this section, a person does not pass the **character test** if:
- (a) the person has a substantial criminal record (as defined by subsection (7)); or
 - (b) the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or
 - (c) having regard to either or both of the following:
 - (i) the person's past and present criminal conduct;
 - (ii) the person's past and present general conduct;the person is not of good character; or
 - (d) in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:
 - (i) engage in criminal conduct in Australia; or
 - (ii) harass, molest, intimidate or stalk another person in Australia; or
 - (iii) vilify a segment of the Australian community; or

- (iv) incite discord in the Australian community or in a segment of that community; or
- (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

Otherwise, the person passes the *character test*.

Substantial criminal record

- (7) For the purposes of the character test, a person has a *substantial criminal record* if:
- (a) the person has been sentenced to death; or
 - (b) the person has been sentenced to imprisonment for life; or
 - (c) the person has been sentenced to a term of imprisonment of 12 months or more; or
 - (d) the person has been sentenced to 2 or more terms of imprisonment (whether on one or more occasions), where the total of those terms is 2 years or more; or
 - (e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution.

Periodic detention

- (8) For the purposes of the character test, if a person has been sentenced to periodic detention, the person's term of imprisonment is taken to be equal to the number of days the person is required under that sentence to spend in detention.

Residential schemes or programs

- (9) For the purposes of the character test, if a person has been convicted of an offence and the court orders the person to participate in:
- (a) a residential drug rehabilitation scheme; or
 - (b) a residential program for the mentally ill;

the person is taken to have been sentenced to a term of imprisonment equal to the number of days the person is required to participate in the scheme or program.

Pardons etc.

- (10) For the purposes of the character test, a sentence imposed on a person is to be disregarded if:
- (a) the conviction concerned has been quashed or otherwise nullified; or
 - (b) the person has been pardoned in relation to the conviction concerned.

Conduct amounting to harassment or molestation

- (11) For the purposes of the character test, conduct may amount to harassment or molestation of a person even though:
- (a) it does not involve violence, or threatened violence, to the person; or
 - (b) it consists only of damage, or threatened damage, to property belonging to, in the possession of, or used by, the person.

Definitions

- (12) In this section:

court includes a court martial or similar military tribunal.

imprisonment includes any form of punitive detention in a facility or institution.

sentence includes any form of determination of the punishment for an offence.

Note 1: **Visa** is defined by section 5 and includes, but is not limited to, a protection visa.

Note 2: For notification of decisions under subsection (1) or (2), see section 501G.

Note 3: For notification of decisions under subsection (3), see section 501C.

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

- (1) This section applies if:
- (a) a delegate of the Minister; or
 - (b) the Administrative Appeals Tribunal;
- makes a decision (the *original decision*):
- (c) to grant a visa to a person as a result of not exercising 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.

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).

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.

Note 1: For notification of decisions under subsection (2), see section 501G.

Note 2: For notification of decisions under subsection (3), see section 501C.

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

- (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.

Note: For notification of decisions under this section, see section 501G.

501C Refusal or cancellation of visa—revocation of decision under subsection 501(3) or 501A(3)

- (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
 - (b) 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.

501D Refusal or cancellation of visa—method of satisfying Minister that person passes the character test

The regulations may provide that, in determining for the purposes of section 501, 501A or 501B, whether:

- (a) a person; or
- (b) a person included in a specified class of persons;

satisfies the Minister that the person passes the character test (as defined by section 501), any information or material submitted by or on behalf of the person must not be considered by the Minister unless the information or material is submitted within the period, and in the manner, ascertained in accordance with the regulations.

501E Refusal or cancellation of visa—prohibition on applying for other visas

- (1) A person is not allowed to make an application for a visa at a particular time (the *application time*) that occurs during a period throughout which the person is in the migration zone if:
 - (a) at an earlier time during that period, the Minister made a decision under section 501, 501A or 501B to refuse to grant a visa to the person or to cancel a visa that has been granted to the person; and
 - (b) the decision was neither set aside nor revoked before the application time.
- (2) Subsection (1) does not prevent a person, at the application time, from making an application for:
 - (a) a protection visa; or
 - (b) a visa specified in the regulations for the purposes of this subsection.

Note: The person may however be prevented from applying for a protection visa because of section 48A.

501F Refusal or cancellation of visa—refusal of other visa applications and cancellation of other visas

- (1) This section applies if the Minister makes a decision under section 501, 501A or 501B to refuse to grant a visa to a person or to cancel a visa that has been granted to a person.
- (2) If:
 - (a) the person has made another visa application that has neither been granted nor refused; and
 - (b) the visa applied for is neither a protection visa nor a visa specified in the regulations for the purposes of this subsection;the Minister is taken to have decided to refuse that other application.
- (3) If:
 - (a) the person holds another visa; and
 - (b) that other visa is neither a protection visa nor a visa specified in the regulations for the purposes of this subsection;the Minister is taken to have decided to cancel that other visa.
- (4) If the decision referred to in subsection (1) is set aside or revoked, the decision that the Minister is taken to have made under subsection (2) or (3) is also set aside or revoked, as the case may be.
- (5) A decision that the Minister is taken to have made under subsection (2) or (3) is not reviewable under Part 5 or 7.

Note: For notification of decisions under this section, see section 501G.

501G Refusal or cancellation of visa—notification of decision

- (1) If a decision is made under subsection 501(1) or (2) or 501A(2) or section 501B or 501F to:
 - (a) refuse to grant a visa to a person; or

- (b) cancel a visa that has been granted to a person;
the Minister must give the person a written notice that:
 - (c) sets out the decision; and
 - (d) specifies the provision under which the decision was made and sets out the effect of that provision; and
 - (e) sets out the reasons (other than non-disclosable information) for the decision; and
 - (f) if the decision was made by a delegate of the Minister under subsection 501(1) or (2) and the person has a right to have the decision reviewed by the Administrative Appeals Tribunal:
 - (i) states that the decision can be reviewed by the Tribunal; and
 - (ii) states the time in which the application for review may be made; and
 - (iii) states who can apply to have the decision reviewed; and
 - (iv) states where the application for review can be made; and
 - (v) in a case where the decision relates to a person in the migration zone—sets out the effect of subsections 500(6A) to (6L) (inclusive); and
 - (vi) sets out such additional information (if any) as is prescribed.
- (2) If the decision referred to in subsection (1):
- (a) was made by a delegate of the Minister under subsection 501(1) or (2); and
 - (b) is reviewable by the Administrative Appeals Tribunal; and
 - (c) relates to a person in the migration zone;
- the notice under subsection (1) that relates to the decision must be accompanied by 2 copies of every document, or part of a document, that:
- (d) is in the delegate's possession or under the delegate's control; and
 - (e) was relevant to the making of the decision; and
 - (f) does not contain non-disclosable information.

- (3) A notice under subsection (1) must be given in the prescribed manner.
- (4) A failure to comply with this section in relation to a decision does not affect the validity of the decision.

501H Refusal or cancellation of visa—miscellaneous provisions

Additional powers

- (1) A power under section 501, 501A or 501B to refuse to grant a visa to a person, or to cancel a visa that has been granted to a person, is in addition to any other power under this Act, as in force from time to time, to refuse to grant a visa to a person, or to cancel a visa that has been granted to a person.

Cross-references to decisions under section 501

- (2) A reference in Part 5 to a decision made under section 501 includes a reference to a decision made under section 501A, 501B, 501C or 501F.

24 Subparagraph 502(1)(a)(ii)

Repeal the subparagraph.

25 Paragraph 503(1)(b)

After “501”, insert “, 501A or 501B”.

26 After section 503

Insert:

503A Protection of information supplied by law enforcement agencies or intelligence agencies

- (1) If information is communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C:

- (a) the officer must not divulge or communicate the information to another person, except where:
 - (i) the other person is the Minister or an authorised migration officer; and
 - (ii) the information is divulged or communicated for the purposes of the exercise of a power under section 501, 501A, 501B or 501C; and
- (b) an authorised migration officer to whom information has been communicated in accordance with paragraph (a) or this paragraph must not divulge or communicate the information to another person, except where:
 - (i) the other person is the Minister or an authorised migration officer; and
 - (ii) the information is divulged or communicated for the purposes of the exercise of a power under section 501, 501A, 501B or 501C.

Note: *Authorised migration officer* and *gazetted agency* are defined by subsection (9).

- (2) If:
 - (a) information is communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C; or
 - (b) information is communicated to the Minister or an authorised migration officer in accordance with paragraph (1)(a) or (b);then:
 - (c) the Minister or officer must not be required to divulge or communicate the information to a court, a tribunal, a parliament or parliamentary committee or any other body or person; and
 - (d) if the information was communicated to an authorised migration officer—the officer must not give the information in evidence before a court, a tribunal, a parliament or parliamentary committee or any other body or person.

- (3) The Minister may, by writing, declare that subsection (1) or (2) does not prevent the disclosure of specified information in specified circumstances to a specified Minister, a specified Commonwealth officer, a specified court or a specified tribunal. However, before making the declaration, the Minister must consult the gazetted agency from which the information originated.

Note: *Commonwealth officer* is defined by subsection (9).

- (4) If a person divulges or communicates particular information to a Commonwealth officer in accordance with a declaration under subsection (3), the officer must comply with such conditions relating to the disclosure by the officer of the information as are specified in the declaration.
- (5) If a person divulges or communicates particular information to a tribunal in accordance with a declaration under subsection (3), the member or members of the tribunal must not divulge or communicate the information to any person (other than the Minister or a Commonwealth officer).
- (6) This section has effect despite anything in:
- (a) any other provision of this Act; and
 - (b) any law (whether written or unwritten) of a State or a Territory.
- (7) To avoid doubt, if information is divulged or communicated:
- (a) in accordance with paragraph (1)(a) or (b); or
 - (b) in accordance with a declaration under subsection (3);
- the divulging or communication, as the case may be, is taken, for the purposes of the Information Privacy Principles set out in section 14 of the *Privacy Act 1988*, to be authorised by law.
- (8) If any Act (whether passed before or after the commencement of this section) provides for information to be given, that Act has effect subject to this section unless that Act expressly provides otherwise.
- (9) In this section:

authorised migration officer means a Commonwealth officer whose duties consist of, or include, the performance of functions, or the exercise of powers, under this Act.

Commonwealth officer has the same meaning as in section 70 of the *Crimes Act 1914*.

Note: A Minister is not a Commonwealth officer.

gazetted agency means a body, agency or organisation that is:

- (a) responsible for law enforcement, criminal intelligence, criminal investigation or security intelligence in, or in a part of, Australia or a foreign country; and
- (b) specified in a notice published by the Minister in the *Gazette*.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

27 After subsection 504(3)

Insert:

- (3A) The *Evidence Act 1995* does not affect the operation of regulations made for the purposes of paragraph (1)(e).

28 Application—refusal or cancellation of visas on character grounds

- (1) The amendment made by item 23, to the extent that it relates to applications for visas, applies to applications that were made before, on or after the commencement of that item.
- (2) The amendment made by item 23, to the extent that it relates to visas granted to a person, applies to visas granted before, on or after the commencement of that item.

29 Transitional—conclusive certificates issued under section 339 of the *Migration Act 1958*

- (1) This item applies to a certificate issued by the Minister that was in force under section 339 of the *Migration Act 1958* immediately before the commencement of this item.

- (2) The certificate has effect after the commencement of this item as if it had been issued under section 339 of the *Migration Act 1958* as amended by this Act.

30 Transitional—conclusive certificates issued under subsection 411(3) of the *Migration Act 1958*

- (1) This item applies to a certificate issued by the Minister that was in force under subsection 411(3) of the *Migration Act 1958* immediately before the commencement of this item.
- (2) The certificate has effect after the commencement of this item as if it had been issued under subsection 411(3) of the *Migration Act 1958* as amended by this Act.

31 Transitional—Ministerial directions

- (1) This item applies to a direction given by the Minister that was in force under section 499 of the *Migration Act 1958* immediately before the commencement of this item.
- (2) The direction has effect after the commencement of this item as if it had been given under section 499 of the *Migration Act 1958* as amended by this Act.

32 Transitional—review of adverse pre-commencement decisions under the *Migration Act 1958*

- (1) Despite the amendments of sections 500 and 502 of the *Migration Act 1958* made by this Act, those sections and the *Administrative Appeals Tribunal Act 1975* continue to apply, in relation to a review of a decision made under section 501 of the *Migration Act 1958* before the commencement of this item, as if:
- (a) those amendments had not been made; and
 - (b) section 501 of the *Migration Act 1958* had not been repealed by this Act.
- (2) The repeal and substitution of subsection 500(4) of the *Migration Act 1958* made by this Act does not imply that an application may be made, or could have been made, to the Administrative Appeals Tribunal for

review of a decision to which a certificate under section 502 of the *Migration Act 1958* applies.

33 Transitional—setting aside and substitution of non-adverse pre-commencement decisions under section 501 of the *Migration Act 1958*

- (1) This item applies if:
- (a) a delegate of the Minister; or
 - (b) the Administrative Appeals Tribunal;
- makes, or has at any time made, a decision (the *original decision*):
- (c) to grant a visa to a person as a result of not exercising the power conferred by section 501 of the *Migration Act 1958* (as in force at any time before the commencement of this item or as continued in force by item 32) to refuse to grant a visa to the person; or
 - (d) not to exercise the power conferred by section 501 of the *Migration Act 1958* (as in force at any time before the commencement of this item or as continued in force by item 32) to cancel a visa that has been granted to a person.
- (2) Section 501A of the *Migration Act 1958* applies to the original decision in a corresponding way to the way in which it applies to a decision referred to in subsection 501A(1) of that Act.

34 Transitional—setting aside and substitution of adverse pre-commencement decisions under section 501 of the *Migration Act 1958*

- (1) This item applies if a delegate of the Minister has at any time made a decision (the *original decision*) under section 501 of the *Migration Act 1958* (as in force at any time before the commencement of this item):
- (a) to refuse to grant a visa to a person; or
 - (b) to cancel a visa that has been granted to a person.
- (2) Section 501B of the *Migration Act 1958* applies to the original decision in a corresponding way to the way in which it applies to a decision referred to in subsection 501B(1) of that Act.
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*[Minister's second reading speech made in—
Senate on 11 November 1998
House of Representatives on 2 December 1998]*

(141/98)
