



# **Migration Amendment (Character and General Visa Cancellation) Act 2014**

**No. 129, 2014**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
<b>Schedule 1—Character test amendments</b>		<b>4</b>
	<i>Migration Act 1958</i>	4
<b>Schedule 2—General visa cancellation amendments</b>		<b>15</b>
	<i>Migration Act 1958</i>	15





# Migration Amendment (Character and General Visa Cancellation) Act 2014

No. 129, 2014

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

[Assented to 10 December 2014]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Migration Amendment (Character and General Visa Cancellation) Act 2014*.

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No. 129, 2014    *Migration Amendment (Character and General Visa Cancellation) Act*    1  
2014

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2014
2. Schedule 1, items 1 to 25	The day after this Act receives the Royal Assent.	11 December 2014
3. Schedule 1, items 26 and 27	The day after this Act receives the Royal Assent.  However, if items 16 and 17 of Schedule 5 to the <i>Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014</i> commence on or before the day after this Act receives the Royal Assent, the provisions do not commence at all.	11 December 2014
4. Schedule 1, items 28 to 32	The day after this Act receives the Royal Assent.	11 December 2014
5. Schedule 2	The day after this Act receives the Royal Assent.	11 December 2014

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedules**

Legislation 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—Character test amendments

### *Migration Act 1958*

#### **1 Paragraph 5C(2)(d)**

Omit “(whether on one or more occasions), and the total of those terms is 2 years”, substitute “, where the total of those terms is 12 months”.

#### **2 Paragraph 500(1)(a)**

After “201”, insert “, other than decisions to which a certificate under section 502 applies”.

#### **3 Paragraph 500(1)(b)**

After “501”, insert “(subject to subsection (4A))”.

#### **4 After paragraph 500(1)(b)**

Insert:

- (ba) decisions of a delegate of the Minister under subsection 501CA(4) not to revoke a decision to cancel a visa; or

#### **5 Paragraph 500(1)(c)**

Omit “to refuse to grant a protection visa, or to cancel”, substitute “, other than a decision to which a certificate under section 502 applies, to refuse under section 65 to grant”.

#### **6 Subsection 500(1)**

Omit “; other than decisions to which a certificate under section 502 applies”.

#### **7 At the end of subsection 500(4A)**

Add:

- ; (c) a decision of a delegate of the Minister under subsection 501(3A) to cancel a visa.



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**8 After subsection 501(3)**

Insert:

(3A) The Minister must cancel a visa that has been granted to a person if:

- (a) the Minister is satisfied that the person does not pass the character test because of the operation of:
  - (i) paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or
  - (ii) paragraph (6)(e) (sexually based offences involving a child); and
- (b) the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.

(3B) Subsection (3A) does not limit subsections (2) and (3).

**9 Subsection 501(5)**

After “(3)”, insert “or (3A)”.

**10 Paragraph 501(6)(b)**

Repeal the paragraph, substitute:

- (b) the Minister reasonably suspects:
  - (i) that the person has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and
  - (ii) that the group, organisation or person has been or is involved in criminal conduct; or
- (ba) the Minister reasonably suspects that the person has been or is involved in conduct constituting one or more of the following:
  - (i) an offence under one or more of sections 233A to 234A (people smuggling);
  - (ii) an offence of trafficking in persons;
  - (iii) the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern;

whether or not the person, or another person, has been convicted of an offence constituted by the conduct; or

**11 Paragraph 501(6)(d)**

Omit “significant”.

**12 After paragraph 501(6)(d)**

Insert:

- ; or (e) a court in Australia or a foreign country has:
- (i) convicted the person of one or more sexually based offences involving a child; or
  - (ii) found the person guilty of such an offence, or found a charge against the person proved for such an offence, even if the person was discharged without a conviction; or
  - (f) the person has, in Australia or a foreign country, been charged with or indicted for one or more of the following:
    - (i) the crime of genocide;
    - (ii) a crime against humanity;
    - (iii) a war crime;
    - (iv) a crime involving torture or slavery;
    - (v) a crime that is otherwise of serious international concern; or
  - (g) the person has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
  - (h) an Interpol notice in relation to the person, from which it is reasonable to infer that the person would present a risk to the Australian community or a segment of that community, is in force.

**13 Paragraph 501(7)(d)**

Omit “(whether on one or more occasions), where the total of those terms is 2 years”, substitute “, where the total of those terms is 12 months”.

**14 At the end of subsection 501(7)**

Add:

; or (f) the person has:

- (i) been found by a court to not be fit to plead, in relation to an offence; and
- (ii) the court has nonetheless found that on the evidence available the person committed the offence; and
- (iii) as a result, the person has been detained in a facility or institution.

**15 After subsection 501(7)**

Insert:

*Concurrent sentences*

- (7A) For the purposes of the character test, if a person has been sentenced to 2 or more terms of imprisonment to be served concurrently (whether in whole or in part), the whole of each term is to be counted in working out the total of the terms.

Example: A person is sentenced to 2 terms of 3 months imprisonment for 2 offences, to be served concurrently. For the purposes of the character test, the total of those terms is 6 months.

**16 Paragraph 501(10)(b)**

Repeal the paragraph, substitute:

(b) both:

- (i) the person has been pardoned in relation to the conviction concerned; and
- (ii) the effect of that pardon is that the person is taken never to have been convicted of the offence.

**17 After section 501B**

Insert:

**501BA Cancellation of visa—setting aside and substitution of non-adverse decision under section 501CA**

- (1) This section applies if:
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(a) a delegate of the Minister; or  
(b) the Administrative Appeals Tribunal;  
makes a decision under section 501CA (the *original decision*) to revoke a decision under subsection 501(3A) to cancel a visa that has been granted to a person.

*Action by Minister—natural justice does not apply*

- (2) The Minister may set aside the original decision and cancel a visa that has been granted to the person if:
- (a) the Minister is satisfied that the person does not pass the character test because of the operation of:
    - (i) paragraph 501(6)(a), on the basis of paragraph 501(7)(a), (b) or (c); or
    - (ii) paragraph 501(6)(e); and
  - (b) the Minister is satisfied that the cancellation is in the national interest.
- (3) The rules of natural justice do not apply to a decision under subsection (2).

*Minister's exercise of power*

- (4) The power under subsection (2) may only be exercised by the Minister personally.

*Decision not reviewable under Part 5 or 7*

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

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

## 18 After section 501C

Insert:

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**501CA Cancellation of visa—revocation of decision under subsection 501(3A) (person serving sentence of imprisonment)**

- (1) This section applies if the Minister makes a decision (the *original decision*) under subsection 501(3A) (person serving sentence of imprisonment) to 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) 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 Minister is satisfied:
    - (i) that the person passes the character test (as defined by section 501); or
    - (ii) that there is another reason why the original decision should be revoked.
- (5) If the Minister revokes the original decision, the original decision is taken not to have been made.

- (6) 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.
- (7) A decision not to exercise the power conferred by subsection (4) is not reviewable under Part 5 or 7.
- Note: For notification of decisions under subsection (4) to not revoke, see section 501G.

## **19 At the end of section 501E**

Add:

- (3) Subsection (1) does not prevent a person, at the application time, from making an application for a visa if, before the application time, the Minister had, acting personally, granted a permanent visa to the person.
- (4) Subsection (1) does not prevent a person, at the application time, from making an application for a visa if:
- (a) before the application time, the person was granted a visa of a kind referred to in subsection (2) or (3); and
  - (b) the person would, but for the operation of subsection (2) or (3), have been prevented from applying for that visa.

## **20 Subsection 501G(1)**

After “501B”, insert “, 501BA, 501CA”.

## **21 After paragraph 501G(1)(b)**

Insert:

- or (ba) not revoke a decision to cancel a visa that has been granted to a person;

## **22 Paragraphs 501G(1)(f) and (2)(a)**

After “(2)”, insert “or section 501CA”.

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**23 Subsection 501H(1)**

Omit “or 501B”, insert “, 501B or 501BA”.

**24 Subsection 501H(2)**

After “501B,”, insert “501BA,”.

**25 After section 501K**

Insert:

**501L Disclosure of information to the Minister**

- (1) The Minister may, by written notice, require the head of an agency of a State or Territory to disclose to the Minister personal information that:
  - (a) is of a kind specified in the notice; and
  - (b) relates to a person, or to a person included in a class of persons, specified in the notice.
- (2) The Minister must not give a notice under subsection (1) to the head of an agency of a State or Territory unless the Minister reasonably believes:
  - (a) that the head of the agency has, or can reasonably acquire, the information; and
  - (b) the information is relevant for the purposes of considering whether:
    - (i) a person satisfies the Minister that the person passes the character test (as defined in section 501); or
    - (ii) the Minister reasonably suspects, or is satisfied, that a person does not pass the character test.
- (3) The head of an agency of a State or Territory who is given a notice under subsection (1) must, as soon as practicable after the notice is given, comply with the notice to the extent that he or she has, or can reasonably acquire, the information specified in the notice.
- (4) Despite subsection (3), the registrar (however described) of a court of a State or Territory is not required to comply with a notice under subsection (1) to the extent that the information specified in the notice, in relation to a person specified in the notice, is information

that relates to proceedings that have not been finally determined by the court.

- (5) The head of an agency of a State or Territory is not excused from complying with a notice under subsection (1) on the ground that disclosing the information specified in the notice would contravene a law of the Commonwealth, a State or a Territory that:
- (a) primarily relates to the protection of the privacy of individuals; and
  - (b) prohibits or regulates the use or disclosure of personal information.

*Immunity from suit*

- (6) A person is not liable to:
- (a) any proceedings for contravening a provision of a law referred to in subsection (5); or
  - (b) civil proceedings for loss, damage or injury of any kind suffered by another person;
- merely because the person gives information to the Minister for the purposes of ensuring that the head of an agency of a State or Territory complies with a notice under subsection (1).

- (7) In this section:

**agency** of a State or Territory includes the following:

- (a) the Crown in right of a State or Territory;
- (b) a Minister of a State or Territory;
- (c) a State or Territory government department;
- (d) an instrumentality of a State or Territory, including a body corporate established for a public purpose by or under a law of a State or Territory;
- (e) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
  - (i) the Crown in right of a State or Territory;
  - (ii) a person or body covered by paragraph (b) or (d);
- (f) a State or Territory court;
- (g) a State or Territory tribunal;



(h) a State or Territory parole board.

**head** of an agency means:

- (a) if the agency is a State or Territory court—the registrar (however described) of the court; or
- (b) otherwise—the principal officer (however described) of the agency.

**26 Subparagraph 502(1)(a)(iii)**

Omit “to refuse to grant a protection visa, or to cancel”, substitute “to refuse under section 65 to grant”.

**27 Paragraph 503(1)(c)**

Omit “to refuse to grant a protection visa, or to cancel”, substitute “to refuse under section 65 to grant”.

**28 Subsection 503(4)**

After “visa”, insert “or to a holder of a permanent visa that was granted by the Minister acting personally”.

**29 Application of amendments made by items 1 and 10 to 16**

The amendments made by items 1 and 10 to 16 of this Schedule apply to:

- (a) a decision to grant or refuse to grant a visa, if:
  - (i) the application for the visa was made before the commencement of this item and had not been finally determined as at that commencement; or
  - (ii) the application for the visa is made on or after the commencement of this item; and
- (b) a decision made on or after the commencement of this item to cancel a visa.

**30 Application of amendments made by items 2, 5, 6, 19, 26 and 27**

The amendments made by items 2, 5, 6, 19, 26 and 27 of this Schedule apply to a decision to refuse to grant a visa or to cancel a visa, or an application for a visa, (as the case requires) made on or after the commencement of this item.

### **31 Application of amendment made by item 28**

The amendment made by item 28 of this Schedule applies to a visa granted personally by the Minister whether before, on or after the commencement of this item.

### **32 Application of amendments made by items 3, 4, 7, 8, 9, 17, 18 and 20 to 24**

- (1) The amendments made by items 3, 4, 7, 8, 9, 17, 18 and 20 to 24 of this Schedule apply to a decision made on or after the commencement of this item to cancel a visa under subsection 501(3A) of the *Migration Act 1958*, whether the sentence of imprisonment on the basis of which the visa is cancelled was imposed before, on or after the commencement of this item.
- (2) Despite subitem (1), the Minister must not, under subsection 501(3A) of the *Migration Act 1958*, cancel the visa of a person who is serving a sentence of imprisonment, if:
  - (a) before the commencement of this item, but during that imprisonment, the Minister considered cancelling the person's visa under subsection 501(2) of the *Migration Act 1958* and decided not to cancel the visa; and
  - (b) since that decision, no further sentence of imprisonment has been imposed on the person.

## **Schedule 2—General visa cancellation amendments**

### ***Migration Act 1958***

#### **1 Subsection 33(10)**

After “F”, insert “, FA”.

#### **2 Subparagraph 48(1)(b)(ii)**

After “116 (general power to cancel),”, insert “133A (Minister’s personal powers to cancel visas on section 109 grounds), 133C (Minister’s personal powers to cancel visas on section 116 grounds),”.

#### **3 Paragraph 116(1)(a)**

Repeal the paragraph, substitute:

- (a) the decision to grant the visa was based, wholly or partly, on a particular fact or circumstance that is no longer the case or that no longer exists; or
- (aa) the decision to grant the visa was based, wholly or partly, on the existence of a particular fact or circumstance, and that fact or circumstance did not exist; or

#### **4 Paragraph 116(1)(e)**

Repeal the paragraph, substitute:

- (e) the presence of its holder in Australia is or may be, or would or might be, a risk to:
  - (i) the health, safety or good order of the Australian community or a segment of the Australian community; or
  - (ii) the health or safety of an individual or individuals; or

#### **5 After subsection 116(1)**

Insert:

- (1AA) Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is not satisfied as to the visa holder’s identity.

(1AB) Subject to subsections (2) and (3), the Minister may cancel a visa (the *current visa*) if he or she is satisfied that:

- (a) incorrect information was given, by or on behalf of the person who holds the current visa, to:
  - (i) an officer; or
  - (ii) an authorised system; or
  - (iii) the Minister; or
  - (iv) any other person, or a tribunal, performing a function or purpose under this Act; or
  - (v) any other person or body performing a function or purpose in an administrative process that occurred or occurs in relation to this Act; and
- (b) the incorrect information was taken into account in, or in connection with, making:
  - (i) a decision that enabled the person to make a valid application for a visa; or
  - (ii) a decision to grant a visa to the person; and
- (c) the giving of the incorrect information is not covered by Subdivision C.

This subsection applies whenever the incorrect information was given and whether the visa referred to in subparagraph (b)(i) or (ii) is the current visa or a previous visa that the person held.

**6 Subsection 116(2)**

After “cancel a visa”, insert “under subsection (1), (1AA) or (1AB)”.

**7 Subsection 116(3)**

After “subsection (1)”, insert “, (1AA) or (1AB)”.

**8 Subsection 117(1)**

Omit “section 116”, substitute “subsection 116(1), (1AA), or (1AB)”.

**9 Subsection 117(2)**

Omit “section 116”, substitute “subsection 116(1)”.

**10 After paragraph 118(c)**

Insert:

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- (ca) section 133A (Minister’s personal powers to cancel visas on section 109 grounds); or
- (cb) section 133C (Minister’s personal powers to cancel visas on section 116 grounds); or

**11 Paragraph 118(f)**

After “cancel”, insert “on character grounds”.

**12 After Subdivision F of Division 3 of Part 2**

Insert:

**Subdivision FA—Additional personal powers for Minister to cancel visas on section 109 or 116 grounds**

**133A Minister’s personal powers to cancel visas on section 109 grounds**

*Action by Minister—natural justice applies*

- (1) If a notice was given under section 107 to the holder of a visa in relation to a ground for cancelling the visa under section 109, and the Migration Review Tribunal, the Refugee Review Tribunal, the Administrative Appeals Tribunal or a delegate of the Minister:
  - (a) decided that the ground did not exist; or
  - (b) decided not to exercise the power in subsection 109(1) to cancel the visa (despite the existence of the ground);the Minister may set aside that decision and cancel the visa, if:
  - (c) the Minister considers that the ground exists; and
  - (d) the visa holder does not satisfy the Minister that the ground does not exist; and
  - (e) the Minister is satisfied that it would be in the public interest to cancel the visa.

Note: The grounds for cancellation under section 109 are non-compliance with section 101, 102, 103, 104 or 105.

- (2) The procedure set out in Subdivision C does not apply to a decision under subsection (1).

*Action by Minister—natural justice does not apply*

- (3) The Minister may cancel a visa held by a person who has been immigration cleared (whether or not because of that visa) if:
- (a) the Minister is satisfied that a ground for cancelling the visa under section 109 exists; and
  - (b) the Minister is satisfied that it would be in the public interest to cancel the visa.

Note: The grounds for cancellation under section 109 are non-compliance with section 101, 102, 103, 104 or 105.

- (4) The rules of natural justice, and the procedure set out in Subdivision C, do not apply to a decision under subsection (3).
- (5) The Minister may cancel a visa under subsection (3) whether or not:
- (a) the visa holder was given a notice under section 107 in relation to the ground for cancelling the visa; or
  - (b) the visa holder responded to any such notice; or
  - (c) the Migration Review Tribunal, the Refugee Review Tribunal, the Administrative Appeals Tribunal or a delegate of the Minister:
    - (i) decided that the ground did not exist; or
    - (ii) decided not to exercise the power in subsection 109(1) to cancel the visa (despite the existence of the ground).
- (6) If a decision was made as mentioned in paragraph (5)(c), the power under subsection (3) to cancel a visa is a power to set aside that decision and cancel the visa.

*Minister's exercise of power*

- (7) The power in subsection (1) or (3) may only be exercised by the Minister personally.
- (8) The Minister does not have a duty to consider whether to exercise the power in subsection (1) or (3), whether or not the Minister is requested to do so, or in any other circumstances.

- (9) Subsection 138(4) does not prevent the Minister setting aside a decision of a Tribunal or a delegate and cancelling a visa in accordance with this section.

**133B Other provisions relating to the exercise of powers in section 133A**

- (1) Subject to subsection (2), the possible non-compliances that can constitute a ground for the cancellation of a visa under subsection 133A(1) or (3) include non-compliances that occurred at any time (whether before or after the commencement of this section), including non-compliances in respect of any previous visa held by the person.
- (2) Section 115 (application of Subdivision C) applies in relation to section 133A in the same way that it applies in relation to Subdivision C.
- (3) To avoid doubt, subsections 133A(1) and (3) apply:
- (a) whether or not the Minister became aware of the ground for cancelling the visa because of information given by the visa holder; and
  - (b) whether the non-compliance because of which the ground is considered to exist was deliberate or inadvertent.
- (4) Steps taken for the purposes of the Minister exercising the power in subsection 133A(1) or (3) in relation to an instance of possible non-compliance by a person do not prevent:
- (a) a notice under section 107 being given to that person because of another instance of possible non-compliance; or
  - (b) the exercise of the power in subsection 133A(1) or (3) in relation to the person because of another instance of possible non-compliance.
- (5) The non-cancellation of a visa under section 133A despite an instance of non-compliance does not prevent the cancellation, or steps for the cancellation, of the visa because of another instance of non-compliance.

**133C Minister's personal powers to cancel visas on section 116 grounds**

*Action by Minister—natural justice applies*

- (1) If a notification was given under section 119 to the holder of a visa in relation to a ground for cancelling the visa under section 116, and the Migration Review Tribunal, the Refugee Review Tribunal, the Administrative Appeals Tribunal or a delegate of the Minister:
- (a) decided that the ground did not exist; or
  - (b) decided not to exercise the power in section 116 to cancel the visa (despite the existence of the ground);
- the Minister may set aside that decision and cancel the visa if:
- (c) the Minister considers that the ground exists; and
  - (d) the visa holder does not satisfy the Minister that the ground does not exist; and
  - (e) the Minister is satisfied that it would be in the public interest to cancel the visa.

Note: The Minister's power to cancel a visa under this subsection is subject to section 117 (see subsection (9) of this section).

- (2) The procedures set out in Subdivisions E and F do not apply to a decision under subsection (1).

*Action by Minister—natural justice does not apply*

- (3) The Minister may cancel a visa held by a person if:
- (a) the Minister is satisfied that a ground for cancelling the visa under section 116 exists; and
  - (b) the Minister is satisfied that it would be in the public interest to cancel the visa.

Note: The Minister's power to cancel a visa under this subsection is subject to section 117 (see subsection (9) of this section).

- (4) The rules of natural justice, and the procedures set out in Subdivisions E and F, do not apply to a decision under subsection (3).
- (5) The Minister may cancel a visa under subsection (3) whether or not:



- 
- (a) the visa holder was given a notification under section 119 in relation to the ground for cancelling the visa; or
  - (b) the visa holder responded to any such notification; or
  - (c) the Migration Review Tribunal, the Refugee Review Tribunal, the Administrative Appeals Tribunal or a delegate of the Minister:
    - (i) decided that the ground did not exist; or
    - (ii) decided not to exercise the power in section 116 to cancel the visa (despite the existence of the ground); or
  - (d) a delegate of the Minister decided to revoke, under subsection 131(1), a cancellation of the visa in accordance with section 128 in relation to the ground.
- (6) If a decision was made as mentioned in paragraph (5)(c), the power under subsection (3) to cancel a visa is a power to set aside that decision and cancel the visa.

*Minister's exercise of power*

- (7) The power in subsection (1) or (3) may only be exercised by the Minister personally.
- (8) The Minister does not have a duty to consider whether to exercise the power in subsection (1) or (3), whether or not the Minister is requested to do so, or in any other circumstances.
- (9) Section 117 applies in relation to the power in subsection (1) or (3) in the same way as it applies to the cancellation of a visa under section 116.
- (10) Subsection 138(4) does not prevent the Minister setting aside a decision of a Tribunal or a delegate and cancelling a visa in accordance with this section.

**133D Cancellation under subsection 133A(1) or 133C(1)—method of satisfying Minister of matters**

The regulations may provide that, in determining for the purposes of subsection 133A(1) or 133C(1) whether:

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

satisfies the Minister that a ground for cancelling the person's visa does not exist, 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.

**133E Cancellation under subsection 133A(1) or 133C(1)—notice of cancellation**

- (1) If a decision is made under subsection 133A(1) or 133C(1) to cancel a visa that has been granted to a person, the Minister must give the former holder of the visa a written notice that:
  - (a) sets out the decision; and
  - (b) specifies the provision under which the decision was made; and
  - (c) sets out the reasons (other than non-disclosable information) for the decision.
- (2) The notice is to be given in the prescribed manner.
- (3) A failure to comply with this section in relation to a decision does not affect the validity of the decision.

**133F Cancellation under subsection 133A(3) or 133C(3)—Minister may revoke cancellation in certain circumstances**

- (1) This section applies if the Minister makes a decision (the *original decision*) under subsection 133A(3) or 133C(3) to 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) 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 ground for cancelling the visa referred to in subsection 133A(3) or 133C(3) (as the case requires) does not exist.
- (5) The power in 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.

### **13 Paragraph 139(a)**

Omit “E and F”, substitute “E, F and FA”.

### **14 Subsections 140(1) and (2)**

Omit “116 or 128”, substitute “116 (general power to cancel), 128 (when holder outside Australia), 133A (Minister’s personal powers to cancel visas on section 109 grounds), 133C (Minister’s personal powers to cancel visas on section 116 grounds)”.

**15 Paragraph 140(4)(b)**

After “131,”, insert “133F,”.

**16 Paragraph 191(2)(d)**

After “Subdivision C, D”, insert “, FA”.

**17 Subsections 192(1) and (4)**

After “Subdivision C, D”, insert “, FA”.

**18 Paragraph 338(3)(c)**

After “made under”, insert “section 133A or 133C,”.

**19 At the end of subsection 338(3)**

Add:

; or (d) was made personally by the Minister under section 109 or 116 or subsection 140(2).

**20 Paragraph 338(4)(b)**

After “a decision”, insert “of a delegate of the Minister”.

**21 Before paragraph 411(2)(a)**

Insert:

(aa) any decision to cancel a protection visa that is made personally by the Minister;

**22 Application of amendments made by items 1 to 17**

- (1) The amendments made by items 1 to 17 of this Schedule apply in relation to a visa held on or after the commencement of those items (even if the visa was granted before that commencement).
- (2) If a notification was given under section 119 of the *Migration Act 1958* before the commencement of the amendments made by items 3 and 4 of this Schedule, that Act continues to apply in relation to that notification as if those amendments had not been made.
- (3) Subsection 116(1AB) of the *Migration Act 1958*, as inserted by item 5 of this Schedule, applies to information given before, on or after commencement of that item.

- (4) The Minister cannot set aside a decision and cancel a visa, under any of the following provisions of the *Migration Act 1958* as amended by item 12 of this Schedule, if that decision was made before the commencement of that item:
- (a) subsection 133A(1);
  - (b) subsection 133A(3), as it has effect because of subsection 133A(6);
  - (c) subsection 133C(1);
  - (d) subsection 133C(3), as it has effect because of subsection 133C(6).

### **23 Application of amendments made by items 18 to 21**

The amendments made by items 18 to 21 of this Schedule apply to decisions made on or after the commencement of those items.

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*[Minister's second reading speech made in—  
House of Representatives on 24 September 2014  
Senate on 28 October 2014]*

(208/14)

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