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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Amendment (Character and
General Visa Cancellation) Bill 2014**

No. , 2014

(Immigration and Border Protection)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

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1 **A Bill for an Act to amend the *Migration Act 1958*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 25	The day after this Act receives the Royal Assent.	
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.	
4. Schedule 1, items 28 to 32	The day after this Act receives the Royal Assent.	
5. Schedule 2	The day after this Act receives the Royal Assent.	

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

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

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 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.

1 **8 After subsection 501(3)**

2 Insert:

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

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

14 (3B) Subsection (3A) does not limit subsections (2) and (3).

15 **9 Subsection 501(5)**

16 After “(3)”, insert “or (3A)”.

17 **10 Paragraph 501(6)(b)**

18 Repeal the paragraph, substitute:

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

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

3 **11 Paragraph 501(6)(d)**

4 Omit “significant”.

5 **12 After paragraph 501(6)(d)**

6 Insert:

7 ; or (e) a court in Australia or a foreign country has:

- 8 (i) convicted the person of one or more sexually based
9 offences involving a child; or
10 (ii) found the person guilty of such an offence, or found a
11 charge against the person proved for such an offence,
12 even if the person was discharged without a conviction;
13 or

14 (f) the person has, in Australia or a foreign country, been
15 charged with or indicted for one or more of the following:

- 16 (i) the crime of genocide;
17 (ii) a crime against humanity;
18 (iii) a war crime;
19 (iv) a crime involving torture or slavery;
20 (v) a crime that is otherwise of serious international
21 concern; or

22 (g) the person has been assessed by the Australian Security
23 Intelligence Organisation to be directly or indirectly a risk to
24 security (within the meaning of section 4 of the *Australian*
25 *Security Intelligence Organisation Act 1979*); or

26 (h) an Interpol notice in relation to the person, from which it is
27 reasonable to infer that the person would present a risk to the
28 Australian community or a segment of that community, is in
29 force.

30 **13 Paragraph 501(7)(d)**

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

1 **14 At the end of subsection 501(7)**

2 Add:

3 ; or (f) the person has:

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

10 **15 After subsection 501(7)**

11 Insert:

12 *Concurrent sentences*

13 (7A) For the purposes of the character test, if a person has been
14 sentenced to 2 or more terms of imprisonment to be served
15 concurrently (whether in whole or in part), the whole of each term
16 is to be counted in working out the total of the terms.

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

20 **16 Paragraph 501(10)(b)**

21 Repeal the paragraph, substitute:

22 (b) both:

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

27 **17 After section 501B**

28 Insert:

29 **501BA Cancellation of visa—setting aside and substitution of**
30 **non-adverse decision under section 501CA**

31 (1) This section applies if:

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

6 *Action by Minister—natural justice does not apply*

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

18 *Minister's exercise of power*

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

21 *Decision not reviewable under Part 5 or 7*

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

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

24 **18 After section 501C**

25 Insert:

1 **501CA Cancellation of visa—revocation of decision under**
2 **subsection 501(3A) (person serving sentence of**
3 **imprisonment)**

- 4 (1) This section applies if the Minister makes a decision (the *original*
5 *decision*) under subsection 501(3A) (person serving sentence of
6 imprisonment) to cancel a visa that has been granted to a person.
- 7 (2) For the purposes of this section, *relevant information* is
8 information (other than non-disclosable information) that the
9 Minister considers:
10 (a) would be the reason, or a part of the reason, for making the
11 original decision; and
12 (b) is specifically about the person or another person and is not
13 just about a class of persons of which the person or other
14 person is a member.
- 15 (3) As soon as practicable after making the original decision, the
16 Minister must:
17 (a) give the person, in the way that the Minister considers
18 appropriate in the circumstances:
19 (i) a written notice that sets out the original decision; and
20 (ii) particulars of the relevant information; and
21 (b) invite the person to make representations to the Minister,
22 within the period and in the manner ascertained in
23 accordance with the regulations, about revocation of the
24 original decision.
- 25 (4) The Minister may revoke the original decision if:
26 (a) the person makes representations in accordance with the
27 invitation; and
28 (b) the Minister is satisfied:
29 (i) that the person passes the character test (as defined by
30 section 501); or
31 (ii) that there is another reason why the original decision
32 should be revoked.
- 33 (5) If the Minister revokes the original decision, the original decision
34 is taken not to have been made.

- 1 (6) Any detention of the person that occurred during any part of the
2 period:
3 (a) beginning when the original decision was made; and
4 (b) ending at the time of the revocation of the original decision;
5 is lawful and the person is not entitled to make any claim against
6 the Commonwealth, an officer or any other person because of the
7 detention.
- 8 (7) A decision not to exercise the power conferred by subsection (4) is
9 not reviewable under Part 5 or 7.

10 Note: For notification of decisions under subsection (4) to not revoke, see
11 section 501G.

12 **19 At the end of section 501E**

13 Add:

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

24 **20 Subsection 501G(1)**

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

26 **21 After paragraph 501G(1)(b)**

27 Insert:

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

30 **22 Paragraphs 501G(1)(f) and (2)(a)**

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

1 **23 Subsection 501H(1)**

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

3 **24 Subsection 501H(2)**

4 After “501B,”, insert “501BA,”.

5 **25 After section 501K**

6 Insert:

7 **501L Disclosure of information to the Minister**

8 (1) The Minister may, by written notice, require the head of an agency
9 of a State or Territory to disclose to the Minister personal
10 information that:

11 (a) is of a kind specified in the notice; and

12 (b) relates to a person, or to a person included in a class of
13 persons, specified in the notice.

14 (2) The Minister must not give a notice under subsection (1) to the
15 head of an agency of a State or Territory unless the Minister
16 reasonably believes:

17 (a) that the head of the agency has, or can reasonably acquire,
18 the information; and

19 (b) the information is relevant for the purposes of considering
20 whether:

21 (i) a person satisfies the Minister that the person passes the
22 character test (as defined in section 501); or

23 (ii) the Minister reasonably suspects, or is satisfied, that a
24 person does not pass the character test.

25 (3) The head of an agency of a State or Territory who is given a notice
26 under subsection (1) must, as soon as practicable after the notice is
27 given, comply with the notice to the extent that he or she has, or
28 can reasonably acquire, the information specified in the notice.

29 (4) Despite subsection (3), the registrar (however described) of a court
30 of a State or Territory is not required to comply with a notice under
31 subsection (1) to the extent that the information specified in the
32 notice, in relation to a person specified in the notice, is information

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

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

11 *Immunity from suit*

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

- 20 (7) In this section:

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

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

1 (h) a State or Territory parole board.

2 **head** of an agency means:

3 (a) if the agency is a State or Territory court—the registrar
4 (however described) of the court; or

5 (b) otherwise—the principal officer (however described) of the
6 agency.

7 **26 Subparagraph 502(1)(a)(iii)**

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

10 **27 Paragraph 503(1)(c)**

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

13 **28 Subsection 503(4)**

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

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

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

19 (a) a decision to grant or refuse to grant a visa, if:

20 (i) the application for the visa was made before the
21 commencement of this item and had not been finally
22 determined as at that commencement; or

23 (ii) the application for the visa is made on or after the
24 commencement of this item; and

25 (b) a decision made on or after the commencement of this item to
26 cancel a visa.

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

29 The amendments made by items 2, 5, 6, 19, 26 and 27 of this Schedule
30 apply to a decision to refuse to grant a visa or to cancel a visa, or an
31 application for a visa, (as the case requires) made on or after the
32 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.

1 **Schedule 2—General visa cancellation**
2 **amendments**
3

4 ***Migration Act 1958***

5 **1 Subsection 33(10)**

6 After “F”, insert “, FA”.

7 **2 Subparagraph 48(1)(b)(ii)**

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

11 **3 Paragraph 116(1)(a)**

12 Repeal the paragraph, substitute:

13 (a) the decision to grant the visa was based, wholly or partly, on
14 a particular fact or circumstance that is no longer the case or
15 that no longer exists; or

16 (aa) the decision to grant the visa was based, wholly or partly, on
17 the existence of a particular fact or circumstance, and that
18 fact or circumstance did not exist; or

19 **4 Paragraph 116(1)(e)**

20 Repeal the paragraph, substitute:

21 (e) the presence of its holder in Australia is or may be, or would
22 or might be, a risk to:

23 (i) the health, safety or good order of the Australian
24 community or a segment of the Australian community;
25 or

26 (ii) the health or safety of an individual or individuals; or

27 **5 After subsection 116(1)**

28 Insert:

29 (1AA) Subject to subsections (2) and (3), the Minister may cancel a visa if
30 he or she is not satisfied as to the visa holder’s identity.

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

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

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

23 **6 Subsection 116(2)**

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

25 **7 Subsection 116(3)**

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

27 **8 Subsection 117(1)**

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

29 **9 Subsection 117(2)**

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

31 **10 After paragraph 118(c)**

32 Insert:

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

5 **11 Paragraph 118(f)**

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

7 **12 After Subdivision F of Division 3 of Part 2**

8 Insert:

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

11 **133A Minister’s personal powers to cancel visas on section 109**
12 **grounds**

13 *Action by Minister—natural justice applies*

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

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

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

1 *Action by Minister—natural justice does not apply*

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

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

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

26 *Minister's exercise of power*

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

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

4 **133B Other provisions relating to the exercise of powers in**
5 **section 133A**

- 6 (1) Subject to subsection (2), the possible non-compliances that can
7 constitute a ground for the cancellation of a visa under
8 subsection 133A(1) or (3) include non-compliances that occurred
9 at any time (whether before or after the commencement of this
10 section), including non-compliances in respect of any previous visa
11 held by the person.
- 12 (2) Section 115 (application of Subdivision C) applies in relation to
13 section 133A in the same way that it applies in relation to
14 Subdivision C.
- 15 (3) To avoid doubt, subsections 133A(1) and (3) apply:
16 (a) whether or not the Minister became aware of the ground for
17 cancelling the visa because of information given by the visa
18 holder; and
19 (b) whether the non-compliance because of which the ground is
20 considered to exist was deliberate or inadvertent.
- 21 (4) Steps taken for the purposes of the Minister exercising the power
22 in subsection 133A(1) or (3) in relation to an instance of possible
23 non-compliance by a person do not prevent:
24 (a) a notice under section 107 being given to that person because
25 of another instance of possible non-compliance; or
26 (b) the exercise of the power in subsection 133A(1) or (3) in
27 relation to the person because of another instance of possible
28 non-compliance.
- 29 (5) The non-cancellation of a visa under section 133A despite an
30 instance of non-compliance does not prevent the cancellation, or
31 steps for the cancellation, of the visa because of another instance of
32 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:

- 1 (a) the visa holder was given a notification under section 119 in
2 relation to the ground for cancelling the visa; or
3 (b) the visa holder responded to any such notification; or
4 (c) the Migration Review Tribunal, the Refugee Review
5 Tribunal, the Administrative Appeals Tribunal or a delegate
6 of the Minister:
7 (i) decided that the ground did not exist; or
8 (ii) decided not to exercise the power in section 116 to
9 cancel the visa (despite the existence of the ground); or
10 (d) a delegate of the Minister decided to revoke, under
11 subsection 131(1), a cancellation of the visa in accordance
12 with section 128 in relation to the ground.
- 13 (6) If a decision was made as mentioned in paragraph (5)(c), the power
14 under subsection (3) to cancel a visa is a power to set aside that
15 decision and cancel the visa.
- 16 *Minister's exercise of power*
- 17 (7) The power in subsection (1) or (3) may only be exercised by the
18 Minister personally.
- 19 (8) The Minister does not have a duty to consider whether to exercise
20 the power in subsection (1) or (3), whether or not the Minister is
21 requested to do so, or in any other circumstances.
- 22 (9) Section 117 applies in relation to the power in subsection (1) or (3)
23 in the same way as it applies to the cancellation of a visa under
24 section 116.
- 25 (10) Subsection 138(4) does not prevent the Minister setting aside a
26 decision of a Tribunal or a delegate and cancelling a visa in
27 accordance with this section.

28 **133D Cancellation under subsection 133A(1) or 133C(1)—method of**
29 **satisfying Minister of matters**

- 30 The regulations may provide that, in determining for the purposes
31 of subsection 133A(1) or 133C(1) whether:
32 (a) a person; or
33 (b) a person included in a specified class of persons;
-

1 satisfies the Minister that a ground for cancelling the person’s visa
 2 does not exist, any information or material submitted by or on
 3 behalf of the person must not be considered by the Minister unless
 4 the information or material is submitted within the period, and in
 5 the manner, ascertained in accordance with the regulations.

6 **133E Cancellation under subsection 133A(1) or 133C(1)—notice of**
 7 **cancellation**

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

19 **133F Cancellation under subsection 133A(3) or 133C(3)—Minister**
 20 **may revoke cancellation in certain circumstances**

- 21 (1) This section applies if the Minister makes a decision (the *original*
 22 *decision*) under subsection 133A(3) or 133C(3) to cancel a visa
 23 that has been granted to a person.
- 24 (2) For the purposes of this section, *relevant information* is
 25 information (other than non-disclosable information) that the
 26 Minister considers:
 27 (a) would be the reason, or a part of the reason, for making the
 28 original decision; and
 29 (b) is specifically about the person or another person and is not
 30 just about a class of persons of which the person or other
 31 person is a member.
- 32 (3) As soon as practicable after making the original decision, the
 33 Minister must:

- 1 (a) give the person, in the way that the Minister considers
2 appropriate in the circumstances:
3 (i) a written notice that sets out the original decision; and
4 (ii) particulars of the relevant information; and
5 (b) invite the person to make representations to the Minister,
6 within the period and in the manner ascertained in
7 accordance with the regulations, about revocation of the
8 original decision.
- 9 (4) The Minister may revoke the original decision if:
10 (a) the person makes representations in accordance with the
11 invitation; and
12 (b) the person satisfies the Minister that the ground for
13 cancelling the visa referred to in subsection 133A(3) or
14 133C(3) (as the case requires) does not exist.
- 15 (5) The power in subsection (4) may only be exercised by the Minister
16 personally.
- 17 (6) If the Minister revokes the original decision, the original decision
18 is taken not to have been made. This subsection has effect subject
19 to subsection (7).
- 20 (7) Any detention of the person that occurred during any part of the
21 period:
22 (a) beginning when the original decision was made; and
23 (b) ending at the time of the revocation of the original decision;
24 is lawful and the person is not entitled to make any claim against
25 the Commonwealth, an officer or any other person because of the
26 detention.

27 **13 Paragraph 139(a)**

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

29 **14 Subsections 140(1) and (2)**

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

1 **15 Paragraph 140(4)(b)**

2 After “131,” insert “133F”.

3 **16 Paragraph 191(2)(d)**

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

5 **17 Subsections 192(1) and (4)**

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

7 **18 Paragraph 338(3)(c)**

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

9 **19 At the end of subsection 338(3)**

10 Add:

11 ; or (d) was made personally by the Minister under section 109 or
12 116 or subsection 140(2).

13 **20 Paragraph 338(4)(b)**

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

15 **21 Before paragraph 411(2)(a)**

16 Insert:

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

19 **22 Application of amendments made by items 1 to 17**

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

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

11 **23 Application of amendments made by items 18 to 21**

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