



Andrew & Renata Kaldor Centre  
for International Refugee Law  
**Legislative brief**

## **Migration Amendment (Character Cancellation Consequential Provisions) Act 2017**

Last updated: 9 March 2017

### **Introduction**

The Migration Amendment (Character Cancellation Consequential Provisions) Act 2017 (Cth) (the amending Act) makes a number of changes to the operation of the character cancellation regime in Australia.

Under [s 501](#) of the *Migration Act 1958 (Cth)* (the Act), a delegate of the Minister for Immigration and Border Protection or the Minister himself may cancel a visa of a non-citizen

Substantive amendments were made to the character cancellation regime by the [Migration Amendment \(Character and General Visa Cancellation\) Act 2014](#) (Cth) (the *Character Act*) that, among other changes, introduced a mandatory character cancellation power. As a result, under subsection 501(3A) of the Act, the Minister *must* notice, if:

- sentenced to death, life imprisonment or a single term of imprisonment of 12 months or more; or
- has been convicted of child sexual offences; and
- the person is serving the term of imprisonment on a full-time basis.

Under [s 501CA](#), the Minister is required to, as soon as practicable after making the mandatory cancellation, to give the person affected notice of the decision and the particulars of the relevant information upon which the cancellation was based.<sup>1</sup> The Minister must also invite the person to make representations about revocation of the decision to cancel the visa.<sup>2</sup> If the Minister does not exercise the discretion to revoke the cancellation, the matter can be further appealed to the Administrative Appeals Tribunal (the AAT).<sup>3</sup> However, under [s](#)

The amending Act inserts references to s 501CA and s 501BA into other provisions in the Act. The purported intention is to ensure that the effect of, and consequences flowing from,

under the Act. The amending Act ensures that:

an immigration officer may detain a person if the immigration officer knows or reasonably suspects that that a non-citizen holds a visa that is being subject to cancellation under s 501BA, and requires the release of the person if the officer becomes aware that their visa will not be cancelled;

can be withheld from the person or their legal advisers;

a non-citizen who has had their visa cancelled under s 501BA and has been detained does not need to be informed that they have 2 working days to apply for another visa;

a non-citizen who had their visas cancelled under s 501(3A) and who does not

### Comment

This provision appears unnecessary and will disproportionately affect asylum seekers and refugees caught by s 501BA. The Parliamentary Joint Committee on Human Rights noted that the Government had not given adequate justifications for this amendment:

*‘ ... given the time critical nature of a person’s response to cancellation, no justification is provided as to how it is sufficient that such information will have been provided previously in a different context, particularly given the very serious consequences for the individual concerned and their pre-existing vulnerability as a person in detention. It is unclear how this amendment is necessary or reasonable’.<sup>5</sup>*

## Consequences of cancellation under s 501BA

### *What the amending Act will change*

The amending Act inserts references to s 501BA into subsections 501E(1)(a), 501F(1) and 503(1b) of The effects of these amendments are that a non-citizen who has had a visa cancelled by the Minister personally under s 501BA will:

- be prevented from making a further application for a visa while in the migration zone (except for a protection visa);
- have any outstanding application for a visa (except for a protection visa) refused by the Minister;
- have any other visa currently held cancelled by the Minister; and
- not be entitled to enter Australia or be in Australia at any time during the period determined by the Regulations.

### *Comment*

These amendments place a non-citizen who has had their visa cancelled under s 501BA in the same position as a person who has had their visa cancelled under s 501, 501A or 501B. Cancellation and exclusion from future re-entry into Australia have been criticised by some excluded from re-entry).<sup>7</sup>

## Persons to be removed as soon as practicable after cancellation under s 501BA

### *What the amending Act will change*

The amending Act inserts a reference to s 501CA into paragraphs 198(2A) and 198(2B) of the Act. The effect of these amendments is that an immigration officer *must* remove from Australia, as soon as reasonably practicable, a non-citizen who:

- has had their visa cancelled under subsection 501(3A) and has been invited under s 501CA to make representations for revocation and who has not done so, or who has made representations, but the Minister has decided not to revoke the original decision; or
- has had their visa cancelled by a delegate of the Minister under s 501(3A) and has not lodged a valid application for another visa, and if they have been invited to make representations about revocation have either not done so, or have done so but the Minister has decided not to revoke the visa cancellation.

### *Comment*

The requirement for an immigration officer to remove a non-

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access to legal a  
judicial review will be delayed. As a consequence, this amendment is likely to lead to an  
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## Expanding the definition of ‘character concern’

*What the amending Act will change*

Under [s 336E of the Act](#), a non-  
under a cla  
disclosure includes a disclosure for the purposes of data-matching in order to identify non-  
under  
subparagraph 336E(2)(ec), disclosures are also permitted for the broader purpose of  
identifying non-citizens who have a criminal history or who are of character concern.

t to be

amended by the *Character Act*.

*Comment*

This amendment will significantly increase the cohort of persons whose identifying  
information can be disclosed on the basi  
would include, for example, a person who the Minister reasonably suspects is, or has been a  
member, of a group or organisation that is, or has been, involved in criminal conduct. The  
provisions are concerning because persons may have their identifying information disclosed,  
despite not having committed any crime.

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## Endnotes

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<sup>1</sup> See *Migration Act 1958* (Cth) s 501CA(3)(a)

<sup>2</sup> Ibid s 501CA(3)(b).

<sup>3</sup> Ibid s 500(1)(ba).

<sup>4</sup> [Explanatory Memorandum](#), *Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016*, 6.

<sup>5</sup> Parliamentary Joint Committee on Human Rights, [Thirty-fourth report of the 44th Parliament](#), 42.

<sup>6</sup> For example, before a decision is made by a delegate of the Minister to cancel on the basis that a person does not meet the character test under s 501, given an opportunity to make arguments about why the visa should be cancelled. If the visa is cancelled, the person is notified of the decision and their review rights: see *Migration Act 1958* (Cth) s 501G.

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<sup>7</sup> See eg, Michael Grewcock, [Punishment, deportation and parole: The detention and removal of former prisoners under section 501 Migration Act 1958](#) (2011) 44(1) *Australian & New Zealand Journal of Criminology* 56.

<sup>8</sup> Law Council of Australia, [Submission No 3 to the Senate into the Migration Amendment \(Character Cancellation and Consequential Provisions\) Bill 2016 \(Cth\)](#) (4 March 2016).