

# Refusals or Cancellation Under s 501: Information for Affected Individuals



## Section 501 of the *Migration Act 1958* – What it means for you

If you hold any Australian visa, permanent or temporary, or if you have applied for or intend to apply for an Australian visa, s.501 of the Act might affect you. This Fact Sheet will provide you with general information about the law.

S.501 of the Act means that your visa can be **refused** or **cancelled** because of what is broadly known as the 'character' test. It does not matter how long you have held your visa for, even if you came to Australia as a child, or if you were born here: *all* visa holders and visa applicants can be affected.

Receiving notice that your visa may be, or has been, refused or cancelled under s.501 can be distressing and overwhelming. It is crucial that you are informed about your options and your rights, because the consequences of refusal or cancellation are extremely serious. A refusal or cancellation under s.501 may:

- Result in *all* visas you hold or have applied for being considered refused or cancelled;
- Result in you becoming unlawful;
- Result in your immigration detention for extended periods of time;
- Result in your removal from Australia; and
- Prevent you from making an application for a visa, or entering Australia, in the future.

## What is the character test?

Broadly speaking, you may not pass the character test if:

- You have a **substantial criminal record** under the law. Most commonly, this means that you have been sentenced to a term or terms of imprisonment of 12 months or more, even if those terms are concurrent, periodic or suspended.
- You committed an offence relating to or during your immigration detention.
- It is suspected that either you, or an organisation, group or person that you may be associated with, may be involved in crimes of international concern, such as people smuggling or war crimes.
- Your conduct, past and present, leads the Minister to consider you are not of good character.
- There is a risk that your presence would be disruptive or threatening to the Australian community.
- You have been convicted or found guilty of sexually based offences involving a child.
- You have received an adverse ASIO assessment or are the subject of an Interpol notice.

See overleaf for specific details.

## What should I do if I am, or might be, affected?

You need to demonstrate to the decision-maker that either:

- You pass the character test, or
- There is another reason why your visa should not be cancelled.

The sooner you take action, the better. Taking action will enable you to prepare, gather information, and respond as fully as you can.

### **If you are worried about your situation due to your history, investigations, charges or convictions:**

- Seek advice from a reputable migration lawyer.
- Ensure your criminal lawyer, and the court, is aware of your migration status and the potential of s.501 to affect your future.
- Authorise your migration and criminal lawyers to work together. For example, an expert opinion on migration consequences may be relevant to a court's determination of sentence.
- Request a copy of your immigration file and your files from the Department of Justice and Regulation, from Corrections, Prisons and Parole Victoria, and any other relevant bodies.

### **If you have received correspondence from the Department regarding s.501:**

- Read the correspondence from the Department carefully, and ensure you understand it. In most cases, the Minister is obliged to give you particulars of the information relevant to the decision.
- Comply with the timeframes specified, or you may lose your opportunity for comment or review.
- Request a copy of your immigration file and your files from the Department of Justice and Regulation, Corrections, Prisons and Parole Victoria, and any other relevant bodies.
- Seek advice from a reputable migration lawyer. Your lawyer will tell you what types of evidence to gather and how to proceed, and they will liaise with the Department on your behalf.

**You should seek legal advice from a reputable immigration lawyer in all the situations described below at the earliest possible opportunity.**

If you are having financial difficulties, many private immigration law firms will consider taking your case on a pro bono or reduced fee basis. You can also contact Legal Aid Victoria, JusticeConnect, Refugee Legal, the Asylum Seeker Resource Centre, or Salvos Legal for referrals or assistance.

Scenario	Section	Outcome	Notes
You do not satisfy the Minister that you pass the character test – s.501(1).	501(1)	Possible refusal.	<ul style="list-style-type: none"> <li>You will be given an opportunity to comment prior to the decision.</li> </ul>
The Minister reasonably suspects you do not pass the character test, and you do not satisfy him that you do.	501(2)	Possible cancellation.	<ul style="list-style-type: none"> <li>You will be given an opportunity to comment prior to the decision.</li> </ul>
The Minister reasonably suspects you don't pass the character test and is satisfied that the decision is in the national interest.	501(3)	Possible refusal or cancellation.	<ul style="list-style-type: none"> <li>You will not be given an opportunity to comment prior to the decision, and you may not be given details of why the decision was made.</li> <li>You can request that the decision be revoked (meaning reconsidered). You must request revocation within 7 days of receiving notice of cancellation.</li> <li>If the Minister or Assistant Minister makes a personal decision <i>not</i> to revoke the cancellation, you will not have access to merits review. The decision can only be overturned if there was jurisdictional error.</li> </ul>
You do not pass the character test because of your substantial criminal record or conviction for sexually based offences regarding a child, and you are serving a full-time sentence of imprisonment.	501(3A)	Mandatory cancellation.	<ul style="list-style-type: none"> <li>You will not be given an opportunity to comment prior to the decision.</li> <li>You can request that the decision be revoked (meaning reconsidered). You must request revocation within 28 days of receiving notice of cancellation.</li> <li>If a delegate of the Minister makes a decision <i>not</i> to revoke the cancellation, you can appeal to the Administrative Appeals Tribunal.</li> <li>If the Minister or Assistant Minister makes a personal decision <i>not</i> to revoke the cancellation, you will not have access to merits review. The decision can only be overturned if there was jurisdictional error.</li> <li>If a delegate or the Tribunal decide to revoke your cancellation, the Minister can overrule that decision if he is satisfied that the cancellation is in the national interest.</li> </ul>
A delegate of the Minister or the Tribunal decides <i>not</i> to refuse or cancel your visa under s.501(1) or (2).	501A and B	The Minister can overrule that decision.	<ul style="list-style-type: none"> <li>If the Minister is satisfied that refusal or cancellation is in the national interest, he or she may personally refuse or cancel your visa.</li> <li>You can request that the Minister's decision be revoked (meaning reconsidered). You must request revocation within 7 days of receiving notice of cancellation.</li> <li>You will not have access to merits review. The decision can only be overturned by a court if there was jurisdictional error.</li> </ul>
A delegate of the Minister decides to cancel or refuse your visa under s.501(1) or (2).			
The Tribunal makes a decision in relation to application for or cancellation of a protection visa.	501J	The Minister can substitute a more favourable decision.	<ul style="list-style-type: none"> <li>If the Minister considers that it is in the public interest to do so, the Minister may set aside the Tribunal's decision and substitute a more favourable decision.</li> </ul>
If information about you resulting in possible refusal or cancellation has been supplied by law enforcement agencies or is confidential	503A	You may not be given relevant information.	