



**Australian Government**  
**Department of Home Affairs**

## Submission

For Decision  
PDMS Ref Number MS23-001623  
Date of clearance: 07/09/2023

**To** Minister for Immigration, Citizenship and Multicultural Affairs

**Subject** s. 47F(1) [REDACTED] – s501C(4) of the *Migration Act 1958* (the Act) - Consideration for revocation of the Minister's decision on 12 April 2021 to cancel s. 47F(1) [REDACTED] visa under s501(3) of the Act (without natural justice)

**Timing** s. 42(1) [REDACTED]  
[REDACTED]

### Recommendations

That you:

1. note that on 12 April 2021, the then Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs cancelled s. 47F(1) [REDACTED] Criminal Justice Stay visa under s501(3) of the Act without natural justice (cancellation decision) and s. 47F(1) [REDACTED] applied for revocation of that decision under s501C of the Act; noted/  
please discuss
2. having considered s. 47F(1) [REDACTED] representations, the draft Statement of Reasons, and other relevant material, decide whether to revoke or not revoke the cancellation decision, recording your decision on, and signing, the Decision Page at **Attachment 1**; revoke/not revoke
3. if you decided not to revoke the cancellation decision and you agreed with the reasoning set out in the draft Statement of Reasons at **Attachment 3**, sign it with any amendments you consider necessary; signed / not signed  
/please discuss
4. note that under s501C of the Act, a notice of your revocation or non-revocation decision must be tabled in Parliament within 15 sitting days after your decision. A notice for that purpose is included for your signature at **Attachment 5**; Signed  
please discuss
5. Note that regardless of your decision, s. 47F(1) [REDACTED] will remain in immigration detention as an unlawful non-citizen. However, the decision will affect s. 47F(1) [REDACTED] ability to apply for other visas; and noted  
please discuss

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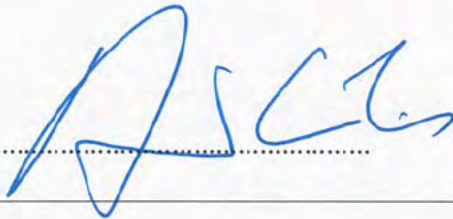
6.

s. 47E(d)

s195A / s197AB  
no submission  
required

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....



Date: 21/9/2023

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Minister Comments

Background

1. s. 47F(1) [redacted], first arrived in Australia on s. 47F(1) [redacted]. [redacted] has not left Australia since that date.
2. s. 47F(1) [redacted]
3. On 28 May 2015, a delegate cancelled s. 47F(1) [redacted] visa under s116(1)(e) of the Act. On 28 June 2016, the Administrative Appeals Tribunal (AAT) affirmed this decision. Both the delegate and AAT were satisfied that the presence of s. 47F(1) [redacted] in Australia was or may be a risk to the safety of the Australian community or a segment thereof. s. 47F(1) [redacted]
4. s. 47E(d)
5. s. 47E(d)
6. On 23 April 2021, s. 47F(1) [redacted] was notified of the decision. On 30 April 2021, s. 47F(1) [redacted] applied for revocation of the cancellation decision under s501C.
7. On 1 July 2021, the CJSC was cancelled under s162. s. 47F(1) [redacted] CISV would have ceased by operation of law under s164 at the same time, had it not already been cancelled.
8. On 24 March 2022, the Minister purported to not revoke the cancellation decision under s501C (purported non-revocation decision).
9. On 30 November 2022, the Federal Court of Australia (Federal Court) quashed the purported non-revocation decision and ordered the Minister to re-consider s. 47F(1) [redacted] revocation request according to law.

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10. s. 47F(1) has been in immigration detention since 23 April 2021 when s. 47F was notified of the cancellation decision. As a result of various prosecutions and subsequent visa cancellation, s. 47F(1) has been in either criminal or immigration detention for the majority of his time in Australia:

**S. 47F(1)**

### Operation of s501C – Revocation

11. Under s501C(3), a person whose visa has been cancelled under s501(3) must be invited to make representations about revocation of the cancellation decision. Section 501C(4) empowers you to revoke the cancellation decision if the person makes representations in accordance with the invitation (s501C(4)(a)) and the person satisfies you that they pass the character test (s501C(4)(b)).
12. As required by s501C(3), s. 47F(1) was invited to make representations within the prescribed period and in the prescribed manner. s. 47F(1) made representations in the prescribed manner and within the prescribed timeframe on 30 April 2021, in satisfaction of s501C(4)(a).
13. The condition in s501C(4)(b) is not met unless s. 47F(1) satisfies you that he passes the character test. Accordingly, it is not open for you to revoke the cancellation decision unless s. 47F(1) satisfies you that he passes the character test.
14. A decision under s501C(4) to not revoke the cancellation decision is not subject to merits review by the AAT. However, it would be open to s. 47F(1) to seek judicial review of such a decision in the Federal Court.
15. Matters that you may consider relevant to your decision on whether to revoke the cancellation decision are outlined in the draft Statement of Reasons at **Attachment 3**. An index of the relevant documents is at **Attachment 2** and copies of the relevant documents themselves are at **Attachment 4**.
16. s. 47F(1) representations about revocation are at **Attachment 4**. You should read and consider these in their entirety. A draft Statement of Reasons in respect of a decision to not revoke the cancellation decision is at **Attachment 3** for your consideration.
17. Please record your decision on, and sign, the Decision Page at **Attachment 1**. If you decide to not revoke and you agree with the draft Statement of Reasons at **Attachment 3**, please sign it with any amendments you consider necessary.
18. The draft Statement of Reasons has been provided for your consideration but it is open to you to be satisfied, after considering the relevant matters, that s. 47F(1) passes the character test and revoke the cancellation decision accordingly.

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19. Section 501C(8) requires you to cause notice of the making of the decision to either revoke or not revoke the cancellation decision to be tabled before both Houses of Parliament within 15 sitting days after the day on which your decision was made. A draft notice for tabling has been prepared for your signature at Attachment 5.

20.

**s. 42(1)**

21.

**s. 47C(1)**

22.

23.

24.

**s. 47E(d)**

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Consideration of whether s. 47F(1) passes the character test

25. The basis for the cancellation decision of 12 April 2021 was that the then Minister reasonably suspected that s. 47F(1) did not pass the character test because of s501(6)(d), which relevantly provides that:

*In the event the person were allowed to enter or to remain in Australia, there is a risk that the person would:*

*(i) engage in criminal conduct in Australia; ...*

26. Your power under s501C(4) to revoke the cancellation decision is not enlivened unless s. 47F(1) satisfies you that s. 47F(1) passes the character test.
27. As s. 47F(1) does not objectively fail the character test, it would be open for you to conclude that s. 47F(1) has satisfied you that s. 47F(1) passes the character test. It would also be open to you to conclude that s. 47F(1) has not satisfied you that s. 47F(1) passes the character test in s501, specifically s501(6)(d)(i).
28. While the matters relevant to your decision under s501C(4) are outlined in more detail in the draft Statement of Reasons at Attachment 3, the following highlights some of the key issues.

S. 47F(1)

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# s. 47F(1)

*Other representations*

70. s. 47F(1) claims it was unlawful for the Minister to rely on the 'national interest' power, which was not enlivened in his circumstances. Attachment I1.

71. s. 47F(1) [redacted]  
Attachments I1 and I2.

72. s. 42(1) [redacted]

73. s. 42(1) [redacted]

74. s. 42(1) [redacted]

75. Any reliance on the *Direction No. 99 Visa Refusal and Cancellation Under s501* in relation to the character test as prescribed by s501(6) will amount to jurisdictional error.  
Attachments I8.

# s. 42(1)

Consultation – Secretary/Commissioner

77. Nil.

Client service implications

78. Nil.

# s. 47C(1), s. 47F(1)

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**s. 47C(1)**

**s. 47F(1)**

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Attachments

Attachment 1 Decision Page

s. 42(1)

s. 47C(1)

s. 42(1)

Attachment 5 Notice for Tabling

s. 42(1)

Authorising Officer

Cleared by:

Meredith Byron  
Assistant Secretary  
Character and Cancellation Branch

Date: 7/9/2023

Ph s. 22(1)(a)(ii)

Contact Officer Meredith Byron, Assistant Secretary, Character and Cancellation Branch,  
Ph s. 22(1)(a)(ii)

Through

- CC Minister for Home Affairs, Minister for Cyber Security
- Secretary
- Commissioner
- Associate Secretary
- First Assistant Secretary, Status Resolution and Visa Cancellation Division
- Assistant Commissioner, Detention and National Removals
- Assistant Commissioner, East
- Commander, Detention Operations
- Commander, Enforcement and Detained Goods East
- Commander, Maritime and Enforcement South

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## Attachment 1

## DECISION BY A MINISTER UNDER S501C OF THE MIGRATION ACT 1958

The following is my decision under s501C of the *Migration Act 1958* (the Act) in relation to the decision under s501(3) of the Act to cancel s. 47F(1) Criminal Justice Stay visa (cancellation decision).

(Please circle the option you select)

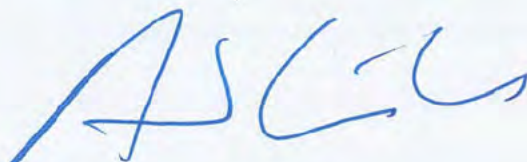
**Revocation outcome**

(a) s. 47F(1) has made representations, in accordance with the invitation given to s. 47F(1) under s501C(3), about revocation of the cancellation decision in accordance with the invitation and s. 47F(1) has satisfied me that s. 47F(1) passes the character test. Accordingly, the power in s501C(4) of the Act is enlivened and I revoke the decision to cancel s. 47F(1) Criminal Justice Stay visa.

OR

**Non-revocation outcome**

(b) s. 47F(1) has made representations, in accordance with the invitation given to s. 47F(1) under s501C(3), about revocation of the cancellation decision and s. 47F(1) has not satisfied me that s. 47F(1) passes the character test (as defined by s501, specifically paragraph 501(6)(d)(i)). Accordingly, the power in s501C(4) of the Act is not enlivened and the decision to cancel s. 47F(1) Criminal Justice Stay visa stands. My reasons for this decision are set out in the attached Statement of Reasons.



THE HON ANDREW GILES MP

Minister for Immigration, Citizenship and Multicultural Affairs

Date: 21/9/2023

**Notice of the making of a decision under section 501C of the *Migration Act 1958***

Acting under section 501C of the *Migration Act 1958*, I have today **revoked** / not revoked a decision made under section 501(3) of the *Migration Act 1958*.



THE HON ANDREW GILES MP

Minister for Immigration, Citizenship and Multicultural Affairs

Date: 21 9 2023