



Commonwealth of Australia

Migration Act 1958

**NEGATIVE PERSONAL PROCEDURAL DECISION
(SECTION 351)**

I, TONY BURKE, Minister for Immigration and Citizenship, consider that:

- a large number of requests for Ministerial intervention under section 351 of the *Migration Act 1958* (Act), or s 417 as it stood prior to 14 October 2024, have been impacted because of the practice that the High Court of Australia in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs; DCM20 v Secretary of Department of Home Affairs* [2023] HCA 10 held to be beyond the executive power of the Commonwealth; and
- identifying and dealing with those requests on a case-by-case basis would involve an unwarranted use of Commonwealth resources; and
- it is not feasible in any event for me or any other Minister to give personal attention to those requests, having regard to our other responsibilities; and
- I intend to issue new instructions for my Department to apply when assisting Ministers in exercising their power under section 351; and
- a person who is adversely affected by this decision, and wishes to have a Minister make a decision under section 351, could make a new request for such a decision subject to those instructions as in force from time to time.

Therefore, exercising my power under subsection 351(1) of the Act and acting in the public interest, I decide that I will not consider whether it is in the public interest to substitute a more favourable decision for a decision of the Administrative Appeals Tribunal in relation to any request for Ministerial intervention if:

- (a) the Department received the request before 12 April 2023; and
- (b) a Minister has not, on or before the date of this decision, decided to consider, or not to consider, whether it is in the public interest to substitute a more favourable decision under subsection 351(1) or former subsection 417(1) of the Act; and
- (c) the request was not made by or on behalf of a person identified in the annexure to this decision.

Dated

4.9.25

Signed

HON. TONY BURKE MP
Minister for Immigration and Citizenship



Commonwealth of Australia

Migration Act 1958

**NEGATIVE PERSONAL PROCEDURAL DECISION
(SECTION 501J)**

I, TONY BURKE, Minister for Immigration and Citizenship, consider that:

- a number of requests for Ministerial intervention under section 501J of the *Migration Act 1958* (Act) have been impacted because of the practice that the High Court of Australia in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs; DCM20 v Secretary of Department of Home Affairs* [2023] HCA 10 held to be beyond the executive power of the Commonwealth; and
- identifying and dealing with those requests on a case-by-case basis would involve an unwarranted use of Commonwealth resources; and
- it is not feasible in any event for me or any other Minister to give personal attention to those requests, having regard to our other responsibilities; and
- I intend to issue new instructions for my Department to apply when assisting Ministers in exercising their power under section 501J; and
- a person who is adversely affected by this decision, and wishes to have a Minister make a decision under section 501J, could make a new request for such a decision subject to those instructions as in force from time to time.

Therefore, exercising my power under subsection 501J(1) of the Act and acting in the public interest, I decide that I will not consider whether it is in the public interest to substitute a more favourable decision for a decision of the Administrative Appeals Tribunal in relation to any request for Ministerial intervention if:

- (a) the Department received the request before 12 April 2023; and
- (b) a Minister has not, on or before the date of this decision, decided to consider, or not to consider, whether it is in the public interest to substitute a more favourable decision under subsection 501J(1); and
- (c) the request was not made by or on behalf of a person identified in the annexure to this decision.

Dated

4. 9. 25

Signed

HON. TONY BURKE MP
Minister for Immigration and Citizenship