

Information for People Applying for Release into Community Detention (s 197AB)

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Who is this Infosheet for?

This Infosheet gives a brief overview of the provisions and laws in the *Migration Act 1958* (Cth) for people who wish to apply to be released from a detention centre in Australia into community detention (called a 'residence determination'). This may be relevant if you are considered to be a 'transitory person' (ie you were brought to Australia from an Offshore Processing Centre in PNG or Nauru to receive medical treatment) and it may also be relevant to other people held in an Australian detention centre. This Infosheet is not to be used as a substitute for individual legal advice.

IMPORTANT

- **If you are currently detained in immigration detention centre or detention hotel in Australia, (including if you have been brought to Australia from an Offshore Processing Centre in PNG or Nauru), you may be able to apply for a residence determination to live in community detention.**
- **The Minister is under no duty to consider your request for a residence determination but there is no harm in trying.**
- **The ASRC may be able to provide you with legal advice. If you are in immigration detention, you can contact us by emailing legal@asrc.org.au or calling our Legal Triage Helpline. If the line is busy, please keep trying:**

Legal Triage Helpline: 0478 700 605 – available Mondays & Thursdays from 10:30am to 12:00pm

What is a residence determination?

A residence determination (otherwise known as 'community detention') is a decision that can only be made by the Minister to **allow a person in immigration detention to be released on condition that they follow certain conditions, including that they reside at a specified address in the community.** It is important to note that **a residence determination is NOT a visa, and those living in the community under a residence determination are still considered to be in immigration detention.** However, aside from living at the specified address, people in community detention are generally free. For example, no guards stay at their houses and they are free to move around in the community as they wish, as long as they continue to live at the specified address.

In order to be eligible for a residence determination, you must currently be in immigration detention.

The Minister has the power to make residence determinations under s 197AB of the *Migration Act*. **The Minister must be satisfied that it would be in the public interest to grant a residence determination** to a person or group of persons (such as a family unit). A residence determination can only be made by the Minister personally, not by the Department or an Australian court or tribunal. **The Minister does not have a duty to make a residence determination or even to consider a request for a determination.**

If, instead of community detention, you wish to be released from closed detention onto a visa, you can make a request under s 195A of the *Migration Act*. For more information on these requests, see our **‘HRLP Infosheet - Information for People Applying for Visas from Immigration Detention (s 195A)’**. You should consider your personal circumstances and obtain legal advice to determine whether a request for a residence determination or a request for a Bridging visa is most appropriate in your circumstances. Often the Minister will automatically consider both options, even if you request one or the other. Given how difficult it is to be released from closed immigration detention, most people are happy if the Minister decides to provide them with either as both result in the person’s release from closed detention.

What sort of conditions are attached to a residence determination?

Since a residence determination is a form of immigration detention, there are restrictions on what you can and can’t do while living in the community.

Generally, those in community detention are not under physical supervision by Australian law enforcement or border authorities, meaning there are no guards and people can move in the community freely. However, there may be certain conditions attached, which may involve reporting to the authorities on a regular basis, having to sleep at a particular residence each night, or curfews.

People living under a residence determination do not have work or study rights, meaning they are not permitted to work or study while in community detention.

Additionally, people living under a residence determination do not have access to Medicare, although they can still receive medical treatment but it is arranged through the Department as necessary.

Depending on their circumstances, **those in community detention may be able to access payments and support through the Status Resolution Support Service (SRSS)**. For people in community detention the SRSS will usually provide free housing, access to healthcare and counselling, and schooling for children under 18. People in need of support often see this as better than a Bridging Visa where a person is usually not eligible for free housing or any payments and must support themselves.

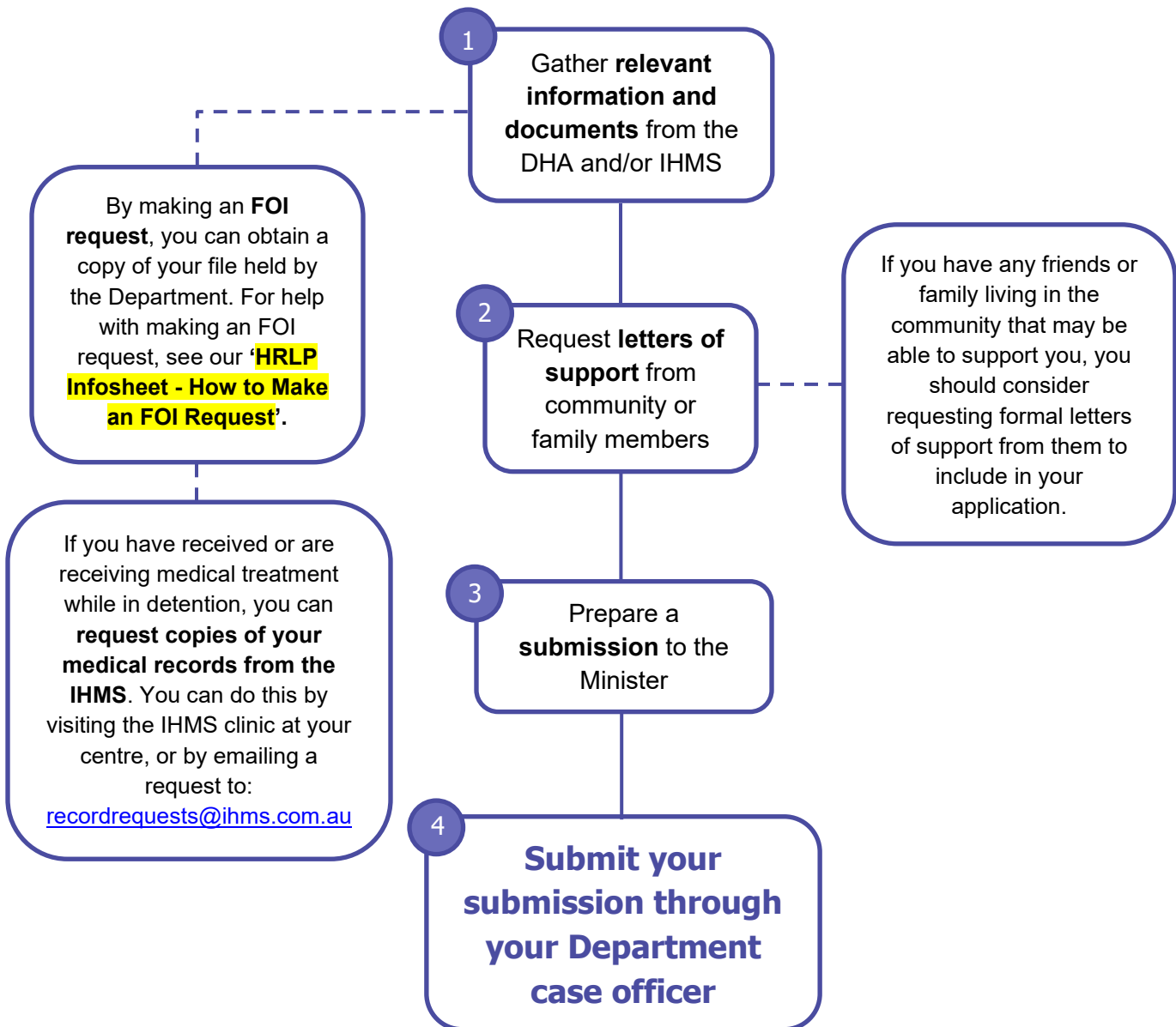
How do I apply for a residence determination?

The Minister is under no obligation to consider your case, so it is important to only submit a request that contains all of the necessary information.

You can obtain independent legal advice to assist you with your application for a residence determination.

The following page contains a diagram outlining the major steps in applying for a residence determination. It should not be used as a substitute for legal advice on the actual application process.

How to Apply for a Residence Determination



How do I make a Freedom of Information (FOI) request with the Department?

Making an FOI request to obtain a copy of your file is an **important part of your application**. By doing so, you can access and submit documents that support or substantiate the reasons why you should be released into community detention, such as any communication you've had with the Department or the details of any medical treatment you have received or are receiving.

There are **three ways to make an FOI request**. You can either:

- **Complete the online form**: you can submit an FOI request by using an online form on the Department's website. You can access the online form at the following link: <https://www.homeaffairs.gov.au/help-and-support/departmental-forms/online-forms/foi>; OR
- **Fill out and lodge Form 424A – 'Request for access to documents or information'**: you can also submit an FOI request by filling out Form 424A, and then lodging it with the Department. You can access Form 424A at the following link: <https://immi.homeaffairs.gov.au/form-listing/forms/424a.pdf>; OR
- **Email the Department directly with your request**: you can email the Department directly at foi@homeaffairs.gov.au with your request.

Once you've submitted an FOI request to the Department, the Department is usually required to make a decision on your request within 30 days. If the Department does not make a decision within that timeframe, you might be able to lodge an appeal with the Office of the Information Commissioner.

How do I obtain copies of my medical records from IHMS?

IHMS is the organisation contracted by the Government to provide healthcare and medical assistance to those in immigration detention. If you are applying for a residence determination because you have a serious illness, medical condition or disability, then obtaining copies of your medical records from IHMS can help to support your application.

You can request copies of your medical records by either:

- **Visiting the IHMS clinic at your detention centre**: speak with the IHMS staff at your immigration detention centre and request copies of your medical records; OR
- **Email the IHMS to request your medical records**: you can email the IHMS at recordrequests@ihms.com.au with your request.

How do I obtain letters of support for my application?

If you have family members or contacts in the Australian community that may be able to support your application, you may wish to obtain written letters of support from them. Depending on your circumstances, you may wish to obtain letters of support to:

- Provide further information for the reasons why you think you should be released into community detention;
 - This may include reports from any healthcare or social workers who have helped you, such as doctors, psychologists, or counsellors.
- Explain who you intend to stay with and receive support from should you be released into community detention (e.g. family, friends, community members).

How do I lodge my request with the Minister?

All requests for a residence determination must be made to the Minister by the Department of Home Affairs. You are not able to lodge a request with the Minister directly.

You should speak with your Department (Status Resolution) case officer about wanting to submit a request for a residence determination. Once it is ready you should provide your request and supporting documentation to your Department (Status Resolution) case officer. If you do not know who your Status Resolution case officer is, you should make a written request to meet with them via a detainee request form which you can request from any Serco guard or immigration detention officer.

It is important to note that even if the Department submits your request to the Minister on your behalf, the Minister is not under any duty to consider or grant your request. You should receive an outcome on your request informing you whether it has been referred to the Minister and if so, the Minister's decision.

Disclaimer: This fact sheet provides general information to people seeking asylum in Australia through the onshore protection visa application process according to the law in July 2021. This fact sheet is not legal advice. You should not rely on this fact sheet to make decisions about your immigration matter. We strongly recommend that you get independent advice from a qualified legal practitioner or a registered migration agent. For information please visit: <https://www.mara.gov.au>.

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