

Information for People Seeking Ministerial Intervention for Release from Detention (s 195A)

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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 transitory persons wishing to request a visa to be released from immigration detention. This Infosheet is not to be used as a substitute for individual legal advice.

IMPORTANT

- If you are currently in an immigration detention centre or other detention place, you can request that the Minister grant you a visa under s 195A of the *Migration Act 1958* so you can be released.
- Where the Minister decides to grant a detained person a visa, it is usually a bridging visa for a set period of time.
- The Minister is under no duty to consider your request for a visa under s 195A.
- 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 powers does the Minister have to grant me a visa?

Under s 195A of the *Migration Act 1958*, the Minister has the power to grant a visa to a person in detention if it would be in the public interest. This power can only be exercised by the Minister personally, not by the Department or an Australian court or tribunal. The Minister does not have a duty to consider a request for a visa under s 195A.

It is most likely that you will be considered for a Bridging Visa E for a finite period of time. A Bridging Visa is a temporary visa that allows you to lawfully remain in the Australian community. Sometimes the visa will be granted on the basis that you are making arrangements to settle in another country or making arrangements to leave Australia. This visa will remain valid until a specified date (usually for six or 12 months), but will also end if you leave Australia, or if your visa is cancelled by the Department.

The Minister also has the power to make residence determinations, which is a decision that allows a person in immigration detention to live in the community whilst remaining in detention (also known as 'community detention'). For more information on making a request for a residence determination, see our '[HRLP Infosheet - Information for People Applying for Community Detention \(s 197AB\)](#)'. You

should consider your personal circumstances and obtain legal advice to determine whether a request for a Bridging Visa or a request for a residence determination is most appropriate in your circumstances. You can request that the Minister consider both options and often the Minister automatically considers both options.

What do I need to know if I am granted a Bridging Visa?

As with any visa, a Bridging Visa comes with restrictions on what you can and can't do while living in Australia. Depending on your circumstances, your Bridging Visa may come with certain conditions that you have to comply with.

You may be able to work and study while on your Bridging Visa. If you were not granted work rights when your initial application was granted, you may be able to apply for a new Bridging Visa that *does* come with work rights at a later date. **If you work without having work rights, the Department may cancel your visa and place you in immigration detention. Depending on your circumstances, this could then lead to you being removed from Australia.**

You may be able to access Medicare while on your Bridging Visa. This will depend on whether or not you have been granted work rights. You may also be able to receive support from the Status Resolution Support Services (SRSS) program, however only a very small number of people released from detention onto bridging visas are granted SRSS. Those who are eligible for SRSS may be able to receive financial support, access to free accommodation, counselling, and other services. However most people released from detention onto a bridging visa are granted work rights and Medicare, but are then expected to support themselves.

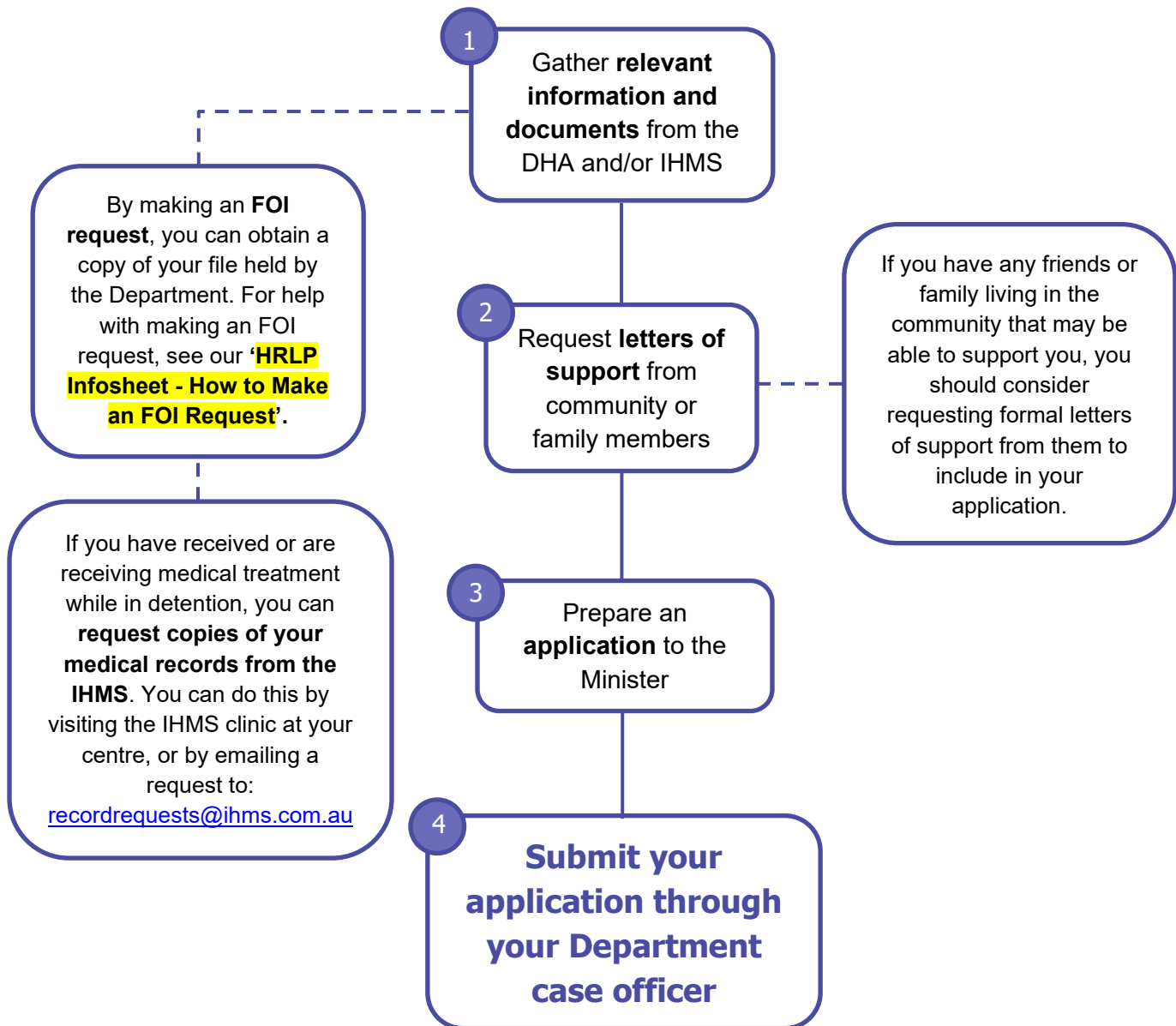
If you are granted a Bridging Visa, it will not automatically renew once it expires. You should seek legal advice to apply for another Bridging Visa at least one month before your current visa expires. If you do not apply for a renewal of your visa before it expires, you may be prevented from making another application.

How do I request that the Minister grant me a visa?

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 request to the Minister.**

The following page contains a diagram outlining the major steps in applying for the Minister to consider granting you a Bridging Visa from detention. It should not be used as a substitute for legal advice on the actual application process.

How to Request that the Minister grant a visa



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 granted a Bridging Visa, such as any communication you've had with the Department or the details of any medical treatment you've 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 Bridging Visa 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 support or further information for the reasons why you think you should be granted a Bridging Visa;

- This may include reports from any healthcare or social workers you have received help from, such as doctors, psychologists, or counsellors.
- Explain who you intend to stay with and receive support from should you be granted a Bridging Visa (e.g. family, friends, community members)

How do I lodge my application with the Minister?

All requests for the Minister to consider granting a Bridging Visa under s 195A 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 Bridging Visa under s 195A of the *Migration Act*. Once your submission and supporting documentation is ready, you should submit them 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 application to the Minister on your behalf, the Minister is not under any duty to consider or grant your application.

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>.

Date: 12 July 2021