

Ministerial Intervention (s 417, s 48B)

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Who is this Infosheet for?

This Infosheet provides an overview of the personal powers of the Minister for Home Affairs ('the Minister') to intervene in your immigration matter. These powers come from section 417 and section 48B of the *Migration Act 1958* (Cth). This process is known as 'ministerial intervention', and will only be exercised by the Minister in the most exceptional cases.

IMPORTANT

- **If your Protection Visa application is rejected by the Administrative Appeals Tribunal (AAT), you can make a request to the Minister for Home Affairs ('the Minister') to intervene in your case to grant you the visa (s 417) or allow you to apply for another Protection Visa (s 48B).**
- **The Minister may intervene where:**
 - You can demonstrate unique and exceptional circumstances that justify the Minister intervening; OR
 - There is new and significant evidence that supports your claim for protection that you did not have before.
- **You should make sure you remain lawful while awaiting for a decision from the Minister, by applying for a Bridging Visa.**

What is ministerial intervention?

The Minister can intervene in your case under s 417 of the *Migration Act* and grant you a permanent visa, including a Protection visa or another category of visa. If you request that the Minister intervenes under s 417, your case must have been to the AAT.

The Minister can also intervene in your case under s 48B of the *Migration Act* if there is significant new information of relevance to your case that was not presented in your first Protection visa application. This option is also open to those who have not been to the AAT (such as those who missed their AAT application deadline or whose cases were decided by the Immigration Assessment Authority (IAA)).

If the Minister intervenes under this section it means the Minister believes that this new information shows reasons that may mean you are in need of protection and so you should be allowed to apply again. If the Minister intervenes under this section you can reapply to the DHA for a Protection visa and start the whole process again.

Those who have been to the AAT can make a request to the Minister under s 417 and s 48B of the *Migration Act* at the same time, but you should carefully consider which intervention power is most relevant to your circumstances.

What will the Minister consider?

Ministerial intervention under s 417 of the Migration Act:

The Minister can intervene in your case if satisfied that it is in the “public interest” to do so. The Minister has a set of guidelines that outline the relevant considerations. You can find the list of unique and exceptional circumstances the Minister would consider here (scroll down to ‘Unique or exceptional circumstances’):

<https://immi.homeaffairs.gov.au/what-we-do/status-resolution-service/ministerial-intervention>

In general, the Minister will consider the following factors when considering your case:

- Strong compassionate circumstances that if not recognised would result in serious, ongoing and irreversible harm or hardship to an Australian citizen or family unit.
- Compassionate circumstances regarding your age/health/psychological state that could result in irreparable harm and continuing hardship to you if they fail to be recognised.
- Exceptional economic, scientific, cultural or other benefit if you can remain in Australia.
- Due to circumstances outside of your control, you cannot be returned to your country of citizenship.
- Other unusual or exceptional circumstances that make your case fall outside the legislation that applied to your original visa application.

Intervention under s 48B of the Migration Act:

Usually, you can only apply for a Protection Visa once. If you ask the Minister to consider intervening under s 48B of the *Migration Act 1958* (Cth), the Minister will consider whether there is important new information in your case that means that you should be allowed to apply again to the DHA for a Protection Visa.

What should I include with my request?

- **Any new information about your refugee claims:** this is the most important part of your request
- **Information about any risks to you if you return home:**
 - Medical and psychiatric/psychological information;
 - Your personal circumstances which place your security at risk if you return home; and
 - Evidence to support these things.
- **Character references:** including letters of support and employment references.

- **Evidence of integration in Australia:**

- Information about your employment/education background and any special skills you have;
- Information about volunteer work, involvement in church or community groups;
- Information about family members in Australia;
- Information about club society memberships;
- Evidence of enrolment of children in the Australian education system; and
- Information about how long you have been in Australia.

- **Statutory declaration:** made by you explaining in as much detail as you can information about the things the Minister will consider.

You should provide as much information as possible. The Minister's decision will be made on the basis of the information you have provided. You should get as much information to the Minister as you can when you apply, but you can continue to send information to the Minister up until a decision is made.

What happens to my Bridging Visa?

Your Bridging Visa will not automatically renew if you have applied for ministerial intervention. You should make sure you apply for another Bridging Visa before your existing visa expires. This will allow you to remain in Australia lawfully. There are some circumstances in which you may not be eligible for a Bridging Visa while awaiting an outcome on your request to the Minister. You should seek legal advice about your options.

Can I apply to the Minister more than once?

You can apply to the Minister more than once but the Minister will not usually personally reconsider your case unless there is significant new information. You should try to make sure your first request is as detailed and thorough as possible.

The DHA does not have to wait until a decision is made on any subsequent requests to ask you to depart Australia.

What are the possible outcomes of a request to the Minister?

If you are successful you will be granted a visa to remain in Australia (under s 417) or you will be given the chance to go back to the start of the process and apply for a Protection visa again (under s 48B).

If unsuccessful you will be asked to make arrangements to depart Australia as you will have exhausted all of your immigration options in Australia. You should seek legal advice about your options if you have already made a request for ministerial intervention.

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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