



Ministerial Intervention Practice and Procedure Resource Handbook

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Ministerial Intervention Practice and Procedure Resource Handbook

This Handbook is a practice oriented guide for people who are not registered migration agents to provide advice and assistance regarding Ministerial intervention requests under s417 and s48B of the Migration Act 1958. The information contained in this guide represents the law and procedures as they are at 1 August 2006. While every effort has been made to ensure that the information in this guide is free from error and/or omissions, the law is complex and constantly changing. We advise readers to consult current legislation and seek further information when faced with specific problems. This guide should not be used as a substitute for legal advice.

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FOUNDATION

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^{NSW}
YOUNG LAWYERS

Allens Arthur Robinson

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Abbreviations

BV	Bridging Visa
DIMA	Department of Immigration and Multicultural Affairs
FC	Federal Court
FMC	Federal Magistrates Court
FOI	Freedom of Information
FPV	Further Protection Visa
HC	High Court
MARA	Migration Agents Regulation Authority
MIA	Migration Institute Association
MRT	Migration Review Tribunal
MSI	Ministerial Series Instructions
PAM	Procedures Advice Manual (DIMA policy publication)
PPV	Permanent Protection Visa
PV	Protection Visa
PVPM	Protection Visas Procedures Manual (DIMA policy publication)
RACS	Refugee Advice and Casework Service
RMA	Registered Migration Agent
RRT	Refugee Review Tribunal
TPV	Temporary Protection Visa
THV	Temporary Humanitarian Visa
The Act	Migration Act 1958 (Cth)
The Regulations	Migration Regulations 1994 (Cth)

1.0 Overview of the RACS Ministerial Legal Clinic

1.1 Introduction to RACS

About RACS – Information for clients

RACS Leaflet (includes map)

Referral Sheet #1 RACS Legal Referral Sheet

Referral Sheet #2 RACS Non Legal Referral Sheet

Referral Sheet #3 RACS Ministerial Intervention assistance (Ministerial Legal Clinic)

RACS Information Sheet #1 Information on assistance offered by RACS

RACS was originally set up as a Victorian-based entity in May 1988 and is now based and incorporated in New South Wales. RACS provides a comprehensive refugee legal service.

RACS provides free legal services for asylum and refugees including:

- Comprehensive case work for onshore asylum seekers in the community and in detention
- Comprehensive advice and some case work assistance for eligible offshore refugee and humanitarian applicants through some migrant resource centres
- Immigration legal advice (Monday evening advice service for face to face appointments)
- Ministerial Legal Clinic (Tuesday evening assistance service for face to face appointments)
- Telephone legal advice
- Referrals
- Community legal education
- Community information sessions

RACS advice and referral areas

RACS provides legal advice on refugee and humanitarian matters including the following: onshore protection visa applications at Department of Immigration and Multicultural Affairs (DIMA) and Refugee Review Tribunal (RRT) stage, offshore refugee applications and family reunion, ministerial requests, complaints against migration agents, applying for bridging visas, review applications in relation to bridging visas to the Migration Review Tribunal (MRT), freedom of information requests, Ministerial waivers, protection visa cancellations, refusals based on character requirements, Article 1F Exclusion from the Refugee Convention, visa conditions for protection visas and humanitarian visas, and some immigration Administrative Appeals Tribunal matters.

RACS provides referrals but not advice on: judicial review applications and processes, complaints against DIMA in relation to matters such as privacy, detention conditions, non refugee immigration advice such as advice on mainstream visas, litigation for asylum seekers/refugees seeking to litigate non visa matters relating to visa processing, detention, and welfare matters.

1.2 Introduction the Ministerial Legal Clinic (MLC)

The Minister for Immigration and Multicultural Affairs has the power to substitute a more favourable decision for the decision of the Refugee Review Tribunal under s417 of the Migration Act ('the Act'). The Minister also has the power under s48B of the Act to allow a person to lodge a second protection visa application. About 5% of the 3000-4000 requests each year for Ministerial intervention result in visas. The Ministerial intervention stage is the last opportunity for asylum seekers to have their claims and experiences considered, yet at present there are very few avenues for assistance in making these requests. In addition people seeking the Minister's intervention are not eligible for the permission to work unless the request has been referred to the Minister's office for personal consideration, and the person has a compelling need to work. The overwhelming majority of people seeking the Minister's intervention have no income, and are reliant upon charities, friends and family for financial survival.

It is critical that Ministerial intervention requests are correct and complete in their claims for a number of reasons:

- Asylum seekers may have had no or poor immigration assistance in the visa application process.
- This request may often be the first time a person has put forward their full claims.
- This request is the first opportunity for Australia's obligations not to refole on basis of the *International Convention on Civil and Political Rights* and the *Convention Against Torture* to be considered.
- This request is the first opportunity for consideration of other key international convention obligations such as obligations under the *Convention on the Rights of the Child*.

The objects of the MLC are to:

- expand RACS capacity for the provision of legal assistance to people making requests to the Minister;
- facilitate complete and accurate claims before the Minister for consideration;
- provide a holistic service of legal and non legal referrals to clients;

Assistance is currently limited to clients in the community, future expansion may include assistance for clients in detention.

1.3 Supervision

The RACS Nominated Person to supervise and check all advice and assistance provided by volunteers for this Project is Louise Boon-Kuo, who is a lawyer and registered migration agent.

RACS policy for supervision of MLC assistance includes the following:

- All advice must be checked by the RACS Nominated Person before the client leaves the RACS office.
- All advice must be checked within 24 hours by RACS Nominated Person.
- All advice and assistance provided to clients must be at RACS offices.
- Request letters must be checked by RACS Nominated Person prior to being handed to the client.

- Supervision and support for ongoing casework is the responsibility of the Nominated Person at RACS.
- All immigration assistance outside the provision of advice and assistance on s417 and s48B requests is provided by the registered migration agent Supervisor.

1.4 Restrictions on assistance provided by people whom are not registered as migration agents

Restrictions on assistance provided by people whom are not registered migration agents

The main sections which regulate the provision of immigration assistance are sections 280 and 276. We set out in detail below which activities non registered persons are permitted to undertake through the RACS MLC Project. It is imperative that you assist only in those activities set out below. If in doubt as to whether an activity constitutes immigration assistance please discuss this with the RACS Supervisor.

The legislation

MIGRATION ACT 1958 - SECT 280

Restrictions on giving of immigration assistance

(1) Subject to this section, a person who is not a [registered migration agent](#) must not give immigration assistance.

Penalty: 60 penalty units.

Note: See also paragraph 504(1)(ja) (which deals with the payment of penalties as an alternative to prosecution).

(1A) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see [section 6.1](#) of the Criminal Code .

...

(5) This section does not prevent an individual from giving immigration assistance of a kind covered by subsection 276(2A) if the assistance is not given for a fee or other reward.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see [subsection 13.3\(3\)](#) of the Criminal Code).

...

MIGRATION ACT 1958 - SECT 276

Immigration assistance

(1) For the purposes of this Part, a person gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, [migration procedure](#) to assist a [visa applicant](#) or [cancellation review applicant](#) by:

- preparing, or helping to prepare, the [visa](#) application or [cancellation review application](#); or
- advising the [visa applicant](#) or [cancellation review applicant](#) about the [visa](#) application or [cancellation review application](#); or
- preparing for proceedings before a court or [review authority](#) in relation to the [visa](#) application or [cancellation review application](#); or

- (d) representing the [visa applicant](#) or [cancellation review applicant](#) in proceedings before a court or [review authority](#) in relation to the [visa](#) application or [cancellation review application](#).
- (2) For the purposes of this Part, a person also gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, [migration procedure](#) to assist another person by:
 - (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a [visa applicant](#) for the purposes of the regulations; or
 - (b) advising the other person about nominating or sponsoring a [visa applicant](#) for the purposes of the regulations; or
 - (c) representing the other person in proceedings before a court or [review authority](#) that relate to the [visa](#) for which the other person was nominating or sponsoring a [visa applicant](#) (or seeking to nominate or sponsor a [visa applicant](#)) for the purposes of the regulations.
- (2A) For the purposes of this Part, a person also gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, [migration procedure](#) to assist another person by:
 - (a) preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or
 - (aa) preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or
 - (b) advising the other person about making a request referred to in paragraph (a) or (aa).
- (3) Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:
 - (a) does clerical work to prepare (or help prepare) an application or other document; or
 - (b) provides translation or interpretation services to help prepare an application or other document; or
 - (c) advises another person that the other person must apply for a [visa](#); or
 - (d) passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.
- (4) A person also does not give immigration assistance in the circumstances [prescribed](#) by the regulations.

Provision of assistance by RACS MLC Non Registered Agent volunteers

Volunteers who are not registered migration agents must not provide immigration assistance other than in relation to s417 requests and s48B requests. This also means that volunteers who are not registered migration agents must not provide advice or assistance in relation to any visa applications, including Bridging Visas, nor in relation to migration procedure outside s417 and s48B request procedure.

All such queries must be directed to the Supervisor. Volunteers who are not registered migration agents must not provide advice or provide assistance outside the clear set of activities provided below.

Volunteers who are not registered migration agents are required to sign an undertaking which states a commitment to undertake only specified activities.

1.4.1 Section 417 requests

Background - Assistance by non registered migration persons with s417 requests

Section 276(2A) of the Act defines immigration assistance to include preparing or helping to prepare a section 417 request to the Minister, or advising a person in relation to the making of a request. In general s280 of the Act provides that immigration assistance must not be provided by non registered persons. However s280(5) of the Act sets out an exception which allows an individual to provide immigration assistance 'of a kind covered by subsection 276(2A)' provided this assistance is given without a 'fee or other reward.'

RACS MLC Project: restrictions on s417 assistance by non registered persons

In the RACS MLC Project, a non registered migration person may provide assistance to a person in making a s417 request provided that:

- There is sufficient connection between the type of assistance provided and the making of a s417 request. Preparing and helping to prepare the request and providing advice on the making of the request are specifically included in s276(2A) of the Act and so have sufficient connection. In practice, these activities would involve preparing a request in accordance with the criteria listed in the Ministerial public interest guidelines MSI 386, which might require providing assistance such as researching country information, reviewing and providing advice on evidence, reviewing the primary and review stage protection visa application and supporting documents. These activities would also involve providing advice on the merits of the s417 request in relation to the Ministerial Guidelines, and advice on the Department of Immigration and Ministerial procedure in processing s417 requests.
- This activity is provided without fee or reward.

1.4.2 Section 48B requests

Background - Assistance by non registered migration persons with s48B requests

While s276 of the Act is silent in relation to whether providing assistance in making a request under s48B of the Act to the Minister constitutes immigration assistance, our view is that non registered migration agents are permitted to provide advice on s48 requests and prepare s48B requests in the circumstances set out below.

Assistance by non registered persons in s48B requests may be permitted on the following basis:

- A request under s48B of the Act is not a visa application, it is a request to the Minister to exercise a statutory power which is not connected to a grant of a visa. Thus the provision of advice and the preparation of a s48B request falls outside the meaning of immigration assistance in s276(1), and thus outside the s280(1) rule prohibiting the provision of immigration assistance by non registered persons.
- Section 48B is not included in the express list of Ministerial discretionary powers in s276(2A). This subsection provides a closed list of Ministerial requests where the provision of advice and

assistance would be considered to be immigration assistance. Thus a s48B request falls outside the meaning of immigration assistance in s276(2A).

- Alternatively, if a s48B request is interpreted as falling within s276(2A), the s280(5) exception would apply so that assistance could be provided by non registered persons provided this is not provided for a fee or reward.

RACS MLC Project: restrictions on s48B assistance by non registered persons

In the RACS MLC Project, a non registered person may:

- Undertake activities such as reviewing the client's protection visa application, review application and judicial review application, take instructions in relation to matters arising from these documents and in relation to new information in relation to the client's protection claims and prepare a s48B request to the Minister.
- Provide advice to the client as to the Departmental and Ministerial procedure in processing s48B requests.
- Provide advice in relation to the merits of that new information provided this advice is *strictly* confined to the merits of a s48B request. In these circumstances the *Policy Advice Manual* Guidelines in relation to s48B should be utilised in providing advice on the merits of new information.
- A non registered person may *not* provide any advice in relation to migration procedure should the s48B request be granted by the Minister, as this would constitute advice in relation to a visa application. However the non registered person may hand the client the RACS information sheet on the refugee determination procedure, and go through this sheet with the client provided no substantial comment or explanation of the information is provided, this is permitted by s276(3). If a client asks questions about migration procedure should the s48B request be accepted and a visa application subsequently be lodged, those questions should be answered only by a registered migration agent.
- This assistance is to be provided without fee or reward.

1.5 The Role of Volunteer Lawyers and Students

The MLC involves lawyers and assistants working in teams of two to three in preparing these requests. The basic roles for the lawyer and assistant are as follows:

Role of Lawyer

- Take instructions from client
- Prepare statements as required
- Provide advice on s417 and s48B requests
- Draft and finalise the request to the Minister
- Liaise with RACS
- Provide legal and non legal referrals

Role of Assistant:

- Assistants to work together in groups of two
- Alternate attendance in client meetings
- Manage the file
- Photocopying as required
- Country and legal research
- Proofread request to the Minister

1.6 Volunteer undertakings

RACS requires that all volunteers sign a Confidentiality agreement. In each appointment with your client you must reiterate the confidentiality of any discussions. RACS also requires that all volunteers sign a document undertaking not to provide assistance in matters outside the scope of the MLC.

1.7 File Location and Management

A complete file will always remain at RACS. All documents that you generate during appointments with clients must be provided to the supervisor to be included in the RACS file. You may duplicate the file so as to work on the matter outside the RACS office. You will undertake a client agreement with the client.

Key client file documents:

Copy of completed Evening Advice Client Intake Sheet

Client Agreement

MLC Client Intake Sheet, with client instructions/ draft letter attached

Documents received from client

Draft Ministerial request letter and copy of email sent to supervisor

Email from supervisor with suggested changes and further points of investigation

Client appointment file notes

Copy of letter as provided to client

Close file letter

1.8 Scope of the Ministerial Legal Clinic

The extent of assistance provide through the MLC is limited and outlined in the Client Agreement to undertake this work. The assistance involves:

- Taking instructions in relation to s 417 Ministerial guidelines and s 48B guidelines and providing advice as to the merits of these matters;
- Undertaking research;
- Preparing a client statement if required;
- Drafting a request to the Minister with appropriate supporting documents;
- Handing the request to the client to choose to provide to the Minister.

This assistance may also involve liaison with third parties, such as friends of the client, the United Nations High Commission on Refugees, or politicians. Lawyers and assistants may wish to contact third parties, but are not required to do so. If lawyers choose not to offer this assistance, this section of the Client Agreement should be deleted. If lawyers choose to offer this assistance, they should discuss this with the Supervisor.

In most cases the file will be closed after the request is handed to the client. In matters where the client is awaiting documents from a Freedom of Information request, the file will remain open. In these

matters, the MLC volunteers will generally not have contact with the client between preparation of these requests. Once the second letter is prepared and handed to the client the file will be closed.

The assistance does not involve:

- Making representations to the Minister or DIMA in relation to the request;
- Making any other contact with the DIMA or Minister in relation to the client.

1.9 Ministerial Legal Clinic Assistance Process - overview

Stage 1 – RACS Evening Advice appointment – Monday night service

The asylum seeker would first attend RACS Evening Advice service and be provided with advice as to their options, Bridging Visa advice, an overview of the Ministerial power and the MLC, and advice on relevant documents which would assist their request. This appointment will also identify any issues in relation to language and dialect and other needs of the client. RACS would make a MLC appointment for this client, and advise client on documents to bring to their MLC appointment.

Stage 2 – First appointment at the MLC – Tuesday night service

At this appointment the Client must bring:

- Two photocopies of all documents (one for RACS, one for MLC Lawyer + Assistant)
- Photocopies and originals of all documents that have been photocopied (so they can be certified for the Minister)
- A disk of a draft 417 letter if the client has prepared this.

First appointment

At this Clinic, the MLC Lawyer and Assistant would undertake the following tasks:

- explain and prepare a Client Agreement, and provide a copy of the signed document to the Client;
- complete a MLC Intake Sheet;
- review the documents of the asylum seeker including the protection visa application, the DIMA decision, the Refugee Review Tribunal decision, any other documents;
- copy documents if required;
- receive instructions from the client as to matters to include in the request to the Minister. In this first appointment this will largely focus on activities and relationships within Australia;
- advise the client as to further documents the client must bring to the next appointment;
- arrange a further appointment to attend to questions arising from the document; or to confirm and receive the Ministerial Intervention letter. This appointment date should be set in consultation with the Supervisor.

Within two weeks of the first appointment the following tasks would be completed::

Lawyer and Assistant: undertake legal and country research as required, draft the request letter to the Minister; and email it to RACS by the Monday 9am prior to the Tuesday appointment at the latest.

Supervisor: reviews this letter and provides advice to the Lawyer.

Stage 2 - Second appointment at MLC – Tuesday night service

At this Clinic, MLC volunteer lawyers and students may undertake the following tasks:

- Take instructions as to issues arising from perusal of documents.
- Prepare a statement as required.
- If the letter is complete: confirm this letter with the client and amend as necessary. Provide this letter to the client for the client to forward to the Minister. Provide two photocopies of this letter for the client and one copy to RACS

Stage 3 – Third appointment at MLC – Tuesday night service

The MLC volunteer lawyers and students may undertake the following tasks:

- If the letter is complete: Confirm this letter with the client. Amend as necessary. Provide this letter to the client for the client to forward to the Minister. Provide two photocopies of this letter for the client and one copy to RACS. Provide a letter to the client advising that the file is closed.
- Some clients may not have all their documents, and await documents from their Freedom of Information request to DIMA. For these clients the first two appointments will be utilised to prepare a letter relating to relationships, community integration and activities in Australia. A third appointment would be made when their FOI documents had been received, and this appointment would clarify issues arising from perusal of these documents. The MLC Lawyer and student would then prepare a further letter within two weeks, and attend a further appointment to confirm and provide the letter to the client.

Final stage – after the Minister’s decision

Client’s will be advised that when they receive their decision from the Minister, they should telephone RACS and make an appointment. RACS will then provide advice as to the their options, Bridging Visas and limitation dates, should the Minister decide not to intervene or not to consider the request.

1.10 Logistics and Contact details

Rostering

Young Lawyers will arrange the rostering of Lawyers and Assistants in liaison with RACS.

Contact for lawyers: Louise Jardim, Chair, Young Lawyers Human Rights Committee,

hrc.chair@younglawyers.com.au

Contact for assistants: Lucas Bastin, Young Lawyers Human Rights Committee,

lucasbastin@yahoo.com.au

Appointments

RACS will arrange client appointments, and arrange for interpreters. RACS will book interpreters in liaison with Lawyers in relation to the time anticipated to be required for interpreter bookings.

RACS MLC Coordinator: Louise Boon-Kuo, 02 9211 4001, Louise.Boon-Kuo@racs.org.au

2.0 Working with Clients

2.1 About the MLC Clients

MLC Clients are people who have been refused recognition as refugees under Australian law. They may have already drafted or sent a brief letter to the Minister, and are now at the stage where they need to provide a full letter to the Minister under s 417 or s 48B of the Migration Act.

MLC clients:

- will be from many different countries;
- may or may not be able to speak English;
- will have low or no income (the majority of people at this stage are not eligible for permission to work); and
- may be survivors of Torture & Trauma;
- may have lived in Australia for a brief time or for decades.

When first meeting with a client during the MLC it is important to explain:

- who you are, your role as a volunteer, that you are not a registered migration agent and cannot offer migration advice;
- what RACS is and the confidential nature of the service, including the independence of both RACS and the law clinic from DIMIA and the RRT; and
- the role and scope of the MLC and the extent of work you undertake to do, this also involves explaining the client agreement.

These points are included as prompts on the MLC Intake Sheet and MLC Client Agreement.

2.2 Working with NESB Clients & Interpreters

Professional Responsibilities to a Client

It is established in law as a professional responsibility that all communications with clients should foster understanding, and be conducted in a form and manner consistent with the client's knowledge and sophistication.¹ For example the client needs to be able to understand the adviser so as to be able to provide instructions to complete a form. The adviser should assist clients to understand the issues in their case sufficiently and their possible rights and obligations so as to enable them to provide proper instructions.

The Lawyers' Professional Conduct and Practice Rules, contained in the Legal Profession Act 1987² state:

Statement of Principle for Rules 1-16 Relations with Clients

¹ *EVBJ Pty Ltd v Greenwood* (1988) 88 ATC 4977 at 4979 – 80 per Brownie J.

² These Rules were made under the 1987 Act which are deemed (by virtue of Schedule 9 clause 24 of the 2004 Act) to have been made under the 2004 Act.

Practitioners should serve their clients competently and diligently. They should be acutely aware of the fiduciary nature of the relationship with their clients, and always deal with their clients fairly, free of the influence of any interest which may conflict with a client's best interests. Practitioners should maintain the confidentiality of their clients' affairs, but give their clients the benefit of all information relevant to their clients' affairs of which they have knowledge. Practitioners should not, in the service of their clients, engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

Many asylum seekers will not speak English or not have English as a first language. As it is extremely important to be able to communicate clearly with a client in preparing Visa applications accredited interpreters should be used when required to assist communication. Identifying the correct language, and dialect or regional language required by a client is essential.

Interpreters at RACS

It is best practice to use NAATI Accredited Level 3 interpreters, not children, relatives and unqualified bilingual staff as interpreters. This is because the issue of confidentiality, linguistic competence, proficiency, impartiality and professionalism must also be taken into account. However RACS faces budget constraints, and is not eligible for free access to the Translation and Interpreting Service (TIS) as this is not accessible to clients who are not permanent residents. RACS utilises a mix of professional NAATI accredited interpreters either onsite or by telephone, volunteer interpreters (some of whom are accredited), friends or family members and staff from ethnic and cultural organisations.

2.3 Tips for Using Interpreters

Prepared by Conference Language Service (translation and interpreting agency)

The Interview

It is necessary to be a little more careful with your interview preparation when using an interpreter. Be confident about the information you need to give or obtain prior to the interview.

Your interpreter and the client may arrive at the same time. It may be useful to call the interpreter in first. It is not necessary to brief the interpreter about the interview however you may wish to alert the interpreter to any sensitive issues especially if there is a history with the client.

Please take care with your seating arrangements. The interpreter should ideally be seated between you and the client. It is useful to explain that the interpreter is present to facilitate communication and he/she will interpret/translate everything that is said from this point on.

Follow these easy steps:

**Always speak in the first person, that is address the client directly and not the interpreter*

**Speak in short sentences or phrases to allow the interpreter to interpret accurately*

**Don't use jargon, as this is difficult to translate*

Take care with questions to avoid ambiguity and clarify past and present as in some languages this is not immediately obvious eg are you able to work now?

After 10 minutes or so it is always a good idea to check if your client is understanding you through the interpreter, you can ask “Are you understanding me through the interpreter”

The interpreter should:

- *Arrive at least 5 minutes before the scheduled interview;
- *Interpret **everything** you and your client say;
- *Seek clarification when they do not understand your question by saying, “the interpreter seeks clarification”.
- *Facilitate communication so that you are communicating effectively with your client.

The interpreter should not under any circumstances:

- *Summarise your client’s responses;
- *Answer on behalf of your client;
- *Put forward an opinion on what your client means;
- *Offer a view about your client’s truthfulness;
- *Advocate on behalf of your client;
- *Have long conversations with your client without your involvement.

You as the interviewer need to

- *Maintain control of the interview at all times by addressing yourself directly to your client;
- *Explain the purpose of the interview and the role of the interpreter;
- *Check occasionally to see if your message is being conveyed accurately, for example you could say “is this making sense or have you understood what it is I need from you?”;
- *Be relaxed and try not to have pre-conceived ideas about certain cultures or nationalities; and
- *Treat all your non-English speaking clients as individuals.

Further resources on working with interpreters

Refugee Review Tribunal, ‘Refugee Review Tribunal Interpreters’ Handbook’, 3rd edition, February 2003, Refugee Review Tribunal, Available at:

<http://www.rrt.gov.au/publications/InterpreterHandbook.pdf>, accessed on 27 February 2006.

Migration Review Tribunal, ‘Migration Review Tribunal Interpreter Handbook’, Available at:

<http://www.mrt.gov.au/interphandbook.html>, accessed on 27 February 2006.

Community Relations Commission For a Multicultural NSW, ‘Good Practice When Working with Interpreters’, *Use of Interpreters in Domestic Violence and Sexual Assault Cases: A Guide for Service Providers*, June 2002, Available at:

<http://www.crc.nsw.gov.au/publications/domesticviolence/goodpractice.pdf>, accessed on 27 February 2006.

Law Society of NSW, *Guide to Best Practice: Lawyers, Interpreters, Translators: Lawyers working with interpreters & translators in a legal environment*, 1996, Available At:

http://www.lawsociety.com.au/uploads/filelibrary/1074124554875_0.5260733413613279.pdf,
accessed on 27 February 2006.

Michael Cooke & Elaine Wylie (National Legal Aid), 'Is an Interpreter Necessary? A Test of English to Assess the Need For an Interpreter for People Involved in Legal Proceedings From a Non-English Speaking Background', undated, Available at: <http://www.nla.aust.net.au/html/interpreters.html>,
accessed on 28 February 2006.

2.4 Torture and Trauma experiences of the client

Factors affecting the interview of clients include:

- Experience living in a totalitarian state with experiences of harm such as detention, torture or arbitrary arrest.
- Torture and trauma.
- Sexuality as gay, lesbian, bisexual, transgender and intersex.
- Experience of domestic violence.
- Experience of sexual assault.
- Experience of detention in Australian immigration detention.

These experiences may affect clients in a variety of ways. For example: Clients might provide “yes” answers to authority figures such as lawyers, DIMA and government authorities. Clients may face difficulties in being specific about their experiences due to shame, cultural taboos, or the desire to avoid traumatic memories.

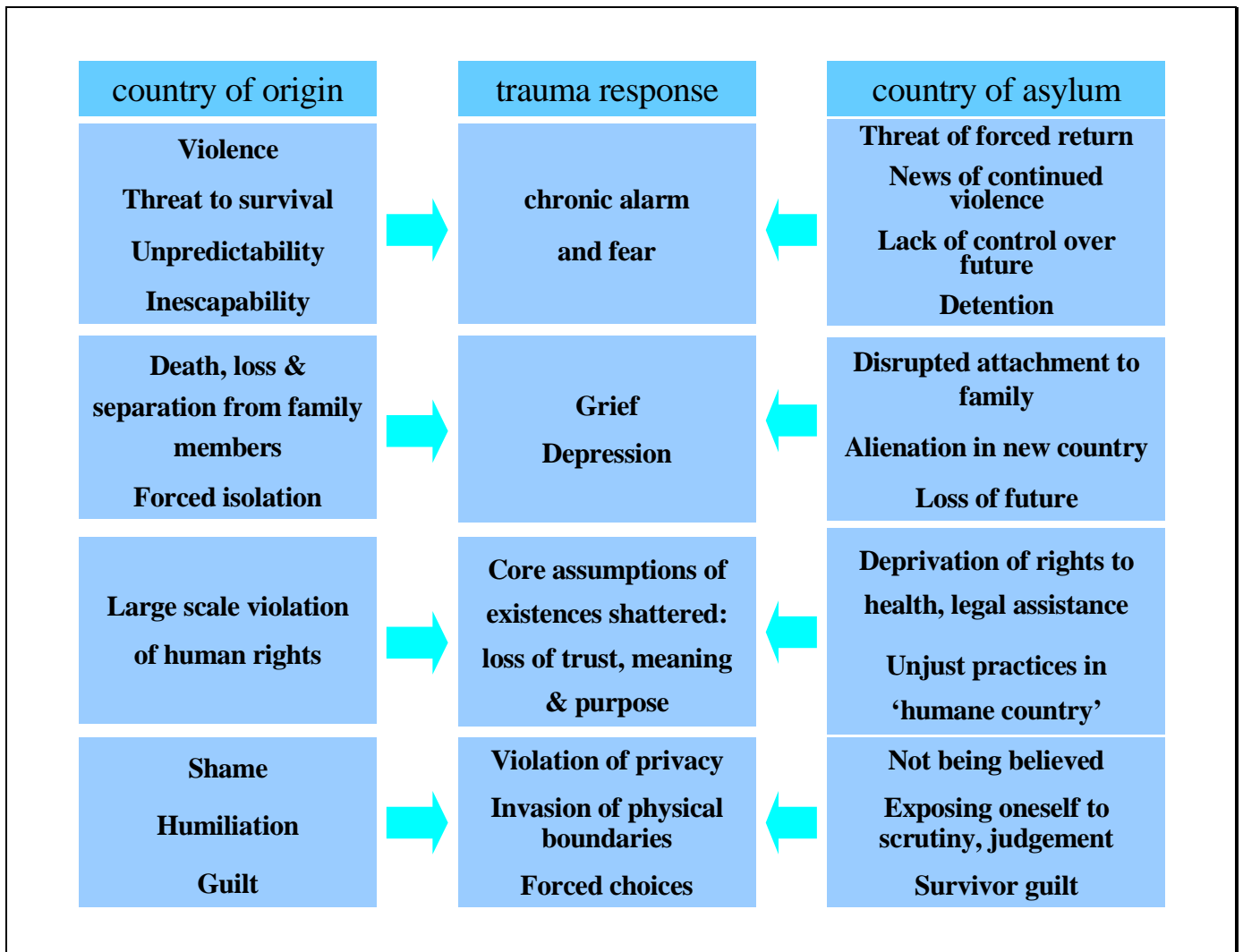
Strategies for interviewing survivors of torture and trauma

Prepared by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors

<p>Be aware of the impact of environment:</p> <ul style="list-style-type: none"> ➤ ask the person where they would like to sit ➤ aware of impact of interpreter ➤ 	<p>Begin with general and gentle discussion</p> <ul style="list-style-type: none"> ➤ explore specific detail only if necessary; ➤ reinforce a feeling of safety
<p>Use open questions and give time</p> <ul style="list-style-type: none"> ➤ do not be afraid of silence or rush the person's recall ➤ avoid sounding interrogative 	<p>Observe the person for signs of anxiety:</p> <ul style="list-style-type: none"> ➤ closed body language ➤ shaking or sweating ➤ fast breathing ➤ avoidance of eye contact ➤ physical pain and discomfort ➤ sighing
<p>Be encouraging in difficult periods, using:</p> <ul style="list-style-type: none"> ➤ body language ➤ supportive statement ➤ reflection 	<p>Anticipate that there could be strong reactions:</p> <ul style="list-style-type: none"> ➤ prepare yourself so you do not appear shocked

Client Trauma Responses

Prepared by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)



Referrals to mental health services

Refer to mental health services where appropriate for example, if the client shows signs of any emotional or psychological distress.

To make this referral provide the following:

- A multilingual leaflet about STARTTS.
- The RACS Non Legal Referral List of free services, and circle STARTTS and Transcultural Mental Health Services

Further resources on the impact of torture and trauma on interviews

Jane Herlihy, Peter Scragg, and Stuart Turner *"Discrepancies in autobiographical memories—implications for the assessment of asylum seekers: repeated interviews study"* British Medical Journal

2002 February 9; 324(7333): 324–327, 2002, Available at <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=65293> Accessed 27 February 2006.

This study finds that:

- Discrepancies arise between two accounts of the same event even when there is no reason for fabrication.
- Refugees with high levels of post-traumatic stress are more likely to give inconsistent accounts if they have a long time to wait between interviews.
- Interviewees are more likely to be inconsistent in details that they rate as peripheral to their experiences than details they consider to be central.
- Inconsistent recall does not necessarily imply that asylum seekers are fabricating their accounts.

The Medical Foundation for the Care of Victims of Torture provides a 'Clinical Bibliography on the Physical Effects on Torture' and 'Psychological Effects of Torture.' Available at <http://www.torturecare.org.uk/articles/bibliography/c221/> and <http://www.torturecare.org.uk/articles/bibliography/c222/> Accessed 27 February 2006.

2.5 Emotional impact of working with Torture and Trauma Survivors

The material used in this section is an extract from *Rebuilding Shattered Lives* from the chapter entitled "*Emotional responses of workers and implications for practice*" which was prepared by the Victorian Foundation for Survivors of Torture Inc.

It is recognised that there is a range of feelings evoked by working with torture and trauma survivors which can powerfully influence ways of responding to the survivors as well as affecting the worker's personal life. Understanding their reactions and how to deal with them is vital for effective work.

Helplessness: Feelings of helplessness can arise when confronted with another person's helplessness and with the awareness of torture practices, other forms of state sanctioned violence and war atrocities. The sense of helplessness can lead to a loss of confidence in one's skills and knowledge and in the power of any intervention. It can also lead to an underestimation of the client's resources.

Judgments about helping too much or "rescuing" can be difficult to make: Nevertheless, awareness of personal limits is vital. Where an overprotective attitude or a need to solve everything dominates, it is usual to simply become exhausted from doing everything. It can also lead to a reluctance to let others do anything because they cannot do it as well. This can also develop into intolerance of outsiders and of alternative approaches.

Guilt: Guilt about being exempt from trauma and suffering and guilt about not taking enough action against the violation of others, can be experienced by workers. It can lead to viewing the survivor as extremely fragile and vulnerable, overlooking what they have done in order to survive. Therefore, one can do too much for them and take excessive responsibility, or one might avoid painful topics for fear

of inducing more hurt. The worker's reactions can mirror the client's in that it is easier to feel guilty rather than helpless.

Anger: Anger is also part of the worker's response to traumatic material – anger at the perpetrator, at bystanders, at society's lack of responsiveness and at the client. Anger can readily be followed by dismay. Initially some workers angrily ask how people, who appeared to have been bystanders could let atrocities occur.

For others, there is the shock of realisation as they begin to understand in human terms why people watched or overcomplied with orders – out of obedience, fear, or a need for power.

A sense of mild hostility and alienation can also develop as a sense of disappointment with friends and colleagues who do not seem to understand. Social activity can come to look trivial and be declined. A lack of trust in others and cynicism regarding their motives is not unusual.

Anger at the client is the hardest to admit to but it can be provoked by clients making excessive demands or by the clients revealing their prejudices. There can be an expectancy that survivors be morally superior. A survivor with normal foibles can be difficult to accept.

Dread and horror: Dread and horror are common reactions, as are sadness, disgust, shame and revulsion. There can be fear of being overwhelmed by such feelings.

Other forms of dread are the client's anger, fear of not being able to help the client and fears of having personal painful memories brought back, memories of being humiliated or memories of regretted actions against others.

Idealisation: On occasions there is a tendency amongst helpers to view survivors as heroic, superhuman figures to be held in awe. This can lead to a feeling of inadequacy in the worker because they do not know the true secrets of survival. It can lead to neglecting or minimising their own pain and suffering. Idealisation can alternate with devaluation and anger.

Personal sense of vulnerability and violence: "Life is no longer the same. If beatings, starvation, torture and mass killings can happen to our patients, they can happen to us. There is an increased awareness of the dangers of hatred and brutality that lie behind the mask of civilisation we all wear, a sense of being more vulnerable to life's dangers"

Avoidance reactions: Helpers also can react to potentially overwhelming emotions associated with trauma by distancing themselves from people who are victims. Denial, detachment and withdrawal are characteristic responses. All workers are detached at times. Counsellors report noticing how they do not seem to feel anything at times.

Fulfilment: Growth, a deeper awareness of the human condition, a valuing of closeness, increased sensitivity and the capacity for sharing and living fully can be the benefit of being exposed to survival amidst the horror of war and trauma. As a worker, one also experiences the privilege of witnessing

the power of courage and the strength of compassion and renewed hope. Being able to do something is immensely satisfying.

Implications for practice: Many emotions are aroused by traumatic material and they can persist. In response to these emotions, one can suppress them, be distracted from them, or look at them further to see what they can tell us about the client or ourselves. Typically, workers predominantly engage in one of the following processes which reflect a wider position in regard to traumatic material – to move toward it by learning more, changing systems and accepting responsibility, or to move away from it by neglecting issues or diminishing awareness of the severity of problems.

2.6 Physical Health

If a client has special needs in relation to hearing, sight, access or illness, RACS will generally schedule an appointment during the day with appropriate support as required.

Investigate whether this affected the clients DIMA and the RRT process because of the interview needs or effective communication needs of the client. Investigate if this affects the substance of refugee or humanitarian claims.

Refer to health assistance as required. Provide the client with RACS Non Legal Referrals Sheet. Both the Asylum Seekers Centre and the House of Welcome may assist clients in accessing health and welfare services and also involve volunteer health professionals. The Refugee Health Service will assist people without Medicare cards. The AIDS Council of NSW (ACON) Positive Living Centre is open to people living with HIV and AIDS.

2.7 Gender sensitivity

At the first appointment it is important to assess whether there are any gender based sensitivities in the matter. If an appointment is for a family group including both male and female members, ensure that you allow time to interview each separately.

Tips

- Reiterate confidentiality.
- Remember that many women may not have confided details of a sexual assault or other matters to their family members.
- Interview the female applicant separately, even if she is a secondary applicant. If the woman has claims you need to consider whether she should be advised to forward her own claims. Alert the RACS staff member if you feel her claims need to be investigated further in a different setting.
- Ask clients if they would feel more comfortable talking about these issues with a male/female adviser/ interpreter, or with a support person or friend present.
- Research reported experiences of women and men in your client's situation. Is there a possibility they may have experienced sexual assault? It is important for experiences of harm to be disclosed as early as possible.

- This prior country research may also assist you in interviewing in relation to gender based harm so as to assess which person in a family group may have the strongest claims. Many families or women may not recognise gender based persecution as a valid claim for refugee status.

Further resources

Nahla Valji and Lee Anne De La Hunt, "*Gender Guidelines for Asylum Determination*" 1999. Published by: University of Cape Town Legal Aid Clinic, as a member of the National Consortium on Refugee Affairs, The European Foundation for Human Rights (EUFHR). Available at <http://www.web.net/~ccr/safr.PDF> Accessed 27 February 2006. Pages 10-14 of this paper examine interviewing procedures for gender persecution cases.

2.8 Cultural factors

Do not make assumptions based on understandings that emerge from cultural signals, it is important to try to leave your cultural conditioning outside client interviews. For example, those in Western cultures generally read a lack of eye contact as indicative of dishonesty. In some cultures women and men may avert their eyes in the presence of authority, and direct eye-contact with a stranger may be seen as "bold", or show that a person is sexually available. Treat each client as an individual and remember that cultures and nationalities are not homogenous.

3.0 Refugee Law

Refugee Law

International refugee law

UNHCR Handbook on procedures and criteria for determining refugee status

1951 UN Convention Relating to the Status of Refugees

1967 Protocol Relating to the Status of Refugees

Australian Law

Refugee Review Tribunal, Guide to Refugee Law in Australia

Migration Act:

Section 36 Protection Visas

Sections 91A – 91G Safe Third Countries

Sections 91M-91Q Non-citizens with access to protection from third countries

Section 91R Persecution

Section 91S Membership of a particular social group

Section 91T Non political crime

Section 91U Particularly serious crime

Section 91V Verification of information

Section 91W Documentary evidence of identity, nationality or citizenship

Section 91X Names of application for protection visas not to be published by the HC, FC, FMC

Section 172 Immigration clearance

Sections 91A – C, M-X, 172

Section 166 Persons entering Australia to provide evidence of identity

Migration Regulations

Schedule 1 - 1401 Protection Visa (Class XA)

Schedule 2 - Subclass 866, 785.

Policy

DIMA, Protection Visas Procedures Manual (PVPM), Policy Advice Manual 3

DIMA, Refugee Law Guidelines

Client Information

Translated definitions of the Refugee Convention definition of a refugee:

Available in hard copy at RACS and online at [www.rrt.gov.au].

Information Sheet #2 The meaning of the term 'refugee'

Information Sheet #3 Refugee Determination Process flow chart

Information Sheet #5 Supporting information and evidence for your protection visa application

Information Sheet #6 How to write your statement in support of your application for refugee status

3.1 The 1951 Refugees Convention and the 1967 Protocol

The 1951 *Refugees Convention* ('the Convention') was drafted to deal with the great number of persons displaced by the events of World War 2 and its aftermath. In its initial form it referred only to events that occurred pre 1951. In 1967 it was amended by the *Refugees Protocol* ('the Protocol') to extend to all persons regardless of the timing of events. The *Refugees Convention* provides a framework for defining who is a refugee for the purposes of the *Convention*. It sets out the obligations of the State signatories to refugees.

The Convention definition of a refugee

Article 1A(2) of the *Convention* defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Translated copies of this definition are available at RACS and should be provided to clients where relevant.

UNHCR Handbook The UNHCR Handbook is a guide published by the UNHCR on procedures for determining refugee status under the *Convention*. It is often cited by decision makers. It is not legally binding but is a useful guide to the interpretation of the *Convention* in the absence of legislation or Australian case law.

3.2 Australian legislation

Australia has incorporated the *Refugees Convention* and *Protocol* into domestic law through the *Migration Act 1958*, which together with the *Migration Regulations 1994*, set out the process of determining who is a refugee in Australia.

Section 36 of the Act incorporates the Convention into domestic law, so that persons who meet this definition are eligible to be granted a protection visa. Section 36 states that the Minister for Immigration must first be “satisfied” that the applicant is a person to whom Australia has “protection obligations” under the Convention. An extract of section 36 is included below:

Section 36. [Protection visas](#)

- (1) There is a class of visas to be known as protection visas.

Note: See also [Subdivision AL](#).

- (2) A criterion for a protection visa is that the applicant for the visa is:

- (a) a [non-citizen](#) in Australia to whom the Minister is satisfied Australia has protection obligations under the [Refugees Convention](#) as amended by the [Refugees Protocol](#); or
- (b) a [non-citizen](#) in Australia who is the spouse or a dependant of a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.

Protection obligations

- (3) Australia is taken not to have protection obligations to a [non-citizen](#) who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a [national](#).
- (4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.
- (5) Also, if the non-citizen has a well-founded fear that:
- (a) a country will return the non-citizen to another country; and

- (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion; subsection (3) does not apply in relation to the first-mentioned country.

Legislation passed in September 2001 codifies parts of the definition of a refugee. Section 91R of the Act provides that the “essential and significant” reason for the persecution must be Convention related. Section 91R(2) provides a non-exhaustive list of acts which would constitute persecution, and s 91R(3) relates to conduct engaged in by the applicant in Australia.

Section 91R Persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the [Refugees Convention](#) as amended by the [Refugees Protocol](#) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:
 - (a) that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution; and
 - (b) the persecution involves serious harm to the person; and
 - (c) the persecution involves systematic and discriminatory conduct.
- (2) Without limiting what is serious harm for the purposes of paragraph (1)(b), the following are instances of serious harm for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (3) For the purposes of the application of this Act and the regulations to a particular person:
 - (a) in determining whether the person has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the [Refugees Convention](#) as amended by the [Refugees Protocol](#); disregard any conduct engaged in by the person in Australia unless:
 - (b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol.

3.3 The Onshore Protection Visa Regime in Australia

Protection Visas (Class XA)

There are several classes of visas applicable to refugees. These include the Class XA - Protection Visa which is granted to successful on-shore asylum seekers. This class of Visa is for *onshore* asylum seekers and excludes those who arrived in Australia at any of the excised places (such as Christmas Island). The Class XA - Protection Visa contains two sub-classes – the 866 Permanent Protection Visa and the 785 Temporary Protection Visa.

To be eligible for a Subclass 866 Permanent Protection Visa an applicant must:

- be in Australia (not in an excised zone);
- have been 'immigration cleared'. This means that the Applicant last entered Australia on a valid visa and was cleared through Australian Customs. The visa must not have been issued on the basis of false or fraudulent documents;
- meet the Convention definition of a refugee or be a member of the same family unit as an Applicant who meets the definition of a refugee (see s36(2));
- satisfy health and character checks.

The Subclass 785 Temporary Protection Visa (TPV) is granted to someone who is found to be owed protection obligations by Australia but who entered Australia without a valid visa or on a visa obtained by using fraudulent documents. The 785 allows the holder to remain in Australia for 3 years. If the TPV-holder applies for a further Protection Visa (FPV) before the expiry of the TPV then the TPV allows the holder to remain in Australia for 3 years or until the further application is finally determined, whichever date is later. If a 785 visa holder applied for an 866 visa on or after 27 September 2001 they will only satisfy the conditions for the grant of an 866 permanent visa if they did not reside for 7 days or more in another country where they could have obtained effective protection on their journey to Australia (see Criteria 866.215). The Minister has the discretion to waive this requirement if the Minister thinks it is in the public interest to do so. If a TPV holder did reside for 7 days or more in another country where s/he could have obtained effective protection then the TPV holder is eligible to apply for only another temporary 785 Visa.

Secondary Movement Visas also referred to as Temporary Humanitarian Visas (THVs). People who have entered Australia at a place excised from the migration zone may later be granted a secondary movement visa to enter Australia, such as a Subclass 447 Secondary Movement Offshore Entry (Temporary) visa or Subclass 451 Secondary Movement Relocation (Temporary) visa. Prior to the end of these visas, the applicant may apply for onshore protection. Subclass 451 visa holders are eligible to apply for Subclass 866 permanent protection, however Subclass 447 visa holders are eligible for a Subclass 785 temporary protection visa only, unless the Minister waives a Subclass 866 visa criteria.

Visa subclass 866 Permanent Protection

The Schedule 2 Provisions with respect to the grant of Visa Subclass 866 are as follows at the time of writing:

[866.1 Interpretation](#)

866.111 In this Part:

fraudulent document means a document that:

- (a) purports to have been, but was not, issued in respect of the applicant; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so.

[Refugees Convention](#)

means the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees.

866.112 For the purposes of this Part, a person ('A') is a [member of the same family unit](#) as another person ('B') if :

- (a) A is a member of B's family unit; or
- (b) B is a member of A's family unit; or
- (c) A and B are members of the family unit of a third person.

866.2 [Primary criteria](#)

Note All applicants must satisfy the primary criteria.

866.21 [Criteria to be satisfied at time of application](#)

[866.211](#) The applicant claims to be a person to whom Australia has protection obligations under the Refugees Convention and:

- (a) makes specific claims under the Refugees Convention; or
- (b) claims to be a [member of the same family unit](#) as a person (the claimant) who:
 - (i) has made specific claims under the Refugees Convention; and
 - (ii) is an applicant for a [Protection \(Class XA\)](#) visa.

866.212

(1) If the applicant meets the requirements of paragraph [866.211\(a\)](#), the applicant:

- (a) is [immigration cleared](#); and
- (b) meets the requirements of subclause (2), (3) or (4).

(2) The applicant meets the requirements of this subclause if:

- (a) the applicant has been granted a Subclass [785](#) (Temporary Protection) visa (whether or not the applicant still holds the visa); and
- (b) the Subclass 785 visa last granted to the applicant has not been cancelled; and
- (c) the applicant has not left Australia since that visa was granted.

(3) The applicant meets the requirements of this subclause if, at the time of the applicant's last entry to Australia:

- (a) the applicant was the holder of a visa that:
 - (i) was granted in the applicant's name; and
 - (ii) was in effect; and
 - (iii) was not counterfeit; and
 - (iv) had not been altered by someone who did not have authority to do so; and
 - (v) had not been obtained using a fraudulent document; and
- (b) in the case of an applicant who held a valid passport, the passport was issued in the applicant's name.

(4) The applicant meets the requirements of this subclause if the applicant:

- (a) has been granted a [Temporary Safe Haven \(Class UJ\)](#) visa (whether or not the applicant still holds the visa); and
- (b) has not left Australia since the grant of that visa.

Note Under section [91L](#) of the Act, a non-citizen who holds, or has ceased to hold, a Temporary Safe Haven (Class UJ) visa is able to make a valid application for a visa only in accordance with a Ministerial determination that section [91K](#) of the Act does not apply to an application for a visa made by the non-citizen.

[866.213](#) If the applicant meets the requirements of paragraph [866.211\(b\)](#), the claimant referred to in that paragraph meets the requirements of subclause [866.212\(2\)](#), (3) or (4).

[866.214](#)

(1) The applicant has not held a Subclass [447](#) (Secondary Movement Offshore Entry (Temporary)) visa since last entering Australia.

(2) The Minister may waive the requirement under subclause (1) if the Minister is satisfied that it is in the public interest to do so.

[866.215 \(1\)](#) If the applicant has held a Subclass [785](#) (Temporary Protection) visa since last entering Australia, the applicant, since leaving his or her home country, has not ever resided, for a continuous period of at least 7 days, in a country in which the applicant could have sought and obtained effective protection:

- (a) of the country; or
- (b) through the offices of the United Nations High Commissioner for Refugees located in that country.

(2) The Minister may waive the requirement under subclause (1) if the Minister is satisfied that it is in the public interest to do so.

[866.22](#) Criteria to be satisfied at time of decision

866.221 The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the [Refugees Convention](#)

866.222 In the case of an applicant referred to in paragraph [866.211\(b\)](#):

(a) the Minister is satisfied that the applicant is a [member of the same family unit](#) as a claimant referred to in that paragraph; and

(b) that claimant has been granted a Protection (Class XA) visa.

[866.222A](#) In the case of an applicant referred to in paragraph [866.211\(a\)](#), the applicant has not, in the last 4 years, been convicted of an offence against a law of the Commonwealth, a State or Territory for which the maximum penalty is imprisonment for at least 12 months.

[866.222B](#) In the case of an applicant referred to in paragraph [866.211\(b\)](#), the applicant, and the claimant referred to in the paragraph, meet the requirement of clause [866.222A](#).

[866.223](#) The applicant has undergone a medical examination carried out by any of the following (a relevant medical practitioner):

(a) a [Medical Officer of the Commonwealth](#);

(b) a medical practitioner approved by the Minister for the purposes of this paragraph;

(c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

[866.224](#) The applicant:

(a) has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or

(b) is under 11 years of age and is not a person in respect of whom a [relevant medical practitioner](#) has requested such an examination; or

(c) is a person:

(i) who is confirmed by a [relevant medical practitioner](#) to be pregnant; and

(ii) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and

(iii) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and

(iv) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

[866.224A](#) A [relevant medical practitioner](#):

(a) has considered:

(i) the results of any tests carried out for the purposes of the medical examination required under clause [866.223](#); and

(ii) the radiological report (if any) required under clause [866.224](#) in respect of the applicant; and

(b) if he or she is not a [Medical Officer of the Commonwealth](#) and considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, has referred any relevant results and reports to a Medical Officer of the Commonwealth.

[866.224B](#) If a [Medical Officer of the Commonwealth](#) considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

[866.225](#) The applicant satisfies public interest criteria [4001](#), [4002](#) and [4003A](#).

[866.226](#) The Minister is satisfied that the grant of the visa is in the national interest.

[866.227](#)

(1) The applicant meets the requirements of subclause [\(2\)](#) or [\(3\)](#).

(2) The applicant meets the requirements of this subclause if the applicant, or a [member of the family unit](#) of the applicant, is not a person who has been offered a temporary stay in Australia by the Australian Government for the purpose of an application for a [Temporary Safe Haven \(Class UJ\)](#) visa as provided for in regulation [2.07AC](#).

(3) The applicant meets the requirements of this subclause if section [91K](#) of the Act does not apply to the applicant's application because of a determination made by the Minister under subsection [91L\(1\)](#) of the Act.

[866.228](#) If the applicant holds a Subclass [785](#) (Temporary Protection) visa, the applicant has held that visa, or that visa and another Subclass [785](#) (Temporary Protection) visa, for the lesser of:

(a) a continuous period of 30 months; and

(b) a shorter period specified in writing by the Minister in relation to the applicant.

866.228A If the applicant holds a Subclass [451](#) (Secondary Movement Relocation (Temporary)) visa, the applicant has held that visa for the lesser of:

- (a) a continuous period of 54 months; and
- (b) a shorter period specified in writing by the Minister in relation to the applicant.

[866.229](#) If the applicant, or a [member of the family unit](#) of the applicant, has been offered a temporary stay in Australia by the Australian Government for the purpose of an application for a [Temporary \(Humanitarian Concern\) \(Class UO\)](#) visa as provided for in regulation [2.07AC](#), the offer was made:

- (a) more than 30 months before the time of decision; or
- (b) if a shorter period was specified in writing by the Minister, more than that period before the time of decision.

[866.230](#) If the applicant is a child referred to in paragraph [2.08\(1\)\(b\)](#):

- (a) the applicant is a [member of the same family unit](#) as a claimant mentioned in paragraph [866.211\(b\)](#); and
- (b) the claimant has been granted a Subclass 866 (Protection) visa.

866.3 [Secondary criteria](#)

[NOTE: All applicants must satisfy the primary criteria.]

Note If the Minister refuses to grant a [Protection \(Class XA\)](#) visa to an applicant who holds, or held, a Subclass [451](#) (Secondary Movement Relocation (Temporary)) visa, a Subclass [447](#) (Secondary Movement Offshore Entry (Temporary)) visa or a Subclass [785](#) (Temporary Protection) visa after the [commencement](#) of [Part 695](#), the applicant for that visa will be taken to have applied for a [Return Pending \(Class VA\)](#) visa: see regulation [2.07AN](#).

866.4 [Circumstances applicable to grant](#)

[866.411](#) The applicant must be in Australia.

866.5 [When visa is in effect](#)

[866.511](#) [Permanent visa](#) permitting the holder to travel to and [enter Australia](#) for a period of 5 years from the date of grant.

866.6 Conditions: Nil.

866.7 [Way of giving evidence](#)

[866.711](#) No evidence need be given.

866.712 If evidence is given, to be given by a label affixed to a valid passport, valid Convention travel document or an [approved form](#).

3.4 The Refugee Determination Process in Australia

Application to DIMIA

To apply for a Protection Visa a person must complete and lodge a Form 866. Form 866 is the application form for an onshore Protection Visa – this includes *temporary* and *permanent* protection visa subclasses. Note that the Forms are updated regularly.

The 866 form contains four parts.

Section A - provides information- does not need to be completed.

Section B - one per family unit. All applicants to be listed on front page.

Section C - one for each person in the family unit who has claims to fear serious harm in his/her country of origin and claims protection.

Section D - one per person named in Form B who did not complete a form C. i.e. Form D is for each applicant in the Family Unit who does not have her/his own claims to fear persecution.

Every person named in Form B will be barred by s48A from lodging another application with his or her own claims if the protection visa application is refused by DIMIA, so it is important for all applicants with claims to each lodge those claims in Form C.

This form will be used throughout the determination process and it is essential that it is completed as accurately and truthfully as possible to limit any credibility concerns which may arise throughout the process. This form is to be lodged with DIMA at 26 Lee Street, Sydney with \$30 and four passport photographs.

DIMA interview

If the applicant lodges a protection visa application with DIMA (in the first instance) they may not be interviewed in relation to this application before receiving a decision from DIMA. If their application for protection is refused by DIMA, they have the right to appeal for a full merits review at the Refugee Review Tribunal (RRT).

Refugee Review Tribunal (RRT) review

Refugee applicants in the community have 28 days from the date of deemed notification of the DIMA decision to lodge an application for review to the RRT. The date of deemed notification is 7 working days from the date of the decision. Refugee applicants in detention have 7 working days from deemed notification to apply for review, that is 7 days from the date of the faxed decision. The RRT has no discretion to extend this time. Applicants will be liable to pay \$1400 to the Australian government if they are unsuccessful at the RRT.

The RRT will invite the applicant to a Hearing if the RRT cannot make a positive decision “on the papers”. If an applicant is invited to attend a Hearing, and fails to attend, the RRT is very likely to refuse the applicant. The Hearing involves an inquisitorial style, where the applicant is asked questions about his/her claims, and provided with an opportunity to respond to adverse information.

Removal from Australia under s198 of the Migration Act

Section 198 of the Act specifies that an unlawful non citizen, whom is a detainee must be removed if their matter is “finally determined.” Section 5 of the Act defines a matter to be “finally determined” after an applicant has exhausted all forms of administrative review (that is review at the MRT or RRT or AAT).

However DIMA policy is not to remove a person if they have an ongoing court action in relation to the DIMA decision, see DIMA policy in the Ministerial Series Instruction *408 Removal from Australia*. This means that if the applicant does not lodge an application for administrative review or judicial review, the applicant will be liable to be taken into detention and removed after 28 days (being the eligibility period for review application) from the date of notification of the decision

Post RRT options

An applicant whom has been refused refugee status by the RRT has two main avenues of appeal if he or she wishes to remain in Australia.

If the applicant is in the community: It is important to note that 28 days after the deemed notification of the RRT decision, the applicant’s Bridging Visa will expire unless the applicant seeks to exercise a review option within this time. If a refugee applicant received their RRT decision in person at the

handing down then the date of decision is the date notified. If the applicant received their decision by post the date of deemed notification is 7 working days from the date of the RRT letter. After this period of time if an asylum seeker does not exercise one of the possible options they will become unlawful and may be detained or removed.

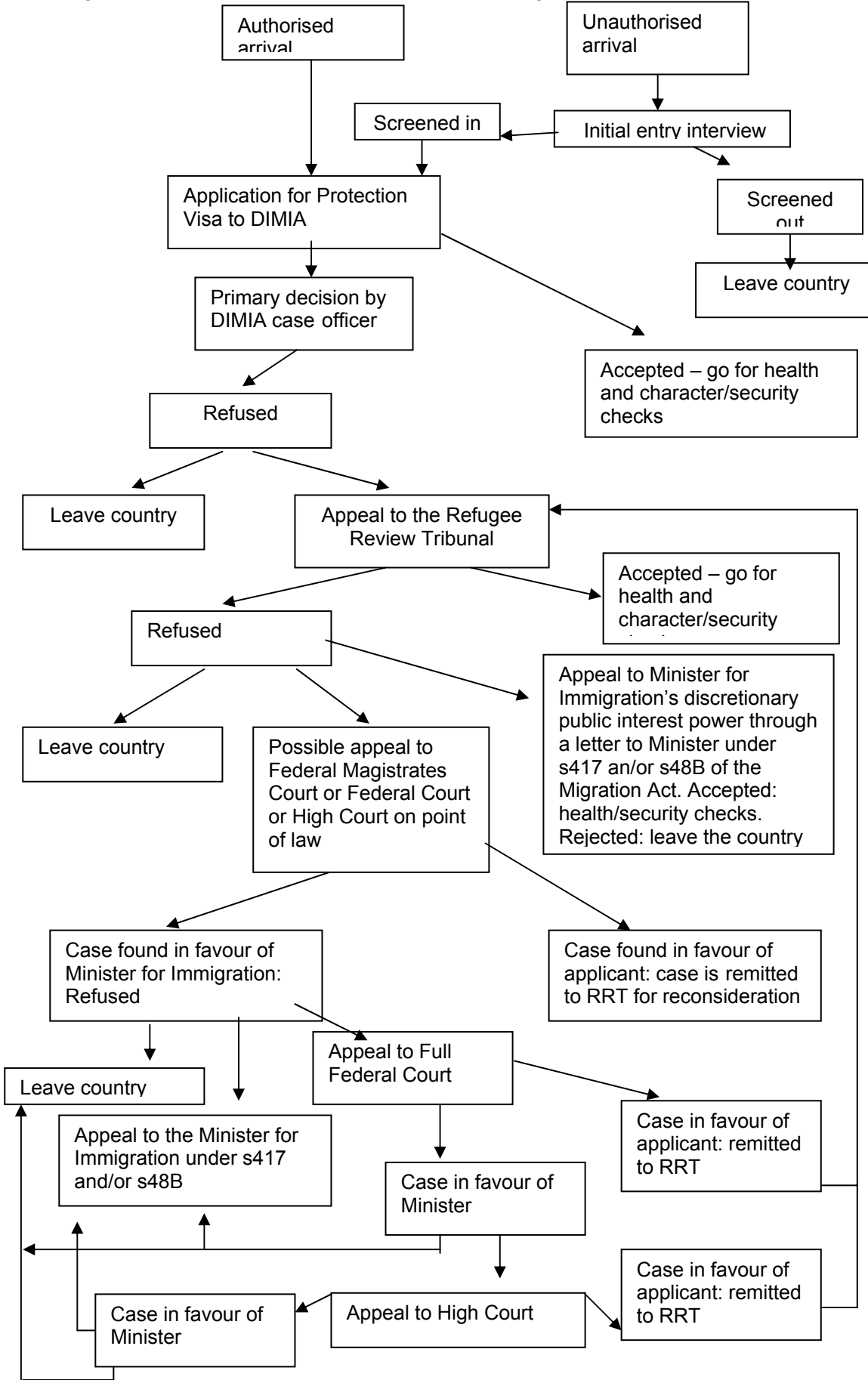
If the applicant is in detention: See the notes on Removal under s198 of the Migration Act above.

The applicant has the following options:

- Judicial Review;
- Request to the Minister under s 417 and s 48B of the Migration Act;
- Any other non protection visa immigration options – there are a very limited number of visas a person may be eligible to apply for;
- Leave Australia within 28 days or make arrangements with DIMA to be granted a bridging visa on departure grounds.

Protection Visa Determination Process

This diagram sets out an overview of the onshore refugee determination process in Australia.



4.0 Review of the application prior protection visa application, review application and other documents

4.1 Introduction

In preparing a s417 or s48B request, you will need to review the prior application documents of your client. You may be examining documents such as a collated Green Book from a judicial review application, documents released under a Freedom of Information (FOI) request, or a collection of documents your client has retained from their application. You would expect to be examining the following documents:

- Protection visa application forms, statements, supporting documentary evidence
- DIMA correspondence and decision
- RRT application and supporting documents
- RRT correspondence and decision
- Judicial review application, correspondence and decision
- Previous requests to the Minister

If a person has sought documents through FOI, you may also have DIMA file notes, notes from the Ministerial Intervention Unit in relation to any previous requests or record of file notes relating to the applicant's detention.

4.2 Freedom of Information Requests (FOI)

At the RACS Monday night Evening Advice service, your client will have been advised to lodge a FOI request to DIMA and the RRT if they have not already done so. FOI requests may be made to DIMA, the RRT, or the MRT.

4.2.1 Freedom of Information Requests to DIMA

FOI requests are made using the DIMA Form 424A. The time period for FOI requests runs from 6 weeks to a three months or so. It is advisable for a client to place a request in as soon as possible. Applicants should specify the documents sought, and refer to their client file references if known. Examples of documents which may be useful include:

I seek copies of:

My visa application to Australia lodged in [city, country], supporting documentation, DIMA decision and any other documents or correspondence on file relating to my visa application and decision;

My visa application for refugee status lodged on [date] at [Sydney Onshore Protection] office, any correspondence in relation to this application, the decision, any documents relating to this decision;

Documents relating to any court applications, decisions

Any documents in relation to any Bridging Visa applications, decisions, Migration Review Tribunal applications and decisions and any correspondence and file notes in relation to this.

Any documents in relation to any [insert visa name] applications, decisions, Migration Review Tribunal applications and decisions and any correspondence and file notes in relation to this.

Any documents relating to my previous requests to the Minister under s 417 and/or s 48B including any correspondence, and any file notes or submissions by the Ministerial Intervention Unit in relation to these requests.

and/ or

I seek copies of the following documents as held on my file by DIMA Villawood at Villawood detention centre:

Medical notes or reports or documents relating to Asylum Seeker;

Psychological reports or notes from psychologists or file notes relating to Asylum Seeker;

Any file notes including DIMA ICSE database notes in relation to my conduct;

Any file notes in relation to my welfare;

Any documents in relation to any Bridging Visa applications and decisions, Migration Review Tribunal applications and decisions and any correspondence and file notes in relation to this.

4.2.2 Freedom of Information requests to the RRT

An applicant may also seek a copy of the tape recording of their RRT or MRT hearing and any documents relating to them in their RRT or MRT application and matter. Applicants will have applied to the RRT, and may have applied to the MRT for example in relation to a Bridging Visa review application. Requests to the RRT or MRT should utilise the respective Tribunals' FOI Form. The RRT FOI Request form is available at [<http://www.rrt.gov.au/forms.htm>]. The MRT FOI Request form is available at [<http://www.mrt.gov.au/forms.html>].

4.3 Truthful statements and genuine documents

You should advise people making requests under s417 or s48B of the Migration Act as to the requirement for truthful statements and genuine documents.

Migration Act 1958

Section 268CM. Offence: giving false or misleading information

268CM. A person who gives false or misleading information in the course of complying or purporting to comply with section [268CJ](#) or [268CK](#) (officer may ask questions) is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

Section 268CN. Offence: giving or showing documents that are false or misleading in material particulars

268CN. (1) A person who gives or shows an [authorised officer](#) a [document](#) that is false or misleading in a material particular, in the course of complying or purporting to comply with section [268CJ](#) or [268CK](#) (officer may ask questions), is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

(2) However, the person is not guilty of an offence if the document is accompanied by a written statement signed by the person:

(a) stating that the [document](#) is, to the person's knowledge, false or misleading in the material particular concerned; and

(b) setting out or referring to the material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.

There are also penalties for providing false or misleading information in protection visa application forms and statements in the Statutory Declaration Act.

4.4 Reviewing and assessing your client's documents

In reviewing these documents you are looking for *information* such as:

- Who is in the application?
- What is their relationship?
- Are there any details in the application that are incorrect and were later fixed?
- Was the applicant represented by a Migration Agent? Who?

You will be analysing the documents to examine:

- What issues or facts did the decision makers accept?
- What issues did they not accept? Why?
- Was the adverse decision based on finding:
 - no convention nexus issues?
 - no well founded fear because the country information did not support the applicant's account or the applicant's fears?
 - that effective protection was available?
 - that the degree of persecution of harm feared did not amount to persecution?
- Have the decision makers referred to the humanitarian merit of the matters or international obligations arising in the case?
- Do the facts show humanitarian issues or give rise to international obligations?
- Are there credibility issues relating to the applicant? Do these arise because:
 - The applicant did not provide sufficient relevant evidence?
 - There were inconsistencies in the client's evidence, for example inconsistencies in the client's statements and documents, or between first and second interview?
 - The decision maker felt that the applicant engaged in conduct in Australia for the purpose of strengthening the applicant's refugee claims as per s 91R(3) of the Migration Act?

Migration Act Section 91R(3)

(3) For the purposes of the application of this Act and the regulations to a particular person:

(a) in determining whether the person has a well founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the [Refugees Convention](#) as amended by the [Refugees Protocol](#); disregard any conduct engaged in by the person in Australia unless:

(b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the [Refugees Convention](#) as amended by the [Refugees Protocol](#).

4.5 Checklist for Advisers when assisting asylum seekers to present their claims:

The matters listed below are matters that may have arisen at the earlier stages of the application protection visa application. While they may not be relevant for every request to the Minister it is useful to understand factors that may have been relevant for decision makers earlier in the process. In addition, in some cases, it may be relevant to address these matters for the s417 or s48B request to the Minister.

A Are there preliminary concerns as to the applicant's capacity to articulate his/her claims

Does your client have the capacity to explain their claims? If this capacity has affected the prior refugee determination process, your client may wish to cover this issue in a statement or in the request to the Minister. Where appropriate alert the immigration decision maker to any factors which impact upon your client's capacity to explain their claims. For example

- Asylum seekers often fear persecution from state authorities, thus may find it difficult to share their story with an immigration official;
- Asylum seekers may have experienced sexual assault and find it difficult to discuss this.
- Asylum seekers may find it difficult to discuss their sexuality.
- Asylum seekers may have cultural or religious taboos in relation to whether to discuss certain issues, or how to discuss those issues, for example, death.

If your client's ability to articulate their claims was and continues to be seriously hindered, it is essential to obtain a psychiatric or psychological report. This may operate either to set out those matters which may be able to be articulated in numerous visits in a therapeutic environment, or set out observations in relation to barriers to communication faced by the applicant, or the memory of the applicant.

B Gender and language appropriate decision makers and interpreters

Were there specific language problems in the refugee determination process? Ensure an applicant is specific about the language and dialect necessary for optimum communication. Dialects often differ significantly, and problems in interpretation may affect appreciation of claims or adversely affect credibility. If there were specific language problems the client must identify these and set out corrections, and you must consider the relevance of these mistakes.

Were there problems arising from the gender of the interviewing officer or interpreter? Were individuals within a family interviewed separately?

C The applicant's statement

Did the applicant's statement provide adequate detail? Explain the importance of preparing a detailed statement. The statement is the central piece of evidence used to present the applicant's claims of fearing persecution in a protection visa application.

D Examining Passports and Travel Documents

The Ministerial Series Instruction 292 "Non citizens using false identities and/or bogus or fraudulent documents" sets out guidelines for DIMA assessment of false or suspicious identities and documents. It is important that only those documents that the client knows or believes to be genuine are submitted to decision makers. You should:

- Advise your client that his/her passport will be closely examined by decision maker officers; and
- Check your client's passport or travel documents for the following:
 - Is this the passport that has been previously presented to DIMA in the protection visa application?
 - If not, when where and how did your client obtain a further passport?
 - Are all the identity details correct?
 - How was the Passport/Travel document obtained?
 - Always check your client's passport (or other travel document) to ensure it verifies your client's movements claims. Note, this will generally already have been considered by decision makers.
 - Investigate the timing of prior travel and the your client's experience of persecution. Note, this will have generally already have been considered by decision makers.
 - If a passport has entry stamps or Visas to other countries discuss with your client why s/he did/didn't seek protection in those countries. Note, this will have generally already have been considered by decision makers.
 - Ask why your client sought their passport and Australian visa (if obtained) at the time it was issued. Be conscious of how long it took the client to leave their country after obtaining travel documents. If they did not leave immediately discuss thoroughly reasons for delay with them. Note, this will have generally already have been considered by decision makers.

E Former Visa applications/grants

DIMA or the RRT may have obtained file(s) in Australia or from overseas regarding any previous Australian visa applications the client has made or Australian visa the client held (including the application for the visa which allowed them to enter Australia). If this is so, your client may wish to address any issues arising from this. The decision maker will have checked these files for any inconsistencies or credibility issues with information in the Protection Visa application. Material often included in such applications includes family details, employment history, and residential addresses etc.

F Internal consistency of information provided in the protection visa application

An issue that may have arisen in the decision making process is the internal consistency of information presented in the protection visa application.

Example: The protection visa contains questions as to the place of residence and the place of employment of the applicant. Check - Is it possible for the applicant to have lived at the address listed as X when s/he was working at the employment address listed as Y some 200km away?

Example: If the applicant states s/he was in hiding as X time, but has listed her/his usual residence as her/his address during X time, this is inconsistent and requires clarification.

Example: The applicant has stated that she was in hiding between x date to y date, but elsewhere in the form has also said that she was working during this period.

G The authenticity and consistency of supporting documents

An issue that may have arisen in the decision making process is the consistency of information presented in the protection visa application and any supporting documentation submitted by the applicant. New documents that your client wishes to submit should be checked for authenticity and consistency. Documents which can be submitted as evidence to support your client's claims include: official/identity documents, medical reports, and supporting letters. Country information from websites, human rights reports, journals, newspapers, and other media articles and extracts from books can also be used to support claims.

Consistency?

Supporting documents must be examined closely to check for consistency with the applicant's statement, information provided in the DIMA application and interview, RRT application and hearing, and the applicant's Travel Document. It is especially important to check dates and places of supporting documentation with the dates and places noted in the applicant's residential addresses list and employment history list, and travel outside their country of nationality.

Example: Does the date of the death certificate of your client's uncle accord with the account in your client's statement? Does the police report of violence against your client use the correct name and date of birth of your client? Does a letter from an employer refer to an employment period in which your client stated she/he was not working and was in hiding?

Authenticity?

If your client has doubts as to the authenticity of a supporting document, this should not be submitted. Ask your client how they obtained the document, who obtained the document for them, etc. See MSI 292 for guidance on how DIMA assesses any documents.

Advise the applicant DIMA has a Document Examination Unit which may assess the veracity of documents. DIMA may also consult the post which covers the country the applicant comes from or have been granted the visa in, the Compliance section, QANTAS document specialists on secondment from DIMA, the AFP, Investigations Units in the regions, the Intelligence Analysis Section, Central Office and others such as other embassies or organisations with experience in recognising bogus documents, e.g. Canadian, US, UK, Netherlands, German or French embassies.

H Time of application for protection visa

This is an issue that may have arisen in the refugee determination process, and may be relevant if your client is making a s48B request. Be conscious of when your client applied for refugee status in Australia. Delay in applying for protection is often used by decision makers as a reason to question the genuineness of an applicant's fear. If there is a substantial period between arrival in Australia and application, it is often advisable to include the applicant's explanation as to why they did not apply for protection earlier in their statement.

I How did your client leave their country of origin?

This is an issue that may have arisen in the refugee determination process, and may be relevant if your client is making a s48B request. Be conscious of the means your client used to exit their country of nationality or former habitual residence.. Note that your client's exit route will have been scrutinised by the decision maker. Although the mode of exit should have no bearing on the applicant's credibility, some decision makers have been known to be suspicious of applicants who left their country 'legally'.

Note that applicants who left their country and entered Australia without valid travel documents are penalised by being granted only temporary protection, i.e. Temporary Protection Visas, Subclass 785, for 3 years.

Be conscious of the travel route your client took to come to Australia. You should check the route your client took and make sure that this information is consistent with any documentation presented by your client. It is important to provide reasons for not seeking protection en route to Australia in any countries where such protection may have been available.

Be conscious of the applicant's family members. If the applicant left their country without their immediate family, she/he may need to provide reasons as to why it is safe for their family to stay behind.

J Your client's activities since arriving in Australia

This is an issue that may have arisen in the refugee determination process, and may be relevant if your client is making a s48B request. **Section 91R(3)** of the *Migration Act* 1958 provides that in assessing whether an applicant is a refugee, the decision maker must "disregard any conduct engaged in by the person in Australia unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee".

Your client must be advised that any activity engaged in whilst in Australia will not necessarily strengthen his/her claims. Conduct should be assessed by the adviser and care must be taken to ensure that the activity will not be prejudicial to your client's claims. If the activity is consistent with the applicant's claims this information should be submitted to the decision maker.

Your client will need to prove that conduct engaged in within Australia is genuinely motivated. Advise your client in this situation to gather independent evidence to support the fact that the activity was engaged in for genuine reasons and not simply to strengthen refugee claims.

Example: A PRC citizen arrived in Australia in 2000. His visa expires and he is detained in Villawood IDC. In VIDC he develops a commitment to Falun Gong activities and practice for the first time. In this situation a decision maker may form the view that this person's belief was formed with a view to

strengthening his refugee claims. It would be important for the applicant to explain his motivations, interest and commitment so that the genuineness of his beliefs and practice may be accepted.

K Changes of Address

It is important to advise an asylum seeker s/he must inform DIMA of any change of address so s/he will be aware of any decision made by DIMA, or request to attend an interview, or request for further information. Applicants should use the DIMA Change of Address form, available from DIMA, to do this. It is the applicant's responsibility to inform DIMA, as undertaken by the applicant in the protection visa application forms.

L Research - Previous decisions

If it has been some time since the applicant's claims were considered at the RRT, it may be relevant to consider if the RRT has changed its approach or understanding in relation to applicants in the situation of your client. If more recent decisions enhance your client's chances of success in being recognised as refugees, this should be included in any s48B request. References to favourable information, reasoning and findings in past Refugee Review Tribunal (RRT), Administrative Appeals Tribunal (AAT) decisions are useful. A selection of published RRT Decisions can be found and searched on the AustLII website (www.austlii.edu.au). The RRT also selects and publishes summaries of some decisions through the "RRT Bulletin", this is located on the RRT website.

M Country Conditions

If the country situation has changed so that this enhances your client's chances of success in being recognised as a refugee, this should be included in any s48B request. Country information is also important in supporting an applicant's s417 claims. Be conscious of any changes in the circumstances of the country of origin since your client's arrival in Australia.

5.0 Ministerial Intervention under s 417

Migration Act

Law and Policy s 417 requests

Migration Act: Section 417, Section 474 Privative Clause

Ministerial Series Instruction 386

Ministerial Series Instruction 387

Information for clients

Referral Sheet #3 RACS Ministerial Legal Clinic

Information Sheet #11 How to prepare a letter of support for a person seeking the Minister's intervention under section 417 of the Migration Act

Information Sheet #15 Requesting the Minister intervene under sections 417, 48B and 195A of the Migration Act (includes sample letters)

Information Sheet #14 Applying for permission to work (includes example statement of financial position and financial hardship to support application for work permission)

5.1 Introduction to section 417 matters

The Minister's power to substitute a more favourable decision for that of the review tribunal is set out in s417 of the Migration Act.

MIGRATION ACT 1958 - SECT 417

Minister may substitute more favourable decision

(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the [Tribunal](#) under section 415 another decision, being a decision that is more favourable to the applicant, whether or not the [Tribunal](#) had the power to make that other decision.

(2) In exercising the power under subsection (1) on or after 1 September 1994, the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of [this Act](#).

(3) The power under subsection (1) may only be exercised by the Minister personally.

(4) If the Minister substitutes a decision under subsection (1), he or she must cause to be laid before each House of the Parliament a statement that:

(a) sets out the decision of the [Tribunal](#); and

(b) sets out the decision substituted by the Minister; and

(c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.

(5) A statement made under subsection (4) is not to include:

(a) the name of the applicant; or

(b) any information that may identify the applicant; or

(c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.

(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

Applicants should also be advised as to the requirement for truthful statements and genuine documents as per sections 268CM and 268CN discussed above.

5.2 Main features of s417 power

- The Minister for Immigration Senator Amanda Vanstone is the decision maker for all requests for Ministerial intervention under s417 and/or s48B of the Migration Act.
- Applicant must have a decision from the RRT (or MRT) to be eligible for Ministerial Intervention. If a child was born after the DIMA refusal this child cannot be included in the RRT application or decision (because the child was not the subject of the original DIMA decision), and so the Minister cannot intervene in relation to this child. If the Minister decides to intervene the child may wish to apply for a child visa.
- Minister's discretionary powers are non-compellable, non-reviewable, and non delegable in domestic law.
- The Minister's decision cannot be reviewed, as set out in s474 Migration Act which states:

474 (1) A [privative clause decision](#):

- (a) is final and conclusive; and
- (b) must not be challenged, appealed against, reviewed, quashed or called in question in any court; and
- (c) is not subject to prohibition, mandamus, injunction, declaration or certiorari in any court on any account.

.....

(7) To avoid doubt, the following decisions are *privative clause decisions* within the meaning of subsection 474(2):

(a) a decision of the Minister not to exercise, or not to consider the exercise, of the Minister's power under subsection 37A(2) or (3), section 48B, paragraph 72(1)(c), section 91F, 91L, 91Q, 195A, 197AB, 197AD, 351, 391, 417 or 454 or subsection 503A(3);

- In making a decision under s417, the Minister is not bound by migration law regulating the making of a valid visa application (Subdivision AA), nor by the matters that must be considered in making a decision about a visa (Subdivision AC). This means the Minister may grant a visa irrespective of whether the circumstances of the individual bear relation to the visa criteria.
- The Minister is accountable to both houses of Parliament and must table a statement setting out the review tribunal decision, the decision substituted by the Minister, and the Minister's reasons.

- The Minister's powers are personal and cannot be delegated. However the *Senate Select Committee on Ministerial discretion in Migration Matters Report* (March 2004)³ states that in practice the administration of s417 is governed by Ministerial Guidelines 386 which delegate the screening of a substantial volume to the Ministerial Intervention Unit and DIMA case officers, and include guidelines for DIMA staff as to when to refer a case to the Minister so the Minister can consider the exercise of powers.
- The Minister has the power to make the decision to⁴:
 - exercise the discretion;
 - not exercise the discretion;
 - not to consider whether to exercise the discretion (in practice the DIMA make this decision).
- Oversight: The Immigration Ombudsman is the main external oversight body. The United Nations Human Rights Committee and Torture Committee can also oversee these powers if a complaint is made to these committee, but the view of the committees is not legally binding. The United Nations High Commission for Refugees (UNHCR) in Australia may choose to intervene and request a meeting with the Minister for matters which bring up Australia's refugee obligations. UNHCR may intervene in this way if it receives a letter of request to do so from an applicant, applicants may choose to send a copy of their s417/s48B request to UNHCR in these circumstances.
- RRT referrals practice – the RRT may refer a matter to the Minister. In the RRT decision the RRT may state that this case raises humanitarian claims best considered by the Minister; and may notify DIMA through a letter to the DIMA State Director. The applicant is not informed that the RRT has informed DIMA of this. However, humanitarian claims may not arise at the review level, or be explored in limited detail, and further the Minister has no obligation to take the view of the RRT into account.
- Between 1997/1998 – 2004/2005, 3.6% - 8.6% of humanitarian (s 417, s 454, 501J) requests resulted in intervention. During this time the percentage of interventions was mostly 4-5%.
- Between 2000-2003 the most frequent visas granted in intervention requests were spouse, close ties and family visas. The DIMA do not utilise reporting practices which indicate the number of grants related to Australia's non refoulement obligations under international conventions.
- The *Senate Select Committee on Ministerial discretion in Migration Matters Report* (March 2004) identified the following factors as problems encountered by applicants in requests to the Minister – the lack of availability of information, lack of availability of Legal Aid or IAAAS, reasons are not given to unsuccessful applicants, exploitation of applicants by people purporting to assist in requests, unsolicited letters sent to the Minister on behalf of an applicant without knowledge of the applicant treated as a first request, bridging visas, work rights because of financial hardship being

³ Senate Select Committee on Ministerial Discretion in Migration Matters, *Report*, March 2004, Commonwealth of Australia, Canberra.

⁴ *Ozmanian* (1996) 141 ALR 322 Merkel J

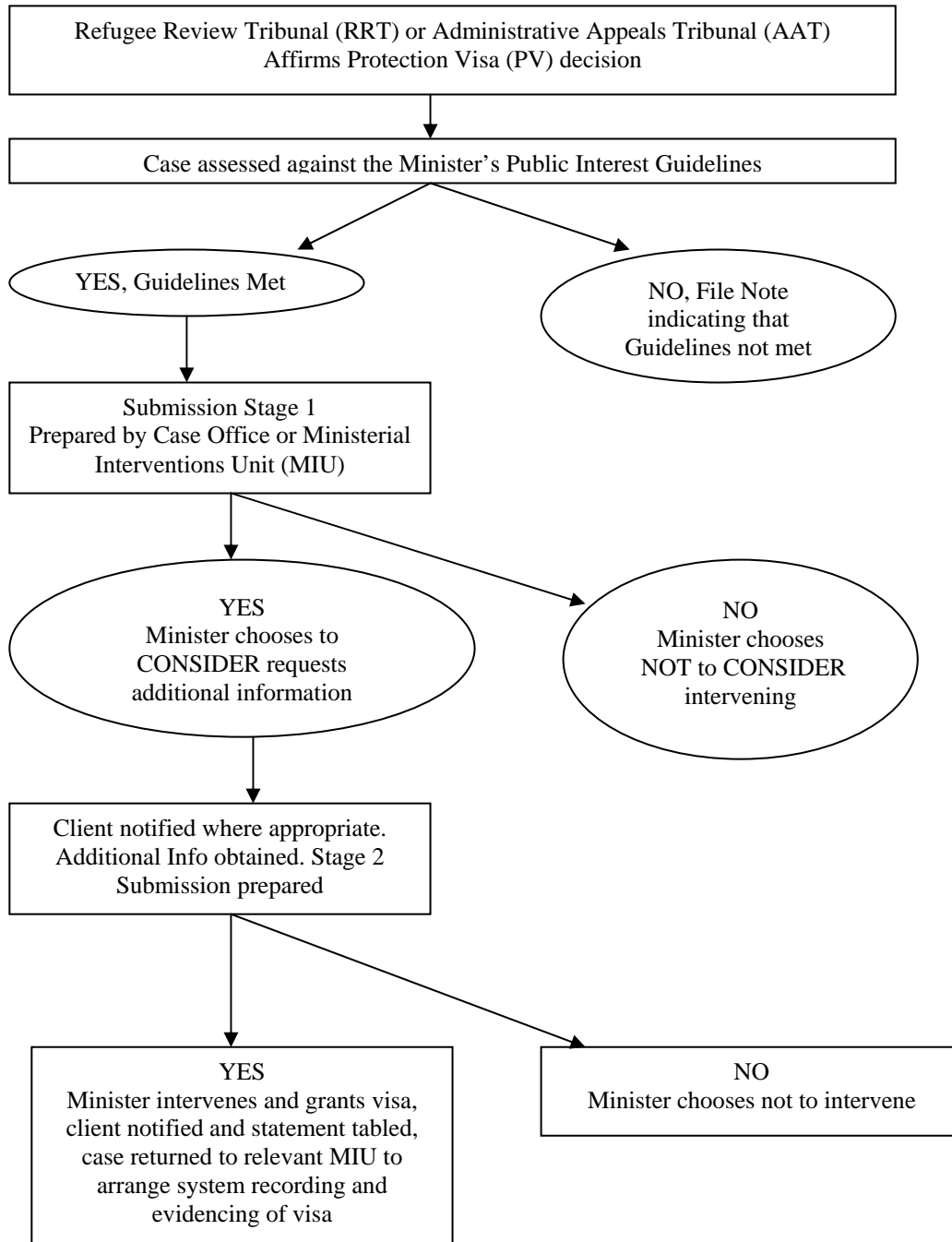
limited to cases whether a matter has been referred to the Minister for personal consideration, and no Medicare where a person does not have permission to work.

- There are no limits on the number of requests that can be made for the Minister's intervention. But only the first request provides eligibility for a Bridging Visa ('BV'). A person will be eligible for a BV on subsequent requests only if the Minister is personally considering the request. For repeat requests the key issue considered is whether the new information, that had not been put before the Minister, brings the request within the guidelines. A person seeking the Minister's intervention will only be granted permission to work where the request has been referred to the Minister's office for the Minister's personal consideration, and the person has a compelling need to work due to financial hardship.
- Requests for intervention are treated on an individual case by case basis, there is no precedent development.
- The Ministerial Intervention Unit (MIU) is responsible for assessing intervention requests against the ministerial guidelines. If the MIU feels that the case does fall within the guidelines, the MIU prepares a submission against the guidelines to the Minister. If the MIU feels that the case does not fall within the guidelines that case is placed on a schedule which provides a summary of the request and the primary and review decision making process.
- Many migration agents, lawyers and Parliamentarians believe that lobbying is an important part of advocacy in a request and increases the likelihood of success, or in having a request put past departmental vetting to be personally considered by the Minister. Access to the Minister and evidence of widespread or passionate community support for example from religious or community groups figures has been identified by some as an important factor in successful requests. There are suggestions that is influential in the exercise of discretion.
- The timeframe for decisions on Ministerial intervention requests ranges between about two months to a number of years.
- Section 198 of the Migration Act requires the remove of unlawful non citizens, in the community or in detention, who do not hold a visa, whose visa application has been finally determined, and whom are not applying for a visa. A request under s417 is not a visa application, and so does not affect the removal provisions. Note that a person may be eligible for a Bridging Visa and if a person holds a Bridging Visa the person is not an unlawful non citizen.

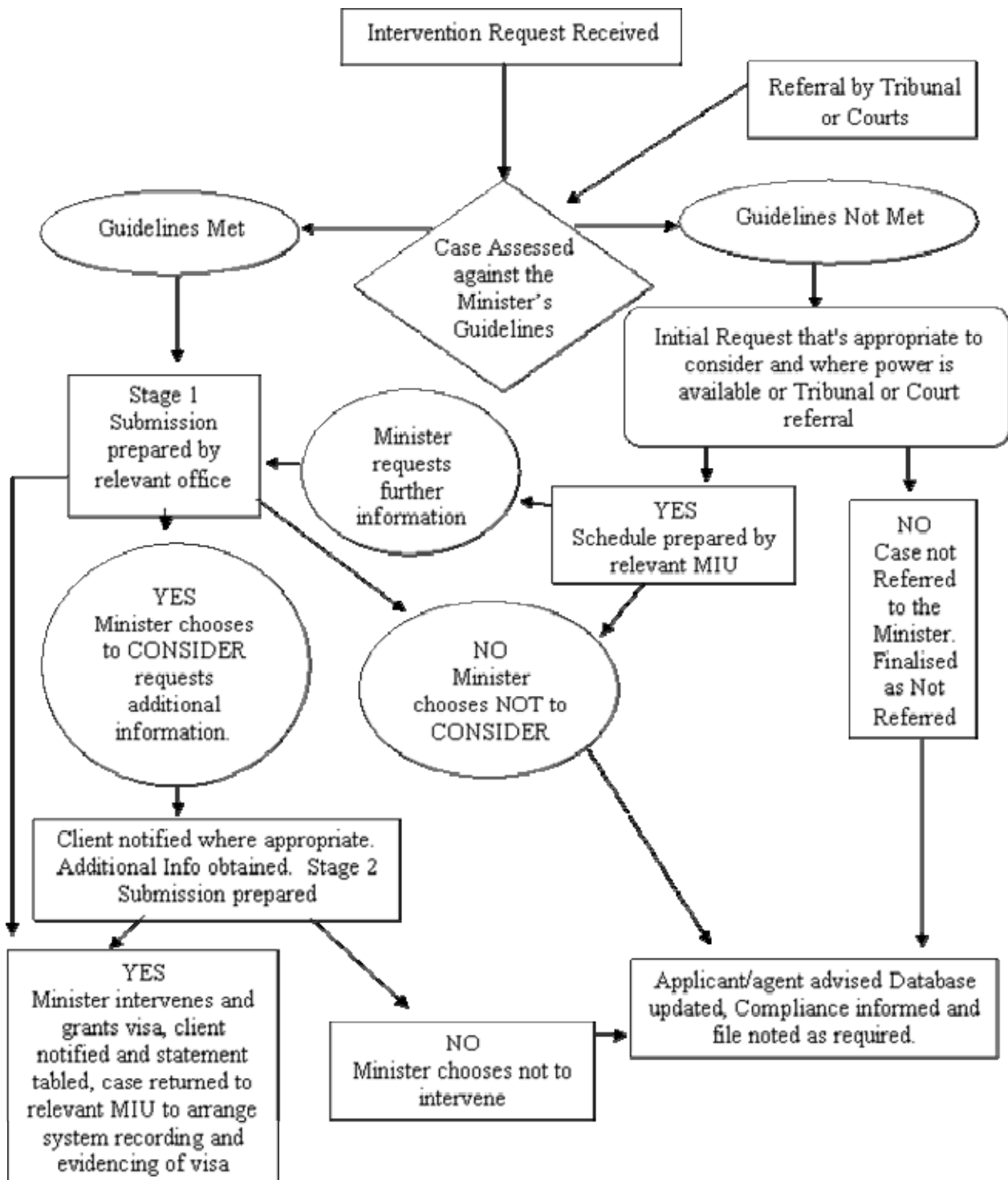
5.3 Process of request

FLOWCHART FOR POST-RRT PROCESS

Source: DIMA Submission no. 24, Attachment 11
Senate Inquiry into Ministerial Discretion of Migration Matters (March 2004)



FLOWCHART FOR PROCESS FROM RECEIPT OF A REQUEST
 Source: DIMA Submission no. 24, Attachment 12
 Senate Inquiry into Ministerial Discretion of Migration Matters (March 2004)



Source: DIMA Submission no. 24, Attachment 12

5.4 The Minister's power and the public interest criteria

This handbook will not include details of the specific criteria. You should examine the Ministerial Guidelines for these specific guidelines. It is important to remember that the Minister is not limited by these guidelines, so any compelling circumstances should be put forward.

The Minister's power is guided by the Ministerial Series Instruction No. 386 ('MSI 386').

MSI 386 explains the circumstances the Minister may wish to consider in exercising her public interest powers under s417 to substitute a decision of a review tribunal for a more favourable decision. The unique or exceptional circumstances are listed at 4.2 and possible adverse information at 5. This MSI also informs DIMA officers when to refer a case to the Minister for the Minister to decide whether to consider exercising such powers.

MSI 387 is intended to assist departmental staff in the application of these Guidelines.

MSI 386 sets out that:

- 4.1.1 The public interest may be served through the Australian Government responding with care and compassion where an individual's situation involves unique or exceptional circumstances...

and specifies that the Minister

- 4.1.2 will generally only consider the exercise of those public interest powers in cases which exhibit one or more unique or exceptional circumstances.

5.5 The Minister's decision to substitute a review decision for a Visitors Visa

In March 2006 the Migration Regulations were amended so as to give effect to certain concessions to a person for whom the Minister has intervened under s417 and granted a Subclass 676 Tourist Visa.

Background to this reform: In some circumstances the Minister has felt that it is not appropriate to grant a permanent visa under the s417 power, but wishes to provide these persons with the ability to apply for a further visa onshore, and also have amended visa criteria in this visa application. This has arisen from policy discussion in relation to the compassionate needs of people seeking Ministerial intervention whom have Australian citizen spouses, or children and a viewpoint that people in this circumstance are not necessarily "unique" or "exceptional." At present the law reform is limited to Contributory Parent (Migrant) (Class CA) and Contributory Aged Parent (Residence)(Class DG), including Visa Subclasses 143 Contributory Parent, 804 Aged Parent, 864 Contributory Aged Parent, 884 Contributory Aged Parent (Temporary),

How does this change the Minister's s417 power? It does not change the Minister's s417 power. But it means that the Minister may choose to grant a temporary Subclass 676 Tourist Visa in circumstances where the Minister is of the view point that an application for the Parent visa subclasses discussed above might be appropriate.

Visa concessions Certain visa criteria concessions have been made for holders of a “substituted Subclass 676 visa” which is a Subclass 676 visa which has been granted following a decision by the Minister to substitute a more favourable decision under section [345](#), [351](#), [391](#), [417](#), [454](#) or [501J](#) of the Act.⁵ Concessions include the removal of the balance of family test and age requirements are removed, and the public interest criterion 4005 (health) is replaced with a more lenient public interest criterion 4007 (health). Public Interest Criteria 4004 is not imposed for substituted subclass 676 visa holders. This 4004 criteria requires that for a visa to be granted that a person be free of debts to the Commonwealth or have made arrangements for debt repayment to the satisfaction of the Minister. In addition, the contributory parent and contributory aged parent visas have lower visa application fees for substituted subclass 676 visa holders. The costs are \$180 for the first instalment and \$11,140 for the second, rather than the generally applicable fees of \$1305/\$1935, and \$27,850.

It is envisaged that the Subclass 676 Tourist visa will be granted for a period of 6 months with work rights and without imposition of a 8503 (no further stay) condition. At present it is too earlier to assess the impact of these regulatory changes to the exercise of the Minister s 417 Migration Act discretion.

5.6 Health, Character and Assurance of Support

The Minister may require a person:

- undergo health tests (by Health Services Australia) or provide a health undertaking;
- provide character information - for example a fresh Australian Federal Police criminal record check (Form 1101), or the submission to DIMA of Form 80 for a security check by ASIO, or an overseas police check (Form 47P);
- provide an Assurance of Support – a legal commitment by 1 or more Australian residents to repay to the Government certain social security payments while the AOS is in force (generally 2 years).

However, the Minister is not required to do these things, nor bound by the outcomes, as the Minister may grant a visa even if the person does not meet the visa criteria.

5.7 Adverse Information

Potentially adverse information is listed in the *Guide to Taking Instructions* below. You should investigate any mitigating circumstances which explain the potentially adverse information.

Example A client participated in a class action, was unable to pay legal fees and so withdrew from the court case and became unlawful. At the time the client would have been eligible for a bridging visa if she had lodged a Ministerial request. Your client this year sought advice and regularised her status. In this example you should discuss with your client why they did not seek a bridging visa following withdrawal from the class action and develop an understanding of the client’s circumstances and experiences at that time.

Please note your client will not always be able to identify the amount of debt owed.

⁵ “Substituted Subclass 676 visa” is defined at Migration Regulations Div 1.2, Regulation 1.03.

Later in the processing of the request, the Minister may request the client provide information about the client's activities and residential address during various periods of living without a visa in Australia.

5.8 Pre MLC – What advice will your client have been given?

Your client will have been advised as to their:

- Eligibility for a s 417 request
- Eligibility for Bridging Visa (BV), how to apply for a BV, and BV conditions
- General information about criteria the Minister considers
- What documents to bring to the MLC appointment, and to bring 2 copies of their documents (1 for RACS, 1 for MLC Volunteer)
- The role of the MLC Clinic (and been provided with an information sheet in relation to this)
- Referral for judicial review merits opinion if relevant
- Risk of detention and removal (if relevant)
- Implications of whether the request is a first or subsequent request
- How to apply for copy of documents on the applicants protection or other visa application file through Freedom of Information.

This pre MLC appointment with a Migration Agent will establish:

- Whether a request has been made before
- The client's Bridging Visa status
- An overview of the client's immigration history
- An indication of the merits of s417 request
- An indication of the merits of s48B request

First MLC appointment - Typical first appointment tasks

Checklist of things to do

- Client agreement
- Complete MLC Intake Sheet -all sections must be completed. Some parts may be completed from the previous Evening Advice appointment.
- Receive documents – 1 for MLC volunteer, 1 for RACS
- Take instructions on s417 and s48B requests as relevant
- Provide advice and referrals (legal and non legal as required)
- Make a further appointment at RACS

Analysing client documents – what documents will you be looking at?

You will be examining documents released by FOI. In examining documents you should take special note as to whether there are documents from the RRT addressing the applicant's humanitarian claims, and any prior submissions from the MIU for the Minister in relation to prior s417 requests. Note that while there are no specific exemptions in the FOI Act in relation to submissions sent to, being considered by or returned by the Minister, part of such a submission might be exempt on the basis that it is a Working Document which provides advice, opinion, analysis or recommendations.

Preparing a Ministerial Intervention Request - overview

Appointment 1 – take instructions on family relationships and activities in Australia. Identify further supporting documents for applicant to obtain.

Post appointment 2 – Review of Protection Visa application and review case. Draft supporting details. Identify issues for clarification.

Appointment 2 – Clarify. Confirm.

Post appointment 2 – Finalise request. Email this request to the Supervisor for checking prior to the appointment.

Final appointment – Hand over two or more copies of the request letter to the client and a close file letter.

5.9 Guide to taking instructions

Take instructions in relation to matters against public interest criteria. The extent to which you are able to do this depends on the availability of the applicant's immigration history documents and whether you have read those documents. If information or documents are already before DIMA, although they should be taken to be known by DIMA, it remains useful to refer to them. If a matter has an extensive history, or if it is a repeat request of the client, it may be useful to resubmit material for DIMA's ease of reference. The following instructions guide will be available electronically for use during appointments. Ensure that any documents to be submitted with the request are consistent with information provided earlier at DIMA or the RRT, or include an explanation as to the inconsistency.

Instructions Guide

Details	Useful Documents
Personal details	
Who is to be included in this request?	
Were all people in the request included in the same protection visa application? Detail background of immigration history.	Peruse PV application/s.
Name	Birth certificate, Passport, Identity documents.
DOB	If this is in issue - provide other docs.
Country	If this is in issue - provide other docs.
Nationality	If this is in issue - provide other docs
Religion	If this is in issue - provide other docs. This might include Statement from the applicant, Baptism or Religious Joining certificate, Letter from religious body in Australia. Support letters from other members of this religion confirming membership.
Date of arrival	If this is in issue - provide other docs

Family in Australia	
Child – CROC/Hardship to Australian family unit/Australian citizen/Community integration	
Do you have children?	Birth certificates
Is the other parent a Australian citizen or permanent resident? Is anyone acting as non biological co-parent?	Proof of paternity (if required)
Age of child?	
Place of birth? Australia?	
Does the child have special needs? Eg health?	Letters from school, careworkers etc Letters from health professionals, including psychologists.
Children's integration and stability – eg school	Letters from school,
Length of time child has been in Australia	
Close ties the child has developed with Australian citizens or permanent residents.	Supporting letters in relation to close ties from Australian citizens/permanent residents?
Why do you feel it is in the best interests of your child to remain in Australia?	
Is there a real risk if the child was returned to home country the child would be subject to cruel, inhuman or degrading treatment?	Was this risk accepted by the RRT? Why or why not? Address issues such as credibility issues, or change in circumstances, change in country information, new information or evidence attesting to this.
Relationship with citizen or permanent resident	
Details about the relationship: Length of relationship Current living arrangements Defacto/married/engaged Effect of removal on partner Ability of partner to support the applicant	Marriage certificates Statutory declarations or letters from friends/associates in relation to genuineness length and nature of relationship Copy lease (if in both names), any joint bank deposits, any other documents referring to both. Statutory declarations of client and partner
Other family relationships: Any other family members in Australia. Extent of contact and relationship.	Copy of the bio data pages of Australian passport. Copy of citizenship document. Birth certificates.

Permanent residents or citizens?	Support letters.
How did they come to be permanent residents/citizens? As refugees?	Statutory declarations.
Community Integration	
Length of time (including detention)	
Work history and current employment	Employment references
Community involvement	References from relevant groups
Voluntary work	References speaking of contribution & value
Church/community/ethnic group participation	Personal references (comment upon character & contribution).
Welfare/sporting/social group	References from professionals/community people?
Involvement in schools	Local MP's?
	Any relevant media coverage including community group newsletter.
Friendships	Letters of support.
Supports available (emotional, financial etc)	Correspondence confirming
Skills and work experience	
Educational qualifications	Copy of relevant certificates
Trade qualifications	
Are these skills listed on the DIMA Skilled Occupations List Form 1121i Available at [www.immi.gov.au/allforms/pdf/1121i.pdf].	
Are these skills listed in the Sydney and Selected Areas Skills Shortage List (SSASSL). This is also in Form 1121i.	
Work experience – Australia, country of origin, other countries	Letters from employers
Study – Australia, country of origin, other countries	
Present study and future employment aspirations	
Special skills/talents eg sporting, creative, academic, scientific, economic. For trade and professional skills in demand, see DIMA's SOL Form 1121i.	
Health	
Medical, psychological problems	Medical reports/letters from medical professionals including doctors, psychologists, psychiatrists, social workers etc
Are you seeing a doctor? Are you on any medication?	
What are the health/treatment needs of this person?	
What treatment are they receiving at present?	
What is the professional diagnosis of the health of this person?	
What medication is prescribed?	
What is the future prognosis and treatment required in the future?	
Availability of care in country of origin	Country information.
Prognosis if returned to country of origin	Letter from overseas medical organisation/ hospital/ NGO
Possible Adverse Information – Character	
Any convictions?	(if priors, important to speak to obtain copy of criminal file or speak with practitioners assisting)
Any conduct re migration offence or migration fraud?	
Unpaid debts to Commonwealth (eg RRT decision fee, detention	

costs, judicial review costs)	
Has the applicant entered into arrangements to repay	
Periods of unlawful stay in Australia?	
Compliance with visa conditions in Australia?	
Co-operation with the DIMA (non adverse evidence eg reporting when unlawful, never been unlawful)	
Is the continued presence of person in Australia a threat to an individual/ society/ Australia security/ prejudice international relations	
Any international obligations on Australia eg extradition	
Possible Adverse Information - Third Country/ Relocation within country of origin	
Can you safely go to a country other than your country of origin?	
Do you have citizenship or the right of entry to another country?	Documents – citizenship forms, passport. Research limitations on the right of entry and right of stay. Is it temporary only?
Are you stateless?	
Relocate to another part of country of origin?	
Significant threat to personal security, human rights or human dignity on return to their country of origin.	
Convention against Torture	
Convention on the Rights of the Child	
International Covenant on Civil and Political Rights	
These criteria involve reviewing an applicant’s Protection Visa application and review application and then seeking instructions to clarify.	
Is there additional information or evidence which has not been provided to the DIMA or RRT?	
<i>RRT decision</i>	Analyse the RRT decision.
Why was the application unsuccessful?	
Did the RRT find the applicant credible?	
What matters did the RRT accept? How do these support the public interest criteria?	
What matters did the RRT not accept?	
Is the refusal based on country information?	
Has the country situation changed?	
Is there now new relevant information, changed circumstances or new evidence on these matters?	Evidence: documentary evidence or country information in relation to changed circumstances.
Why was this information or evidence not provided to the RRT?	
Is the refusal based on effective protection in a third country?	
Is there information relevant to Australia’s international obligations that has not been put to DIMA or the RRT?	
Risk of harm to children?	
Risk of harm	
Risk of torture - mental/physical, is there an official element?	
Threat to human rights	
Previous torture/trauma, inhuman to return, subjective fears	Psych report
Systematic harm, denial of rights	
Cruel, inhuman or degrading treatment/punishment	

Right to life
Protection of the family, risk to any other family members?
Other compassionate circumstances/ humanitarian
Compassionate age circumstances
Did the applicant have an agent in the primary or review application or in prior Ministerial intervention requests?? Check the name of the agent in the MARA website and sanctions list?
What was the applicant's experience with the migration agent?
Has the applicant made a complaint against the agent?

5.10 Australia's key international obligations not to refoule people in certain circumstances

Australia is a signatory to international conventions including the Convention Against Torture (CAT), the International Convention on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CROC). Australia's non-refoulement obligations may arise in relation to people facing problems in their country of origin as described in the following Articles. It is important to remember the Ministerial Intervention stage is the first stage that these issues may be completely canvassed and considered.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

International Covenant on Civil and Political Rights

Article 6 Right to life

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Other key obligations

International Covenant on Civil and Political Rights

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Convention on the Rights of the Child

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

6.0 Section 48B requests to the Minister

Law and Policy s48B requests

Sections 48A and 48B of the Migration Act 1958

Protection Visa Policy Manual paragraphs 210 – 223, in particular *Minister's Guidelines – s48A cases and requests for s 48B ministerial interventions* paragraphs 216 – 223.

Information for clients

Referral Sheet #3 RACS Ministerial Legal Clinic

Information Sheet #1 Information on assistance offered by RACS

Information Sheet #3 Refugee Determination Flowchart

Information Sheet #5 Supporting information and evidence for your protection visa application

Information Sheet #15 Requesting the Minister intervene under sections 417, 48B and 195A of the Migration Act (includes sample letters)

Information Sheet #14 Applying for permission to work (includes example statement of financial position and financial hardship to support application for work permission)

6.1 Introduction

The Minister has the power under s48B to allow a person to lodge a further protection visa application while remaining in the migration zone.

Legislation

Section 46(1)(d) Migration Act

...an application for a visa is valid if, and only if:...it is not prevented by section 48 (visa refused or cancelled) (or s48A (protection visa refused or cancelled))

Section 48A Migration Act

48A. (1) Subject to section [48B](#), a [non-citizen](#) who, while in the [migration zone](#), has made:

(a) an application for a protection visa, where the grant of the visa has been refused (whether or not the application has been [finally determined](#)); or

(b) applications for protection visas, where the grants of the visas have been refused (whether or not the applications have been finally determined);

may not make a further application for a protection visa while in the migration zone.

[TRANSITIONAL PROVISION](#)

(1A) For the purposes of this section, a non-citizen who:

(a) has been removed from the [migration zone](#) under section [198](#); and

(b) is again in the migration zone as a result of travel to Australia that is covered by paragraph [42\(2A\)\(d\)](#) or [\(e\)](#); is taken to have been continuously in the migration zone despite the removal referred to in paragraph (a).

Note: Paragraphs [42\(2A\)\(d\)](#) and [\(e\)](#) cover limited situations where people are returned to Australia despite their removal under section [198](#).

(1B) Subject to section [48B](#), a non-citizen in the [migration zone](#) who held a [protection visa](#) that was cancelled may not make a further application for a protection visa while in the migration zone.

(2) *In this section:*

application for a protection visa includes:

(aa) an application for a visa, a criterion for which is that the applicant is a [non-citizen](#) in Australia to whom Australia has protection obligations under the [Refugees Convention](#) as amended by the [Refugees Protocol](#); and

(ab) an application for a visa, a criterion for which is that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen in Australia:

(i) to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; and

(ii) who holds a protection visa; and

(a) an application for a visa, or entry permit (within the meaning of this Act as in force immediately before 1 September 1994), a criterion for which is that the applicant is a non-citizen who has been determined to be a refugee under the [Refugees Convention](#) as amended by the [Refugees Protocol](#); and

(b) an application for a decision that a non-citizen is a refugee under the Refugees Convention as amended by the Refugees Protocol; and

(c) an application covered by paragraph (a) or (b) that is also covered by section 39 of the Migration Reform Act 1992.

Section 48B Migration Act

[Minister may determine that section 48A does not apply to non-citizen](#)

48B. (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular [non-citizen](#), determine that section [48A](#) does not apply to prevent an application for a protection visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.

(2) The power under subsection (1) may only be exercised by the Minister personally.

(3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

(a) sets out the determination; and

(b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.

(4) A statement under subsection (3) is not to include:

(a) the name of the non-citizen; or

(b) any information that may identify the non-citizen; or

(c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned — the name of that other person or any information that may identify that other person.

(5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:

(a) if the determination is made between 1 January and 30 June (inclusive) in a year — 1 July in that year; or

(b) if the determination is made between 1 July and 31 December (inclusive) in a year — 1 January in the following year.

(6) The Minister [does not have a duty to consider](#) whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

People who are not barred by s48A and may lodge a further protection visa application without making a s48B request:

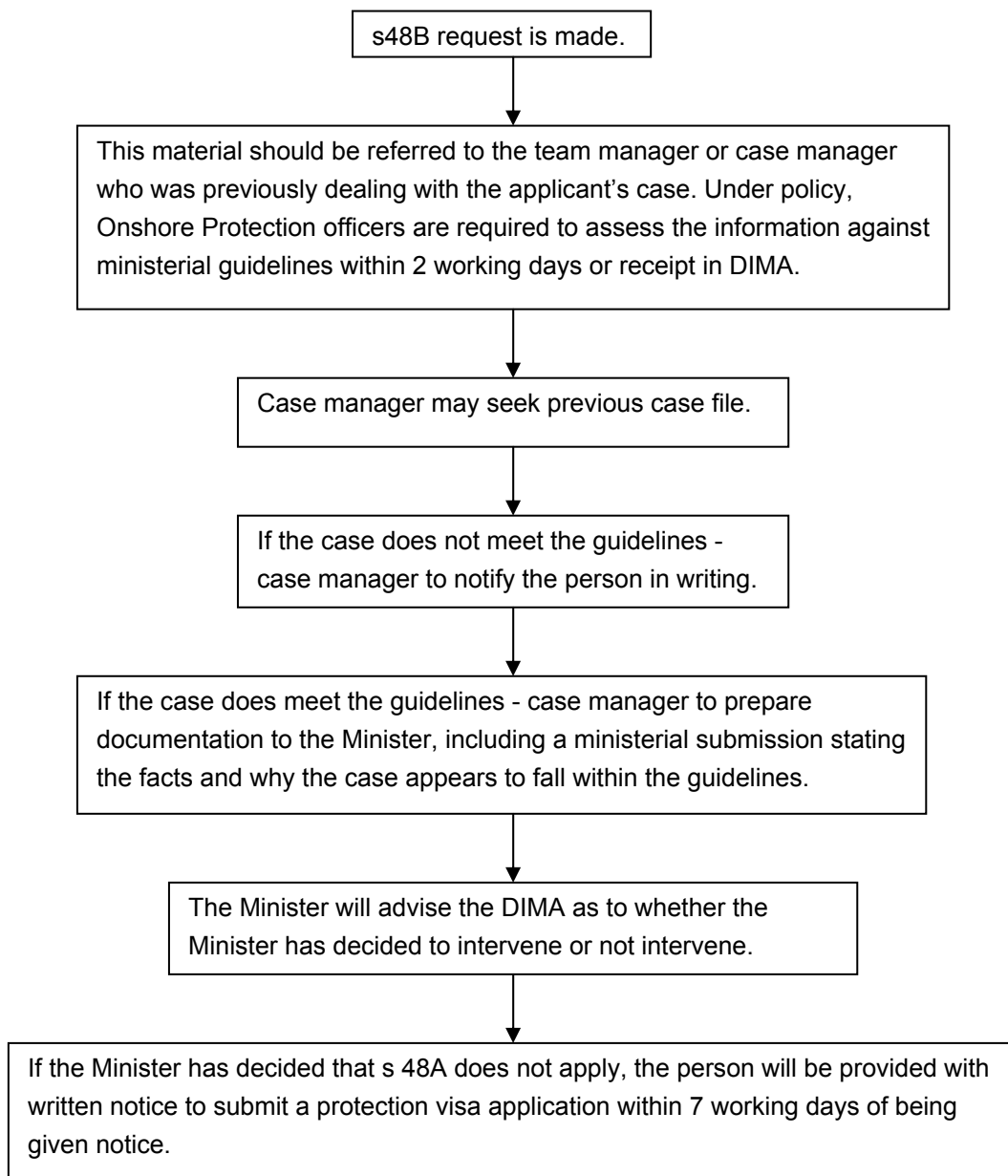
- If a person made their first protection visa application as a member of a family unit and did not put forward their own claims, and this application was refused before 1 October 2001, then this person is able to lodge a further protection visa application. A person in this situation is not barred by s48A from lodging because the changes to the definition of “application for a protection visa” in s48A and s36(2) were operational from 1 October 2001. Anyone who receives a primary decision on a protection visa application on and after 1 October 2001 is caught by the new law in s48A which prohibits further applications for secondary members of an initial protection visa application.
- If a person had their first protection visa application refused by DIMA, and on a review application the Administrative Appeals Tribunal set aside the decision of the DIMA, then this person is not barred by s 48A because the effect of the set aside is that there is no longer a primary refusal decision.⁶

6.2 Main features of the Minister’s s 48B power

- Minister’s discretionary powers are non-compellable, non-reviewable, and non-delegable in domestic law.
- A s48B decision by the Minister is not reviewable and is included as a privative clause decision at s474 of the Migration Act.
- A s48B request is not a visa application.
- A s48B request may be lodged in the form of a letter to the Minister, or as a purported further protection visa application.
- Requests are commonly made if a person was refused at DIMA but for some reason missed the limitation date for a review application, or if the situation in the person’s country of origin has deteriorated, or if a person has evidence that was not available at the primary and review stages of the protection visa application.
- The onus to present information is on the person making the request. The case manager may or may not undertake country research and is not required to undertake a complete reassessment.
- Section 50 of the Migration Act states that in considering a purported further protection visa application, the Minister is not required to reconsider an information considered in the earlier application. But a case manager can take into account the cumulative effect of claims presented in that earlier application and in the present request. Case managers are not required to obtain the applicant’s previous case file and will decide this on a case by case basis.
- A person will not be eligible for a bridging visa on the basis of a request for the Minister to exercise discretion under s48B. A person may be eligible for a bridging visa on other grounds such as a request to the Minister under s417 or a judicial review application, or may hold a substantive visa. If a person does not hold a bridging or substantive visa a person is liable to be detained and removed.
- A person will not be interviewed in relation to the further information submitted.

⁶ See *Tekriti v MIMIA* (2004) 1 FCA 772.

6.3 Section 48B request procedure flowchart



6.4 Relevant information for a s48B request

Information is relevant in a s48B request if it presents:

- substantive and credible new claims or new information and/or;
- a change of circumstances in the country of nationality which would enhance a person's chance of success in a protection application; and/or
- certain cases which are outside the time limit for judicial review; and/or
- matters relevant to international obligations.

The **guiding questions DIMA will consider** in relation to this new information are:

- Is the information credible? Why?

- Is the information Convention related? Why?
- Does this enhance the applicant's chances of making a successful claim for protection?
- Why was this information not brought forward to the decision maker during the refugee status determination process? Are these reasons credible and compelling?

In preparing the s48B request you should address these issues for all new information.

Checklist for instructions:

- Does your client have new claims?
- Does your client have documentation to support these new claims?
- Does your client have new evidence?
- How did your client obtain this evidence?
- Why was this information not brought forward to the decision maker during the refugee status determination process?

6.5 New claims or new information

In presenting new claims or new information, you should ensure that you have reviewed your client's prior case (see above at Part 4.0), the prior Convention claims, and established which matters require clarification. In conference with your client you need to establish:

- The credibility of the information or documents;
- The reasons why this information was not brought forward earlier.

You then need to address the other guiding questions DIMA will consider.

Why was the information not put forward earlier?

- If the applicant did not know this new information during consideration of previous application, DIMA will consider:
Is the information credible?
Is it consistent with previous claims?
If it is not consistent with previous claims, is there a plausible reason why the new claims are inconsistent with previous claims made?
- If information was known and available to the applicant earlier but not provided, DIMA will consider:
Are the reasons put forward by the applicant as to why it was not submitted to the decision maker plausible and compelling?

6.6 New evidence or documents

Documents your client might now be able to obtain that are relevant to refugee status determination include:

Identity Identity cards or documents. For example a passport, national identity card, birth certificate, driver's license, student card, employment card, household registration card, family registration booklet etc

Political Membership cards from a political party, union or other organisation to which the client belongs, minutes of meetings, publications of the party, leaflets, posters (eg of rallies), articles in relation to the activities of the political group. Also should include in the statement a description of the organisation, it's aims and structure and activities and client's role in this.

Religious Religious membership documents, references from the church, mosque, religious group, documents such as Baptism certificates, religious newsletters, other family members religious identity documents, any other documents showing client's religious identity, eg voting cards, national identity cards, passport etc. It is also useful to include details in client's statement that show his/her knowledge of religion, history of involvement with religion etc.

Ethnicity Any document showing a client's connection to a particular area eg documents showing residence. Often this may be best included in the client's statement, for example setting out knowledge of customs specific to the client's ethnicity such as marriage rites, death rites, cultural celebrations, traditional foods, traditional clothing etc.

Membership of a particular social group Complaints or reports to police or other governmental bodies that a client has made. Evidence of client's membership of a social group. For example – women, married women, homosexuals, etc

Nationality Evidence of nationality – passport, birth certificate etc

Medical Reports If an asylum seeker has seen, is seeing, or will see a health or medical service regarding an emotional or physical disability relevant to his/her claims and/or application for protection then discuss with the asylum seeker the usefulness of obtaining a medical report to submit as supporting evidence. This may include medical reports or admission details to hospitals in the asylum seeker's country of nationality, and/or medical reports prepared in Australia.

Photographs For example photographs of injuries related to the asylum seekers claims of persecution, photographs of attendance at events relevant to claims for example at demonstrations.

Police records, court and legal documents These documents from a client's country of origin may support his/her history of persecution, for example arrest warrants relating to the client or the client's friends or family.

Supporting Letters and Statements Support letters from family, friends, colleagues, organisation officials verifying or supporting claims about persecution can also be useful. If possible for these letters to be set out as statutory declarations and witnessed (eg by a notary public or justice of the peace or equivalent officer in accordance with the law in the client's country), these statements may carry further weight. As a general rule support letters from independent bodies are considered to be more objective than letters from friends and family members. International human rights organisations such as Amnesty International can also be approached to provide support letters.

Country Information Also relevant are newspaper reports about events in the client's country or the client or people mentioned in the client's statement, and independent country reports.

6.7 New claims for refugee status

A sur place claim is one which has developed since an applicant has left their country of origin. For new refugee claims that relate to any activities an applicant has engaged in Australia since the decision, these claims will be considered by the DIMA in light of whether the applicant can satisfy s91R(3) Migration Act. This may include matters such as your client's expression of political views in Australia, involvement in activities in Australia such as becoming the adherent of a religion or your client being the subject of publicity in Australia. See the discussion of s91R(3) Migration Act above at Part 4.0.

Other issues relevant in this instance are:

- whether the applicant's activities are likely to have come to the attention of the authorities in their country of origin;
- how the authorities are likely to view this activities;
- whether these new claims are consistent with previous claims or the applicant has a plausible and credible explanation as to why they are inconsistent.

New claims may be presented through preparation of a statement of the client where relevant, or included in the letter, with supporting documents as available. If you are unsure whether a statement is necessary in your request please discuss this with the RACS supervisor.

6.8 Changed circumstances in the person's country of origin

You may submit circumstance have changed in your client's country of origin and support this through:

- independent country information. It may be that certain country information was not available at the time of your client's determination or that the situation has changed;
- reference to Refugee Review Tribunal decisions which find that a person in your client's circumstances is a refugee. The Tribunal may have recognised that circumstances have changed since your client's matter was determined, or may have changed their assessment of the country situation.

Ensure that you identify country information that is relevant to your client's claims, and to the definition of a refugee. A guide to country research resources is included at Part 8.0 of this handbook. It is useful to include short and pertinent extracts of country information, and ensure that you provide full references for this information, including details if relevant of the availability of this document online.

DIMA will consider whether the country situation has in fact changed, and whether these changes enhance your client's chance of making a successful application for refugee status.

6.9 Preparing statements

One of the major issues in preparing a protection visa application is to provide enough information so the claims are credible. Some of the main reasons for the refusal of protection applications are:

- The claims of the applicant with regard to what has happened or what will happen are not consistent with the available country information. For example a person may claim that they fear being arbitrarily arrested and detained and that they will not have access to a fair trial. Their application may be rejected if information available to the decision maker indicates that the police in a particular country follow due process and the courts will accord a person a fair trial.
- The applicant's claims were inconsistently put at different stages of the application process. For example many people add new information to their claims at the RRT stage (eg. by changing dates or adding new incidents). In many cases, such information when added without good reason and explanation, is regarded as untrue.
- The applicant's behaviour is not indicative of a genuine fear of persecution. For example a person who has held a valid passport and visa and then delayed leaving their country, or a person who, after having left their home country, has delayed making a protection application (either in another country or in Australia) may not be found to have a 'well founded fear' of persecution.

The Migration Act provides that adverse inferences may be drawn about a protection visa applicant's credibility in certain circumstances. Section 91V provides that an officer may draw unfavourable inferences about a person's credibility where the person refuses to give evidence on oath or affirmation (after being asked to do so) or gives such evidence in a manner or with such a demeanor that they appear insincere. Section 91W provides unfavourable inferences may be drawn if a protection visa applicant refuses to provide documents about their identity or nationality and does not have a reasonable excuse for the refusal.

It is essential that this statement:

- is prepared carefully to ensure that there are no internal inconsistencies; and
- is understood and signed by the applicant (and interpreted to them in their own language if they do not speak or read English);
- is checked by the supervisor prior to being read back to your client.

It is advisable that the statement:

- uses language and words that the applicant would use; and
- does not contain technical words (eg. 'persecution' or 'membership of a particular social group')

The following information is an extract from material RACS has prepared for clients:

Information Sheet #6 How to write your statement in support of your application for refugee status:

Things to Remember

- As the applicant, the onus is on *you* to prove your case. Your statement is the most important document you submit to do this.
- You must tell the truth. DIMIA will check your claims. If you are found to have lied about anything, it will affect your chances of getting a visa.
- Be consistent. Do not contradict yourself. For example, make sure the dates in your statement correlate with the dates specified in any supporting documents you submit to DIMA. If you are unsure when an event occurred keep your comments general, that is “*around* December 2001” or “*approximately* two months later”.
- You must relate your claims to at least one of the five grounds for refugee status in the UN Refugee Convention definition – race, religion, nationality, membership of a particular social group or political opinion.
- Make your statement as comprehensive as possible. The more relevant details that you include in your statement the more likely your statement will be believed.
- The person who reads your statement may know very little about your country.
- If you need more time to submit your full statement to DIMIA, you may submit a brief statement initially notifying DIMIA that your full statement will follow. It is essential that your full statement is then submitted as soon as possible.

Your Statement

When you are making an application for refugee status you need to submit a supporting statement to go with the application form. This statement should explain your reasons for claiming refugee status.

You should include the following information.

1. Some personal details, introducing yourself. For example,

My name is (your name). I was born on ... (date of birth) in ... (place – city and country). I am a (ethnic group or religion if relevant e.g. Alevi Kurd, Tamil, Ba’hai, Christian, Muslim). My usual occupation was (your usual profession or trade). I left (your home country) on ... (date) and arrived in Australia on(date). I now live at ... (present address).

2. Some background information regarding the situation in your country, including the types of problems in your country and the types of people targeted for persecution.
3. Your statement must be in chronological order, that is, in the order that things happened. If your parents suffered from similar problems to you, then start with this. You should then continue to describe the first time you suffered from these problems, even if you were very young. Describe the history of your problems. You should finish with the main event that led to you leaving your country and coming to Australia.

For example:

- Our family first had problems when the authorities arrested my brother for demonstrating against the government. This was about five (5) years ago.
- My troubles started two (2) years ago when I joined a political organisation opposed to the government.
- I was arrested and interrogated by the authorities on a number of occasions over the next two (2) years until I came to Australia.
- The last occasion was ...

Of course, you must provide details of such events.

4. All the things that happened to you that caused you to leave your country (starting with the first thing that happened and ending with the last one before coming to Australia). Include small things as well as big things. For example:

- You may have done things, or have been suspected of doing things, which caused problems for you, such as criticising the government or other powerful groups, or belonging to a particular political party or religion, or going to demonstrations, publishing articles etc.
- You may have been harassed because of your race, religion, nationality or suspected association with certain groups in your country.

5. Places: for example, where you lived, where these things happened, places you visited before you came to Australia. You must specify all the places you visited on your way to Australia. You must also state how long you spent in these places.

If you held a TPV 785 visa since last entering Australia - if you stayed in a country for more than seven (7) days on your way to Australia, you must state what efforts you made to obtain protection from the local government, Australian embassy, high commission or consulate, or from the UN or other international aid agency. For example, did you try and lodge a refugee application with the UN in that country? If not, why not?

6. Dates: The day, month and year (if you can remember) of events you mention in your statement. If you cannot remember the dates exactly, try and think of the time of year, for example winter or summer, early or late in the year. Do not put in a date if you are not sure of it – say 'I think' or 'about' or 'approximately'.
7. How you left your country is important. For example, did you leave legally? Did you bribe an official to get a passport? Did you have difficulty leaving your country?
8. What do you think will happen to you if you go back?

9. Will the authorities in your country be able to protect you?
10. Could you relocate to another part of the country and live there safely?
11. Things that happened to other people may also be relevant. For example, other members of your family, or of the same political party, or the same religion. If you are in a similar situation this will be important evidence of what might happen to you if you return to your country.

6.9 Other s48B request claims

Missed judicial review: If the applicant has missed the time limit for lodging appeals to the Federal Court due to error or delay by detention centre staff. In this situation, the DIMA will assess the merits of the applicant's judicial review application and whether s417 power is available.

Matters relevant to international obligations: The Minister may also consider any relevant international obligations, as discussed above at Part 5.8.

7.0 Writing up your Ministerial Intervention request

7.1 Examples and templates

A template letter is on all RACS computers, available when you open a New Document and select “MLC L to Minister”.

A template Instructions Sheet is available on RACS computers, available as a template when you open a New Document and select “MLC Instructions Sheet.”

A template Client Registration Sheet for the inside front cover a client file, available as a template when you open a New Document and select “MLC Client Registration”

Example s417 and s48B requests are available online at RACS Training Website. Email [Louise.Boon-Kuo@racs.org.au] for details about this closed access training site.

7.2 Basic structure

- Explanation of MLC request assistance provided to client
- Introduction to s417 and/or s48B request
- Immigration History
- Overview of personal details of all people subject of the request
- Section 417 request – address relevant criteria under headings of each criteria and refer to and label attachments as relevant
- Section 48B request - address relevant criteria under headings of each criteria
- Concluding remarks – ensure you advise if your client is awaiting documents under FOI and that a further letter will be sent once the FOI is received.
- Attach relevant documents, labelled *Attachment A*, *Attachment B* etc.

7.3 Focus

Your letter should address the public interest criteria listed in MSI 386, but this is not an exhaustive statement of matters the Minister may take into account. If you or a client feel that a matter is unique or exceptional you should include details in this request. Your letter need not, and should not refer to every criteria. You should focus on the relevant criteria in your case, placing strongest criteria first.

7.4 Style

- Use plain language in your letter.
- Use direct speech – “I” - this is a letter from your client, not from you nor the RACS office.
- Keep extracts of country information brief and relevant. Ensure that full references are provided in footnote form, ie for articles Author, ‘Title of article in speech marks’, *Journal Title italicized*, page numbers (if available). If materials are available online, indicate: Available at: [URL details] Accessed at [date of access].
- Refer to attachments as Attachment A, B, C etc. When referring to Attachments in the text of the letter do so in following style **Attachment A**.
- Use 11 point Arial font.

- When including extracts of country information, indent the information and place in 10 point Arial font.

7.5 Letterhead

Letters will not be provided on letterhead. Letters must be provided in hard copy to the applicant, and a copy of that as provided maintained on RACS file. A standard introductory paragraph will explain the role and limitations of the Ministerial Legal Clinic at the beginning of the Request letter.

8.0 Further reading and resources

Some further reading has been included in the handbook above. This section guides you to some resources available online to guide your legal research, your knowledge of s417 and s48B requests and determinations, and to guide your country research.

8.1 Ministerial Intervention request resources

Senate Select Committee, *Senate Select Committee Report on Ministerial Discretion into Migration Matters*, March 2004

http://www.aph.gov.au/senate/committee/minmig_ctte/report/report.pdf

Commonwealth Ombudsman (now designated as Immigration Ombudsman as of December 2005 for immigration matters)

http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/complaints_immigration

Australian Parliamentary Library, *Ministerial Discretion in Migration Matters: Contemporary Policy Issues in Historical Context* <http://www.aph.gov.au/library/pubs/CIB/2003-04/04cib03.htm>

Catholic Commission for Justice, Development and Peace, *Concern about Ministerial Concern in Migration Matters* (2003)

<http://www.melbourne.catholic.org.au/ccjdp/pdf/op14-200308-specialreportaboutministerialdiscretion.pdf>

International Conventions

International Covenant on Civil and Political Rights <http://www.ohchr.org/english/law/ccpr.htm>

Convention on the Rights of the Child <http://www.ohchr.org/english/law/crc.htm>

Convention against Torture <http://www.ohchr.org/english/law/cat.htm>

Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd edition, Oxford University Press, Oxford.

Human Rights Tools <http://www.humanrightstools.org/about.htm>

Refugees and asylum seekers:

UNHCR *Handbook on Procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PUBL&id=3d58e13b4>

Refugee Review Tribunal, *Guide to Refugee Law in Australia*, <http://www.rrt.gov.au/guidereflaw.htm>

John Vrachnas Kim Boyd Mirko Bagaric and Penny Dimopoulos, *Migration and Refugee Law: Principles and Practice in Australia*, 2005, Cambridge University Press, Port Melbourne.

Description: 340 pages, paperback

Mary Crock, *Immigration and Refugee Law in Australia*, 1998, Federation Press, Annandale.

A guide to key resources and recent developments <http://www.aph.gov.au/library/intguide/SP/Refugees.htm>

8.2 Australian legal and government

- Department of Immigration and Multicultural Affairs (DIMA) – www.immi.gov.au
- Department of Foreign Affairs and Trade (DFAT) – www.dfat.gov.au
- Minister for Immigration – www.minister.immi.gov.au
- Refugee Review Tribunal (RRT) – www.rrt.gov.au
- Migration Agents Registration Authority (MARA) – www.themara.com.au
- Parliament of Australia – www.aph.gov.au
- Australasian Legal Information Institute (Austlii) – www.austlii.edu.au
- Legal Aid NSW – www.legalaid.nsw.gov.au
Includes client information about Legal Aid and common legal issues (non immigration) in various community languages.
- Immigration Advice and Rights Centre (IARC) – www.iarc.asn.au/index.html

Comprehensive database of Commonwealth legislation and judicial decisions

- ComLaw – www.comlaw.gov.au
Good source of current legislation, particularly for up-to-date or historical legislation. ComLaw supersedes
- SCALEplus www.scaleplus.law.gov.au, but SCALEplus may have legislation not available on ComLaw

8.3 Overseas legal and government

Useful for non-Australian laws

- Asylumlaw.org – www.asylumlaw.org
Provides information on the asylum process in several countries, including Australia, as well as case support for many countries.
- World Legal Information Institute (Worldlii) – www.worldlii.org
Access legal information across 21 international databases.

Americas

- US Department of State – www.state.gov
- Michigan University Refugee Case Law Site – www.refugeecaselaw.org/subsite.asp
A collation of refugee decisions from several jurisdictions
- Immigration and Refugee Board of Canada – www.irb-cisr.gc.ca
RefLex - www.irb-cisr.gc.ca/en/decisions/reflex/index_e.htm
Collation of Immigration and Refugee Board of Canada decisions
- Legal Information Institute (LII) – www.law.cornell.edu
Database of US legislation and judicial decisions.
- Canadian Legal Information Institute (CanLII) – www.canlii.org
Comprehensive database of Canadian legislation and judicial decisions
- Inter-American Commission on Human Rights (IACHR) – www.cidh.org/defaultE.htm
- IACHR Case Law - www1.umn.edu/humanrts/cases/commissn.htm
- Organization of American States (OAS) Special Rapporteur on the Freedom of Expression - www.cidh.org/Relatoria/index.asp?IID=1
- Inter-American Court of Human Rights (IACtHR) - www.corteidh.or.cr/index_ing.html

Europe & Central Asia

- Migration Policy Group – www.migpolgroup.com
- Immigration and Nationality Directorate – www.ind.homeoffice.gov.uk
- UK Department of Constitutional Affairs: Human Rights Page – www.lcd.gov.uk/hract/hramenu.htm
- British and Irish Legal Information Institute (BAILII) – www.bailii.org
- European Court of Human Rights – www.echr.coe.int
Court judgments, decisions and case law – hudoc.echr.coe.int
- European Union Monitoring and Advocacy Programme (EUMAP) - www.eumap.org

8.4 Non Government Organisations

International/Overseas NGOs

- United Nations High Commissioner for Refugees (UNHCR) – www.unhcr.ch
- United Nations High Commissioner for Human Rights (UNHCHR) – www.ohchr.ch/english
- Amnesty International – www.amnesty.org
- Human Rights Watch – www.hrw.org
- United Nations International Children’s Emergency Fund (UNICEF) – www.unicef.org
- Red Cross (ICRC) – www.icrc.org/eng
- US Committee for Refugees (USCR) – www.refugees.org
- Freedom House – www.freedomhouse.org
- European Council on Refugees and Exiles – www.ecre.org
- European Network Against Racism – www.enar-eu.org/en
- National Coalition of Anti-Deportation Campaigns – www.ncadc.demon.co.uk
- International Helsinki Federation for Human Rights - www.ihf-hr.org/index.php
Oversees human rights conditions in Organisation for Security and Cooperation in Europe (OSCE) member states
- World Organization Against Torture – www.omct.org
- Asian Human Rights Commission – www.ahrc.net
- International Crisis Group – www.crisisgroup.org

Australian NGOs

- Human Rights and Equal Opportunity Commission (HREOC) – www.hreoc.gov.au
- Amnesty International Australia – www.amnesty.org.au
- Refugee Council of Australia – www.refugeecouncil.org.au

8.5 News and Articles

General

- IRIN – www.reliefweb.net
- The Economist – www.economist.com
- The Christian Science Monitor – www.csmonitor.com
- BBC News - news.bbc.co.uk
- CNN – www.cnn.com
- Reuters – www.reuters.com
- Guardian Unlimited – www.guardianunlimited.co.uk
- The New Internationalist – www.oneworld.org/ni

- OneWorld.net – www.oneworld.net
Provides worldwide news coverage.
- News Trove – www.newstrove.com/index.html
News stories from major newspapers.
- DRUDGE Report – www.drudgereport.com
- Forum18 News Service - <http://www.forum18.org>
News focusing on the freedom of religion.
- Google News – news.google.com
- World News Network (WN Network) - www.wnnetwork.com
- World-newspapers.com – www.world-newspapers.com
Links to newspaper, magazine and news sites in English from around the world.

Africa

- Afrol News – www.afrol.com
- Africa News – www.africanews.com/search.html
- Mbendi Information for Africa – www.mbendi.co.za/land/af/p0005.htm
- All Africa – allafrica.com
- Africa Confidential – www.africa-confidential.com/countryindex.htm
- USAID Bureau for Africa – www.usaid.gov/locations/sub-saharan_africa/

Americas

- CNN – www.cnn.com
- Zona Latina Latin American Newspapers – www.zonalatina.com/Zlpapers.htm
Lots of links to Latin American news sources

Asia

- Radio Free Asia – www.rfa.org
- Asia Times Online – www.atimes.com

Europe and Central Asia

- Radio Free Europe/Radio Liberty – www.rferl.org
News focusing on Eastern Europe and Central Asia.
- EurasiaNet.org – www.eurasianet.org/index.shtml
News from Central Asia and the Caucasus.
- Central Asia News – www.centralasianews.net

Middle East and North Africa

- Middle East News and World Report Official Website – www.middleeastnews.com
- Mid East Realities (MER) – www.middleeast.org
- Middle East News Online – www.middleeastwire.com
- The Middle East Times – www.metimes.com
- Arab Gateway – www.al-bab.com/arab/news
- Arabic News – www.arabicnews.com

8.6 Country Information and References

(also see NGOS and news)

Government

- US Department of State
Country Background Information – www.state.gov/r/pa/bgn
Country Reports on Human Rights Practices - <http://www.state.gov/g/drl/hr/c1470.htm>
Annual Report on International Religious Freedom - <http://www.state.gov/g/drl/irf/rpt>
- CIA World Factbook – www.cia.gov/cia/publications/factbook
- UK Home Office Country of Origin Research - www.homeoffice.gov.uk/rds/country_reports.html
- Immigration and Refugee Board of Canada
Country of Origin Research Information – www.irb-cisr.gc.ca/en/research/origin_e.htm
REFINFO database – www.irb-cisr.gc.ca/cgi-bin/foioci.exe/refinfo_e?

Language

- Ethnologue Languages Database – www.ethnologue.com/country_index.asp

Database of Country of Origin Information Requests

- Asylumlaw.org Super Search – www.asylumlaw.org/cgi-bin/teaxis.cgi/webinator/metanew4
- UNHCR
Country of Origin and Legal Information – www.unhcr.ch/cgi-bin/teaxis/vtx/rsd
- IRIN – www.reliefweb.net
- European Country of Origin Information (ECOI) – www.ecoi.net
- Danish Immigration Service Fact-finding Missions –
www.udlst.dk/english/publications/Default.htm?CATEGORIES=23
- Human Rights Internet – www.hri.ca
- US Citizenship and Immigration Services: Resource Information Center -
uscis.gov/graphics/services/asylum/ric/index.htm
- Amnesty International Links - web.amnesty.org/links

A large variety of links organised according to theme and country

- Derechos: Human Rights around the World – www.derechos.org/human-rights/world.html
- Links to human rights organisations and documents in countries around the world.
- Minority Rights Group International - minorityrights.org
- Library of (US) Congress Country Studies - memory.loc.gov/frd/cs/cshome.html
- Forced Migration Online - www.forcedmigration.org

AFRICA

- AfricaFiles – www.africafiles.org
Articles and documents on various human rights issues in Africa

ASIA

- UC Berkeley Library – Human Rights in South Asia: Selected Internet Resources -
www.lib.berkeley.edu/SSEAL/SouthAsia/humanrights.html
- UC Berkeley Library – Afghanistan and the US: Selected Internet Resources -
www.lib.berkeley.edu/SSEAL/SouthAsia/afghan_US.html
- Asian Legal Resource Centre – www.alrc.net

9.0 List of information resources for clients

9.1 Material produced by external organisations available at RACS

MARA Information Sheet "Information on the regulation of the Migration Advice Professions"

MARA Form M03 Complaint Form

Federal Magistrate's Court leaflet "Migration Appeals in the Federal Magistrate's Court".

[www.fmc.gov.au/pubs/html/migration_appeals.html] in English, [Arabic](#), [Bengali](#), [Chinese](#), [Farsi](#), [Filipino](#), [Hindi](#), [Indonesian](#), [Punjabi](#), [Russian](#), [Sinhalese](#), [Spanish](#), [Tamil](#).

Material to assist in referrals to health and welfare organisations

Red Cross: English only

STARTTS: (Service for the Treatment of Torture and Trauma Survivors). Leaflets available in English, Tamil, Serbian, Burmese, Chinese, Arabic, Croatian, Farsi, Khmer, Spanish.

Asylum Seekers Centre: Farsi.

The House of Welcome: English.

Refugee Convention definition of a refugee (in English and many other languages).

9.3 RACS Client Information Sheets

Information Sheet #1	Information on assistance offered by RACS
Information Sheet #2	The meaning of the term 'refugee'
Information Sheet #3	Refugee Determination Process flow chart
Information Sheet #4	The types of protection available in Australia
Information Sheet #5	Supporting information and evidence for your protection visa application
Information Sheet #6	How to write your statement in support of your protection visa application
Information Sheet #7	How to lodge your protection visa application in Sydney
Information Sheet #8	Preparing for DIMA Interviews
Information Sheet #9	How to apply and prepare for review at the Refugee Review Tribunal
Information Sheet #10	Your options after being refused by the Refugee Review Tribunal
Information Sheet #11	How to prepare a letter of support for a person seeking the Minister's intervention under s417 of the Migration Act
Information Sheet #12	Information for people holding a TPV (785) or THV (447, 451) (in English, Farsi, Arabic)
Information Sheet #14	Applying for permission to work (includes Example Statement of financial position and financial hardship to support application for work rights)
Information Sheet #15	Requesting the Minister's Intervention under sections 417, 48B, 195A of the Migration Act (includes example letters)
Information Sheet # 16	Freedom of Information Requests
Information Sheet # 17	Debts to the Commonwealth
Information Sheet # 18	Resources for Country Research

RACS Referral Sheets

Referral Sheet #1 Legal Referral Sheet

Referral Sheet #2 Non Legal Referral Sheet

Referral Sheet #3 RACS Ministerial Intervention Assistance – Ministerial Legal Clinic