

Fact Sheet: Section 48B Ministerial Intervention Permission to Lodge Another Protection Visa application

This factsheet explains how to write a letter to request Ministerial Intervention under section 48B of the *Migration Act 1958* (the 'Act'). This applies to people who have had a Protection Visa application refused or cancelled since they last entered Australia and wish to have a chance to apply for another Protection Visa due to changes in their circumstances or their country of origin.

What is section 48B?

In most cases, if you have been refused a Protection visa you are prevented from making another application for a Protection visa or almost all other visas (see sections 48 and 48A of the Migration Act).

However, the Minister for Immigration has a special power to allow a person to make a 2nd application if the Minister thinks it is in the "public interest" under Section 48B of the Migration Act.

The Minister's power under section 48B

Under Section 48B, the Minister can grant permission to make another protection visa application due to exceptional circumstances. These circumstances must justify considering new information or significant changes in circumstances after the protection visa refusal decision.

Who is eligible to apply under section 48B?

Section 48B Ministerial Intervention is available to all people who have applied for a Protection visa in Australia, including fast track applicants.

When can I apply for a section 48B Ministerial intervention?

In order to apply for Ministerial Intervention under Section 48B, you must have been refused a protection visa. The request must in general be made after merits review options have been exhausted in the AAT or IAA. However, you can also apply if you have missed the deadline to apply for review in the AAT (applies only to non-fast track applicants).

A section 48B request will not be considered for referral to Minister if the protection visa was refused in the last **6 months**, unless there are exceptional reasons why those claims were not raised.

The Minister may also consider s48B requests following protection visa cancellations where the person has then been assessed as engaging Australia's non-refoulement obligations i.e. Australia's duty not to send someone back to a country where they would be harmed.

What criteria do I need to meet?

You should meet the following criteria:

- There should be exceptional circumstances which justify consideration of plausible new information about your case or there should have been significant changes in circumstances, since your protection visa refusal decision
- The plausible new information means that you may now be a person to whom Australia owes protection obligations.
- The plausible new information should not previously have been considered adversely by a decision maker with the Department, Tribunal, a previous s48B request, or an International Treaty Obligations Assessment (ITOA).

- If you are in the community, you should be lawful, on a bridging visa, when making this request. People in detention can make this request.

The Minister will also consider:

- Whether you pose a threat to Australian national security or society;
- Whether you have committed any criminal offences in Australia;
- Whether you have complied with the conditions of your visas in Australia.

The prospects of success of this kind of application are unfortunately extremely low. Only a very small number are successful each year. We don't recommend you make a s48B Ministerial request unless your case clearly meets the criteria above which the Minister will consider in relation to significant new information.

How to make a section 48B request

To make a section 48B Request, you can prepare a letter setting out the relevant reasons you believe the Minister should intervene to allow you to make another Protection Visa application.

What information should I provide in my request?

In your request to the Minister, you should explain:

- What are the significant changes in circumstances that have occurred after your protection visa refusal decision?
- What are the exceptional circumstances that justify the consideration of new information in your case?
- How does the information show that Australia has obligations to protect you?
- Why wasn't the new information available to decision makers at the time of your first application?
 - Was it not known to you at the time?
 - Does it relate to a change of conditions in your country of origin since your case was decided?
 - Does it relate to changed personal circumstances since your case was decided?
 - Was there any family violence towards you which prevented you from disclosing this new information?
 - Did the actions of a migration agent prevent you from disclosing the new information?
 - Were you suffering torture and trauma effects which prevented you from disclosing this information? Medical or psychological reports should be submitted.

If the new information was raised with but not able to be considered by the Immigration Assessment Authority, seek legal advice.

Where do I send a section 48B request?

Requests must be made in writing, including either via online Ministerial Portal:

<https://www.homeaffairs.gov.au/help-and-support/departmental-forms/online-forms/contact-the-minister>

Or by post to:

Minister for Immigration, Citizenship and Multicultural Affairs
PO Box 6022
Parliament House
Canberra ACT 2600

The letter should include the following:

- At the beginning of your request, write your name, date of birth, and a number identifying you with the Department or Tribunal: Your application ID (a ten digit number), your file number (CLF year/4 digit number), your Tribunal or IAA file number if appropriate.
- Outline your current situation and explain your exceptional circumstances and/or significant changes in circumstances, and how you meet the other criteria for Ministerial Intervention.
- If you are writing a letter, sign and date the letter.
- Provide your contact details including your address and phone number.
- Attach supporting documents and reports to provide evidence of your circumstances.
- Send certified copies rather than original documents.
- Keep a copy of the letter or email and all documents that you send.

Frequently Asked Questions

Can you make more than one request for Ministerial Intervention?

While there is no limit to the number of requests for Ministerial Intervention which you may make, it is not usual for the Minister to consider repeat requests. The Minister's guidelines for s48B requests specifically say that the Minister considers that each time a person raises new claims following an initial s48B request, the claims become less compelling and asks the Department to consider this before referring a repeat request to the Minister.

So it is very important to include all relevant information in your first request to the Minister.

Can you request Ministerial Intervention if you are unlawful?

You can request Ministerial Intervention under s417 or s48B if you are in immigration detention. If you are in the community, the Minister does not usually consider requests unless you are a lawful non-citizen which means that you have a visa (including a bridging visa). The Minister expects a person requesting intervention to remain lawful until the request is finalised. So you need to think carefully about when you make a Ministerial Intervention request if you are on a bridging visa that is going to expire after a protection visa refusal, negative AAT or IAA decision, or unsuccessful judicial review application in the courts.

Can you apply for a bridging visa while waiting for the outcome of your request?

You can lodge an application for a bridging visa for the time you will be in the community waiting for the outcome of your request for Ministerial Intervention but it is not guaranteed you will get one. This is particularly so if it is not your first request for Ministerial Intervention. You can use Form

1008 or Form 1005. Seek legal advice if you are unsure which form is appropriate.

Make sure to carefully check the conditions on your bridging visa as they are likely to change if granted a bridging visa in connection with your ongoing request for Ministerial Intervention. You may not be granted work rights in relation to your request and you may want to seek legal advice about how making a section 48B request will affect whether you can work while you are waiting for the outcome of the request.

Can you get other people to write in support of your Ministerial Intervention request?

Yes. You can provide letters of support with your request.

Getting Help from RACS

RACS is entirely independent of the Department of Home Affairs. All assistance is free.

If you would like advice or assistance, RACS offers the following service options:

Telephone advice	Day	Time	Address/Number
Client Line	Monday to Friday	11AM to 1PM and 2PM to 4PM	(02) 8355 7227 or admin@racs.org.au
Auburn Drop-in	Wednesday	Register in person from 10 AM to 12 PM	Visit 44A Macquarie Road, Auburn

Please note: This fact sheet contains general information only. It does not constitute legal or migration advice. RACS is independent of the Department of Home Affairs. All assistance is free. This factsheet was prepared in October 2023.