

How to ask for Ministerial Intervention from Detention

The purpose of this factsheet is to explain how to write a letter to request Ministerial Intervention under either s195A, or s197 of the Migration Act, or to make a request for consideration by the Minister under both of these Ministerial intervention powers.

The information in this factsheet is generally for asylum seekers who arrived by boat who are currently in immigration detention in Australia. If you arrived in Australia by boat without a visa you do not have the right to apply for any kind of visa unless the Minister for Immigration gives you permission to do so. This means that, generally, if you arrived by boat and are in detention, you cannot apply for a Bridging visa to be released from detention. This may not be the case if you have a bar lift letter from the Minister. If you are unsure whether this applies to you, please contact a registered migration agent for advice.

If you are in detention because your visa has been cancelled, the information in this factsheet is not applicable to your situation. Strict time limits may apply. For example to appeal a bridging visa cancellation, you must lodge your appeal to the Administrative Appeals Tribunal within two days. If you are currently in detention because of a visa cancellation, we recommend you seek urgent advice.

If you are subject to transfer to Nauru or PNG and are seeking an exemption from transfer seek we recommend you seek specific legal advice.

What are the different kinds of requests for the Minister to consider a person's case from detention?

You can ask for your case to be considered for intervention by the Minister if:

- You are in detention and are seeking to be released:
 - You are seeking a visa from detention in the public interest (s195A),
 - You are seeking a residence determination permitting your release from detention and for you to reside in the community (s197AB and s197AD).

How to make requests

- These requests may be made separately or together, however they may not be made directly to the Minister.
- Requests for the Minister to consider exercising the residence determination power and the power to exempt a person from regional transfer can only be made by officers of the Department of Immigration. For this reason, requests on behalf of an asylum seeker should be made in writing to an officer of the Department of Immigration with a request that the officer refer the matter to the Minister for Immigration.
- The Minister's powers are non-compellable (meaning that the Minister has no duty to consider whether to exercise the power even if requested) and can only be exercised by the Minister personally (not by any other person).
- There are guidelines for each kind of request about which cases are to be brought for Ministerial attention by Departmental officers.

Requests for the Minister to grant a visa from detention: s195A

The Minister's Power under section 195A of the Migration Act (the public interest detention intervention power)

Section 195A of the Migration Act give the Minister for Immigration the power to grant a visa to a person from detention if the Minister thinks it is in the "public interest" to grant them a visa.

The power may be exercised in relation to anyone currently in immigration detention, regardless of their mode of arrival, reasons for detention, or immigration history in Australia (subject to the information below).

What are the criteria?

The Minister may be willing to consider grant of a visa from detention if:

- You have individual needs that can't properly be cared for in a secured immigration detention facility, as confirmed by an appropriately qualified professional treating you.
- There are strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or a family unit (where at least one member of the family is an Australian citizen or permanent resident), or there is an impact on the best interest of a child in Australia.
- You have no matters with the Department or with a merits review body: the Administrative Appeals Tribunal or the Immigration Assessment Authority in relation to your claims, but removal is not reasonably practicable because:
 - Your identity or nationality hasn't been positively established despite your co-operation.
 - Your country of origin refuses to recognise you as a national.
 - Your country of origin refuses to accept your return or issue a travel document to facilitate your return.
 - It's not possible to return you to your country of origin because of ongoing conflict or a policy regarding involuntary removals.
- There are other compelling or compassionate circumstances.

In your request for Ministerial intervention, you should explain how your situation meets at least one of the criteria above.

The Minister won't consider your matter if:

- You have been assessed as posing a threat to Australian national security or society;
- You have had a visa refused or cancelled under s 501 of the Act.
- You have already made another kind of Ministerial request which has been considered previously by the Minister and which this s195A request duplicates.

Requests for a residence determination – s 197AB

What is a residence determination?

The Minister for Immigration has the power to make a "residence determination" – a decision that a person in detention can reside in the community at a specified place, without being accompanied or restrained. The person will not hold a visa while living in the community and is not allowed to work. The Minister can make a residence determination if they think it is in the public interest.

The power to make a residence determination may be exercised in relation to anyone currently in immigration detention, regardless of their mode of arrival, reasons for detention, or immigration history in Australia (subject to the information below).

Residence determinations: Which matters are likely to be brought to the Minister?

According to the guidelines, priority matters which may be brought to the Minister's attention include

- people who arrived in Australia before 1 January 2014 and who are unaccompanied minors;
- families; or
- single adults affected by any of the following circumstances:
 - disability or congenital illness requiring ongoing intervention;
 - diagnosed Tuberculosis where supervision of medication dispensing is required;
 - ongoing illness, including mental health illnesses, requiring ongoing medical intervention; and
 - elderly detainees requiring ongoing intervention.

The Minister may also consider other cases where there are unique or exceptional circumstances.

Matters which the Minister has indicated are not to be referred include where a person arrived on or after 1 January 2014, where a person has had their claims rejected at primary and review stages, or where there has been an adverse security assessment.

Residence determinations: What issues will the Minister consider in making a decision?

If a matter is brought to the Minister's attention, the guidelines say that the Minister will take into account:

- the person's age and family composition;
- any close relationships with Australian citizens or permanent residents and whether continued detention would result in irreparable harm and continued hardship to an Australian.
- the person's immigration history;
- their health and wellbeing;
- any unique family circumstances of health issues.

An example of a request for Ministerial intervention under either 195A or 197AB or both

[DATE]

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

c/o Case Manager: [Name]
Case Management
Immigration Detention Facility

Request for consideration for Ministerial intervention under s 195A (intervention power from detention) and s 197AB (residence determination)

Name:

Boat ID:

DOB:

I am currently detained at [Place of Detention].

This is a request to the Minister for Immigration and Border Protection to:

- a) grant me a visa from detention under section 195A; and
- b) exercise the power under section 197AB to make a residence determination in relation to me [and my family].

I enclose the following documents in relation to this request: [list documents].
[supporting documentation]

Include information about:

- *your immigration history: where you are from, when and how you arrived in Australia, your history of immigration detention*
- *your age and family composition and any particular vulnerabilities based on either youth or age requiring ongoing intervention.*
- *any close relationships with Australian citizens or permanent residents and whether continued detention would result in irreparable harm and continued hardship to an Australian.*
- *your health and wellbeing: a summary of any mental / physical health problems or other issues which have arisen since the beginning of their detention, and in particular:*
 - *disability or congenital illness requiring ongoing intervention;*
 - *diagnosed Tuberculosis where supervision of medication dispensing is required;*
 - *ongoing illness, including mental health illnesses, requiring ongoing medical intervention*
 - *any particular reasons why the detention environment is a substantial cause and contributing factor of these health problems.*
- *any unique family circumstances of health issues.*

Conclusion

There are strong and compelling reasons for the Minister to exercise his power under section 197AB to make a residence determination in relation to me.

[your name and contact details].

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:

Service	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.