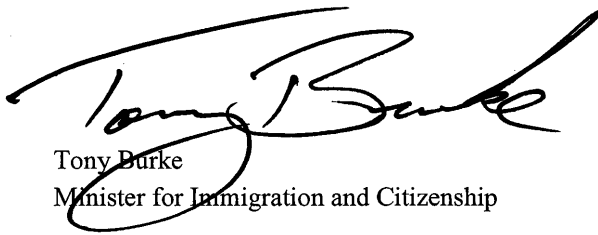


Ministerial Instructions for processing requests for Ministerial intervention under subsection 48B(1) of the *Migration Act 1958*

I, Tony Burke, Minister for Immigration and Citizenship, give the following instructions to my Department for processing requests for Ministerial intervention under subsection 48B(1) of the *Migration Act 1958*.

Dated

4.9.25

A large, stylized handwritten signature in black ink, appearing to read 'Tony Burke', is written over the printed name and title.

Tony Burke
Minister for Immigration and Citizenship

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Part 1—Preliminary

1. Nature of these instructions and my principles in considering whether to use the intervention power

Nature

- 1.1 These instructions to the Department, on how to deal with certain requests for the Minister to exercise the intervention powers under subsection 48B(1) of the *Migration Act 1958*, are issued in the exercise of executive power.
- 1.2 These instructions do not involve making a procedural decision (see paragraph 4.2). Rather, they are non-statutory instructions to officers of the Department that will enable them, in the appropriate cases, to put a Minister in a position to consider making a procedural decision.
- 1.3 These instructions only deal with requests for the exercise of the power in subsection 48B(1) of the *Migration Act 1958* (Act) that are made by or on behalf of a non-citizen. They do not prevent the Department of Home Affairs (Department) from referring a non-citizen's case to a Minister where the Department forms the view that referral is appropriate.

Principles

- 1.4 Parliament's intention, in introducing the section 48A visa application bar and the subsection 48B(1) power to lift it, was to prevent repeat applications for protection visas (PVs) by non-citizens in order to delay their removal and to circumvent Australia's immigration requirements.
- 1.5 The section 48A bar is an integrity measure and the power to lift this bar provides a safety net for use in very limited circumstances where a non-citizen is making genuine protection claims that could not have been raised in their initial PV application and which now require consideration.
- 1.6 I expect a PV applicant to make all their circumstances and protection claims known to the Department during the assessment of their initial PV application and to make full use of the assessment process and any avenue of review available to them. Usually, this will be an individual's only opportunity to have their protection claims considered by Australia.
- 1.7 Following a decision to refuse to grant a PV where no protection finding is made, or a non-statutory assessment that concludes that a non-citizen does not engage Australia's *non-refoulement* obligations, I expect that individual to depart Australia in a timely manner.
- 1.8 I consider the public interest is served by ensuring that a non-citizen who has been found not to engage Australia's protection obligations is prevented from making unmeritorious repeat requests to prolong their stay in Australia.
- 1.9 However, the public interest may also be served by providing a way for new information or changed country conditions or individual circumstances, in relation to a non-citizen who has previously been found not to engage Australia's protection

obligations, to be considered. In these limited circumstances the public interest is served by allowing those new claims to be assessed through a statutory process to ensure that Australia upholds its *non-refoulement* obligations.

2. Nature of the Minister's intervention power

- 2.1 Under subsection 48A(1) and subsection 48A(1AA) of the Act, a non-citizen who, while in the migration zone, made an application for a PV, or had such an application made on their behalf, that was refused cannot make a valid application for a PV while the non-citizen remains in the migration zone. These provisions apply whether or not the application has been finally determined.
- 2.2 Under subsection 48A(1B) of the Act, the same applies to a non-citizen who held a PV that was cancelled. These provisions apply regardless of the grounds on which a new PV application would be made or whether the criteria which the non-citizen would claim to satisfy existed earlier.
- 2.3 Subsections 48A(1), (1AA) and (1B) of the Act are subject to section 48B of the Act.
- 2.4 Subsection 48B(1) of the Act provides that if the Minister considers 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 of the Act does not apply to prevent an application for a PV made by that non-citizen in the period starting from when the notice is given and ending at the end of the seventh working day after the day on which the notice is given. Such a determination is described as lifting the section 48A application bar. The power to intervene is personal and non-compellable.
- 2.5 The Minister does not have a duty to consider whether to exercise the power under subsection 48B(1) of the Act in respect of any non-citizen, whether the Minister is requested to do so by the non-citizen or by any other person, or in any other circumstances.

3. Purpose of these instructions

- 3.1 These are my instructions to the Department, as Minister for Immigration and Citizenship, for processing requests for a Minister to consider exercising the intervention power under subsection 48B(1) of the Act.
- 3.2 The purpose of these instructions is to explain:
 - a. how a non-citizen may make a request that a Minister consider exercising the intervention power in their case; and
 - b. how the Department is to process such requests; and
 - c. the categories of requests I wish to have referred to a Minister in order for a Minister to be in a position to consider making a procedural decision, and the form in which they are to be referred; and
 - d. the categories of requests I do not wish to have referred to a Minister and that the Department is to finalise without referral to a Minister.

Note: The term 'procedural decision' here is defined in paragraph 4.2. It means a procedural decision of the kind described in paragraph 14 of the reasons for judgment of the

plurality in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 10.

4. Terminology

4.1 A number of expressions used in these instructions are already defined in the Act and will not be duplicated here, however, abbreviations for some of these expressions are set out below:

- a. bridging visa (**BV**): section 37;
- b. finally determined: section 5;
- c. member of the same family unit: subsection 5(1);
- d. Permanent Protection (subclass 866) visa: subsection 35A(2);
- e. protection visa (**PV**): section 35A;
- f. receiving country: subsection 5(1);
- g. Safe Haven Enterprise (subclass 790) visa (**SHEV**): subsection 35A(3A);
- h. Temporary Protection (subclass 785) visa (**TPV**): subsection 35A(3);
- i. Tribunal: subsection 5(1);
- j. unauthorised maritime arrival (**UMA**): section 5AA.

4.2 In these instructions:

Act means the *Migration Act 1958*.

family violence has the meaning given in paragraph 4 of [Ministerial Direction 110](#), ‘Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under s 501CA’, issued 7 June 2024.

finalised: a request is finalised:

- by the Department—on the day that it sends one of the notifications mentioned in paragraph 9.2; or
- by the requester—on the day that the Department receives a notification from them that they wish to withdraw the request.

full submission means a submission made in accordance with paragraph 13.

non-refoulement obligations means Australia’s obligations to not return a person to face certain types of harm, arising under Article 33 of the *1951 Convention Relating to the Status of Refugees* as amended by the *1967 Protocol relating to the Status of Refugees*, under Article 3 of the *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* and in relation to Articles 6 and 7 of the *International Covenant on Civil and Political Rights* and its Second Optional Protocol, aiming at the abolition of the death penalty.

paragraph 11.1 criteria means the criteria for referring a request to a Minister on a full submission, set out in paragraph 11.1.

procedural decision means a decision to consider, or not to consider, whether it is in the public interest to determine that section 48B of the Act does not apply to prevent an application for a protection visa.

refusal, in relation to an application for a PV, means a decision to refuse the visa application where that application has been ‘finally determined’.

repeat request means any request made for a Minister to consider exercising the intervention power under subsection 48B(1) made by or on behalf of the same requester at any time after the date on which the previous intervention request was finalised.

Note: A request can be a repeat request irrespective of whether the earlier request was finalised without referral to a Minister.

A request can be a repeat request irrespective of the identity of the Minister to whom the earlier request was addressed, or the Minister by whom, or under which section 48B Instructions or Guidelines they were dealt with.

representative, of a non-citizen, in relation to a request, means

- a legal practitioner or migration agent who has been notified to the Department as the non-citizen’s representative in relation to matters that include the request by:
 - providing a form 956; or
 - sending a letter to the Department, dated and signed by the legal practitioner or migration agent, that sets out the name of the non-citizen and (if known), the non-citizen’s departmental client number or file number, and, in the case of a migration agent, the agent’s Migration Agent Registration Number; or
- a person, other than a legal practitioner or migration agent, who the non-citizen has authorised to represent them in matters that include the request, in writing provided to the Department.

request means a request for a Minister to exercise the intervention power under subsection 48B(1) of the Act.

requester means the non-citizen who made the request, or, if they are represented, the non-citizen on whose behalf the request is made.

summary submission means a submission made in accordance with paragraph 14.

5. When the subsection 48B(1) power is not enlivened

5.1 The intervention power under subsection 48B(1) of the Act is not enlivened if:

- a. the non-citizen requesting intervention has not, while in the migration zone, been refused a PV or had a PV cancelled; or
- b. the request asks a Minister to lift the section 48A bar to permit them to lodge a valid application for a visa that is not a PV; or
- c. the non-citizen is not in the migration zone.

Part 1A—The effect of these instructions

5A. Nothing in these instructions constitutes a decision by a Minister under the Act

- 5A.1 I have not, in issuing these instructions, decided to consider whether to exercise a Ministerial intervention power for the purposes of subsection 197E(5) of the Act in respect of any non-citizen. As a result, the issuing of these instructions will not affect the operation of subsection 197E(1) of the Act in respect of any non-citizen.

Part 2—Making a request

6. Who may make a request

- 6.1 A request can be made to the Department by a non-citizen or their representative.

7. How a request is to be made

- 7.1 A request must be made in writing.
- 7.2 The request must identify the relevant paragraph 11.1 criterion, or criteria, that the requester relies upon.
- 7.3 The request must be accompanied by all the information relevant to assessing whether the requester satisfies that criterion or those criteria.
- 7.4 Any information not in English must include accurate English translations (which should be done by a translator accredited by the National Accreditation Authority for Translators and Interpreters (NAATI)).

Part 3—Processing requests

8. How a request is to be processed

- 8.1 The Department is to finalise a request without referral to a Minister if the request is inappropriate to refer in accordance with paragraph 10.1. I do not wish a Minister to be put in a position to consider making a procedural decision in such cases.
- 8.2 The Department is to refer a request to a Minister in a full submission if:
- the request is not inappropriate to refer in accordance with paragraph 10.1; and
 - the request satisfies at least one of the paragraph 11.1 criteria.
- 8.3 Otherwise, the Department is to refer a request to a Minister in a summary submission.

9. Notification of actions and outcomes

- 9.1 Upon receiving a request the Department will acknowledge receipt in writing.

- 9.2 Following an assessment by the Department in accordance with these instructions, the Department will notify the requester as follows:
- a. if the request is inappropriate to refer—that it has been finalised without referral to a Minister and stating the relevant subparagraph of paragraph 10.1 under which the request has been finalised; or
 - b. if the request is referred to a Minister and the Minister decides not to consider whether to exercise the power, or decides not to exercise the power—the outcome.

Part 4—Requests that should not be brought to a Minister’s attention

10. Requests that are inappropriate to refer

- 10.1 A request is inappropriate to refer (and will therefore be finalised without referral to a Minister), if any of the following circumstances apply:
- a. the intervention power is not enlivened in accordance with paragraph 5.1;
 - b. the request is not made in accordance with Part 2 of these instructions;
 - c. the requester’s PV application is not finally determined;
 - d. a notice of intention to remove pursuant to section 198 of the Act has been issued to the requester;
 - e. the request is a repeat request—unless:
 - i. a Minister has previously agreed to lift the subsection 48A(1) bar but the non-citizen was not able to lodge an application within the specified timeframe; or
 - ii. after the date the prior request was finalised, the non-citizen’s receiving country has been listed as a high risk country in the Pre-removal Clearance Policy Instruction; or
 - iii. it raises claims of family violence that have not been previously considered; or
 - iv. the previous request was finalised for non-satisfaction of Part 2 of these instructions; or
 - v. the previous request was finalised by a personal procedural decision of the Minister, made on 4 September 2025; or
 - vi. a Minister asks that a non-citizen’s repeat request be referred to them for consideration.

Part 5—Requests that should be brought to a Minister’s attention

11. Requests that should be brought to a Minister’s attention on a full submission

- 11.1 The following are the relevant criteria for referring a request to a Minister on a full submission:
- a. There exists new country information corroborating the non-citizen’s protection claims, or where changes in the non-citizen’s circumstances (including changes in the situation in their receiving country) relating to Australia’s *non-refoulement* obligations have occurred after a PV refusal or cancellation, and that new information or change may mean the non-citizen would engage Australia’s *non-refoulement* obligations were they to be removed from Australia.
 - b. The non-citizen may engage Australia’s *non-refoulement* obligations, but a protection finding within the meaning of section 197C of the Act has not been made.
 - c. The non-citizen previously held a PV on the basis of being a member of the same family unit as a PV holder and that visa was consequentially cancelled under section 140 of the Act.
 - d. The non-citizen previously held a PV on the basis of being a member of the same family unit as a PV holder (such that their own protection claims have never been assessed), and their PV has since been cancelled.
 - e. A Minister has previously agreed to lift the subsection 48A(1) bar but the person was not able to lodge an application within the specified timeframe.
 - f. There has been a pre-removal clearance, an assessment commenced under subsection 197D(2) of the Act, or another non-statutory assessment such as an International Treaties Obligations Assessment, which has found that the non-citizen engages, or may engage, Australia’s protection obligations.
 - g. A Minister asks that a non-citizen’s case be referred to them for consideration.

12. Requests that should be brought to a Minister’s attention on a summary submission

- 12.1 A request that is not inappropriate to refer (as per paragraph 10.1) but has been assessed by the Department against the paragraph 11.1 criteria and has been found not to satisfy any of them is to be referred to a Minister in a summary submission setting out the reasons for which the Department has arrived at that conclusion.

Part 6—How requests should be referred to a Minister

Note: The procedures set out below are to be followed to ensure the efficient administration of the intervention power.

13. Information to be presented to a Minister in a full submission

- 13.1 When referring a non-citizen's request to a Minister in a full submission the Department should include any information it considers may be of assistance to that Minister. This would usually include:
- a. a brief overview of the non-citizen's circumstances; and
 - b. in the case of a repeat request—the relevant exception applying under paragraph 10.1(e); and
 - c. which of the paragraph 11.1 criteria is satisfied and the reasons for that conclusion; and
 - d. any character or security concerns in relation to the non-citizen; and
 - e. removal or return considerations; and
 - f. a copy of any assessment undertaken by the Department on their consideration of the protection claims.
- 13.2 Where there are multiple requests with similar circumstances they can be referred to a Minister as part of a bulk submission.

14. Information to be presented to a Minister in a summary submission

- 14.1 When referring a non-citizen's request to a Minister in a summary submission the Department should include any information it considers may be of assistance to that Minister. This would usually include:
- a. a brief overview of the circumstances of the non-citizen; and
 - b. in the case of a repeat request—the relevant exception applying under paragraph 10.1(e); and
 - c. a brief explanation of why the request does not satisfy any of the criteria in paragraph 11.1; and
 - d. a brief overview of any relevant supporting information such as letters of support, country information and the results of any investigations or verification conducted by the Department in relation to the claims made; and
 - e. a copy of any assessment undertaken by the Department on their consideration of the protection claims.
- 14.2 Where there are multiple requests with similar circumstances they can be referred to a Minister as part of a bulk submission.