



Australian Government

Department of Home Affairs

Introduction to Country of Origin Information (COI)



Presented by the Country of Origin Information Services Section (COISS)

February 2020

Agenda

- What is country of origin information?
- Why is COI important?
- Policy
- About the Country of Origin Information Services Section (COISS)
- COISS Products and Services
- CISNET
- Questions

Session outcomes

- Understand the meaning of 'COI research'
- Understand how COI research is used in protection obligations assessments
- Understand the role of Country of Origin Information Services Section (COISS) in providing COI
- Develop basic skills in using the COI resources available for relevant information when considering applicant claims
- Understand how to search and submit requests in CISNET
- Comply with the Ministerial Direction 84: Consideration of Protection Visa applications (DFAT assessments) and the COI Procedural Instruction (on Legend).

Introduction to COI

- COI research is a specialty that is practised globally
- COISS adheres to the internationally acknowledged principles of COI
- COISS comprises of 17 specialist COI researchers, each focusing on a country or a region
- COI is an important part of refugee and humanitarian decision making and COISS researchers are trained to provide high quality COI tailored to the needs of decision makers
- CISNET is the department's COI database – if COISS writes it or cites it, it's on CISNET!

What is COI

- COI is information which relates to an applicant's claims for protection about the countries where they fear harm.
- COI relates directly to grounds for protection in the Refugee Convention and Complementary Protection obligations, as given effect by the *Migration Act 1958*, including (but not limited to):
 - Race, religion, nationality, particular social group, political opinion
 - Cultural and social norms
 - State protection
 - Relocation
- COI can also help with:
 - Determining the credibility of an applicant's claims
 - Preparing questions for the interview
 - Providing in-country context to an applicant's claims

Sources of COI

- Local media
- Global or international media
- Inter-governmental organisations (UNHCR, IOM)
- Non-government organisations (Amnesty, HRW, Freedom House)
- Church and religious organisations
- Special interest groups
- Academic sources
- Australian government and foreign government agencies (DFAT, USSD, UKHO)
- Open-source, Unclassified

Role of COI

- Decision makers need to refer to COI throughout the assessment process.
- COI should be considered when assessing a range of questions, including:
 - The credibility and plausibility of claims put forward by an applicant
 - Whether an applicant's subjective fear of persecution has an objective basis (well-founded fear)
 - Whether there are areas in the country where the applicant would not face persecution
 - Availability of state protection
 - If a particular social group exists (is the group socially recognisable in the society).

A quality refugee decision

The quality of a protection obligations assessment depends **largely** on how well a decision maker has used **COI** (factual evidence) to support their findings.

Correct use of COI leads to:

- A good decision

What is a good decision?

- considers breadth/scope of all COI available/weighting

Incorrect use of COI may lead to:

- incorrect assessments
- inconsistent outcomes for cases involving similar circumstances
- findings of judicial error by the courts.

COI that must be considered

- Two types of COI **must** be considered in decision records:
 1. COISS products and CISNET holdings
Procedural Instruction: Use of COI Procedural Instruction
 2. DFAT Reports
Ministerial Direction 84: Consideration of Protection Visa applications

Remember to always...

- Use the most up-to-date COI
- Use of the most recent COISS Common Claims document if one is available at the time of the decision
- Use sufficient COI in assessing all material
- Weigh conflicting COI in decision records
- Accurately footnote as per the requirements in the Procedural Instruction.

Policy about COI

- The *Use of COI Procedural Instruction* was updated in 2018 and is available on LEGEND: [Policy – Refugee and Humanitarian – Use of Country of Origin Information](#)
 - The policy requires Protection Visa (PV) case officers to take into account relevant COISS products and CISNET holdings in their PV decision records.
 - Case officers are required to demonstrate they have considered information in COISS products and where they take a different view, articulate this in their decision record.

Policy about COI

What does this mean for you?

- You can rely on the professional researchers in COISS to conduct thorough COI research on your behalf.
- You can still come to your own conclusions about COI. However, you must demonstrate you have considered information in COISS products in your decision record and articulate reasons for any deviations.
- Relying on COISS for COI means you can spend more time on other aspects of decision making.
- You can still do your own research, but you must use CISNET. Only minimal fact-checking should be done outside of CISNET.
- You can cite COISS products directly. The same way you would cite any other COI source.

Ministerial Direction 84: Consideration of Protection Visa applications

Ministerial Direction 84 states:

Where the Department of Foreign Affairs and Trade has prepared a country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.

Decision makers **must**:

- » demonstrate, in the decision record, that they have taken into account relevant information from a DFAT report.
- » Decide how much weight to accord to DFAT reports.

DFAT reports are available on CISNET and can be provided to applicants on request.

About COISS

COISS manages the Department's research program in consultation with its stakeholders. COISS officers are located across Sydney, Melbourne and Canberra.



COISS Products

COISS produce the following products that are available on CISNET:

- **Q&A Responses:** research responses to questions relating to individual protection visa cases
- **Common Claims:** targeted to the most identifiable and common claims raised in caseloads
- **Thematic Briefs:** targeted to a particular protection issue or theme raised in caseloads
- **Situational Updates:** address emerging trends or shift in COI that may impact on a particular caseload
- **Resource Guides:** package of major COI reports for bigger country caseloads
- **COISS Conversations:** delivered via skype, enables COISS research officers and PV decision makers to exchange real time country information on high priority protection caseloads.

COISS Services

- **Monitoring** human rights issues across the globe
- **Maintain CISNET** to ensure it is up-to-date at all times
- **Upload documents to CISNET** by request (subject to suitability)
- **Send cables** to posts
- **Research requests** (Question and Answer service)
- **Ad hoc briefings** for business areas and Executive
- **Training** and assistance

The role of COISS

- COISS researchers are trained to assess and present COI on the basis of: *relevance, currency, reliability, accuracy, traceability and transparency.*
- COISS provides information. COISS does not provide: s. 47E(d) findings, or statements of future likelihood. s. 47E(d)
- COISS researchers cannot advise case officers to make a particular decision or finding.
- COI research can sometimes be inconclusive or return no information. Where possible, COISS will provide context where specific information is not available.


The role of decision makers

- Background reading: COISS papers and CISNET, other reports and papers
- Develop a research strategy which involves formulating research questions. To do this decision makers must:
 - Have a good understanding of the current legal and policy frameworks for assessing protection claims
 - Examine all the information on the applicant's file
 - Familiarise themselves with background information on conditions in the applicant's country of origin.
- Decide what tools and services to use to locate COI.
- If unsure, ask a COISS research officer.

CISNET

- The Department's country information database.
- Contains roughly half a million documents.
- CISNET was recently upgraded to make it more intuitive and user friendly.
- Access CISNET via the Bordernet homepage.

s. 22(1)(a)(ii)



On CISNET you will find:

- **DFAT:** Country Information Reports, Thematic Reports, cables
- **COISS products:** Common Claims, Thematic Briefings, Situational Updates, Resource Guides, Q&A responses
- **Media:** local and international news articles
- **Foreign government reports:** US Department of State, UK Home Office, Immigration and Refugee Board of Canada
- **NGO reports:** Annual reports by Amnesty International, Human Rights Watch and Freedom House
- **UNHCR reports:** Return advisories, UNHCR eligibility guidelines
- **Other COI reports:** academic reports and studies, journal articles, maps, legislation, audio/video clips and more

Searching CISNET

- Basic Search
- Advanced Search
- Filtering search results

Practical Exercise: How to browse and search for information on CISNET.

Research Requests

- Express Q&As
 - 24 hrs from receipt of request for time-critical decisions
 - Limited to 1-2 factual questions
- Standard Q&As
 - 4 days from commencing research
 - Up to 3 questions

Practical Exercise: Let's submit a research request in CISNET.

Request a document upload

- Completed within 24 hours of allocation.
- COISS will assess information prior to uploading to CISNET.
 - All information must be relevant, current, reliable, accurate, traceable and transparent.
- Not fit for CISNET – file it in client's file on TRIM.

Practical Exercise: Let's request a document be uploaded to CISNET

Where can I find help?

Tip sheets and short instructional videos are available on the Help and Training page on CISNET. These will help you to:

- Navigate CISNET
- Carry out basic and advanced searches
- Submit a research request
- Submit a request to upload a document.

Contact COISS

- Country of Origin Information Services Section (COISS)

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- CISNET issues

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Thank you for listening

Any Questions?



Australian Government

Department of Home Affairs

Section 91W & Section 91WA training

September 2019

Learning Outcomes

On completion of the course, you will be able to:

- assess, apply and request identity documents as per Section 91W and Section 91WA
- identify what documentary evidence is
- explain what produces documents mean as per Section 91W and Section 91WA
- demonstrate the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explain what a reasonable and not reasonable explanation is.

Legislation

Section 91W

Evidence of identity or bogus identity documents in response to a request.

Section 91WA

Providing bogus identity documents or destroying identity documents with or in connection with a Protection Visa application.

Refer to your participant guide – page 55.

Legislation

Keywords

- May – this is a discretion.
- Must – this is mandatory.
- And – you must be satisfied of all components.
- Or – you only need to be satisfied of one or the other.
- Causes the document to be – this refers to circumstances where an applicant has provided a document via a channel other than themselves.
- Reasonable explanation – this is a key component of both the Section 91W and Section 91WA assessment.

Legislation

Why do we have Sections 91W and 91WA?

To encourage applicants to provide the Department with genuine identity documents. Establishing an applicant's identity is a keystone of making a decision to grant or refuse any visa.

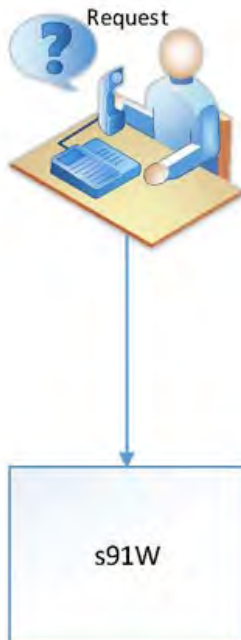
This is especially the case for Protection Visa applicants because their identity, nationality or citizenship can have a direct bearing on whether they engage Australia's protection obligations.

- **Section 91W** – assists the decision maker to request identity, nationality or citizenship documents to establish an applicant's identity and requires the decision maker to refuse the Protection Visa application if an applicant fails to provide identity documents or provides bogus documents in response without a reasonable explanation.
- **Section 91WA** – if an applicant destroys or provides bogus identity documents without a reasonable explanation their Protection Visa application must be refused.

Legislation

What is the difference?

- **Section 91W** – helps you to request documents
- **Section 91WA** – assess documents provided with application



Part One – Section 91W

Section 91W

When to assess?

Section 91W – Evidence of identity and bogus documents

(1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.

If you don't already have evidence of the applicants identity, nationality and citizenship – request under Section 91W(1).

Section 91W

When to apply it?

Section 91W – Evidence of identity and bogus documents

- (2) The Minister **must** refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

Section 91W

How to make a request?

Section 91W – Evidence of identity and bogus documents

- (1) The Minister or an officer may, **either orally or in writing**, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document ; and
 - (d) when the request was made, the applicant was given a warning, **either orally or in writing**, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

Documentary evidence

What is an identity, nationality or citizenship document?

Documentary evidence that:

- is generally government issued
- has robust identity proofing processes
- has robust issuance protocols
- has security features
- usually contain a biometric (photograph and/or fingerprint)

It says who the applicant is and, depending on the type of document, what their nationality or citizenship is.

Request made – what next?

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Applicant produces documents

What is produces?

Section 91W – Evidence of identity and bogus documents

(1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.

(4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

Applicant produces documents

What if I need more information or a different document?

You can request additional documents or information under Section 56 of the Act.

Section 56 – Further information may be sought

(1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.

(2) Without limiting [subsection](#) (1), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.


Applicant produces docs – Are they genuine?

- A ***bogus document*** is a document which the decision maker reasonably suspects:
 - was not issued to the applicant
 - is counterfeit or has been altered by a person who does not have authority to do so
 - was obtained as a result of a false or misleading statement (whether or not made knowingly).


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Section 91W

Refused to comply

- The applicant refused to respond to the s91W request.
- Same as before:
 - Seek reasonable explanation.
 - If reasonable, proceed.
 - If not reasonable, must refuse.

Section 91W

Case Study

- A person has arrived in Australia on an Italian passport and cleared immigration at the border.
- They then subsequently lodge a Protection Visa (PV) application and claim that the Italian passport was fraudulently obtained and that is not their real identity.
- No documentary evidence of their identity, nationality or citizenship was submitted with the PV application.
- The applicant claims to be an Albanian national and provides a new identity on the application.

Section 91W

Case Study

Questions:

- What do you do?
- How can a Section 91W request be made?
- For the request to be lawful what should be included in the request?

Section 91W

Case Study

- You make a Section 91W request and the applicant provides an Albanian electrical company invoice that has the applicant's name and Albanian address listed on it.

Question:

- Is this evidence of the applicant's identity, nationality or citizenship?

Section 91W

Case Study

- You make a Section 91W request and the applicant provides an Albanian passport that appears to have some damage. The edges are frayed and it looks like it may have been pulled apart or stretched at some point.

Question:

- What do you do?

Section 91W

Case Study

- s. 47E(d) [REDACTED] tell you that the document may be

Question:

- What do you do?

Section 91W

Case Study

- The applicant admits in their explanation that the Albanian document is bogus and says that they provided the bogus Albanian document as their Italian document is the real document.
- They owed a large sum of money to criminals in Italy and are scared for their life. They have been harmed by the criminals and told they will be killed if they don't pay soon.
- The applicant was afraid that Australia would not accept that they were a refugee if they were from Italy so they pretended to be Albanian.

Section 91W

Case Study

Questions:

- Is this a reasonable explanation?
- What would you do next?

Part Two – Section 91WA

Legislation

Section 91WA

Providing bogus documents or destroying identity documents.

Refer to your participant guide – page 55.

Section 91WA

Case Law

BGM16

Impact of the change:

- You can only refuse under Section 91WA if documents were provided with or in connection with the current Protection Visa application.
- Documents provided previously can still be considered as part of a credibility assessment but cannot form the basis of a refusal under Section 91WA.

Section 91WA

When to assess?

Section 91WA – Providing bogus documents or destroying identity documents

(1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:

- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
- (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.

Section 91WA

What is provides?

Section 91WA – Providing bogus documents or destroying identity documents

(3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

Section 91WA

When to apply it?

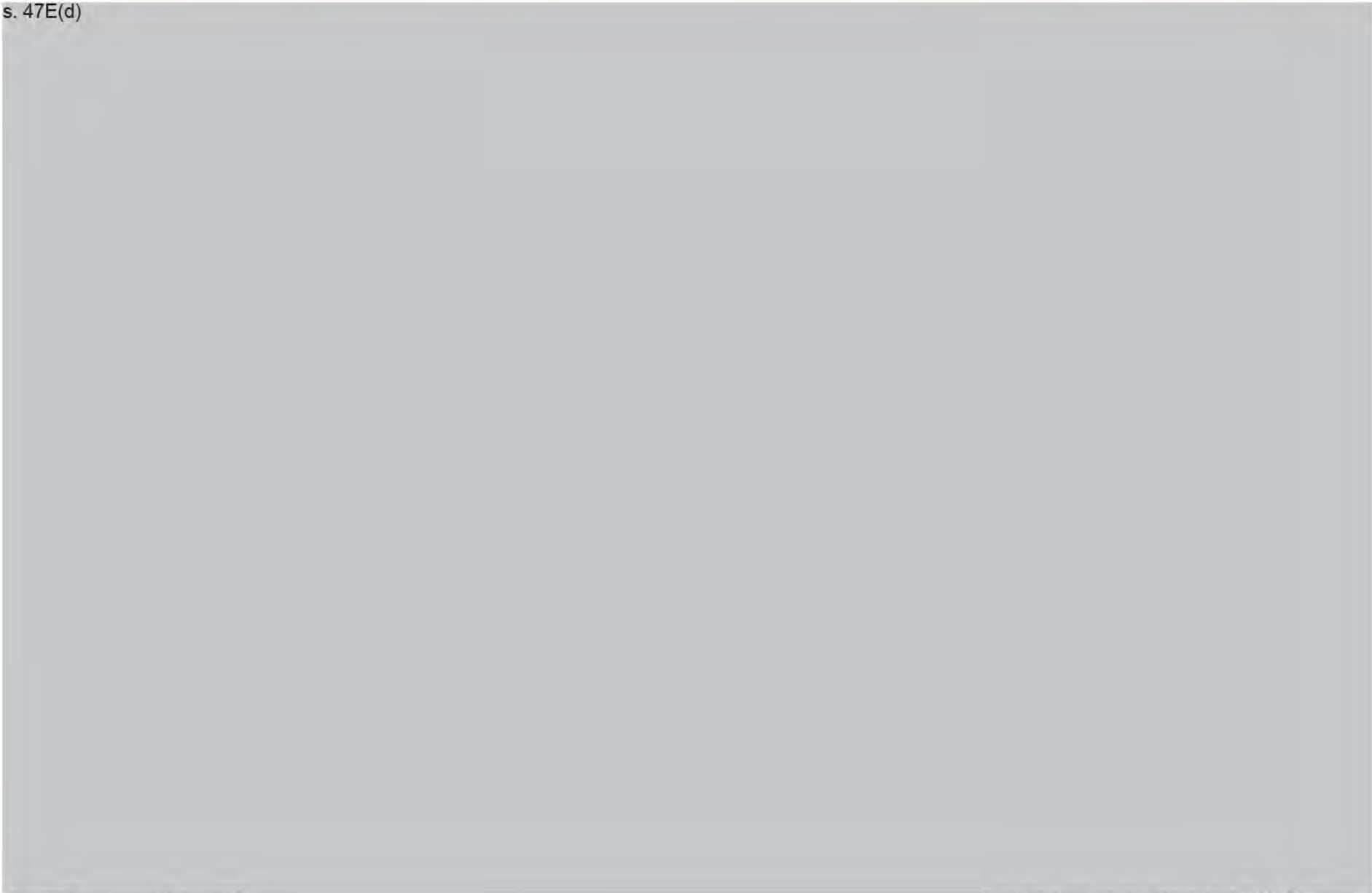
Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.


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Section 91WA

Bogus document

Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) **either:**
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or**
 - (ii) has taken reasonable steps to provide such evidence.**
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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Section 91WA

Case Study

- You are assessing a Protection Visa (PV) application for an Iraqi national. Their PV application included an Iraqi passport that has been assessed to be genuine and you are satisfied of their identity.
- However, when the applicant originally entered Australia they did so on a bogus Swedish passport and used that bogus passport to obtain a visa and clear immigration.

Questions:

- What do you do about this passport?
- Does it affect their application?

Section 91WA

Case Study

- You find however that the applicant has submitted bogus documents with their application. This includes documents that were fraudulently obtained to indicate that the applicant held a job working for coalition forces during the Iraq war, which if true may have been grounds for the applicant to seek protection.

Question:

- What do you do?

Section 91WA

Case Study

- You are processing a Protection Visa application for a person who arrived by plane undocumented in Australia. They claim that during the flight they destroyed their passport by tearing it up and flushing it down the airplane toilet.
- You are satisfied that the applicant has destroyed documentary evidence of their identity and therefore seek an explanation from the applicant why they did so.
- They advise that the people smuggler that arranged their visa and travel to Australia told them that they should destroy their passport enroute to Australia.

Section 91WA

Case Study

Questions:

- How does Section 91WA(1)(b) apply?
- Did the applicant destroy the document or were they compelled to do so by circumstances outside of their control?

Section 91W and 91WA

- Detailed charts on how to apply both processes is available in the Protection Visa Processing Guidelines available on Legend.
- When to send letters, when to contact the applicant and what you're assessing at each stage.

Questions?



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Department of Home Affairs

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Section 91W and Section 91WA Training

Participant Workbook

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Document Information

Document Details

| | |
|----------------|---|
| Approval Date | 18 October 2019 |
| Date of Review | 18 October 2020 |
| Contact | Learning and Change Support Section (LCSS) s. 47E(d) |
| TRIM Reference | ADD2019/4978191 |

Document Change Control

| Version | Date of issue | Author | Brief description of change |
|---------|---------------|--|---|
| 1.0 | 09/08/2019 | Learning and Change Support Section (LCSS) | Initial release |
| 1.1 | 14/08/2019 | Protection Assessment Support Section (PASS) | Reviewed content and incorporated policy position on Section 91W and Section 91WA |
| 1.2 | 19/09/2019 | Learning and Change Support Section (LCSS) | Incorporated policy content |

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Introduction

Purpose of this guide

This guide provides information and instructions on activities undertaken as part of the instructor-led learning sessions. It also provides a place for you to take notes as required, and record the results of classroom activities used in support of your assessment requirements.

Your responsibilities

You are expected to actively participate in the instructor-led learning session. You should be pro-active in asking questions and seeking clarification to ensure you have an accurate understanding of the content and of the assessment requirements.

This Participant Guide should not be printed; recording comments within the document using Adobe Acrobat DC is preferable to printing.

Instructions - how to use this guide

During the instructor-led learning session, follow the facilitator / trainer as you progress throughout the learning content, taking notes as required. Where directed by your facilitator / trainer, record the results of classroom activity / quizzes in the space provided.

The following symbols are used to provide visual prompts for particular actions.



Duration – how long (in hours) the session will take to complete



Objectives / goals – what you will know or be able to do at the completion of the module



Handout – to be given as required by your facilitator / trainer



Key information – noting the summary information / message



Activity / Quiz – provides a place to record the results of classroom activities



Assessment – provides instructions on the formative assessment



Additional reading / references – lists the references used in the module

Contact

For more information and questions, please contact your Training Coordinator at:

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Overview

Description

The purpose of this module is to provide officers with the knowledge to assess identity documents as per Section 91W and Section 91WA provisions.



This module has been designed to be delivered in a number of ways – these options are:

- participants watch the audio recording (35 minutes)
- facilitation using training materials available (3.5 hours)

Course/Module Aim/Objective

The purpose of this module is to provide officers with the knowledge to assess identity documents as per Sections 91W and 91WA provisions.

Course Learning Outcomes

On completion of the course, you will be able to:

- assess, apply and request identity documents as per Section 91W and Section 91WA
- identify what documentary evidence is
- explain what produces documents mean as per Section 91W and Section 91WA
- demonstrate the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explain what a reasonable and not reasonable explanation is.

Pre-requisite

- Document Examination Module (as part of Induction Training)

Course/Module Structure

This module structure has been designed to be delivered in a number of ways – these options are:

- participants watch the audio recording (35 minutes)
- facilitation using training materials available (3.5 hours)



Section 91W and Section 91WA – Session Plan

Part 1 – Section 91W

| Topic | Timing |
|---|------------|
| Welcome and Introduction | 5 minutes |
| Learning Outcomes | 5 minutes |
| Legislation – Sections 91W and 91WA | 5 minutes |
| Why do we have Sections 91W and 91WA? | 8 minutes |
| What is the difference between Sections 91W and 91WA? | 8 minutes |
| When to assess Section 91W? | 5 minutes |
| When to apply Section 91W? | 8 minutes |
| How to make a Section 91W request? | 8 minutes |
| Documentary evidence – what is an identity, nationality or citizenship document? | 8 minutes |
| Request made – what next? | 2 minutes |
| Section 91W – scenarios | 10 minutes |
| Applicant produces documents – what is produces? | 5 minutes |
| Applicant produces documents – what if I need more information or a different document? | 8 minutes |
| Applicant produces documents – are they genuine? | 5 minutes |
| Suspicion documents are bogus | 8 minutes |
| Suspected bogus document and Section 57 procedural fairness obligations | 10 minutes |
| Suspected bogus document produced | 2 minutes |
| Bogus document – reasonable explanation | 8 minutes |
| Bogus document – not reasonable explanation | 2 minutes |
| Applicant refused to comply to Section 91W request | 3 minutes |
| Case Studies on Section 91W | 15 minutes |
| Closing | 2 minutes |

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Part 2 – Section 91WA

| Topic | Timing |
|------------------------------|------------|
| Introduction | 5 minutes |
| Legislation | 5 minutes |
| Case Law – BGM16 | 5 minutes |
| When to assess Section 91WA? | 5 minutes |
| What is provides? | 5 minutes |
| When to apply Section 91WA? | 5 minutes |
| Section 91WA scenarios | 5 minutes |
| Suspected bogus documents | 5 minutes |
| Bogus document | 5 minutes |
| Document destruction | 5 minutes |
| Case Studies on Section 91WA | 15 minutes |
| Questions | 5 minutes |
| Closing | 5 minutes |

Assessment Requirements

| Assessment | Assessment Type | Description | Assessment Criteria |
|--------------|-----------------|---|---|
| Case Studies | Formative | The assessment is a 30 minute written assessment, comprising case studies and is open book. | <p>Confirming knowledge of:</p> <ul style="list-style-type: none"> assessing, applying and requesting identity documents as per Section 91W and Section 91WA identifying what documentary evidence is explaining what produces documents mean as per Section 91W and Section 91WA demonstrating the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and |

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| Assessment | Assessment Type | Description | Assessment Criteria |
|------------|-----------------|-------------|---|
| | | | <ul style="list-style-type: none">explaining what a reasonable and not reasonable explanation is. |

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Section 91W and Section 91WA Training



This module is estimated to take 3.5 hours.



Objective

The purpose of this module is to provide officers with the knowledge to assess identity documents as per Section 91W and Section 91WA provisions.

Learning Outcomes

On completion of this module, you will be able to:

- assess, apply and request identity documents as per Sections 91W and 91WA
- identify what documentary evidence is
- explain what produces documents mean as per Sections 91W and 91WA
- demonstrate the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explain what a reasonable and not reasonable explanation is.

Legislation

Section 91W

Evidence of identity or bogus identity documents in response to a request.

Section 91WA

Providing bogus identity documents or destroying identity documents with or in connection with a Protection Visa application.

Refer to your participant guide – page 55.

Department of Home Affairs

Section 91W and Section 91WA training

Legislation

Keywords

- May – this is a discretion.
- Must – this is mandatory.
- And – you must be satisfied of all components.
- Or – you only need to be satisfied of one or the other.
- Causes the document to be – this refers to circumstances where an applicant has provided a document via a channel other than themselves.
- Reasonable explanation – this is a key component of both the Section 91W and Section 91WA assessment.

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Sections 91W and 91WA training

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Legislation

Why do we have Sections 91W and 91WA?

To encourage applicants to provide the Department with genuine identity documents. Establishing an applicant's identity is a keystone of making a decision to grant or refuse any visa.

This is especially the case for Protection Visa applicants because their identity, nationality or citizenship can have a direct bearing on whether they engage Australia's protection obligations.

- **Section 91W** – assists the decision maker to request identity, nationality or citizenship documents to establish an applicant's identity and requires the decision maker to refuse the Protection Visa application if an applicant fails to provide identity documents or provides bogus documents in response without a reasonable explanation.
- **Section 91WA** – if an applicant destroys or provides bogus identity document without a reasonable explanation their Protection Visa application must be refused.

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Section 91W and 91WA Training

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Legislation

What is the difference?

- Section 91W – helps you to request documents
- Section 91WA – assess documents provided with application



s91W



s91WA

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Sections 91W and 91WA training 6

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Part One – Section 91W

Section 91W

When to assess?

Section 91W – Evidence of identity and bogus documents

(1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.

If you don't already have evidence of the applicants identity, nationality and citizenship – request under Section 91W(1).

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Section 91W and 91WA training



Before sending a Section 91W request, refer to ICSE records to check if a request has been sent previously.

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Section 91W

When to apply it?

Section 91W – Evidence of identity and bogus documents

- (2) The Minister **must** refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

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Section 91W and 91WA training



‘Must’ in subsection (2) means that it is mandatory to apply this provision if (a) to (d) are met. Even if the applicant is found to be a refugee or is owed Complementary Protection, you must still refuse the application.

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Section 91W

How to make a request?

Section 91W – Evidence of identity and bogus documents

- (1) The Minister or an officer may, **either orally or in writing**, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document ; and
 - (d) when the request was made, the applicant was given a warning, **either orally or in writing**, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

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Section 91W and 91WA Training 10



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Documentary evidence

What is an identity, nationality or citizenship document?

Documentary evidence that:

- is generally government issued
- has robust identity proofing processes
- has robust issuance protocols
- has security features
- usually contain a biometric (photograph and/or fingerprint)

It says who the applicant is and, depending on the type of document, what their nationality or citizenship is.

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Sections 91W and 91WA training 11



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Request made – what next?

Sections 91W and 91WA training 12

This image shows a single sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. On the right side, there is a vertical strip of yellowed or aged paper, suggesting the sheet is part of a bound notebook. The overall appearance is clean and unused.

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Applicant produces documents

What is produces?

Section 91W – Evidence of identity and bogus documents

(1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.

(4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

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Sections 91W and 91WA training



‘Produces’ for the purpose of subsection 91W(1) is defined in subsection 91W(4).

It is important to note that the definition includes the term ‘causes the document to be’.

‘Causes the document to be’ covers circumstances where an applicant has provided a document via a channel other than themselves.

It is important that the applicant is aware the document is being provided on their behalf otherwise they have not ‘caused the document to be’ provided.

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Applicant produces documents

What if I need more information or a different document?

You can request additional documents or information under Section 56 of the Act.

Section 56 – Further information may be sought

(1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.

(2) Without limiting [subsection \(1\)](#), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.

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Sections 91W and 91WA training 16



Officers cannot make a finding to refuse under Section 91W(2) for additional information requested under Section 56, however may make credibility findings.

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Applicant produces docs – Are they genuine?

- A **bogus document** is a document which the decision maker reasonably suspects:
 - was not issued to the applicant
 - is counterfeit or has been altered by a person who does not have authority to do so
 - was obtained as a result of a false or misleading statement (whether or not made knowingly).

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- Refer to your training material on assessing documentation or to the Procedural Instruction on Legend: **Bogus Documents – Detection, Seizure and Retention.**

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Sections 91W and 91WA training 18



The term **bogus document** is defined in Section 5(1) of the Migration Act – this is the same for Section 91W and Section 91WA.

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Refer to the training material on assessing documentation or to the Procedural Instruction on Legend: IIB-1540 - Bogus Documents – Detection, Seizure and Retention.

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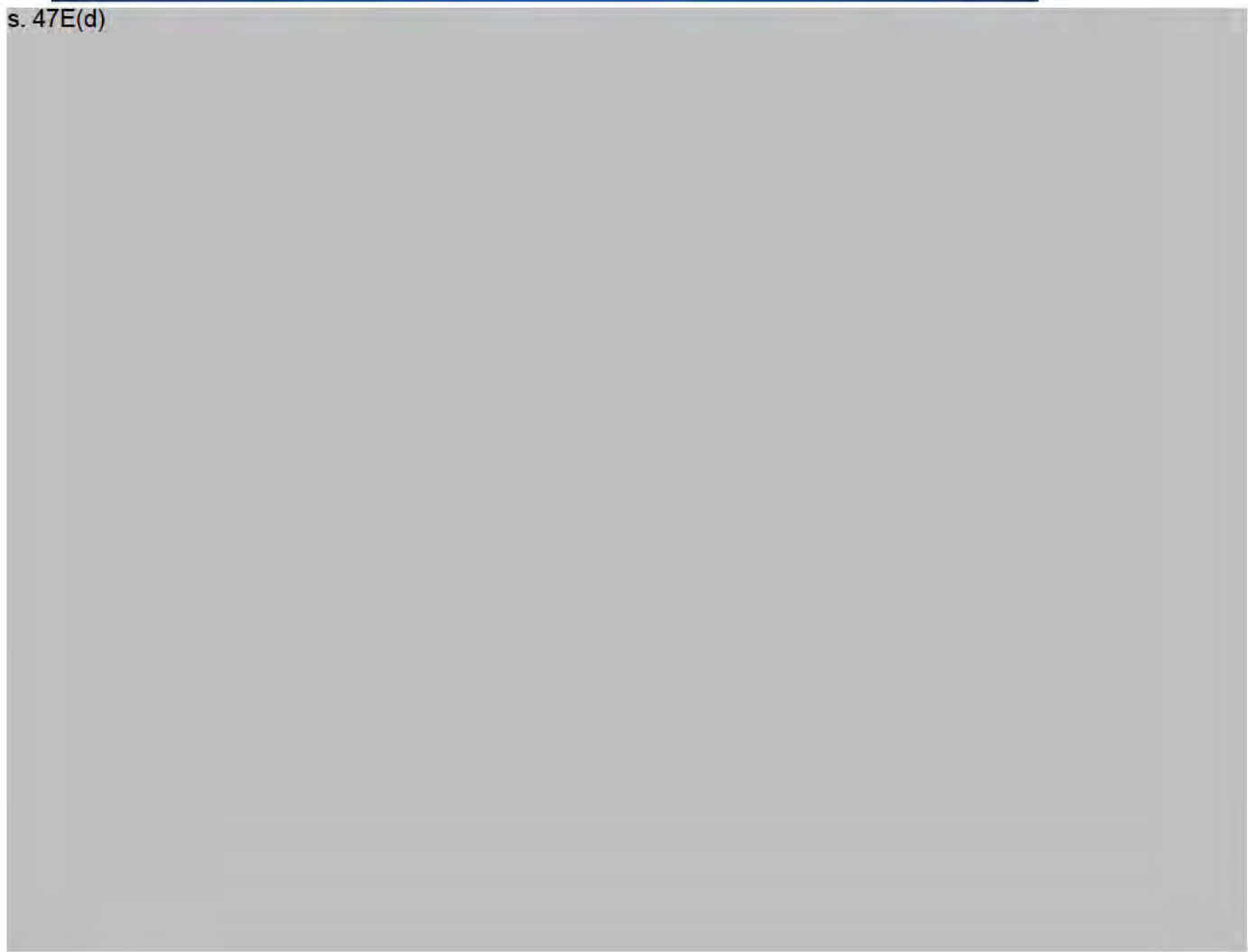
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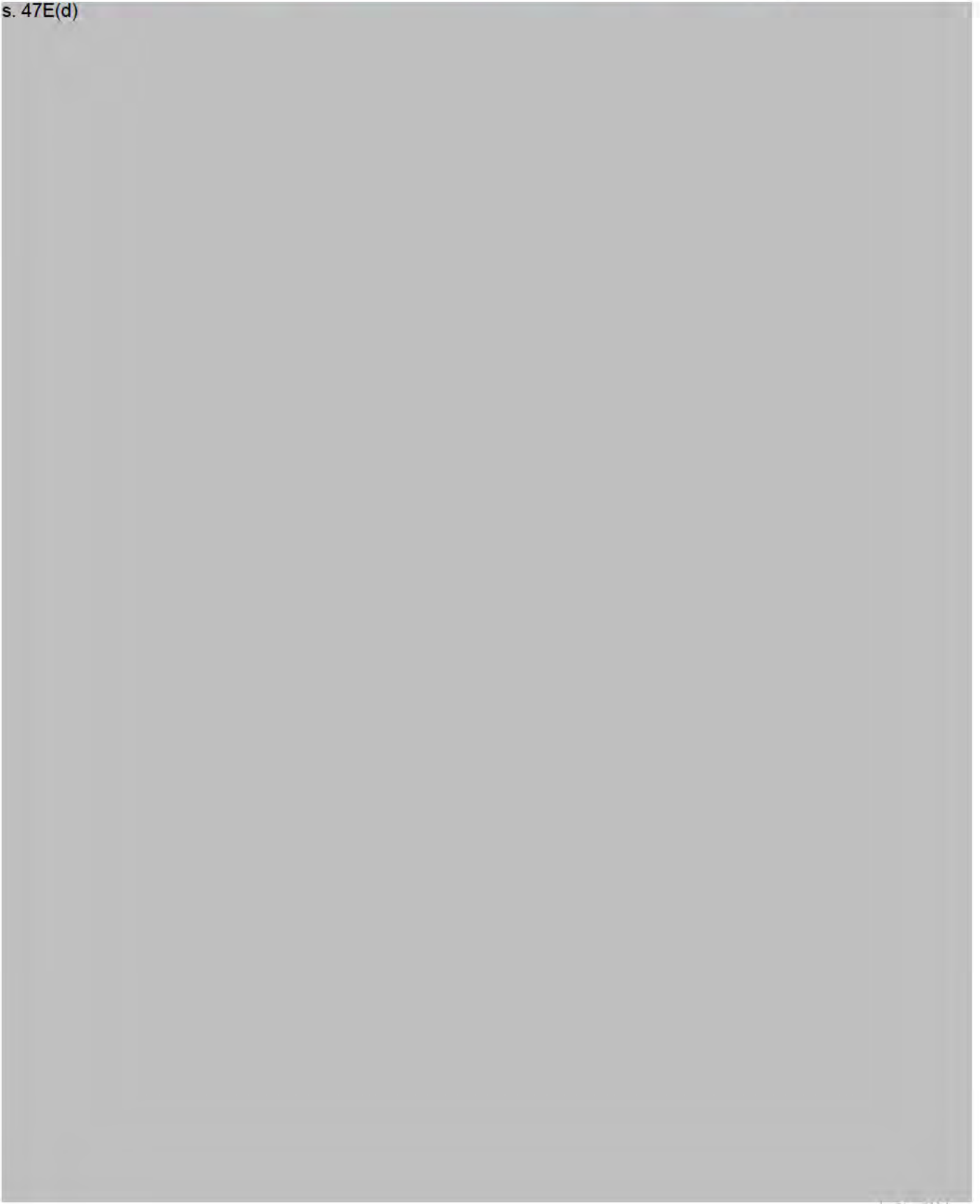
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Section 91W

Refused to comply

- The applicant refused to respond to the s91W request.
- Same as before:
 - Seek reasonable explanation.
 - If reasonable, proceed.
 - If not reasonable, must refuse.



Assessment – Section 91WA Case Studies

This is a formative Assessment: and will take approximately 15 minutes to complete. The assessment is an open book, with a pass mark of 80% - confirming knowledge of:

- assessing, applying and requesting identity documents as per Section 91W
- identifying what documentary evidence is
- explaining what produces documents mean as per Sections 91W
- demonstrating the necessary steps to undertake when assessing if an identity document is genuine or bogus and
- explaining what a reasonable and not reasonable explanation is.

Section 91W

Case Study

- A person has arrived in Australia on an Italian passport and cleared immigration at the border.
- They then subsequently lodge a Protection Visa (PV) application and claim that the Italian passport was fraudulently obtained and that is not their real identity.
- No documentary evidence of their identity, nationality or citizenship was submitted with the PV application.
- The applicant claims to be an Albanian national and provides a new identity on the application.

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Sections 91W and 91WA training 23

Section 91W

Case Study

Questions:

- What do you do?
- How can a Section 91W request be made?
- For the request to be lawful what should be included in the request?

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Section 91W

Case Study

- You make a Section 91W request and the applicant provides an Albanian electrical company invoice that has the applicant's name and Albanian address listed on it.

Question:

- Is this evidence of the applicant's identity, nationality or citizenship?

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Section 91W and 91WA Training 26

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Section 91W

Case Study

- You make a Section 91W request and the applicant provides an Albanian passport that appears to have some damage. The edges are frayed and it looks like it may have been pulled apart or stretched at some point.

Question:

- What do you do?

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Section 91W

Case Study

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Question:

- What do you do?

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Sections 91W and 91WA training 27

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Section 91W

Case Study

- The applicant admits in their explanation that the Albanian document is bogus and says that they provided the bogus Albanian document as their Italian document is the real document.
- They owed a large sum of money to criminals in Italy and are scared for their life. They have been harmed by the criminals and told they will be killed if they don't pay soon.
- The applicant was afraid that Australia would not accept that they were a refugee if they were from Italy so they pretended to be Albanian.

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Sections 91W and 91WA training 28

Section 91W

Case Study

Questions:

- Is this a reasonable explanation?
- What would you do next?

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Part Two – Section 91WA

Legislation

Section 91WA

Providing bogus documents or destroying identity documents.

Refer to your participant guide – page 55.

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Sections 91W and 91WA training 31

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Section 91WA

Case Law

BGM16

Impact of the change:

- You can only refuse under Section 91WA if documents were provided with or in connection with the current Protection Visa application.
- Documents provided previously can still be considered as part of a credibility assessment but cannot form the basis of a refusal under Section 91WA.

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Section 91W and 91WA training 22

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Section 91WA

When to assess?

Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.

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Section 91W and 91WA training 43



The term bogus document is defined in Section 5(1) of the Migration Act – this is the same for Section 91W and Section 91WA.

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Refer to your training material on assessing documentation or to the Procedural Instruction on Legend: IIB-1540 - Bogus Documents – Detection, Seizure and Retention.

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Section 91WA

What is provides?

Section 91WA – Providing bogus documents or destroying identity documents

(3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

Section 91WA

When to apply it?

Section 91WA – Providing bogus documents or destroying identity documents


- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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Sections 91W and 91WA Training

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Sections 91W and 91WA training 38

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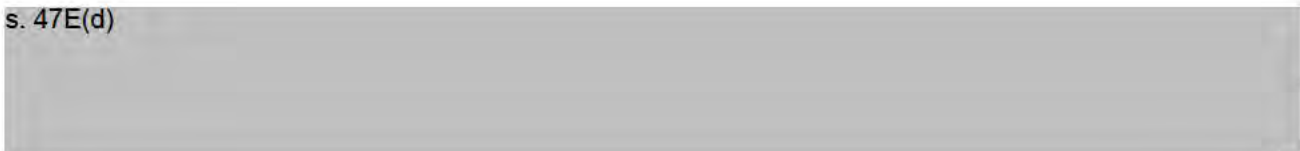


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Section 91WA

Bogus document

Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) **provides documentary evidence of his or her identity, nationality or citizenship; or**
 - (ii) **has taken reasonable steps to provide such evidence.**
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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Section 91W and 91WA training 40



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Assessment – Section 91WA Case Studies

This is a formative Assessment: and will take approximately 15 minutes to complete. The assessment is an open book, with a pass mark of 80% - confirming knowledge of:

- assessing, applying and requesting identity documents as per Section 91WA
- identifying what documentary evidence is
- explaining what produces documents mean as per Section 91WA
- demonstrating the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explaining what a reasonable and not reasonable explanation is.

Section 91WA

Case Study

- You are assessing a Protection Visa (PV) application for an Iraqi national. Their PV application included an Iraqi passport that has been assessed to be genuine and you are satisfied of their identity.
- However, when the applicant originally entered Australia they did so on a bogus Swedish passport and used that bogus passport to obtain a visa and clear immigration.

Questions:

- What do you do about this passport?
- Does it affect their application?

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Sections 91W and 91WA Training

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Section 91WA

Case Study

- You find however that the applicant has submitted bogus documents with their application. This includes documents that were fraudulently obtained to indicate that the applicant held a job working for coalition forces during the Iraq war, which if true may have been grounds for the applicant to seek protection.

Question:

- What do you do?

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Section 91W and Section 91WA Training 91

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Section 91WA

Case Study

- You are processing a Protection Visa application for a person who arrived by plane undocumented in Australia. They claim that during the flight they destroyed their passport by tearing it up and flushing it down the airplane toilet.
- You are satisfied that the applicant has destroyed documentary evidence of their identity and therefore seek an explanation from the applicant why they did so.
- They advise that the people smuggler that arranged their visa and travel to Australia told them that they should destroy their passport enroute to Australia.

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Sections 91W and 91WA training 44

Section 91WA

Case Study

Questions:

- How does Section 91WA(1)(b) apply?
- Did the applicant destroy the document or were they compelled to do so by circumstances outside of their control?

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Section 91W and 91WA

- Detailed charts on how to apply both processes is available in the Protection Visa Processing Guidelines available on Legend.
- When to send letters, when to contact the applicant and what you're assessing at each stage.

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Section 91W and 91WA Training 46



Key points to remember when assessing Section 91W or Section 91WA:

- **Section 91W relates to a request for documents.**
- **Section 91WA relates to documents that have already been provided with an application.**
- **These provisions relate to documentary evidence of identity, nationality or citizenship only.**
- **If procedural fairness is required, this must be done separate to a finding that a document is bogus and seeking a reasonable explanation.**
- **A reasonable explanation will depend on the individual circumstances of the applicant.**
- **If the Protection Visa application is being refused under Section 91W or Section 91WA, the Refugee and Complementary Protection must still be assessed.**

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Sections 91W and 91WA training 46

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References

The following are the references used in this module:

Section 91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a **protection visa** to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the **protection visa** to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a **bogus document** in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the **bogus document**; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the **protection visa** to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a **bogus document** in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the **bogus document**; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.


Section 91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a **protection visa** to an applicant for a protection visa if:
- (a) the applicant provides a **bogus document** as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the **bogus document** or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

Section 56 Further information may be sought

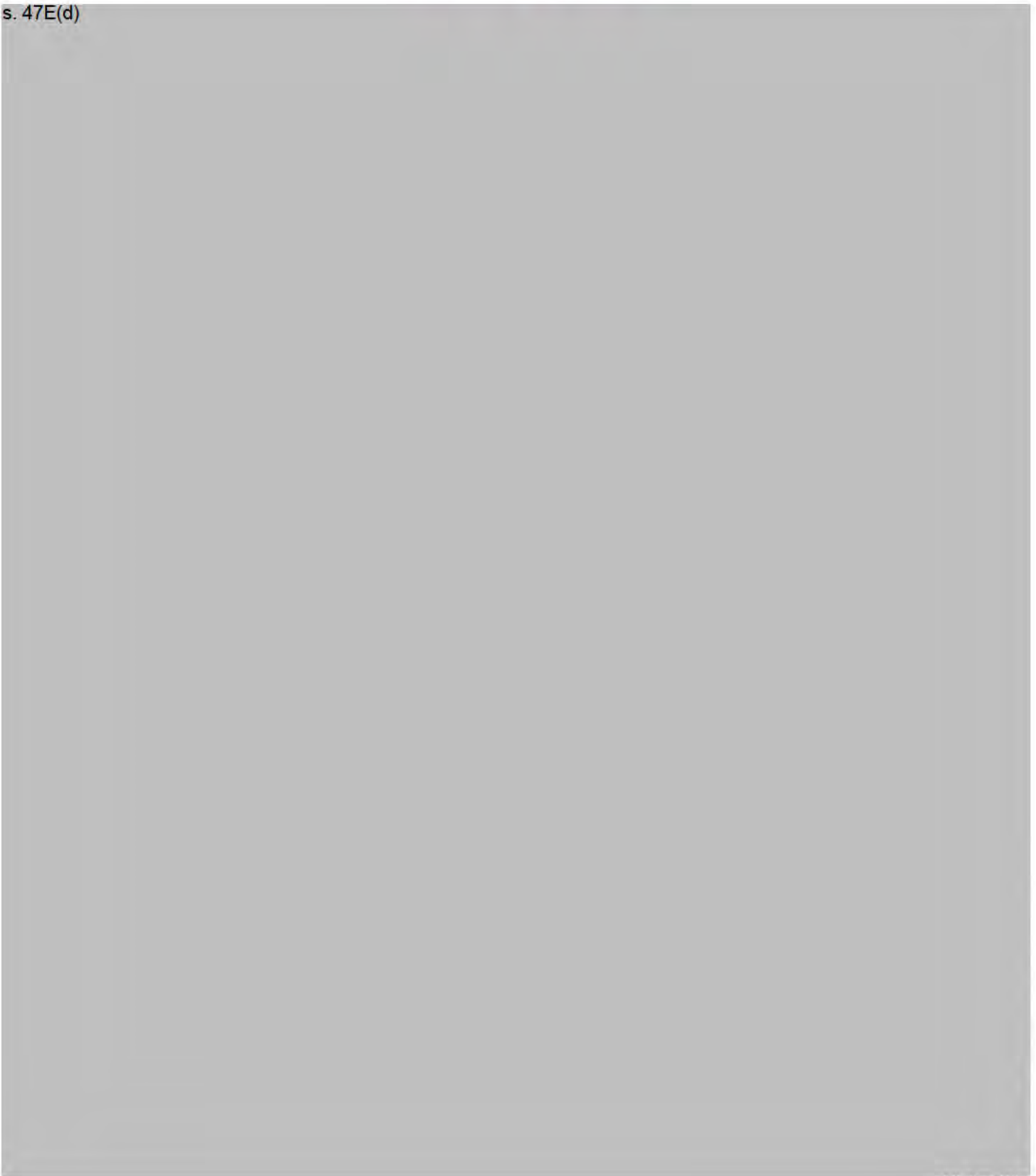
- (1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.
- (2) Without limiting subsection (1), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.

Section 5(1)

 **bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

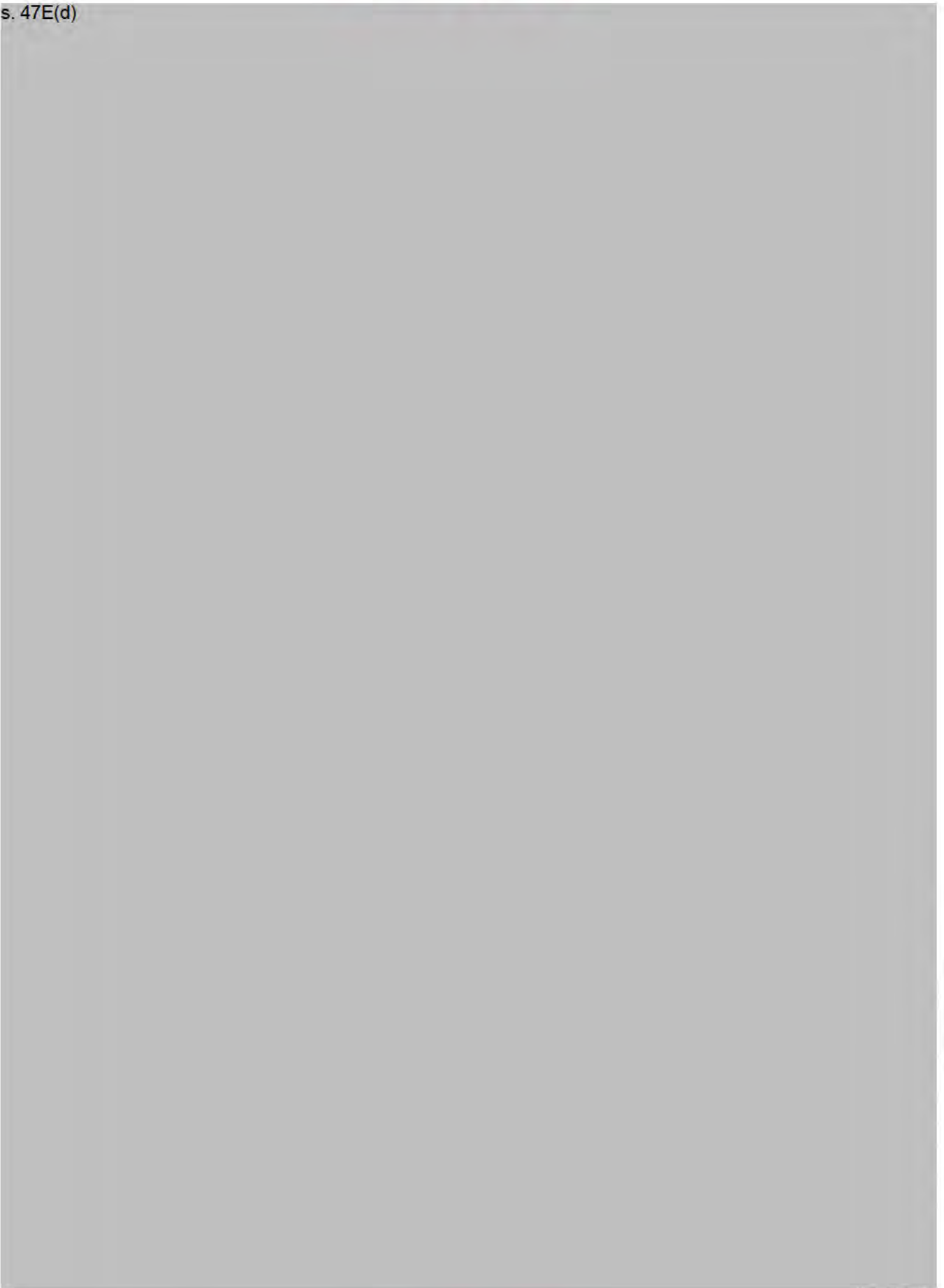
- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

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Section 91W and Section 91WA Training

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Document Information

Document Details

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| Approval Date | 18 October 2019 |
| Date of Review | 18 October 2020 |
| Contact | Learning and Change Support Section (LCSS) s. 47E(d) |
| TRIM Reference | ADD2019/4978183 |

Document Change Control

| Version | Date of issue | Author | Brief description of change |
|---------|---------------|--|---|
| 1.0 | 09/08/2019 | Learning and Change Support Section (LCSS) | Initial release |
| 1.1 | 14/08/2019 | Protection Assessment Support Section (PASS) | Reviewed content and incorporated policy position on Section 91W and Section 91WA |
| 1.2 | 19/09/2019 | Learning and Change Support Section (LCSS) | Incorporated policy content |

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Overview

Course/Module Aim/Objective

The purpose of this module is to provide officers with the knowledge to assess identity documents as per Section 91W and Section 91WA provisions.

Course Learning Outcomes

This module supports the attainment of the following learning outcomes:

- assess, apply and request identity documents as per Section 91W and Section 91WA
- identify what documentary evidence is
- explain what produces documents mean as per Section 91W and Section 91WA
- demonstrate the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explain what a reasonable and not reasonable explanation is.

Course/Module Structure

This module structure has been designed to be delivered in a number of ways – these options are:

- participants watch the audio recording (35 minutes)
- facilitation using training materials available (3.5 hours)

Pre-requisite

- Document Examination Module (as part of Induction Training).



Section 91W and Section 91WA – Session Plan

Part 1 – Section 91W

| Topic | Timing |
|---|-----------|
| Welcome and Introduction | 5 minutes |
| Learning Outcomes | 5 minutes |
| Legislation – Sections 91W and 91WA | 5 minutes |
| Why do we have Sections 91W and 91WA? | 8 minutes |
| What is the difference between Sections 91W and 91WA? | 8 minutes |
| When to assess Section 91W? | 5 minutes |
| When to apply Section 91W? | 8 minutes |
| How to make a Section 91W request? | 8 minutes |

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| Topic | Timing |
|---|--------------------|
| Documentary evidence – what is an identity, nationality or citizenship document? | 8 minutes |
| Request made – what next? | 2 minutes |
| Section 91W – scenarios | 10 minutes |
| Applicant produces documents – what is produces? | 5 minutes |
| Applicant produces documents – what if I need more information or a different document? | 8 minutes |
| Applicant produces documents – are they genuine? | 5 minutes |
| Suspicion documents are bogus | 8 minutes |
| Suspected bogus document and Section 57 procedural fairness obligations | 10 minutes |
| Suspected bogus document produced | 2 minutes |
| Bogus document – reasonable explanation | 8 minutes |
| Bogus document – not reasonable explanation | 2 minutes |
| Applicant refused to comply to Section 91W request | 3 minutes |
| Case Studies on Section 91W | 15 minutes |
| Closing | 2 minutes |
| Estimate total time | 140 minutes |

Part 2 – Section 91WA

| Topic | Timing |
|------------------------------|-----------|
| Introduction | 5 minutes |
| Legislation | 5 minutes |
| Case Law – BGM16 | 5 minutes |
| When to assess Section 91WA? | 5 minutes |
| What is provides? | 5 minutes |
| When to apply Section 91WA? | 5 minutes |
| Section 91WA scenarios | 5 minutes |
| Suspected bogus documents | 5 minutes |
| Bogus document | 5 minutes |
| Document destruction | 5 minutes |

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| Topic | Timing |
|------------------------------|------------|
| Case Studies on Section 91WA | 15 minutes |
| Questions | 5 minutes |
| Closing | 5 minutes |
| Estimate total time | 75 minutes |

Assessment Requirements

| Assessment | Assessment Type | Description | Assessment Criteria |
|--------------|-----------------|---|---|
| Case Studies | Formative | The assessment is a 30 minute written assessment, comprising case studies and is open book. | Confirming knowledge of: <ul style="list-style-type: none">• assessing, applying and requesting identity documents as per Section 91W and Section 91WA• identifying what documentary evidence is• explaining what produces documents mean as per Sections 91W and 91WA• demonstrating the necessary steps to undertake when assessing if an identity document is genuine or bogus and if an identity document has been destroyed and• explaining what a reasonable and not reasonable explanation is. |

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Section 91W and Section 91WA training



This module is estimated to take 3.5 hours.



Objective

On completion of this module you will be able to:

- assess, apply and request identity documents as per Section 91W and Section 91WA
- identify what documentary evidence is
- explain what produces documents mean as per Section 91W and Section 91WA
- demonstrate the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explain what a reasonable and not reasonable explanation is.



Australian Government
Department of Home Affairs

Section 91W & Section 91WA training

September 2019

Learning Outcomes

On completion of the course, you will be able to:

- assess, apply and request identity documents as per Section 91W and Section 91WA
- identify what documentary evidence is
- explain what produces documents mean as per Section 91W and Section 91WA
- demonstrate the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explain what a reasonable and not reasonable explanation is.

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Section 91W and Section 91WA Training

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Legislation

Section 91W

Evidence of identity or bogus identity documents in response to a request.

Section 91WA

Providing bogus identity documents or destroying identity documents with or in connection with a Protection Visa application.

Refer to your participant guide – page 55.

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Section 91W and Section 91WA training 3

Duration: 10 minutes

Notes/Key points:

Please refer to page 55 in your participant guide. This is the legislation that we will keep referring back to.

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Legislation

Keywords

- May – this is a discretion.
- Must – this is mandatory.
- And – you must be satisfied of all components.
- Or – you only need to be satisfied of one or the other.
- Causes the document to be – this refers to circumstances where an applicant has provided a document via a channel other than themselves.
- Reasonable explanation – this is a key component of both the Section 91W and Section 91WA assessment.

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Sections 91W and 91WA training

Duration: 5 minutes

Notes/Key points:

Please note the key words in each of the sections.

- May – this is a discretion.
- Must – this is mandatory.
- And – you must be satisfied of all components.
- Or – you only need to be satisfied of one or the other.
- 'Causes the document to be' – this refers to circumstances where an applicant has provided a document via a channel other than themselves.
- 'Reasonable explanation' – this is a key component of both the s91W and s91WA assessment. We will cover what this means during the training.

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Legislation

Why do we have Sections 91W and 91WA?

To encourage applicants to provide the Department with genuine identity documents. Establishing an applicant's identity is a keystone of making a decision to grant or refuse any visa.

This is especially the case for Protection Visa applicants because their identity, nationality or citizenship can have a direct bearing on whether they engage Australia's protection obligations.

- **Section 91W** – assists the decision maker to request identity, nationality or citizenship documents to establish an applicant's identity and requires the decision maker to refuse the Protection Visa application if an applicant fails to provide identity documents or provides bogus documents in response without a reasonable explanation.
- **Section 91WA** – if an applicant destroys or provides bogus identity document without a reasonable explanation their Protection Visa application must be refused.

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Section 91W and 91WA training

Duration: 8 minutes

Notes/Key points:

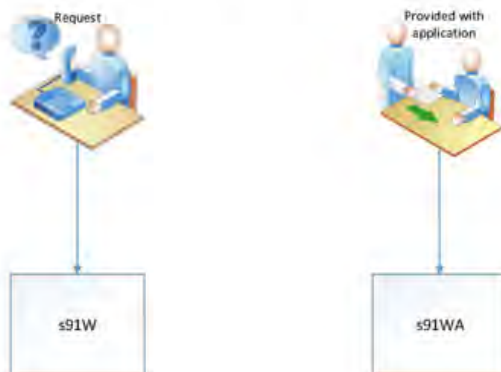
- Establishing an applicant's identity is a keystone of making a decision to grant or refuse any visa. This is especially the case for Protection Visa applicants because their identity, nationality or citizenship can have a direct bearing on whether they engage Australia's protection obligations.
- Section 91WA was introduced by the Protection and Other Measures Bill (POM). POM also amended Section 91W, strengthening it to make non-compliance with, or providing a bogus document in response to, a request for documentary evidence of identity, nationality or citizenship under subsection 91W(1) a refusal ground for a protection visa.
- The intent of these provisions is:
 - That Australians need to be confident that those who are found to be refugees are in fact who they say they are.
 - If asylum seekers do not cooperate with the government to establish their identity they should not be given the benefit of a Protection Visa.
 - The provisions make it clear that it is expected that Protection Visa applications are made in good faith, with full disclosure of identity.
 - The provisions also respect the fact that in some circumstances, for example where a person is stateless, it may not be possible for a Protection Visa applicant to provide documentary evidence of their identity, nationality or citizenship, even if they want to and have taken all reasonable steps to do so.
 - Cooperation is the key.

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Legislation

What is the difference?

- **Section 91W** – helps you to request documents
- **Section 91WA** – assess documents provided with application



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Sections 91W and 91WA training 6

Duration: 8 minutes

Notes/Key points:

- Section 91W relates to a request for documents of identity, nationality or citizenship. This request must be made under Section 91W(1) of the Act.
- Section 91WA relates to documents of identity, nationality or citizenship that have already been provided to the Department or have been destroyed.

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Part One – Section 91W

Part One – Section 91W

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Sections 91W and 91WA training 7

Notes/Key points:

Part One – we will now be focusing on Section 91W.

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Section 91W

When to assess?

Section 91W – Evidence of identity and bogus documents

(1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.

If you don't already have evidence of the applicants identity, nationality and citizenship – request under Section 91W(1).

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Section 91W and 91WA training 31

Duration: 5 minutes

Notes/Key points:

- Highlight 'may request' – discretion.
- The delegate has a discretion to request an applicant to provide documentary evidence of their identity, nationality or citizenship.
- A Section 91W(1) request can be made at any time during the Protection Visa assessment process.
- Before sending a Section 91W request, refer to ICSE records to check if a request has been sent previously.

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Section 91W

When to apply it?

Section 91W – Evidence of identity and bogus documents

- (2) The Minister **must** refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

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Section 91W and 91WA training

Duration: 8 minutes

Notes/Key points:

- 'Must' in subsection (2) means that it is mandatory to apply this provision if (a) to (d) are met. Note: and between subsections (a) to (d).
- Even if the applicant is found to be a refugee or is owed Complementary Protection, you must still refuse the application.
- We will discuss in the training how to know if each of the subsections in the provision apply to the applicant.

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Section 91W

How to make a request?

Section 91W – Evidence of identity and bogus documents

- (1) The Minister or an officer may, **either orally or in writing**, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, **either orally or in writing**, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

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Section 91W and 91WA Training 10

Duration: 8 minutes

Notes/Key points:

- A request under Section 91W can be made either orally or in writing.
- The request must include the warning as per subsection 91W(2)(d) – that if the applicant:
 - Fails to comply or produces a bogus document in response to the request
 - The Minister cannot grant the Protection Visa to the applicant
- Failure to provide this information to the applicant will invalidate any eventual refusal under Section 91W.

In writing is preferable

- Officers can make a request under Section 91W if one has not been made or the officer deems it appropriate to make another request.

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Documentary evidence

What is an identity, nationality or citizenship document?

Documentary evidence that:

- is generally government issued
- has robust identity proofing processes
- has robust issuance protocols
- has security features
- usually contain a biometric (photograph and/or fingerprint)

It says who the applicant is and, depending on the type of document, what their nationality or citizenship is.

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Sections 91W and 91WA training 11

Duration: 8 minutes

Notes/Key points:

- Under Section 91W a delegate can request documentary evidence of identity, nationality or citizenship.
- An identity, nationality or citizenship document will generally have one of the following:
 - Government issued
 - Robust identity proofing processes
 - Robust issuance protocols – there was a process the applicant had to go through to get the document
 - Security features – for example biodata page and/or security page on a passport
 - Contain a biometric for example photo or fingerprint

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Request made – what next?

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Sections 91W and 91WA Training 12

Duration: 2 minutes

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Section 91W

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Applicant produces documents

What is produces?

Section 91W – Evidence of identity and bogus documents

(1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.

(4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

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Sections 91W and 91WA training 14

Duration: 5 minutes

Notes/Key points:

- Produce for the purpose of subsection 91W(1) is defined in subsection 91W(4).
- It is important to note that the definition includes the term 'causes the document to be'.
- 'Causes the document to be' covers circumstances where an applicant has provided a document via a channel other than themselves.
- It is important that the applicant is aware the document is being provided on their behalf otherwise they have not 'caused the document to be' provided.

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Applicant produces documents

What if I need more information or a different document?

You can request additional documents or information under Section 56 of the Act.

Section 56 – Further information may be sought

(1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.

(2) Without limiting [subsection \(1\)](#), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.

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Sections 91W and 91WA training 15

Duration: 8 minutes

Notes/Key points:

- Where the applicant has complied with the requirements in Section 91W(1) and the officer still requires evidence of identity, nationality or citizenship this can be done in accordance with Section 56 of the Act.
- This can be done at any time during the process in writing or orally. For example: via email or during an interview.

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- A Section 56 request may be appropriate where there is not enough information for the purpose of establishing identity, nationality or citizenship. A decision maker may make a Section 56 request in writing after an interview if for example when writing up their decision they do not have sufficient information in relation to the applicant's life story and as a result cannot establish the applicant's identity.

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Applicant produces docs – Are they genuine?

- A **bogus document** is a document which the decision maker reasonably suspects:
 - was not issued to the applicant
 - is counterfeit or has been altered by a person who does not have authority to do so
 - was obtained as a result of a false or misleading statement (whether or not made knowingly).

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Sections 91W and 91WA training 18

Duration: 5 minutes

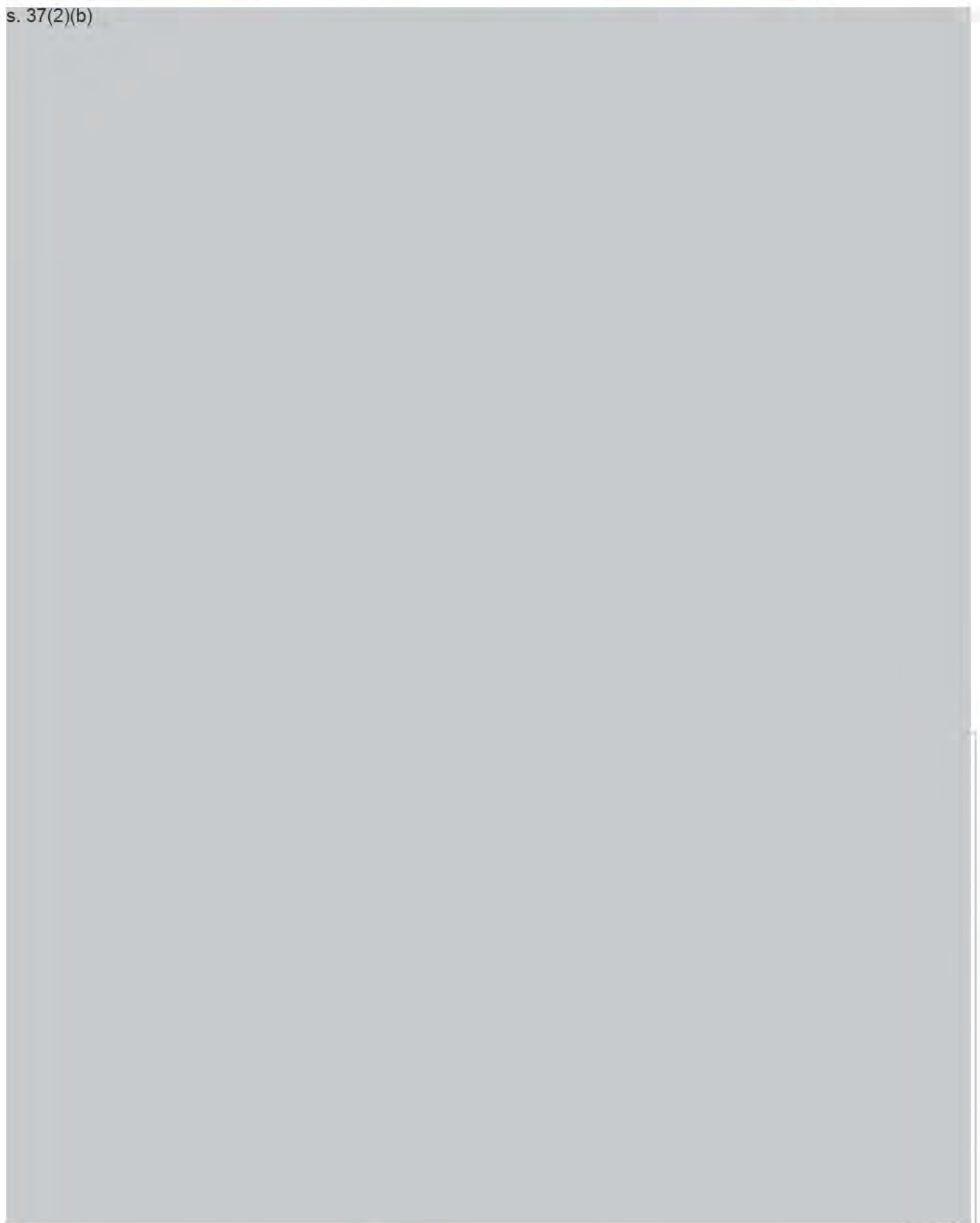
Notes/Key points:

- The term bogus document is defined in Section 5(1) of the Migration Act.
- A **bogus document** is a document which the decision maker reasonably suspects:
 - was not issued to the applicant; or
 - is counterfeit or has been altered by a person who does not have authority to do so; or
 - was obtained as a result of a false or misleading statement (whether or not made knowingly).

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s. 37(2)(b)



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Scenario 2:

- An applicant produces a document in response to a Section 91(W)1 request.
- You find the document to be genuine – no further action required.


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Duration: 10 minutes

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s. 37(2)(b)



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Duration: 8 minutes

Notes/Key points:

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Section 91W

Refused to comply

- The applicant refused to respond to the s91W request.
- Same as before:
 - Seek reasonable explanation.
 - If reasonable, proceed.
 - If not reasonable, must refuse.

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Sections 91W and 91WA training 22

Duration: 3 minutes

Notes/Key points:

- If an applicant refuses to comply with a Section 91W(1) request, the same procedure must be followed
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Assessment – Section 91W Case Studies

This is a formative Assessment: and will take approximately 15 minutes to complete. The assessment is an open book, with a pass mark of 80% - confirming knowledge of:

- assessing, applying and requesting identity documents as per Section 91W
- identifying what documentary evidence is
- explaining what produces documents mean as per Sections 91W
- demonstrating the necessary steps to undertake when assessing if an identity document is genuine or bogus and
- explaining what a reasonable and not reasonable explanation is.

Section 91W

Case Study

- A person has arrived in Australia on an Italian passport and cleared immigration at the border.
- They then subsequently lodge a Protection Visa (PV) application and claim that the Italian passport was fraudulently obtained and that is not their real identity.
- No documentary evidence of their identity, nationality or citizenship was submitted with the PV application.
- The applicant claims to be an Albanian national and provides a new identity on the application.

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Section 91W and 91WA training

Section 91W

Case Study

Questions:

- What do you do?
- How can a Section 91W request be made?
- For the request to be lawful what should be included in the request?

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Questions and Answers

Question 1: What do you do?

Answer: Issue a Section 91W request.

Question 2: How can a Section 91W request be made?

Answer: In writing or orally.

Question 3: For the request to be lawful what should be included in the request?

Answer: Warning: The Minister cannot grant the Protection Visa to you if you refuse or fail to comply with this request or if you produce a bogus document in response to this request.

Section 91W

Case Study

- You make a Section 91W request and the applicant provides an Albanian electrical company invoice that has the applicant's name and Albanian address listed on it.

Question:

- Is this evidence of the applicant's identity, nationality or citizenship?

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Section 91W and 91WA Training

Question and Answer

Question: Is this evidence of the applicant's identity, nationality or citizenship?

Answer: No, the document contains no way to link it to the applicant such as biometrics. The applicant could be assuming the identity listed on the invoice.

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Section 91W

Case Study

- You make a Section 91W request and the applicant provides an Albanian passport that appears to have some damage. The edges are frayed and it looks like it may have been pulled apart or stretched at some point.

Question:

- What do you do?

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Section 91W and 91WA Training 26

Question and Answer

Question: What do you do?

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Section 91W

Case Study

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Question:

- What do you do?

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Section 91W and 91WA Training 27

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Section 91W

Case Study

- The applicant admits in their explanation that the Albanian document is bogus and says that they provided the bogus Albanian document as their Italian document is the real document.
- They owed a large sum of money to criminals in Italy and are scared for their life. They have been harmed by the criminals and told they will be killed if they don't pay soon.
- The applicant was afraid that Australia would not accept that they were a refugee if they were from Italy so they pretended to be Albanian.

Discoveries of Notes/Attachments

Section 91W and 91WA Training 23

Section 91W

Case Study

Questions:

- Is this a reasonable explanation?
- What would you do next?

Discoveries of Notes/Attachments

Section 91W and 91WA Training 24

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Part Two – Section 91WA

Part Two – Section 91WA

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Sections 91W and 91WA training 30

Duration: 5 minutes

Notes/Key points:

Part Two – we will now be focusing on Section 91WA.

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Legislation

Section 91WA

Providing bogus documents or destroying identity documents.

Refer to your participant guide – page 55.

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Sections 91W and 91WA training 31

Duration: 5 minutes

Notes/Key points:

Please refer to page 55 in your participant guide. This is the legislation that we will keep referring back to.

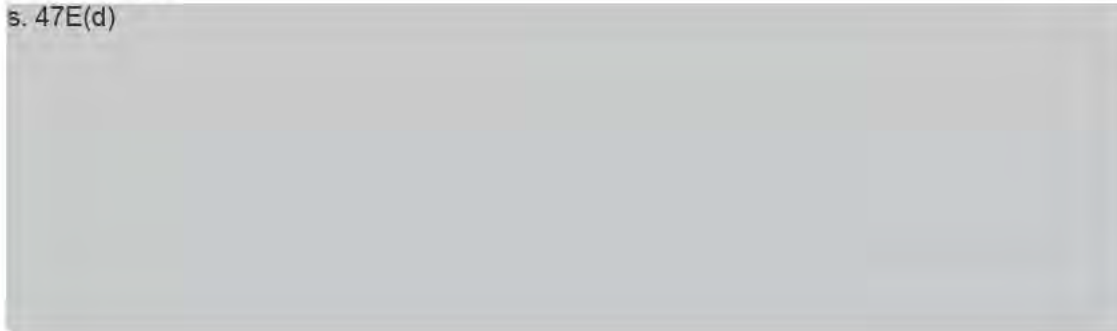
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Section 91WA

Case Law

BGM16

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Section 91W and 91WA training 18

Duration: 5 minutes

Notes/Key points:

The intent of Section 91WA introduced in 2015 (as part of the Protection and Other Measures Bill), was to prevent the grant of a Protection Visa to people who do not show integrity in their dealings with the Department. The provision was drafted to cover all dealings with the Department. Unlike Section 91W there is no specific link to a Protection Visa application in the text of the legislation. The Full Federal Court decision in BGM16 confined the scope of Section 91WA.

The Summary of Court decision:

- The court found that the text of Section 91WA(1)(a) is directed specifically to conduct by an applicant for the Protection Visa.
- The court found that, the purpose of the provision is to ensure the identity, nationality and citizenship of applicants for the Protection Visa is accurately ascertained.
- There may be no doubt about a person's true identity, nationality or citizenship for the purpose of their Protection Visa application, Section 91WA would instead be imposing a punishment for previous acts of dishonesty.
- The approach the Minister had taken was in the alternative to this purpose and gave Section 91WA a different purpose and the court found this approach to be invalid.

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Section 91WA

When to assess?

Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.

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Sections 91W and 91WA training 43

Duration: 5 minutes

Notes/Key points:

- This provision relates to
 - when documents have already been provided with or in connection with the Protection Visa application
 - when there is evidence documents have been destroyed.
- Note this Section applies to documentary evidence of identity, nationality or citizenship – these are the same type of documents as in Section 91W.
- An identity, nationality or citizenship document will generally have one of the following:
 - Government issued
 - Robust identity proofing processes
 - Robust issuance protocols – there was a process the applicant had to go through to get the document
 - Security features – for example the security page on a passport
 - Contain a biometric for example photo or fingerprint
- The term bogus document is defined in Section 5(1) of the Migration Act – this is the same for Section 91W and Section 91WA.
- A *bogus document* is a document which the decision maker reasonably suspects:

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- was not issued to the applicant; or
- is counterfeit or has been altered by a person who does not have authority to do so; or
- was obtained as a result of a false or misleading statement (whether or not made knowingly).

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Section 91WA

What is provides?

Section 91WA – Providing bogus documents or destroying identity documents

(3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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Sections 91W and 91WA training 34

Duration: 5 minutes

Notes/Key points:

- 'Produce' for the purpose of subsection 91WA(1) is defined in subsection 91WA(3).
- This is the same as Section 91W(4).
- It is important to note that the definition includes the term 'causes the document to be'.
- 'Causes the document to be' covers circumstances where an applicant has provided a document via a channel other than themselves.
- It is important that the applicant is aware the document is being provided on their behalf otherwise they have not 'caused the document to be' provided.

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- Caused also applies to the destruction of documents. If the applicant has played a role in the destruction of the document, even if they did not destroy it themselves.

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Section 91WA

When to apply it?

Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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Sections 91W and 91WA training

Duration: 5 minutes

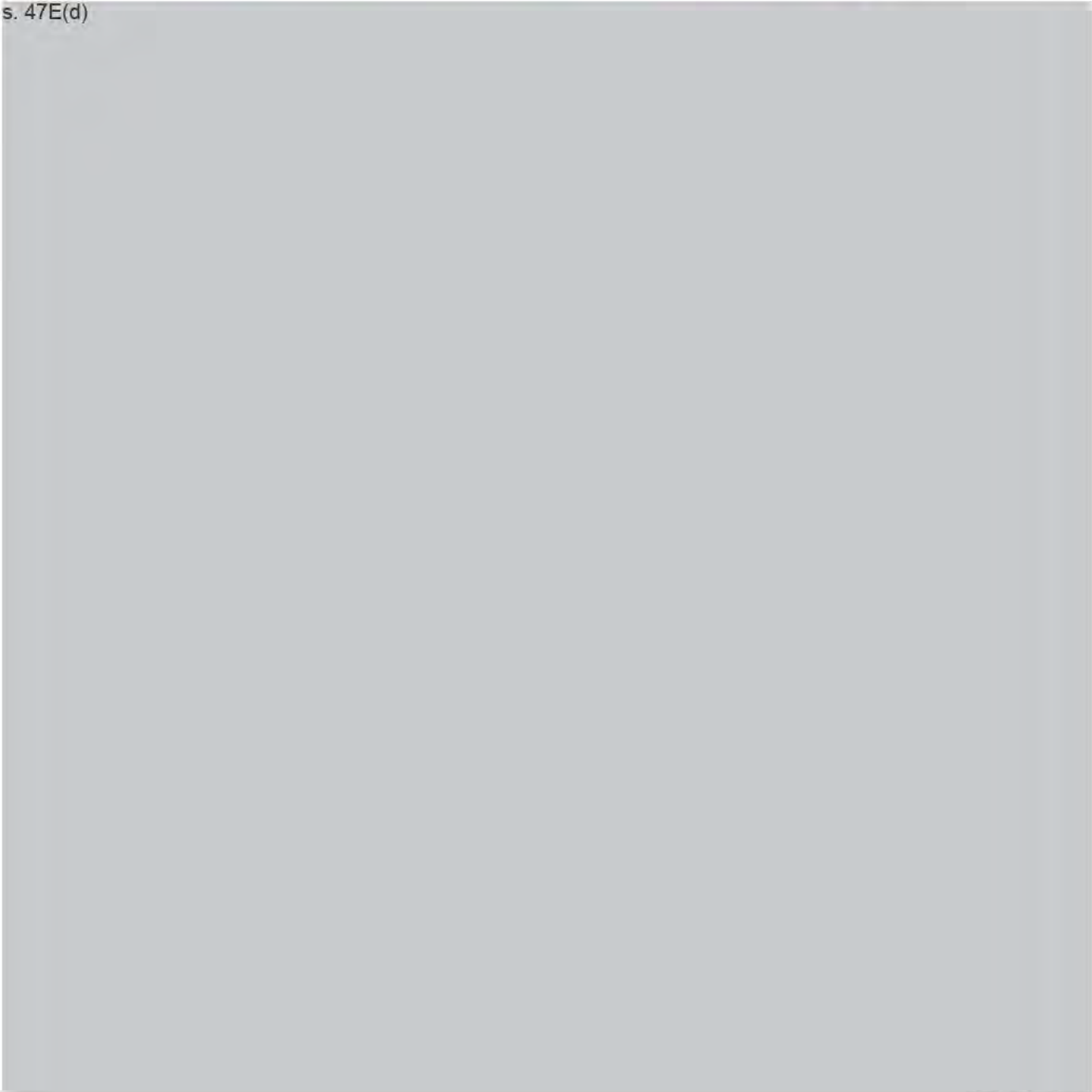
Notes/Key points:

Note that 'must' means it must be applied when the relevant provisions are met.

- Even if the applicant is a refugee or is owed Complementary Protection, you must still refuse the application.
- If a request under Section 91W has not been made or there is evidence an applicant has provided a bogus identity, nationality or citizenship document (not in relation to a Section 91W request) or destroyed an identity, nationality or citizenship document you should make an assessment under Section 91WA.


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Duration: 5 minutes

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3. After considering the information you assess that the document is bogus.
4. Give the applicant an opportunity to provide a reasonable explanation for providing a bogus document in accordance with Section 91WA(2)(a).

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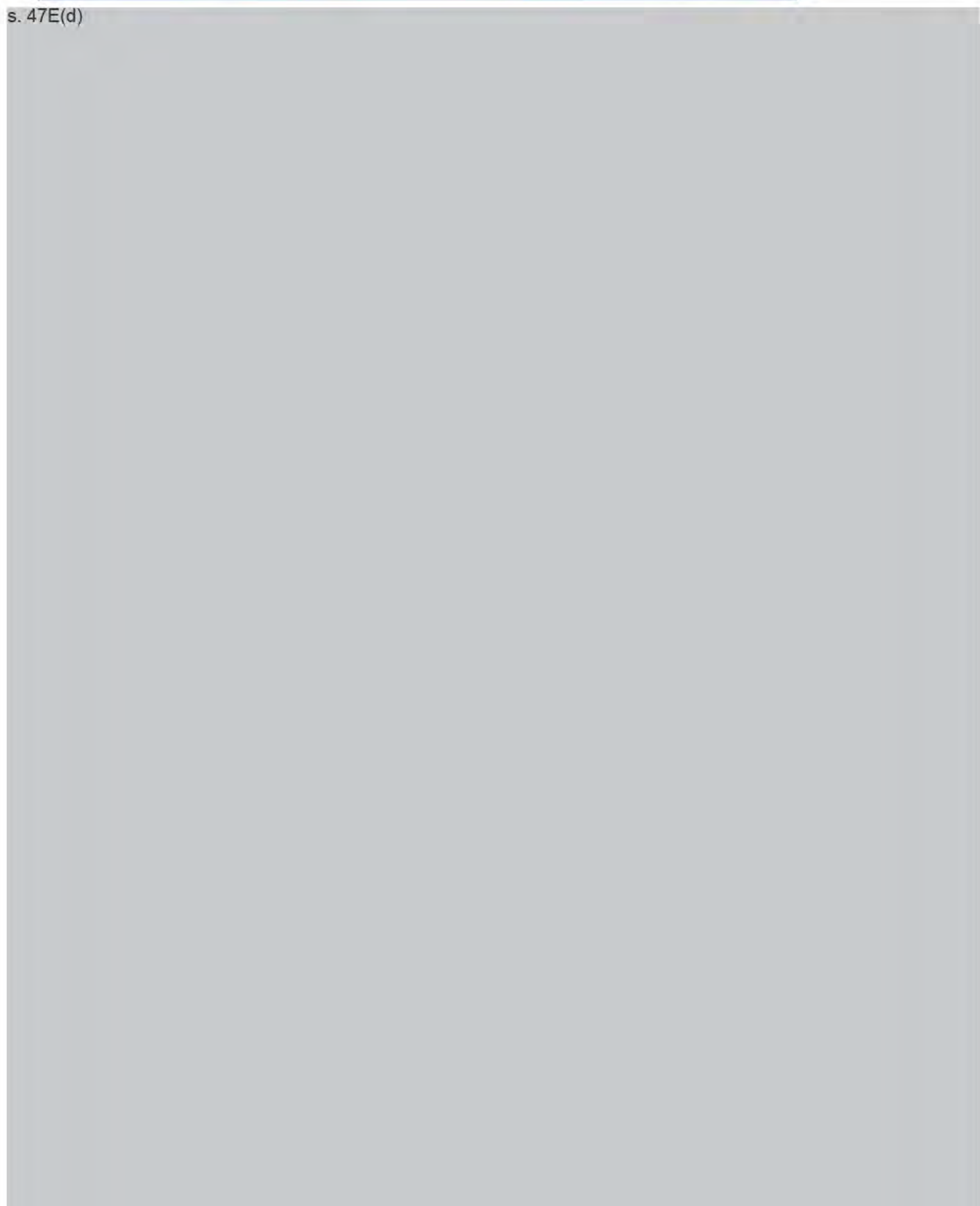
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Section 91WA

Bogus document

Section 91WA – Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) **provides documentary evidence of his or her identity, nationality or citizenship; or**
 - (ii) **has taken reasonable steps to provide such evidence.**
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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Section 91W and 91WA training 40

Duration: 5 minutes

Notes/Key points:

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Question to the group – What would you consider to be reasonable steps?

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Assessment – Section 91WA Case Studies

This is a formative Assessment: and will take approximately 15 minutes to complete. The assessment is an open book, with a pass mark of 80% - confirming knowledge of:

- assessing, applying and requesting identity documents as per Section 91WA
- identifying what documentary evidence is
- explaining what produces documents mean as per Section 91WA
- demonstrating the necessary steps to undertake when assessing if an identity document is genuine or bogus or if an identity document has been destroyed and
- explaining what a reasonable and not reasonable explanation is.

Section 91WA

Case Study

- You are assessing a Protection Visa (PV) application for an Iraqi national. Their PV application included an Iraqi passport that has been assessed to be genuine and you are satisfied of their identity.
- However, when the applicant originally entered Australia they did so on a bogus Swedish passport and used that bogus passport to obtain a visa and clear immigration.

Questions:

- What do you do about this passport?
- Does it affect their application?

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Sections 91W and 91WA, Part 2

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Section 91WA

Case Study

- You find however that the applicant has submitted bogus documents with their application. This includes documents that were fraudulently obtained to indicate that the applicant held a job working for coalition forces during the Iraq war, which if true may have been grounds for the applicant to seek protection.

Question:

- What do you do?

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Section 91W and 91WA (training) 63

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Section 91WA

Case Study

- You are processing a Protection Visa application for a person who arrived by plane undocumented in Australia. They claim that during the flight they destroyed their passport by tearing it up and flushing it down the airplane toilet.
- You are satisfied that the applicant has destroyed documentary evidence of their identity and therefore seek an explanation from the applicant why they did so.
- They advise that the people smuggler that arranged their visa and travel to Australia told them that they should destroy their passport enroute to Australia.

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Sections 91W and 91WA training 44

Section 91WA

Case Study

Questions:

- How does Section 91WA(1)(b) apply?
- Did the applicant destroy the document or were they compelled to do so by circumstances outside of their control?

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Sections 91W and 91WA training 45

Questions and Answers

Question 1: How does Section 91WA(1)(b) apply?

Answer: Section 91WA would apply and the application must be refused.

Question 2: Did the applicant destroy the document or were they compelled to do so by circumstances outside of their control?

Answer: The applicant destroyed the passport of their own volition.

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Section 91W and 91WA

- Detailed charts on how to apply both processes is available in the Protection Visa Processing Guidelines available on Legend.
- When to send letters, when to contact the applicant and what you're assessing at each stage.

Department of Home Affairs

Section 91W and 91WA Training 46

Duration: xxx minutes

Notes/Key points:

Key points to remember when assessing Section 91W or Section 91WA:

- Section 91W relates to a request for documents.
- Section 91WA relates to documents that have already been provided with an application.
- These provisions relate to documentary evidence of identity, nationality or citizenship only.
- If procedural fairness is required, this must be done separate to a finding that a document is bogus and seeking a reasonable explanation.
- A reasonable explanation will depend on the individual circumstances of the applicant.
- If the Protection Visa application is being refused under Section 91W or Section 91WA, the Refugee and Complementary Protection must still be assessed.

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Questions?



References

The following are the references used in this module:

Section 91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a **protection visa** to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the **protection visa** to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a **bogus document** in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the **bogus document**; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the **protection visa** to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a **bogus document** in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the **bogus document**; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.


Section 91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a **protection visa** to an applicant for a protection visa if:
- (a) the applicant provides a **bogus document** as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the **bogus document** or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

Section 56 Further information may be sought

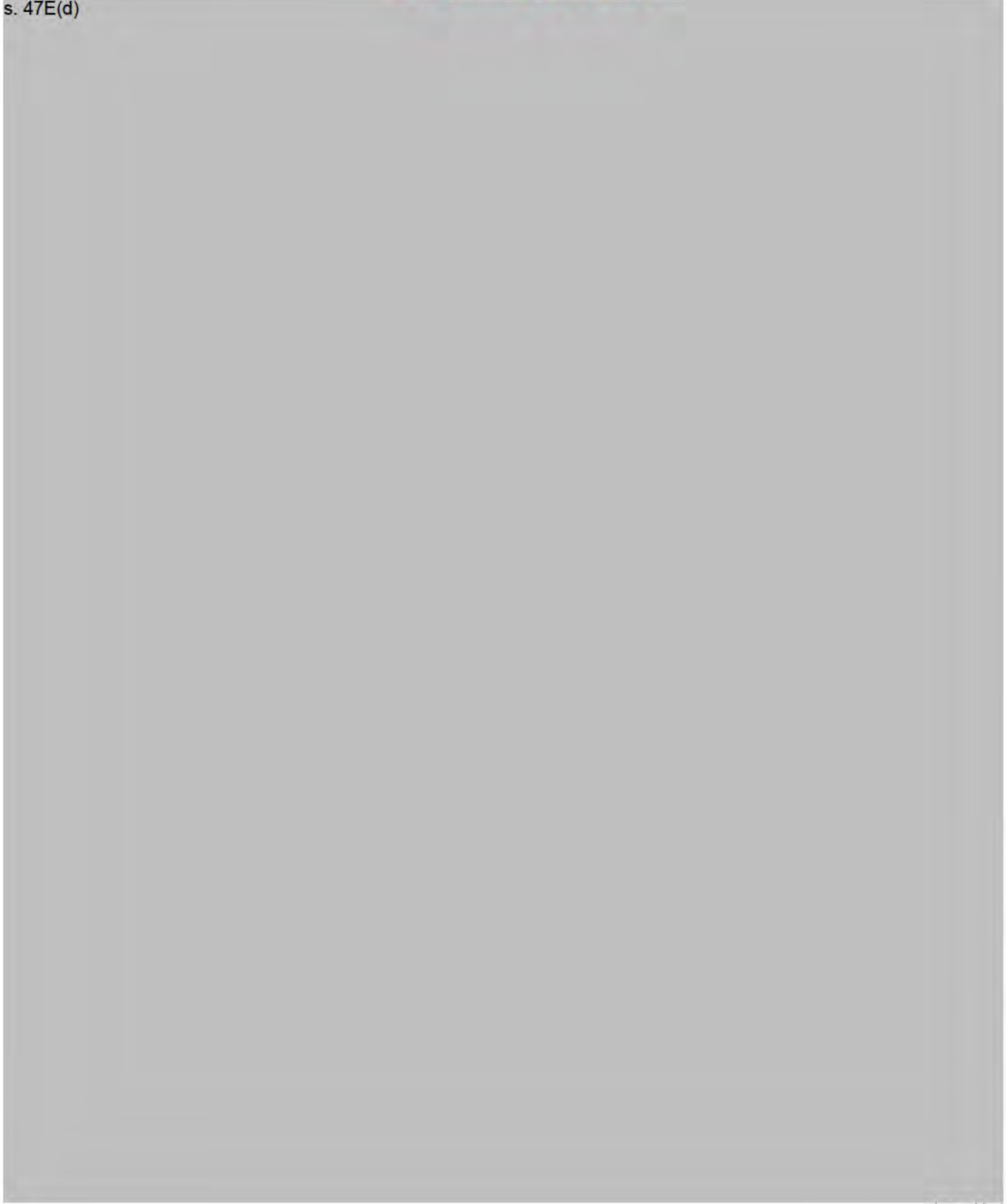
- (1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.
- (2) Without limiting subsection (1), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.

Section 5(1)

 **bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

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Fast Track Interview preparation worksheet

Interview preparation – Insert Applicant name – Given FAMILY NAME enter CID, Enter Boat/Centre ID, Enter agent name and firm, enter receiving country

Summary of claims

Insert summary of claims directly below - only include material claims relevant to protection assessment. Either use dot points or summarise basis of claims in two – three short paragraphs. This should be written in a form that can transferred to Part 4 – Protection of decision record (if the applicant is refused)

Insert general questions/themes

Interview preparation - Systems checked

| Issue identified: | If yes, what is issue? |
|-------------------|------------------------|
|-------------------|------------------------|

| | |
|-------|--|
| ICSE: | Yes <input type="checkbox"/> No <input type="checkbox"/> Click here to enter text. |
|-------|--|

| | |
|--------|--|
| TRIPS: | Yes <input type="checkbox"/> No <input type="checkbox"/> Click here to enter text. |
|--------|--|

| | |
|-------|--|
| CCMD: | Yes <input type="checkbox"/> No <input type="checkbox"/> Click here to enter text. |
|-------|--|

| | |
|-------|--|
| TRIM: | Yes <input type="checkbox"/> No <input type="checkbox"/> Click here to enter text. |
|-------|--|

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Interview preparation - Identity

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Insert issues/considerations

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Yes ☐ No ☐ More info required ☐

Insert issues/considerations

Has applicant provided documents (with no indicators of fraud) in support of identity/nationality/citizenship and not destroyed relevant identity documents? Does applicant comply with s91WA and/or s91W (if docs requested)?

Yes ☐ No ☐ More info required ☐

Insert issues/considerations

Do I have enough information to make a finding about the applicant's identity?

Yes ☐ No ☐ More info required ☐

Insert issues/considerations

Insert Identity questions / themes

Interview preparation - finding of fact assessment

If you accept all claims as stated – does the applicant meet the criteria to engage protection obligations?

Yes ☐ No ☐ More info required ☐

Click here to enter text.

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Yes ☐ No ☐ More info required ☐

Click here to enter text.

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Yes ☐ No ☐ More info required ☐

Click here to enter text.

Is there 'relevant information' as per s57? Is yes, what must be presented to the applicant for comment?
Ensure s57 questions are [inserted in Part 11](#) using Quick Parts

Yes ☐ No ☐ More info required ☐

Click here to enter text.

Finding of fact questions / themes

Insert finding of fact – questions / themes

Interview Preparation – claim analysis

| s. 47E(d) | Issue/information | Questions required? |
|-----------|-------------------|--|
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> |

Has the situation in the country of reference significantly changed since the applicant's departure?

Improved ☐ Worsened ☐ Similar ☐ More info required ☐

[Click here to enter text.](#)

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Does available country information support the applicant's protection claim?

Yes ☐ No ☐ More info required ☐

[Click here to enter text.](#)

Could the applicant avoid harm and live in another part of the receiving country?

Yes ☐ No ☐ More info required ☐

[Click here to enter text.](#)

Do questions about reasonableness of relocation need to be asked?

Yes ☐ No ☐ More info required ☐

[Click here to enter text.](#)

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Yes ☐ No ☐ More info required ☐

[Click here to enter text.](#)

Claim analysis questions/themes

[Insert claim analysis questions / themes](#)

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Insert character questions / themes

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Onshore Protection Interviews

Practical guidance

| | |
|----------------|---|
| Approval Date | 25 May 2018 |
| Contact | Protection Assessment Support Section, Humanitarian Program Capability Branch <u>Onpro Programme Office</u> |
| Trim Reference | ADD2017/1245327 |

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1. Introduction

1.1. Purpose and scope

This document provides practical guidance on conducting protection visa interviews in an effective and sensitive manner. It provides specific guidance on:

- interview arrangements
- preparing for an interview
- how to investigate protection claims, including key interviewing principles, questioning techniques, presenting adverse information and factors to consider when interviewing vulnerable applicants
- Self-evaluation and self-care for PV officers following the interview.

This guidance relates to, is consistent with and complements the procedural advice on interviews contained in the Procedural Instruction - Refugee and Humanitarian – Protection Visa Processing Guidelines.

2. Policy and principles

2.1. Purpose of the interview

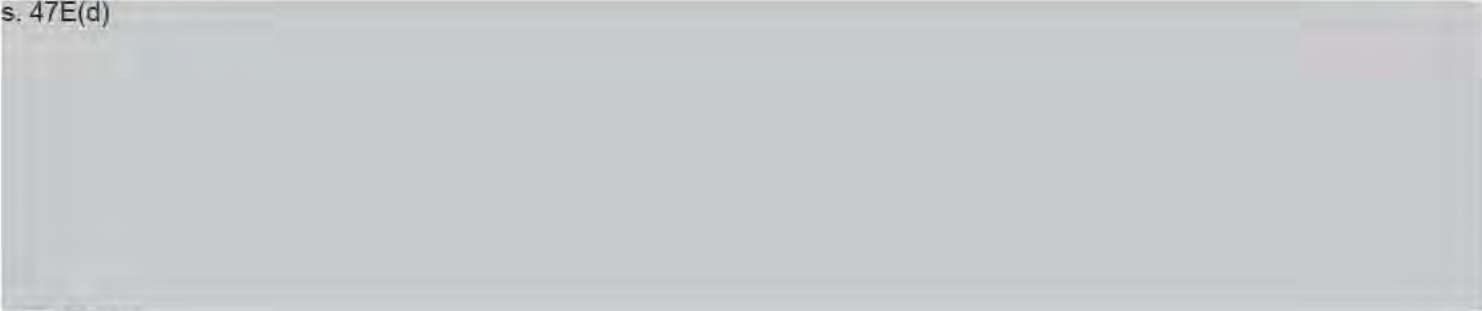
The assessment of protection claims involves consideration of information provided in the application and country information. An interview with the applicant may be required to clarify information that is at the disposal of the officer. The protection visa (PV) interview can provide a further opportunity for an applicant to give detailed evidence about their protection claims, and often constitutes a key component of procedural fairness and the identity and credibility assessment.

During a PV interview, officers must identify and investigate the key issues related to the assessment of the application through a focused and sensitive approach to questioning, particularly as some evidence may relate to instances of persecution or serious harm, torture or sexual violence. Obtaining sufficient information and being able to subject claims to sensitive but rigorous enquiry can be a crucial step in ensuring that protection claims are thoroughly considered.


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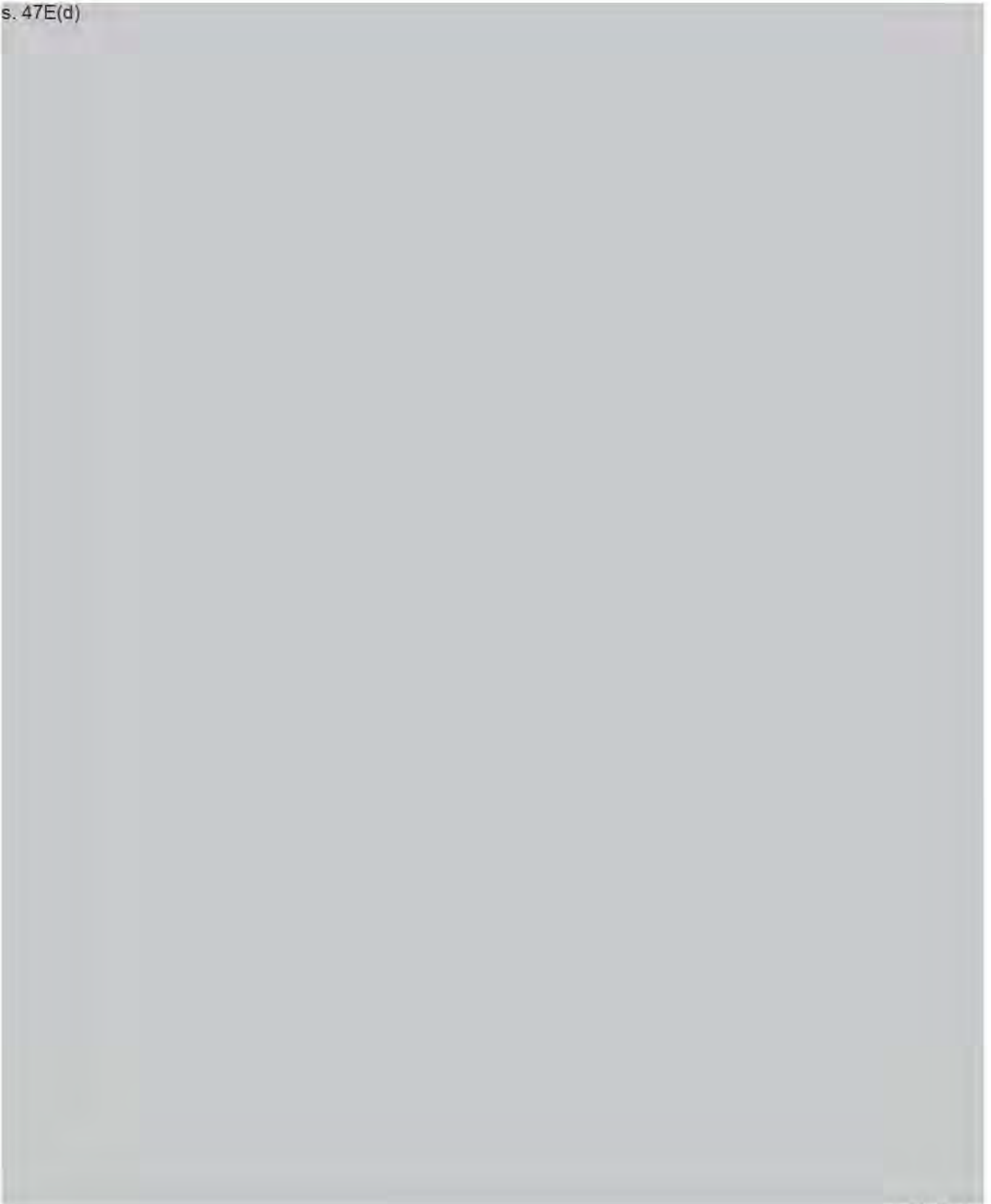
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For further information about sensitive interviewing techniques for applicants with LGBTI, claims see Procedural Instruction - Refugee and Humanitarian – Protection Visa Processing Guidelines.

For further information about gender issues see PAM 3: Refugee and Humanitarian – Gender Guidelines.

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11. Applicants with psychological vulnerabilities including mental health conditions¹

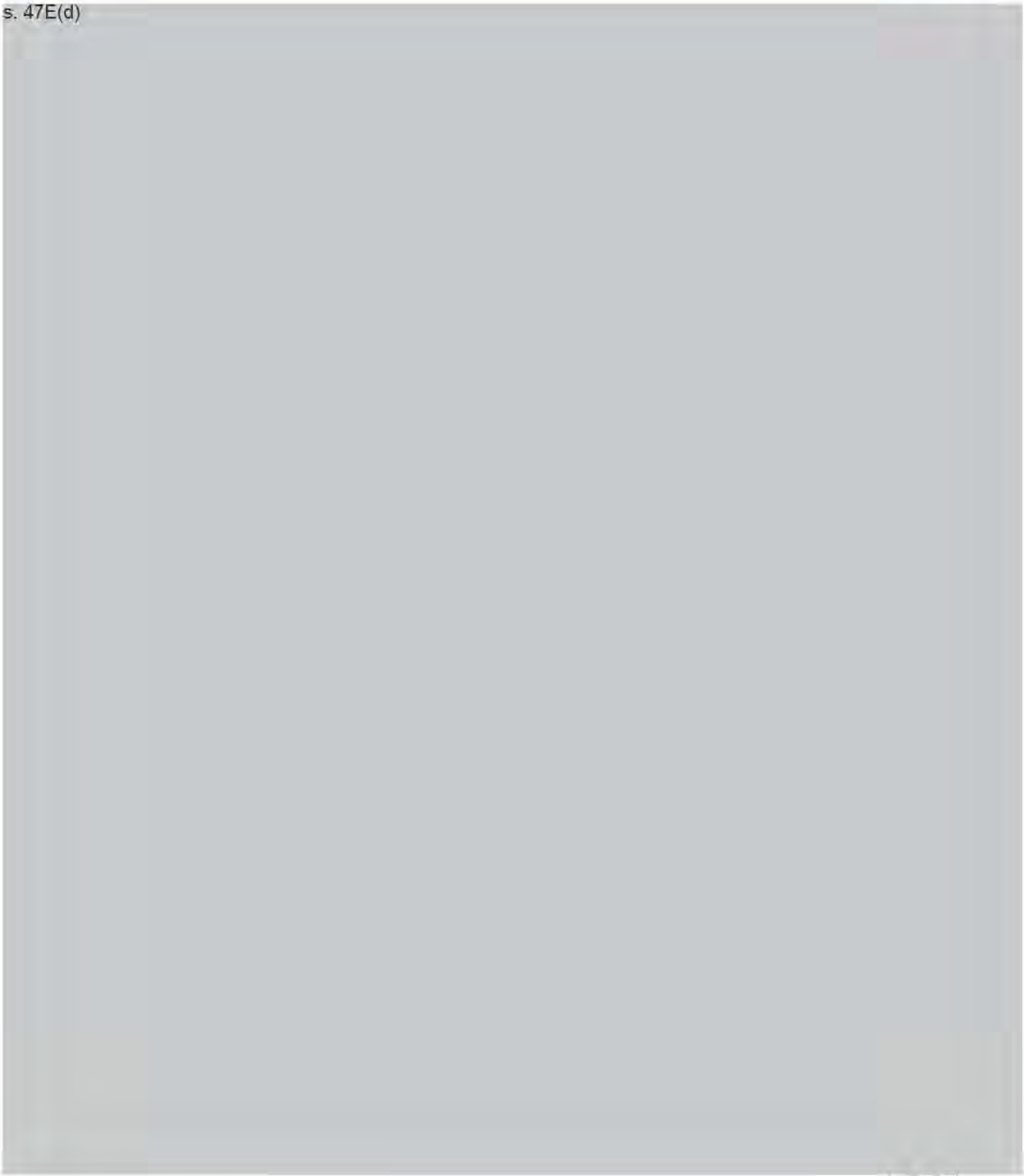
This chapter:

- addresses ways to identify and assist psychologically vulnerable applicants;
- provides techniques and options that can be used to better engage with applicants whose ability to participate in the Protection visa (PV) assessment process is reduced due to their disordered mental state and/or impaired cognitive abilities; and
- describes a range of procedural modifications that can be adopted to facilitate the fair and accurate assessment of the applicant's claims.

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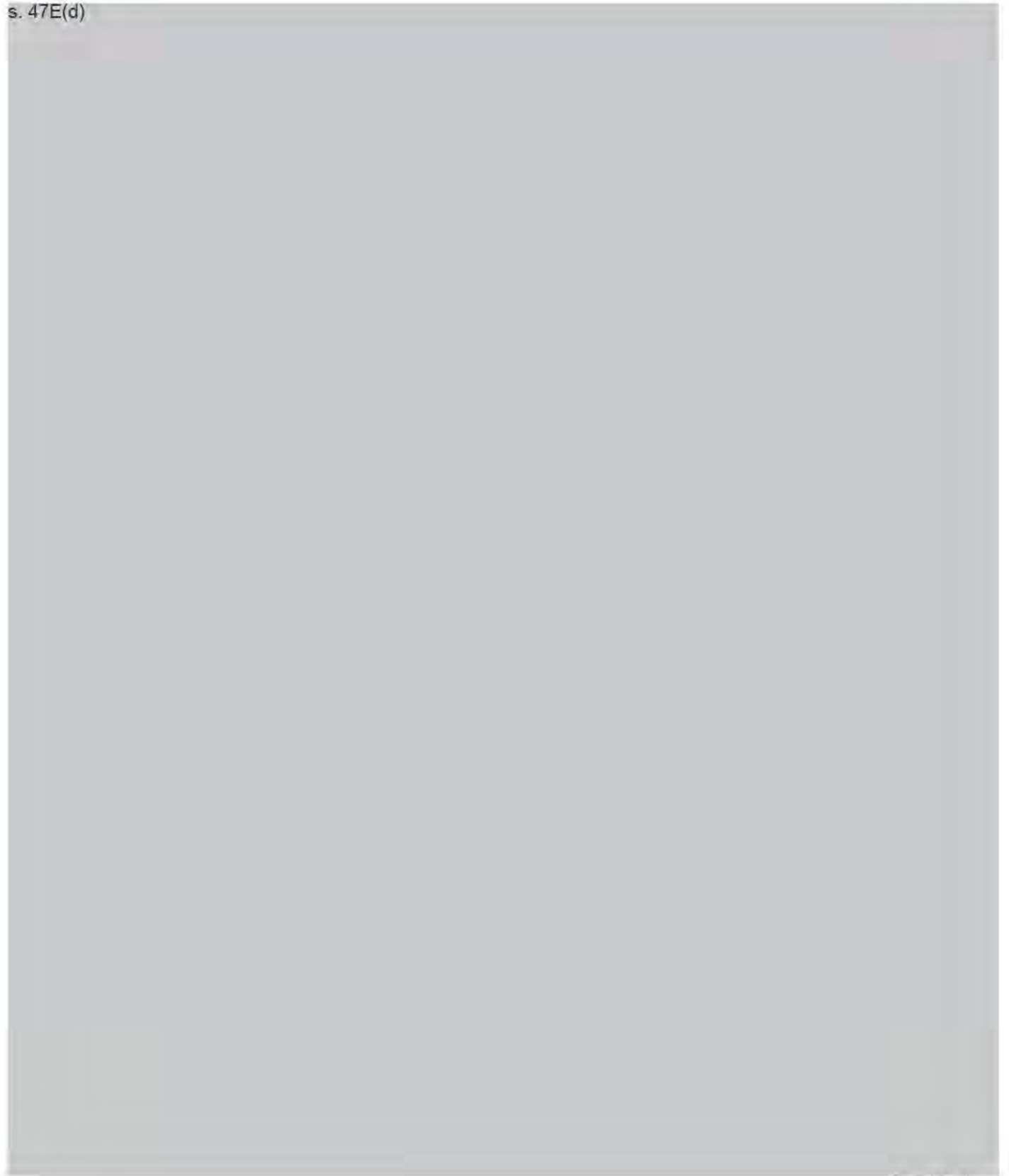
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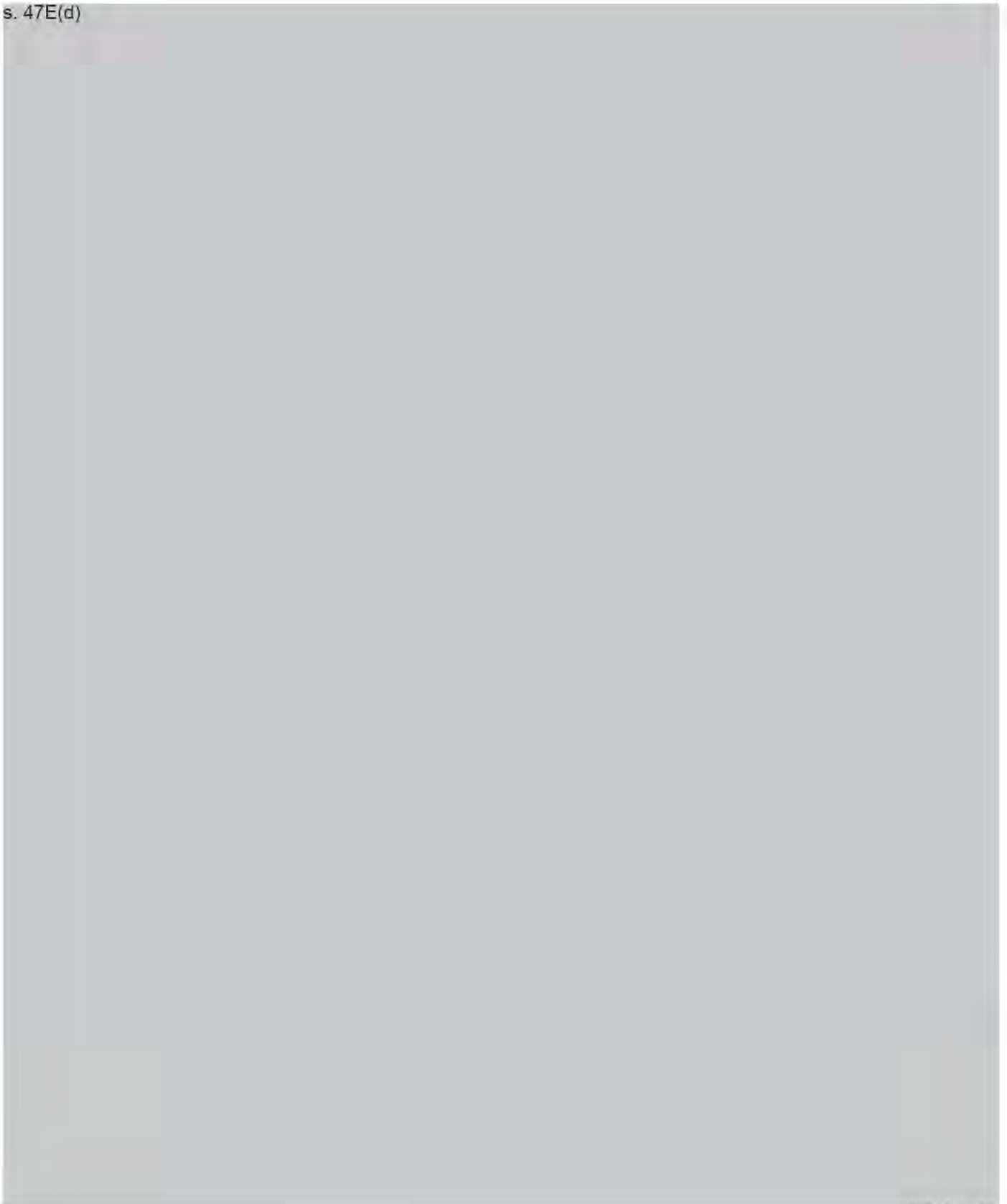
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BEYOND BLUE: 1300 224 636

LIFELINE: 131 114

FORUM OF AUSTRALIAN SERVICES FOR SURVIVORS OF TRAUMA AND TORTURE (FASSTT)

ACT 02 6251 4550, NSW 02 9794 1900, NT 08 8985 3311, QLD 07 3391 6677, SA 08 8206 8900 TAS 03 6221 0999, VIC 03 9388 0022, WA 08 9227 2700

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12.1. Domestic and family violence

Domestic and Family violence (DFV) involves conduct that is violent, threatening, coercive or controlling or intended to cause a family or household member to be fearful. It can include:

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- physical, verbal, emotional, sexual or psychological abuse
- neglect
- financial abuse
- stalking
- harm to an animal or property
- restricting spiritual or cultural participation
- exposing children to the effect of these behaviours.

For a full definition of what behaviours are considered domestic and family violence, see [Domestic and Family Violence Strategy 2016-20](#).

Departmental contacts who can provide support and guidance on dealing with DFV issues

The [Domestic and Family Violence Contact Officer Network](#) has been developed to improve the safety of DIBP clients, staff and the Australian community by:

- providing timely information, advice and guidance to staff to assist them in responding practically and appropriately to DFV issues
- ensuring consistency and quality in our responses to incidents of DFV
- increasing awareness of DFV across the Department.

DFV contact officers have specialist training in DFV issues and can provide subject matter expertise, guidance and information about appropriate services. The role of the DFV Contact Officer is not one of counsellor or case officer.

A number of other areas in the Department can also provide support and advice in relation to cases involving DFV.

External support services

For information on external support services, including state and territory support services, refer to s. 22(1)(a)(ii)

Family Safety Pack in community languages

Protection visa applicants who may be at risk of DFV can be given a Family Safety Pack in their own language. The Family Safety Pack contains information on DFV, sexual assault, forced and early marriage, and family violence and partner visas and have been translated into 46 languages.

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For more information on responding to DFV situations, refer to the below departmental resources:

- [First response assistance for clients](#)
- [Responding to DFV situations](#) (six scenarios with information on such issues as possible disclosure required and record keeping).

A referral card with contact details of DFV support services should be provided to applicants who claim to be victims or perpetrators of DFV. Where an applicant indicates that they are or have been a victim or a perpetrator of domestic or family violence and a domestic violence referral card is not available, advise them that they can seek support from the below organisations.

1800RESPECT: 1800 737 732 or www.1800RESPECT.org.au

FAMILY RELATIONSHIPS ADVICE LINE: 1800 050 321 or www.familyrelationships.gov.au

MENSLINE AUSTRALIA: 1300 789 978 or www.mensline.org.au

FINANCIAL COUNSELLING AUSTRALIA: 1800 007 007 or www.financialcounsellingaustralia.org.au

The above contact details on support services is also available at [ADD2018/481674](#)

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For further information about assisting an applicant who is a victim of domestic or family violence and reporting protocols, see Bordernet: s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

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14. Further guidance

For further guidance, please refer to:

- Refugee and Humanitarian – Protection Visa Processing Guidelines
- Refugee and Humanitarian – Refugee Law Guidelines

15. Sources


The following sources were used in the development of this guidance:

- United Kingdom Home Office, 'Asylum Policy Instruction, Asylum interviews', March 2015.
- European Asylum Support Office, 'EASO Practical Guide: Personal interview', December 2014.
- STARTTS, 'The Effects of Refugee Trauma, Culture and Anxiety on the Interview Process' (Training handout for DIPB decision makers), 2014
- UNHCR, 'Interviewing Applicants for Refugee Status', 1995
- Steel, Zachary, Frommer, Naomi and Silove Derrick, 'The mental health impacts of migration: the law and its effects, Failing to understand: refugee determination and the traumatized applicant', 2004
- Mills Oakley panel firm, recording of a training delivered to PV case officers, 2016
- Child safeguarding, Bordernet <https://bordernet.immi.local/border-ops/policy/child-protection>
- Domestic and family violence, Bordernet <https://bordernet.immi.local/border-ops/policy/domestic-family-violence-client>
- Department of Human Services, 'Enough' (Family and Domestic Violence Package), 2016
- Monthly feedback from IAA, 2016, 2017
- New Intelligence, 'Art and Science of Interview, foundations PV decision makers'(Training participant guide), 2005
- 'Guidance Note on the Psychologically Vulnerable Applicant in the Protection Visa Assessment Process', prepared by UNHCR in consultation with a panel of Mental Health Experts, 2017.

The following areas of the Department were consulted:

- Humanitarian Program Operations Branch
- Humanitarian Program Capabilities Branch
- Health Policy Section
- Citizenship Support Section
- Student and Graduate Visas section
- Family Migration Programme Management Section
- 457 and Bridging Visa ABC Management Section

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- 
- Community Programme Delivery Section
 - ELO network.

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Protection visa interview pro forma

KEY FOR THIS PRO FORMA

- The *blue italicised text* is information to assist the interviewing officer and is not to be read to the applicant.
- **Black text** is information that is to be conveyed by the interviewing officer to the applicant.
- **Bolded black text** is a closed question the interviewing officer is to ask the applicant.
- The *[red italicised text in brackets]* is text that needs to be amended by the interviewing officer in light of the applicant's particular circumstances and subsequently read aloud, to the applicant.

BEFORE INTERVIEW COMMENCES

1. *Ensure that you have a copy of the relevant 'translated' version of the 'Important information about your protection visa interview' sheet (TRIM: ADF2016/5935) with you, before the start of the interview.*
2. *Introduce yourself.*
3. *Request that the applicant and any other person taking part in the interview, eg. support person, get their identity documents out, before the start of the interview.*

1. RECORDING OF THE INTERVIEW

I am recording this interview to make sure the Department of Home Affairs (the Department) has an accurate record of what we discuss.

Q. Do you consent to the Department making an audio recording of this interview?

If no, explore why the applicant does not want the interview to be recorded. Where possible, attempt to alleviate their concerns, as it is preferable to have a recording for review purposes. If the applicant still prefers not to have the interview recorded, then explain that the interview will not be recorded and that you will take notes.

If yes, start recording and turn on recorder.

2. INTERVIEW OPENING

Please confirm your consent to the Department making an audio recording of the interview.

The following is a record of interview held on [date/month/year] [in person at [location] / by [video conference/ telephone] at [interviewing officer location] and [applicant location]].

The time is [time].

My name is [interviewing officer's name]. I am an officer of the Department of Home Affairs. I am interviewing [applicant's name], who has applied for a [permanent Protection visa/ Temporary Protection visa/ Safe Haven Enterprise visa].

3. OTHER PERSON(S) IN THE INTERVIEW

<<START OPTION 1 – if applicant has representation or support person>>

Also [present at/ on the line for] the interview is the applicant's migration agent [name of agent] from [agency].

Also [present at/ on the line for] the interview is the applicant's support person [support person's name].

A copy of their identity document[s] is on TRIM file [CLF20XX/XXXX].

<<END OPTION 1 – if applicant has representation or support person>>

<<START OPTION 2 – if applicant has no representation or support person>>

You are participating in this interview without a migration agent or support person. Is that correct?

<<END OPTION 2 – if applicant has no representation or support person>>

<<START OPTION 3 – if no interpreter is required>>

You have told us you that you do not need an interpreter for this interview.

Q. Can you understand and speak English?

Q. Do you want to continue this interview in English?

If you do not understand something I am saying, or you do not know the English words to respond fully to a question, please let me know and I will reword the question.

<<END OPTION 3 – if no interpreter is required>>

<<START OPTION 4 - if an interpreter is required>>

We are using an interpreter in the *[name of language]* language to assist with the interview. The interpreter has been provided by *[name of interpreting provider]*, identity number *[interpreter ID number]*.

The interpreter is bound not to discuss any information they hear during this interview. The interpreter is only here to assist with language interpretation.

If you do not understand the interpreter, or you think they do not understand you, please let me know immediately by raising your hand.

Q. Do you understand the interpreter?

Q. Have you met the interpreter before?

If 'yes', ask where they have met the interpreter before.

Q. Do you have any objection to us using this interpreter for this interview?

If you do not understand anything that I say, please ask me to repeat or reword the question.

<<END OPTION 4 – if an interpreter is required>>

4. PROTECTION OBLIGATIONS

<<START OPTION 1 – general purpose of interview >>

The purpose of this interview is to ask you questions regarding your application for a protection visa and to give you the opportunity to provide further information in support of your application.

<<END OPTION 1 – general purpose of interview>>

<<START OPTION 2 – for TPV holders who have applied for a SHEV and an interview is required>>

The purpose of this interview is to ask you questions regarding your Safe Haven Enterprise visa (SHEV) application and to give you the opportunity to provide further information in support of your application. Whilst you were previously assessed as engaging Australia's protection obligations for a Temporary Protection visa, you have now applied for a SHEV and therefore your claims in this application need to be assessed.

<<END OPTION 2 – for TPV holders who have applied for a SHEV and an interview is required>>

Before this interview you were provided with an information sheet, called 'Important information about your Protection visa interview.' This information sheet includes an explanation of 'Australia's protection obligations'.

Q. Did you read and understand the information in this sheet?

If the applicant's answer is no, provide the applicant and the interpreter with a copy of the translated 'Important information about your Protection visa interview' sheet (ADF2016/5935) and give them an opportunity to go through the information. If an information sheet in the applicant's language is not available provide a description of the assessment process.

It is your responsibility to raise all your claims for protection and provide evidence in support of those claims. If your application is refused, you may not have another chance to provide further information to support your claims or to raise new claims.

Q. Do you have any questions about this interview?

5. CLIENT INFORMATION CHECKS

The officer who makes a decision on your application may not be me, and may decide your application without further contact with you.

Your personal information, including information you provide during this interview, will be treated with confidentiality and will only be given to officers of other agencies who are authorised and need to know this information. Details of your claims or any of your other personal information will not be given to the authorities in [insert country/ies] or the public.

6. IMPORTANCE OF PROVIDING COMPLETE AND TRUTHFUL INFORMATION

It is very important that you tell the truth and provide the Department with complete and accurate protection claims as early as possible, including during this interview. Giving false or misleading information to the Department is a serious offence under Australian law and may result in criminal penalties and the refusal of your visa.

If you would like to provide additional information to the Department as part of your protection visa application, or if you wish to correct some information you provided previously, please do so during the interview

s. 47E(d)

7. OATH AND AFFIRMATION - DISCRETIONARY

The applicant may be requested to make either an oath or affirmation. Provide the interpreter with a copy of the Oath and Affirmation translated sheet in the relevant language.

I am going to request that you make an oath or an affirmation.

An 'oath' is a solemn undertaking to tell the truth, referring to a god or religious belief.

An 'affirmation' is an undertaking to tell the truth, without referring to a god or religious belief.

You must choose whether you would like to make an oath or an affirmation. An oath or affirmation is treated as the same by the Department. It will make no difference to your application, whether you choose to make an oath or an affirmation.

We may question whether your claims can be believed, if you refuse to make an oath or affirmation.

Please answer 'Yes' or 'No' to the following question:

Q. Are you willing to make an oath or affirmation, that the information you have provided, or will provide to the Department is true?

You may wish to refer to section 91V(1) of the Migration Act 1958 (the Act), which provides that an officer may request the applicant to make an oral statement, on oath or affirmation, to the effect that the information provided by a protection visa applicant, is true.

Q. Do you want to make an oath or an affirmation?

<< START OPTION 1: Oath>>

I promise by [*almighty god/name of deity*] that the information I have provided, or will provide regarding my claim for protection is true and complete in every respect.

<<END OPTION 1: Oath>>

<<START OPTION 2: Affirmation>>

I solemnly and sincerely declare and affirm that the information I have provided, or will provide regarding my claim for protection is true and complete in every respect.

<<END OPTION 2: Affirmation>>

8. INTERVIEW

Refer to your interview plan and consider matters to be discussed, in order to assess whether the applicant engages Australia's protection obligations. This may include, but is not limited to, country of reference/receiving country, well-founded fear of persecution, effective protection measures, persecution, protection in another country, exclusion / ineligibility and character and security considerations.

I will now ask you some questions regarding the claims you have raised in your protection visa application.

9. RELEVANT (ADVERSE) INFORMATION

Under s57 of the Act, decision makers are required to give particulars of any information that is 'relevant information' to the applicant for comment. Decision makers must turn their mind to the definition of 'relevant information' under s57(1), before they put the information to, and invite the applicant to comment under s57(2), including when considering refusal under s91W or s91WA of the Act. See section 3.10.3 - 'Documentation pillar' in the Protection Visa Processing Guidelines.

<<START OPTION 1 – fast track applicants only - general invitation to comment on adverse information during the interview>>

I am required to put information to you for comment, where that information would be the reason, or part of the reason, for deciding that you are not eligible to have your decision reviewed by the Immigration Assessment Authority.

Provide the applicant with the adverse information.

You can provide further comments during this interview or within *[7 calendar days for applicants not in immigration detention / 3 working days for applicants in immigration detention]*. You should provide your comments *[in writing by email / post OR in person OR by telephone]* to *[address / location / phone number]*.

If you require more time to provide this information you must contact me *[in writing by email / post OR in person OR by telephone]* at *[address / location / phone number]* before the due date to request an extension.

<<END OPTION 1 – fast track applicants only - general invitations to comment on adverse information>>

<<START OPTION 2 – general invitation to comment on adverse information during the interview>>

I am required to put information to you for comment, where that information would be the reason, or part of the reason, for refusing to grant you a protection visa.

Provide the applicant with the adverse information

You can provide further comments during this interview or within *[7 calendar days for applicants not in immigration detention / 3 working days for applicants in immigration detention]*. You should provide

your comments *[in writing by email / post OR in person OR by telephone]* to *[address / location / phone number]*.

If you require more time to provide this information you must contact me *[in writing by email / post OR in person OR by telephone]* at *[address / location / phone number]* before the due date to request an extension.

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10. DOCUMENTARY EVIDENCE OF IDENTITY (s91W and s91WA) – requesting ‘reasonable explanation’

Q. Do you have any identity documents with you today?

Examine any documents provided and ask whatever questions you may have about them.

<<START OPTION 1 – s91W opportunity to provide an explanation during an interview>>

On *[date]* you were requested in writing to produce documentary evidence of your identity, nationality or citizenship for inspection by an officer of the Department. When the request was made you were notified that you could not be granted a protection visa if you refused or failed to comply with the request or produced a forged or fraudulently obtained document in response to the request, unless you provide a reasonable explanation for doing so.

You have *[refused/ failed to comply with / produced a bogus document in response to]* this request. Therefore the grant of your protection visa is prevented by s91W of the Act, unless you have a reasonable explanation for *[refusing/failing to comply with the request / producing a bogus document]*.

Q. Please explain why you have *[refused / failed to comply with the request / produced a bogus document]*?

You can provide further explanation and information within *[7 calendar days for applicants not in immigration detention / 3 working days for applicants in immigration detention]*. You should provide this information *[in writing by email or post / in person / by telephone]* to *[address / location / phone number]*.

<<END OPTION 1 – s91W opportunity to provide an explanation>>

<<START OPTION 2 – s91WA opportunity to provide an explanation>>

You have *[destroyed or disposed of documentary evidence of your identity, nationality or citizenship / you have caused such documentary evidence to be destroyed or disposed of / you have provided a bogus document as evidence of your identity, nationality or citizenship]*.

The grant of your protection visa application will be prevented by section 91W of the Act unless you have a reasonable explanation for *[destroying or disposing of such documentary evidence/ causing such documentary evidence to be destroyed or disposed of / providing a bogus document as evidence]*

of your identity, nationality or citizenship] and either provide documentary evidence of your identity, nationality or citizenship, or demonstrate that you have taken reasonable steps to do so.

Q. Please explain why you have [produced a bogus document, destroyed or disposed of such documentary evidence, or caused such documentary evidence to be destroyed or deposited off]?

Q. Are you able to provide documentary evidence of your identity, nationality or citizenship?

Q. What steps have you taken to try provide documentary evidence of your identity, nationality or citizenship?

<<END OPTION 2 - s91WA opportunity to provide an explanation >>


Note: If the applicant has not previously been issued a s91W(1) request in writing, provide them with a s91W(1) request in writing, at the interview, ONLY if required.

11. INTERVIEW BREAK

I will now give you time to consider what we have discussed. Take this time to make sure we have covered everything you wish to talk about. I will *[turn off the recorder and leave the room / turn off the recorder]* during this time.

A break of at least ten minutes should be given, unless the applicant would like to commence sooner or requests a longer break

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12. INTERVIEW CLOSING

Turn recorder on.

Q. Do you have any comments in response to the concerns I have raised, or in regard to the information I have provided?

Q. Before we finish this interview, is there anything else you would like to say in regard to your protection visa application?

If the applicant answers 'no', you may provide them with an opportunity to put more evidence and submissions to you, in a prescribed manner.

Otherwise state:

Any additional information provided to the Department, before a decision is made on your application, will be considered.

I now conclude your interview.

The time is *[time]*.

Turn off recorder.

DRAFT