



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 document 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



s91W



s91WA

# 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)

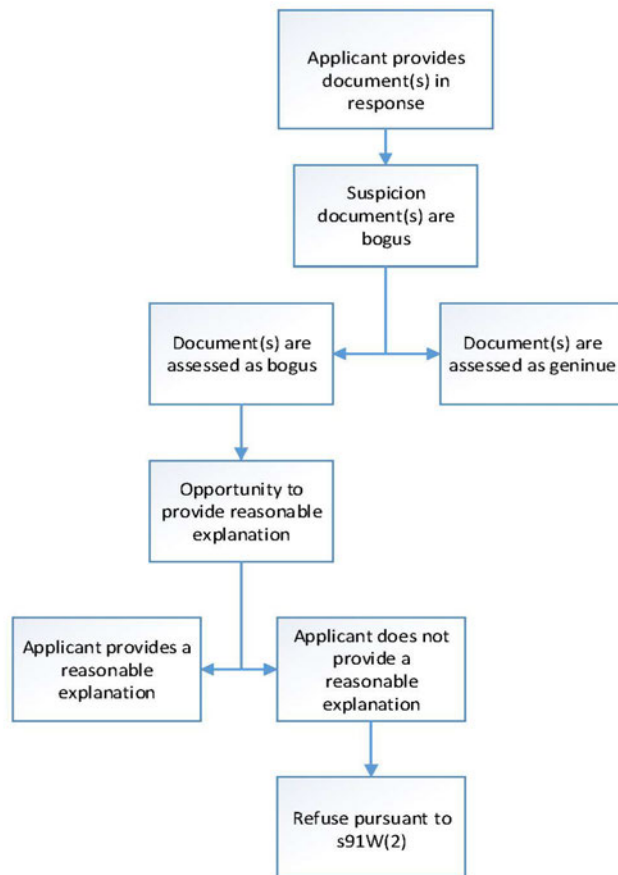
**It says who the applicant is and, depending on the type of document, what their nationality or citizenship is.**

# Request made – what next?

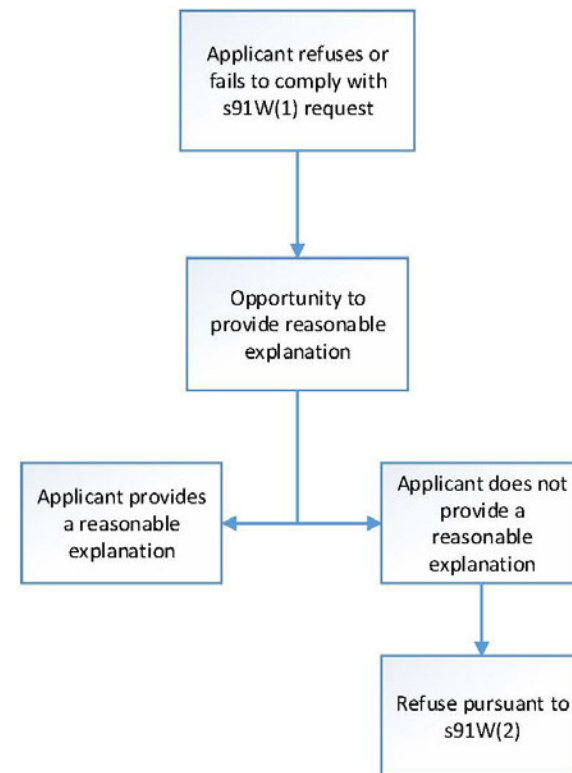
# Section 91W

## Scenarios

**Flowchart – officer suspects the applicant has provided a bogus document**



**Flowchart – the applicant fails to comply with the request and does not produce documentary evidence of their identity, nationality or citizenship**



# 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.

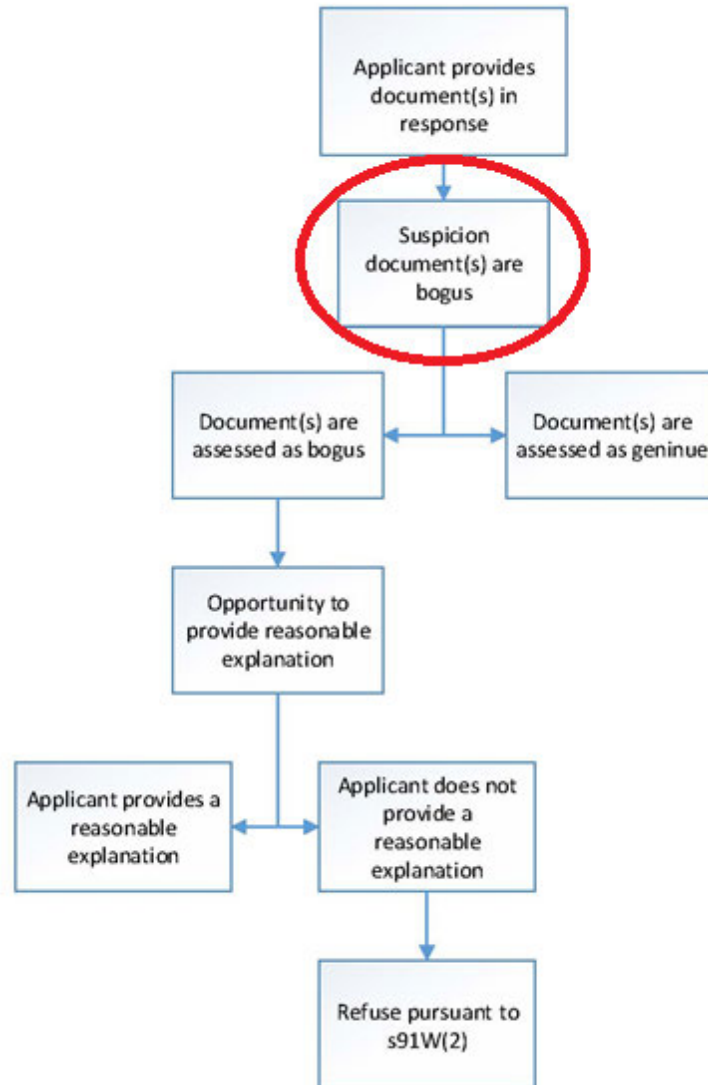
(2) Without limiting [subsection](#) (1), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.

# 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).
- s. 47E(d)  

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



# Suspicion documents are bogus

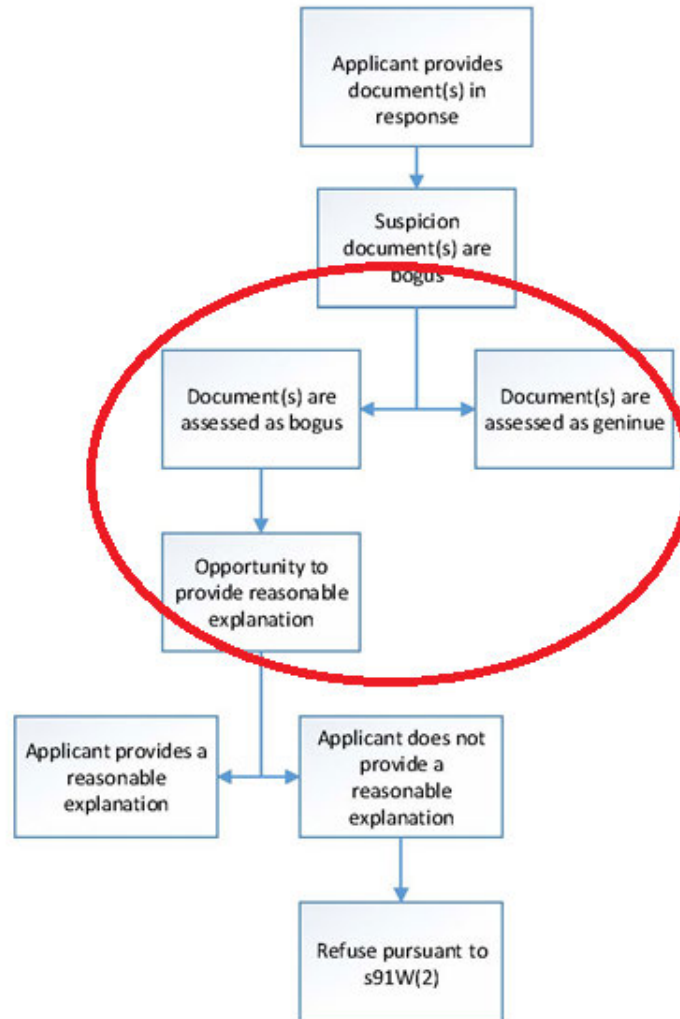


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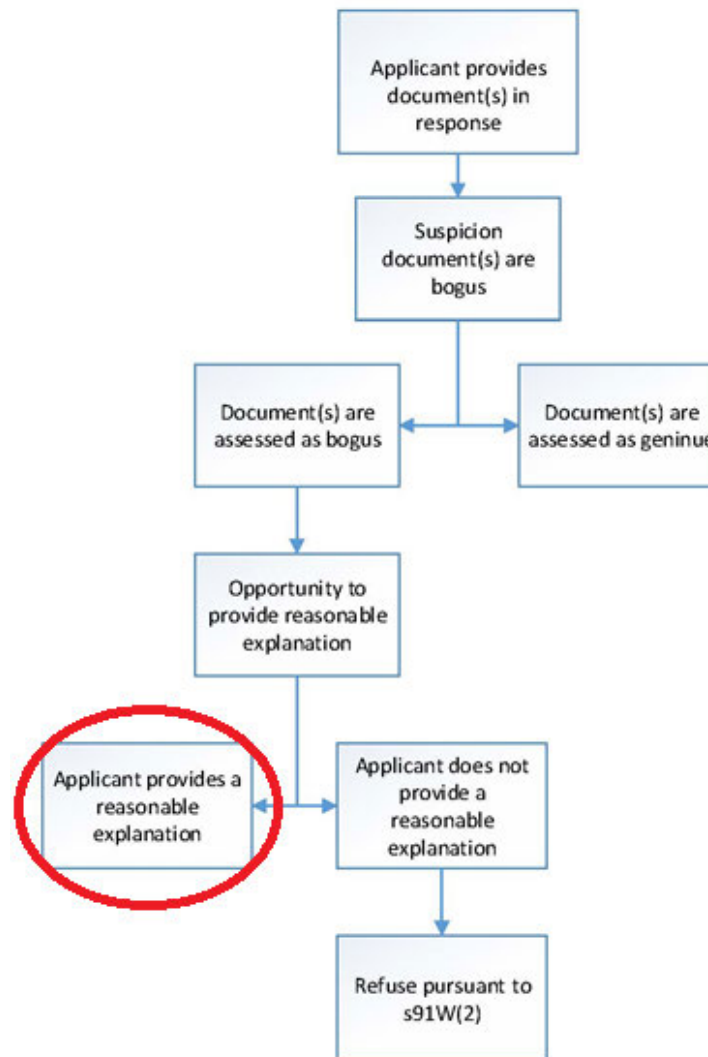


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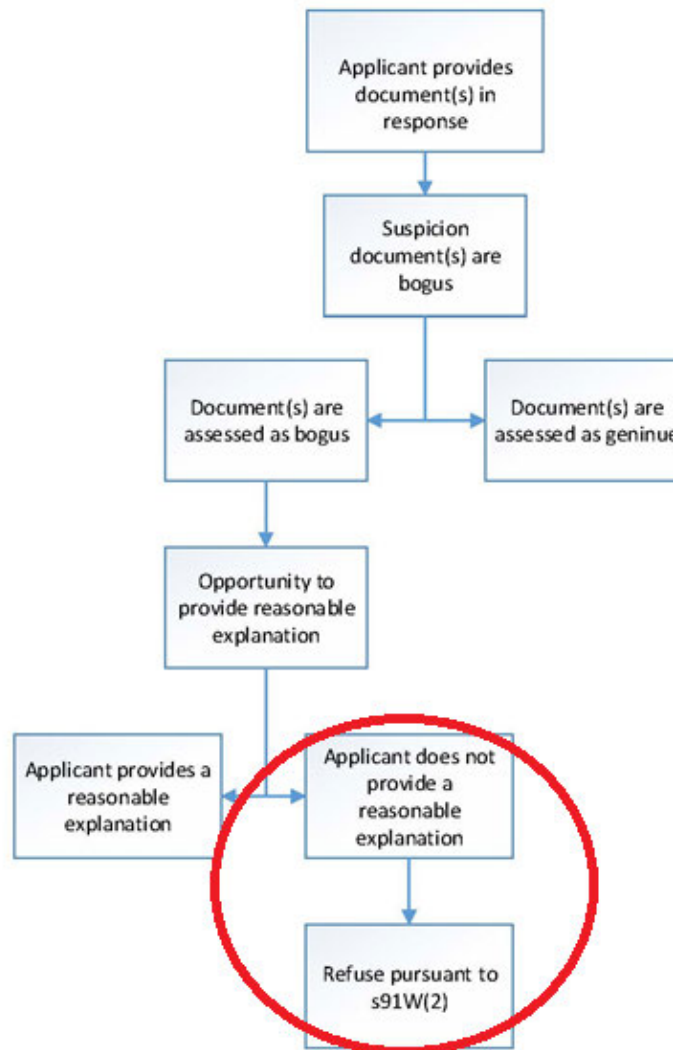
# Suspected bogus documents produced



# Bogus document – reasonable explanation



# Bogus document – not reasonable



# 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)  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

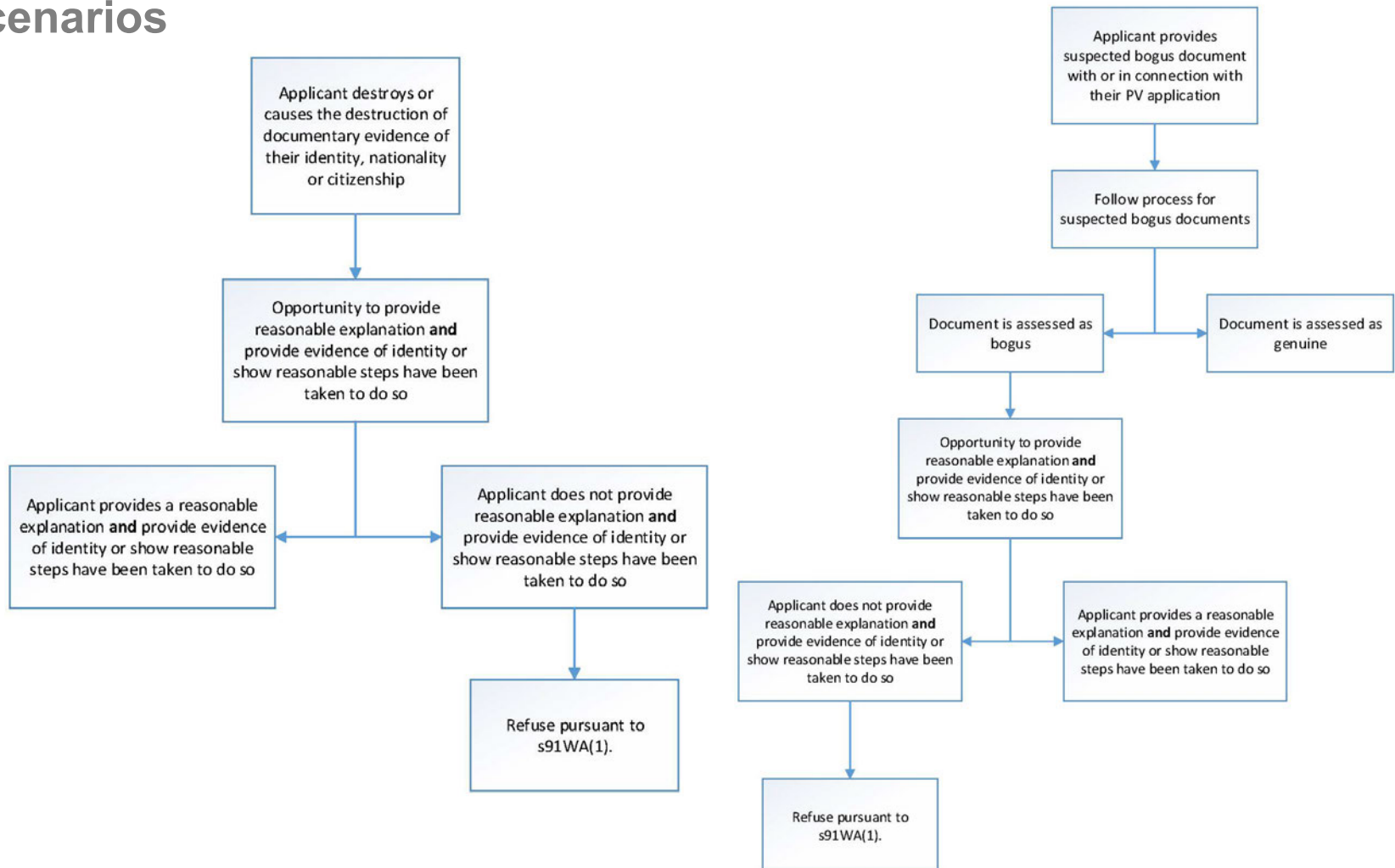
## When to apply it?

### Section 91WA – Providing bogus documents or destroying identity documents

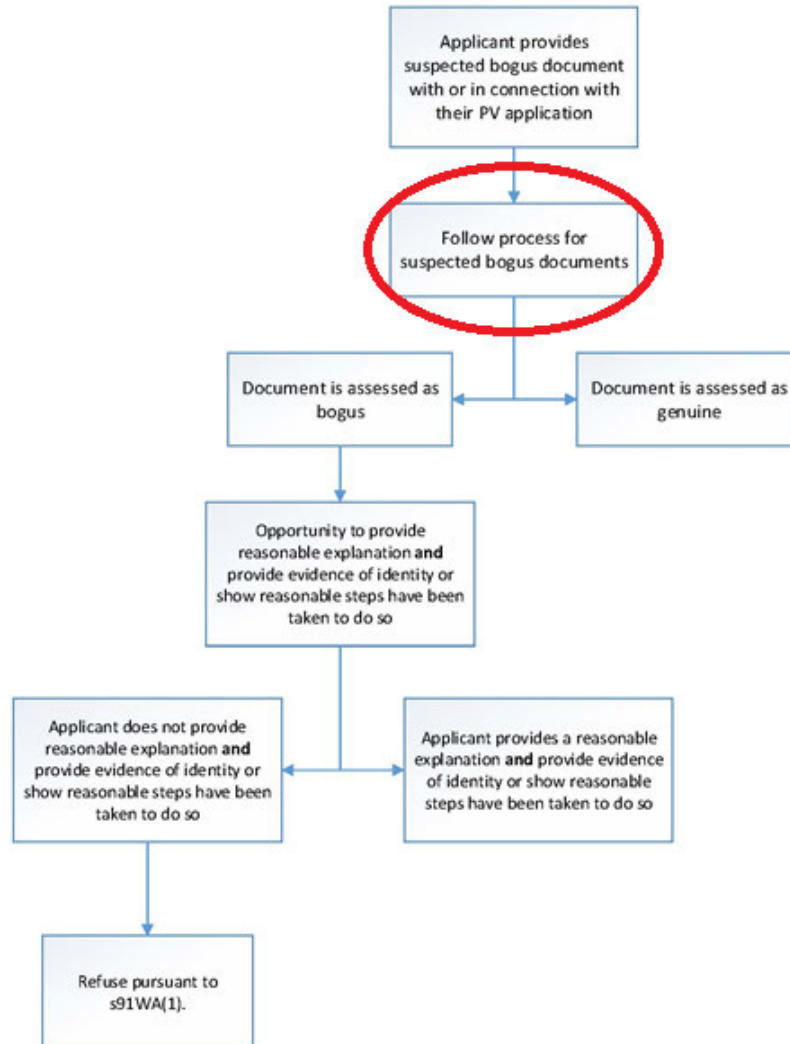
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- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's 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 91WA

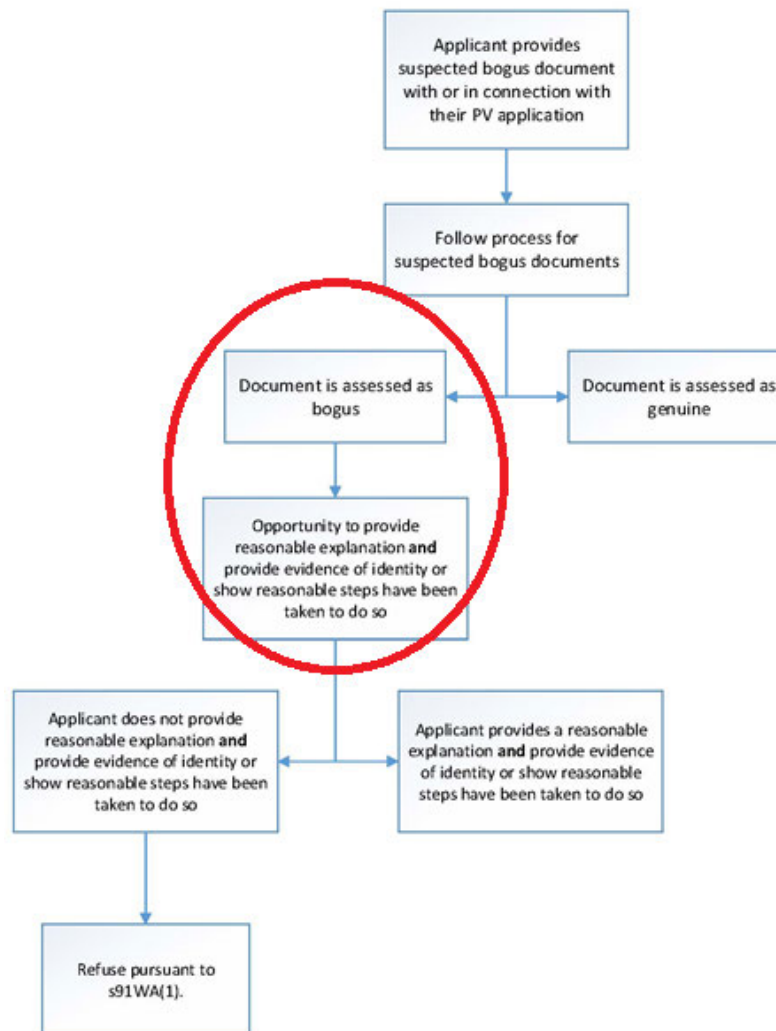
## Scenarios



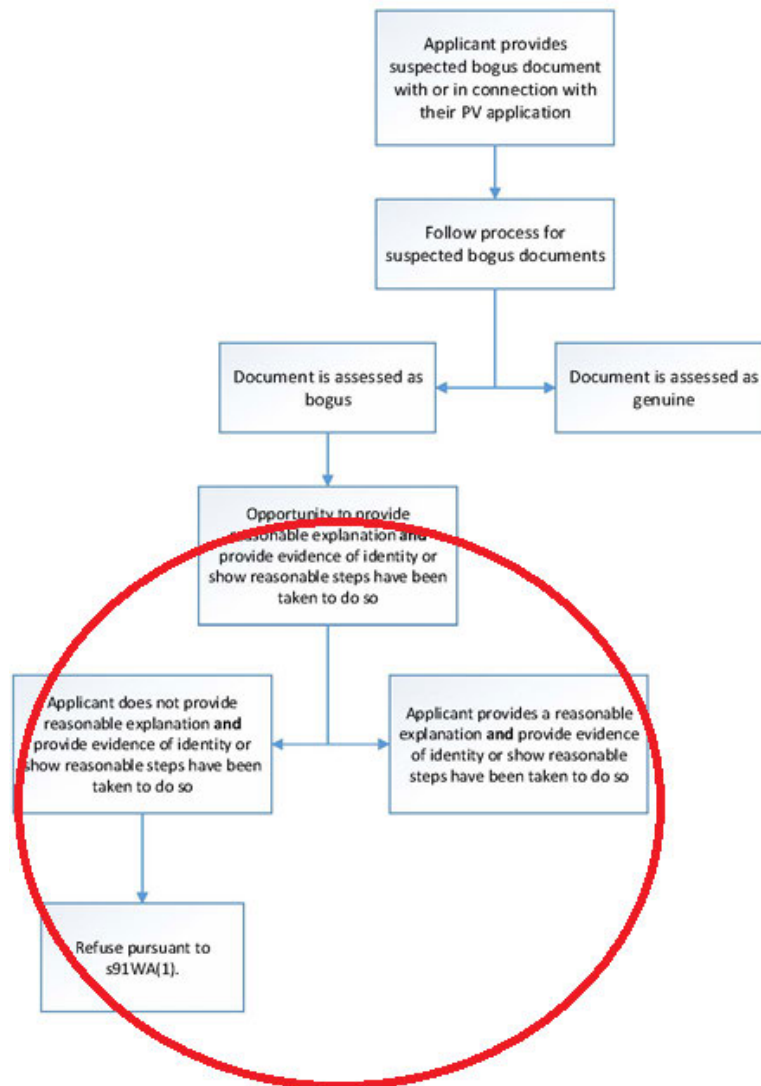
# Suspected bogus document



# Bogus document



# Bogus document



# Section 91WA

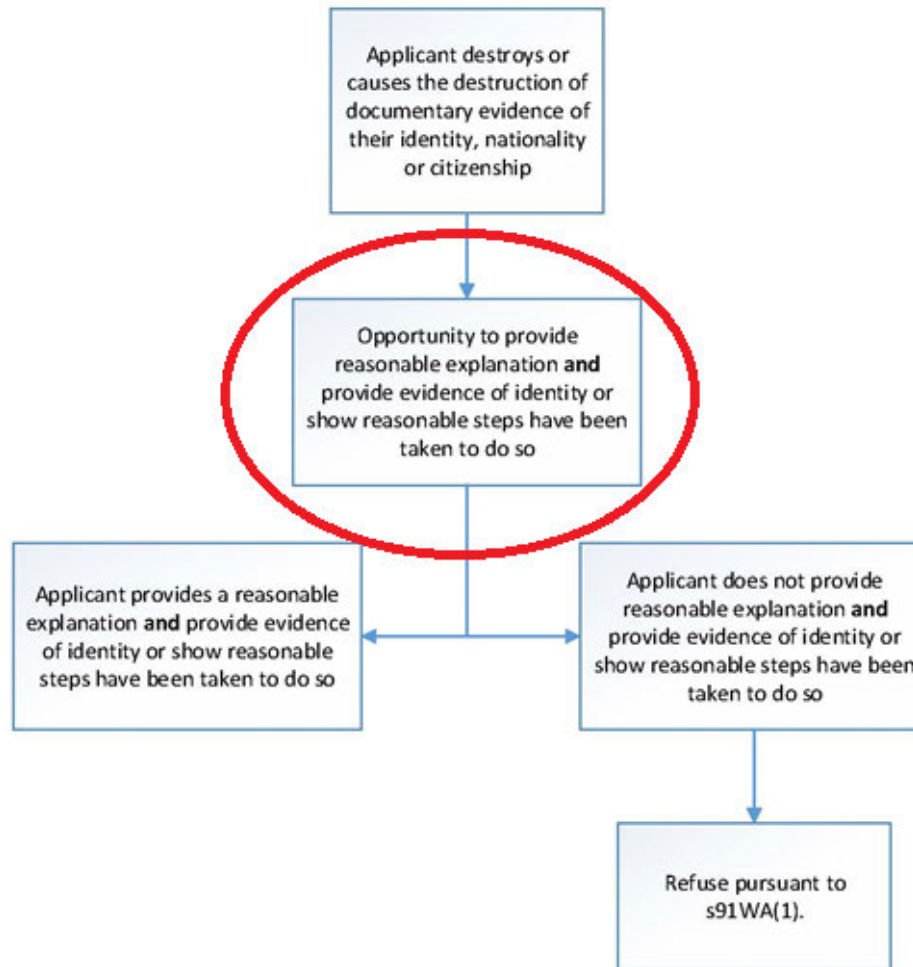
## Bogus document

### 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
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- (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.



# Document destruction



# 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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