



Section 91W and Section 91WA Training

Facilitator Guide

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Document Information

Document Details

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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.	<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 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.

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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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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.

- Please note that subsection (4) in 91W is void due to wording of some aspects of the section.
- Section 91W(2)(c) invalidates Section 91W(3). If an applicant has a reasonable explanation the assessment of Section 91W(2) is completed and therefore Section 91W(3) does not need to be assessed. Policy is exploring options for legislative amendment to fix this.

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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 4

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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Sections 91W and 91WA training 5

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.

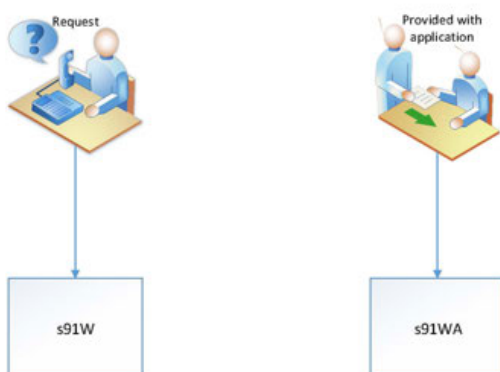
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Legislation

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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Sections 91W and 91WA training 8

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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Sections 91W and 91WA training 9

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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Sections 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

Question: Would a utility bill be documentary evidence of 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 utility bill.

- Documents received may not always be what you were after or wanted.
- It is up to the applicant to provide the evidence of identity, nationality or citizenship – an officer cannot refuse an applicant because they complied with Section 91W by providing documentary evidence of their identity, nationality or citizenship but it was not a document preferred by the officer.

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Request made – what next?

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Sections 91W and 91WA training 12

Duration: 2 minutes

Notes/Key points:

- If an applicant provides genuine documents, that are sufficient evidence of identity, nationality or citizenship and there is no suspicion that they are bogus – you are finished assessing Section 91W and can move on with the rest of the Protection Visa application.

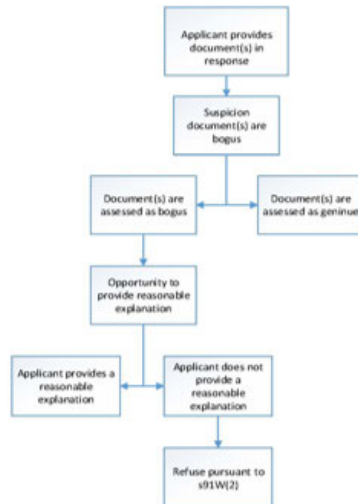
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Section 91W

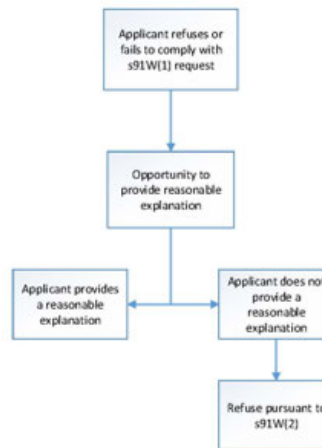
Scenarios

Flowchart – officer suspects the applicant has provided a bogus document



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



Sections 91W and 91WA training 13

Duration: 10 minutes

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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.
- Officers cannot make a finding to refuse under Section 91W(2) for additional information requested under Section 56, however may make credibility findings.
- 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 16

Duration: 5 minutes

Notes/Key points:

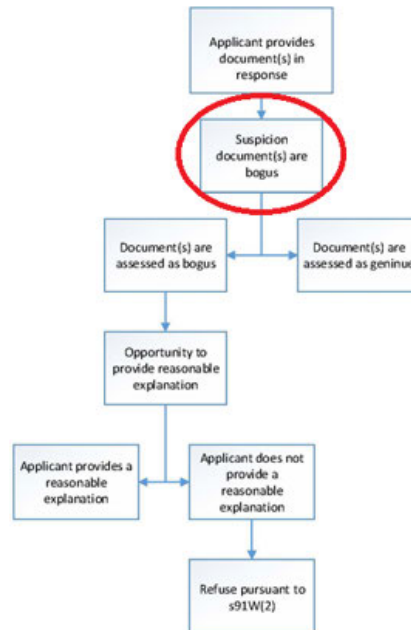
- The term bogus document is defined in Section 5(1) of the Migration Act.
- A **bogus document** is a document which the decision maker reasonably suspects:
 - was not issued to the applicant; or
 - is counterfeit or has been altered by a person who does not have authority to do so; or
 - was obtained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

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Suspicion documents are bogus



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Sections 91W and 91WA training 17

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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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Sections 91W and 91WA training 18

Duration: 10 minutes

s. 37(2)(b)



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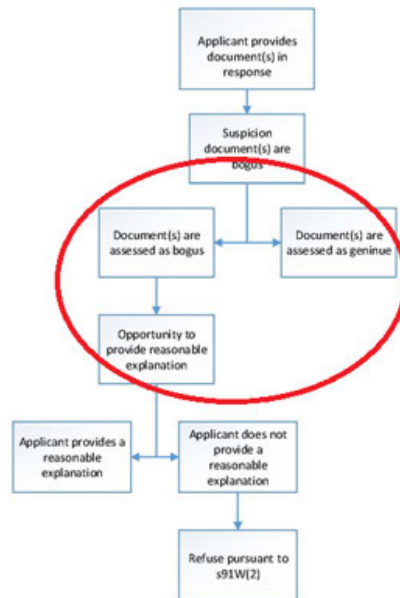
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Suspected bogus documents produced



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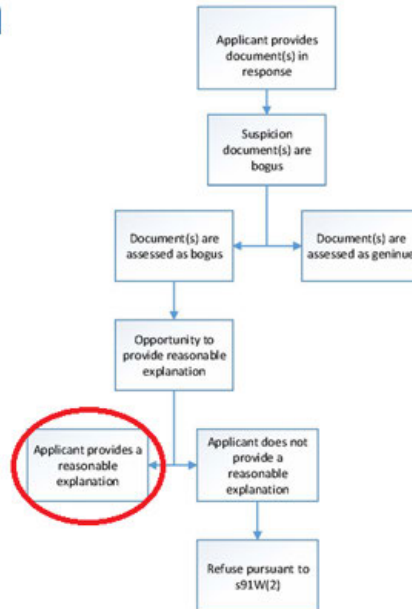
Duration: 2 minutes

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Bogus document – reasonable explanation



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Sections 91W and 91WA training 20

Duration: 8 minutes

Notes/Key points:

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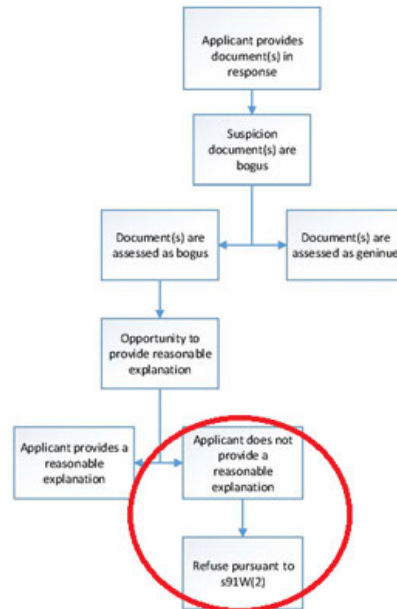
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Bogus document – not reasonable



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Sections 91W and 91WA training 21

Duration: 2 minutes

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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

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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Sections 91W and 91WA training 25

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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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

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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Section 91W

Case Study

Questions:

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

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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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Sections 91W and 91WA training 32

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 33

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 35

Duration: 5 minutes

Notes/Key points:

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

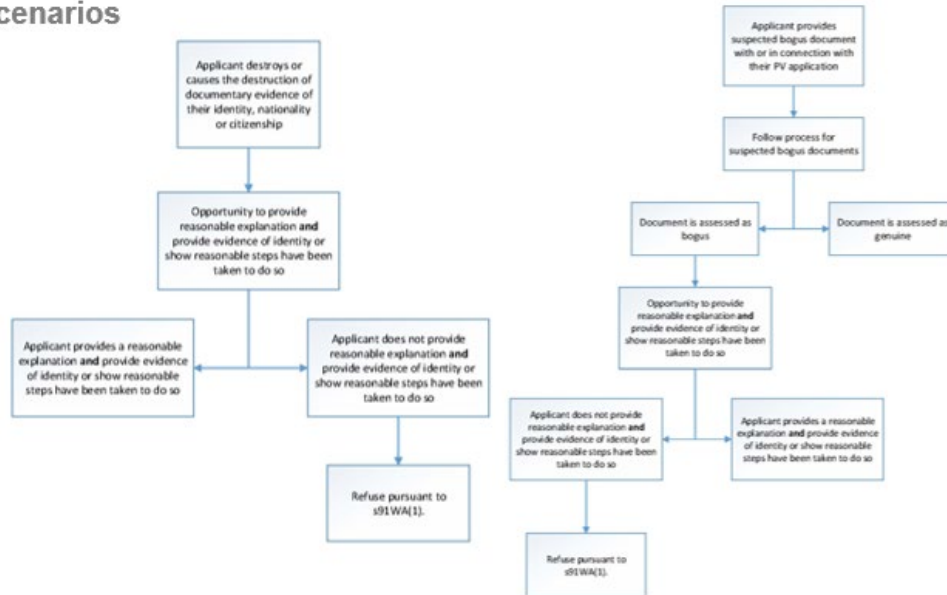
- Even if the applicant is a refugee or is owed Complementary Protection, you must still refuse the application.
- If a request under Section 91W has not been made or there is evidence an applicant has provided a bogus identity, nationality or citizenship document (not in relation to a Section 91W request)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

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Section 91WA

Scenarios



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Sections 91W and 91WA training 36

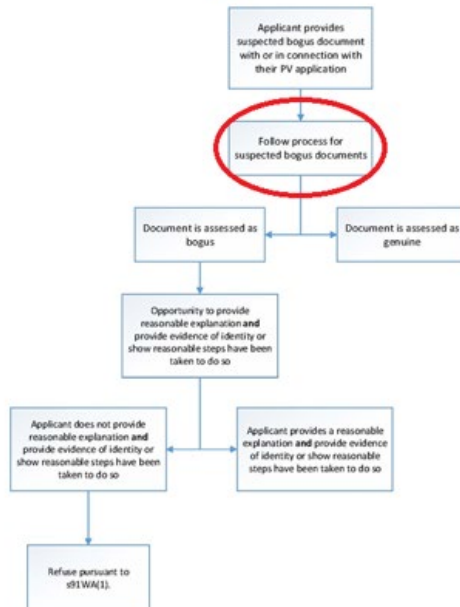
Duration: 5 minutes

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Suspected bogus document



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Sections 91W and 91WA training 37

Duration: 5 minutes

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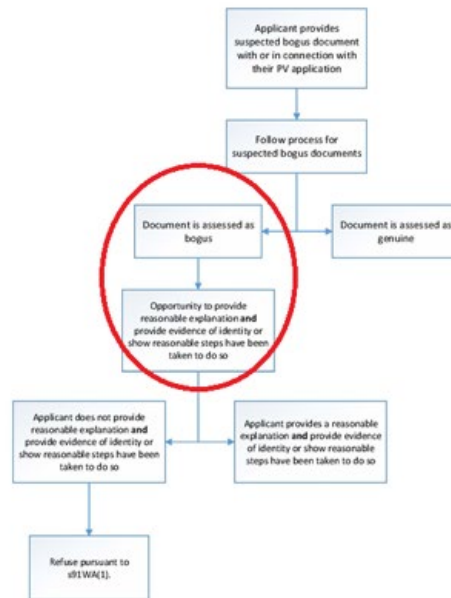
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Bogus document



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Sections 91W and 91WA training 38

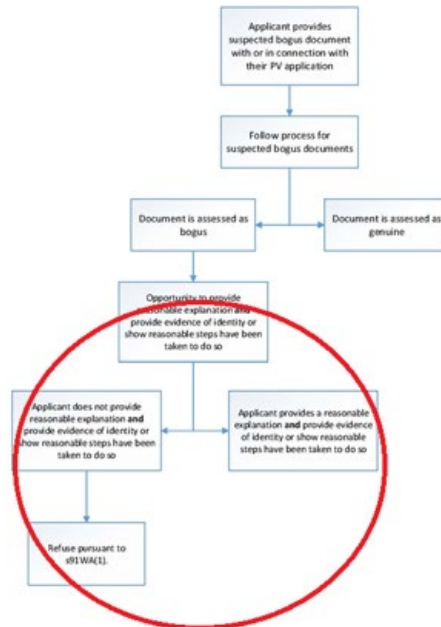
Duration: 5 minutes

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Bogus document



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Sections 91W and 91WA training 39

Duration: 5 minutes

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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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Sections 91W and 91WA training 40

Duration: 5 minutes

Notes/Key points:

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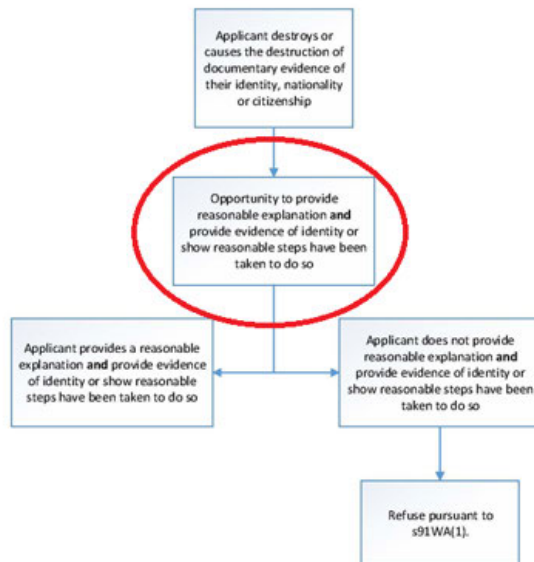
Question to the group – What would you consider to be reasonable steps?

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Document destruction



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Sections 91W and 91WA training 41

Duration: 5 minutes

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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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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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Sections 91W and 91WA training 43

Question and Answer

Question: What do you do?

Answer: In regards to Section 91WA, nothing. The documents are not related to the applicant's identity, citizenship or nationality. The documents are likely to affect the applicant's credibility when you are assessing their claims for protection, but Section 91WA does not give you grounds for refusal of the application.

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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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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.

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Sections 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?

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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.

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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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