



Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002386  
Date of Clearance: 17/01/2024

To Minister for Immigration, Citizenship and Multicultural Affairs  
Subject Possible Ministerial Intervention - sections 46A(2), 46B(2) and 48B - victims of family violence  
Timing Not time critical

Recommendations

That you:

- 1. note this submission includes s. 47F(1) who have been found to meet the guidelines for referral to you as victims of family violence;
- 2. intervene under sections 46A(2) and 48B of the Migration Act 1958 (the Act), to lift the sections 46A(1) and 48A application bars to allow them to lodge a Temporary Protection (subclass 785) visa (TPV) or Safe Haven Enterprise (subclass 790) visa (SHEV) application;
  - i. if you agree to recommendation 2, please sign the Decision Instruments at Attachments A and Attachment B and the Statements to Parliament at Attachments C and Attachment D;

noted / please discuss

agreed / not agreed

signed / not signed

AND

- 3. intervene under subsection 46B(2) to allow s. 47F(1) to lodge a Bridging E (subclass 050) visa (BVE) application;
  - ii. if you agree to recommendation 3, please sign the decision documents at Attachment E.

agreed / not agreed

signed / not signed

Minister for Immigration, Citizenship and Multicultural Affairs

Signature..... 

Date 23/1/2024

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Minister's Comments

**Key Issues**

1. This submission relates to a [REDACTED] s. 47F(1) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] for referral to you, under section 48B of the Act, having raised plausible new claims s. 47F(1) [REDACTED] that may engage Australia's protection obligations.

2. [REDACTED] **S. 47F(1)** [REDACTED]

3. [REDACTED]
4. [REDACTED]
5. If you agree to intervene under sections 46A(2) and 48B of the Act to allow [REDACTED] s. 47F(1) [REDACTED] to lodge a TPV or SHEV application, please sign the decision documentation at Attachments A to Attachment D.

6. If you agree to lift the application bars and [REDACTED] s. 47F(1) [REDACTED]  
[REDACTED]

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7. [REDACTED] s. 47F(1) [REDACTED] the Department recommends that you intervene under subsection 46B(2) of the Act, to allow the lodgement of a valid BVE application. This will then allow the Department to manage the grant of any subsequent BVE, with or without an application.
8. Should you agree to lift the subsection 46B(1) application bar to allow [REDACTED] s. 47F(1) [REDACTED] This will allow the Department to manage their immigration status and progress their status resolution without requiring the ongoing exercise of your power under section 195A of the Act.
9. If you decide to lift the BVE application bar for [REDACTED] s. 47F(1) [REDACTED] please sign Attachment E.

**Background**

[REDACTED] s. 47F(1) [REDACTED]

**S. 47F(1)**

# S. 47F(1)

## Your power under section 48B of the *Migration Act 1958*

20. As the [REDACTED] s. 47F(1) [REDACTED], unless you exercise your non-compellable and non-delegable power under section 48B of the Act.
21. Under section 48B of the Act, you have the power to intervene and lift the section 48A bar, to allow a person to make a subsequent protection visa application, if you consider it in the public interest to do so.
22. The section 48A bar, as specified in the Act, would only be lifted for a period of seven working days, ending at the end of the seventh working day after the day on which the notice is taken to be received.



23.

**S. 47F(1)**

**Your power under subsection 46A(2) of the *Migration Act 1958***

24.

s. 47F(1)

It is open to you to consider lifting the subsection 46A(1) bar to allow them to lodge a protection visa application.

25. In exercising your power, you must specify the class of visa for which the non-citizen may apply. The Department recommends that you intervene to lift the bar for the Temporary Protection (Class XD) visa and the Safe Haven Enterprise (Class XE) visa. Schedule 1 of the *Migration Regulations 1994* (the Regulations) will prevent a UMA from lodging an application for a permanent PV.
26. Schedule 1 of the Regulations will prevent UMAs from lodging both an application for a SHEV and an application for a TPV. UMAs will need to choose one visa for which to apply. Whichever application is lodged first will be valid and any subsequent application will be invalid. If a UMA was to attempt to lodge a TPV application and a SHEV application at the same time, the SHEV application will be valid and the TPV application will be invalid, in accordance with Schedule 1 Items 1403(3)(f) and 1404(3)(f) of the Regulations.
27. Should you agree to lift the bar to allow these s. 47F(1) to lodge a valid application, and enable the Department to commence processing their protection claims, they will be invited to choose to apply for either a TPV or SHEV.
28. If you agree, the bar will be lifted for a limited timeframe for a TPV or SHEV application. The timeframe for which you can lift the subsection 46A(1) bar is discretionary and the Department has recommended this timeframe be set for seven (7) working days from the day of notification, in line with the legislated timeframe under subsection 48B(1) of the Act. This will provide them with a reasonable opportunity to make a valid application.

**Your power under section 46B(2) of the *Migration Act 1958***

29.

s. 47F(1)

It is open to you to consider lifting the subsection 46B(1) bar to allow them to lodge a BVE application. A bar lift under subsection 46B(2) of the Act is not required for a TPV or SHEV as that bar remains lifted as a result of previous Ministerial Intervention.

30. Lifting the subsection 46B(1) bar would allow the Department to manage the grant of any subsequent BVE to these transitory persons, with or without application.
31. In exercising your power, you must specify the class of visa for which the non-citizens may apply. The Department recommends that you intervene to lift the bar for the Bridging E (General) (Class WE) visa.

32. If you agree, the subsection 46B(1) bar will be lifted for an indefinite timeframe to align with the bar lift under subsection 46A(2) of the Act to allow the Department to manage their immigration status and to progress their status resolution without requiring the exercise of your power under section 195A of the Act.

**Consultation – internal/external**

33. [REDACTED] s. 47C(1)

**Consultation – Secretary / A/g Dep Sec Immigration / ABF Commissioner**

34. The Secretary, A/g Deputy Secretary Immigration and ABF Commissioner were not consulted on this submission.

**Client service implications**

35. Not applicable.

**Risks and Sensitivities**

36. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

37. Not applicable.

**Attachments**

**Attachment A** Decision Instrument for Section 48B of the Act

**Attachment B** Decision Instrument for Subsection 46A(2) of the Act – TPV/SHEV

**Attachment C** Statement to Parliament under Section 48B of the Act

**Attachment D** Statement to Parliament under Subsection 46A(2) of the Act – TPV/SHEV

**Attachment E** Decision Documents for Subsection 46B(2) of the Act – BVE

**Authorising Officer**

Cleared by:

Jill Ogden  
Assistant Secretary  
Humanitarian Program Operations Branch

Date: 17/01/2024

Ph: [REDACTED] s. 22(1)(a)(ii)

**Contact Officer:** Jill Ogden, Assistant Secretary, Humanitarian Program Operations Branch, Ph: [REDACTED] s. 22(1)(a)(ii)

**CC** Minister for Home Affairs, Minister for Cyber Security  
Secretary  
ABF Commissioner  
Deputy Secretary Immigration A/g  
First Assistant Secretary, Refugee, Humanitarian and Settlement Division  
First Assistant Secretary, Status Resolution and Visa Cancellation Division  
Assistant Secretary, Humanitarian and Child Wellbeing Policy and Capability Branch  
Assistant Secretary, Status Resolution Branch  
Senior Director, Status Resolution Network

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NOTICE UNDER SUBSECTION 48B(1) OF THE *MIGRATION ACT 1958* THAT SECTION 48A DOES NOT APPLY TO  
PREVENT AN APPLICATION FOR A TEMPORARY PROTECTION (CLASS XD) VISA AND  
A SAFE HAVEN ENTERPRISE (CLASS XE) VISA

I consider it is in the public interest to exercise my power under section 48B of the *Migration Act 1958* (the Act) and I have determined that section 48A of the Act does not apply to prevent an application for a protection visa made by the below named persons in the timeframe specified in the notification letter.

S. 47F(1)



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THE HON ANDREW GILES MP

Minister for Immigration, Citizenship and Multicultural Affairs

23/1 / 2024



**EXERCISE OF MINISTERIAL DISCRETION  
UNDER SUBSECTION 46B(2) OF THE *MIGRATION ACT 1958***

**- STATEMENT TO PARLIAMENT -**

1. Exercising my power under subsection 46B(2) of the *Migration Act 1958* (the Act), I have determined that subsection 46A(1) of the Act does not apply to applications made by these persons for a Bridging E (Class WE) (subclass 050) visa.
2. Having regard to all their circumstances and personal characteristics, I considered that it was in the public interest to exercise my power under subsection 46B(2) of the Act to enable these persons to lodge a valid Bridging E (Class WE) (subclass 050) visa application in Australia.
3. In the circumstances, I have decided that as a discretionary and humanitarian act, it is in the interests of Australia as a humane and generous society to allow these persons to lodge a Bridging E (Class WE) (subclass 050) visa application in Australia.



**THE HON ANDREW GILES MP**

Minister for Immigration, Citizenship and Multicultural Affairs

23/1 / 2024

**NOTICE UNDER SUBSECTION 46A(2) OF THE *MIGRATION ACT 1958* THAT SUBSECTION 46A(1) DOES NOT APPLY TO PREVENT AN APPLICATION FOR A TEMPORARY PROTECTION (CLASS XD) VISA AND A SAFE HAVEN ENTERPRISE (CLASS XE) VISA**

Pursuant to subsection 46A(2) of the *Migration Act 1958* (the Act), and considering that it is in the public interest to do so, I hereby determine that subsection 46A(1) of the Act does not apply to an application made by the below named persons for a Temporary Protection (Class XD) visa (TPV) and a Safe Haven Enterprise (Class XE) visa (SHEV), noting that unauthorised maritime arrivals will only be able to lodge a valid application for either a TPV or a SHEV. Pursuant to subsection 46A(2A) of the Act, this determination has effect, in its application to the below named persons, for a period of seven (7) working days from the day on which the unauthorised maritime arrival is notified of the determination.

**S. 47F(1)**



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THE HON ANDREW GILES MP

Minister for Immigration, Citizenship and Multicultural Affairs

23/1 / 2024

**EXERCISE OF MINISTERIAL DISCRETION  
SECTION 48B OF THE *MIGRATION ACT 1958***

**- STATEMENT TO PARLIAMENT -**

Exercising my power, under section 48B of the *Migration Act 1958* (the Act), I have decided to allow these persons to make a further protection visa application.

1. The particular circumstances of these persons are that they have had their protection visa applications refused. Their claims were reviewed by the Department and a determination was made that they may be persons to whom Australia has protection obligations.
2. Although these persons have previously had their protection visa applications refused, I consider it is in the public interest to allow them to make a further application for a Temporary Protection (Class XD) visa or Safe Haven Enterprise (Class XE) visa.
3. Accordingly, it is appropriate in the circumstances of these persons that I exercise my power under section 48B of the Act.



**THE HON ANDREW GILES MP**

Minister for Immigration, Citizenship and Multicultural Affairs

23/1/2024

**EXERCISE OF MINISTERIAL DISCRETION**  
**SECTION 46A(2) OF THE *MIGRATION ACT 1958***

**- STATEMENT TO PARLIAMENT -**

1. Exercising my powers under subsection 46A(2) of the *Migration Act 1958* (the Act), I have decided to allow these persons to lodge a Temporary Protection (Class XD) visa and a Safe Haven Enterprise (Class XE) visa application in Australia.
2. The particular circumstance of these persons is that they arrived as unauthorised maritime arrivals (UMAs).
3. I considered, in the particular circumstances of these persons, that it was in the public interest to exercise my power, under subsection 46A(2) of the Act, to enable these persons to apply for a Temporary Protection (Class XD) visa and a Safe Haven Enterprise (Class XE) visa.
4. I note that whilst I am lifting the bar in relation to both a Temporary Protection (Class XD) visa and a Safe Haven Enterprise (Class XE) visa, Schedule 1 of the *Migration Regulations 1994*, will prevent UMAs from lodging both an application for a SHEV and an application for a TPV. These persons will need to choose one visa to apply for as they will only be able to lodge a valid application for either a TPV or a SHEV.



**THE HON ANDREW GILES MP**

Minister for Immigration, Citizenship and Multicultural Affairs

23/1/2024

EXERCISE OF MINISTERIAL DISCRETION

NOTICE OF A DECISION UNDER SUBSECTION 46B(2) OF THE *MIGRATION ACT 1958* TO PERMIT THE MAKING OF VALID VISA APPLICATIONS

Pursuant to subsection 46B(2) of the *Migration Act 1958* (the Act) and considering that it is in the public interest to do so, I hereby determine that subsection 46B(1) of the Act does not apply to an application made by the persons named below for a Bridging E (Class WE) (subclass 050) visa.

S. 47F(1)



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THE HON ANDREW GILES MP

Minister for Immigration, Citizenship and Multicultural Affairs

23/1 / 2024