Australian Government

Department of Immigration and Citizenship

Ministerial Intervention Statistics - Australia

2010-11



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Ministerial Intervention Statistics – Australia: 2010-11 was prepared by Systems, Program Evidence and Knowledge Section in consultation with International Obligations and Intervention Support Section of the Department of Immigration and Citizenship (DIAC) in Australia.

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Background

This publication provides statistical information about requests for Ministerial Intervention during each half of the program year 2010-11.

The *Migration Act 1958* (the Act) and the *Migration Regulations* 1994 (the Regulations) provide a structured statutory framework for the implementation and management of Australia's migration and humanitarian program. This framework includes very detailed and specific criteria that must be satisfied before a non-citizen can be granted a visa to travel to, enter and remain in Australia. While the legislative framework allows a high degree of transparency and equity in visa decision making, its highly prescriptive nature means it cannot address every situation where there may be compelling reasons for a person to be permitted to remain in Australia.

Independent merits review is available to unsuccessful visa applicants in Australia through the Tribunals. However the Tribunals, like departmental decision-makers, are bound by the Act and Regulations - therefore they do not have discretion to grant a visa where a person does not meet the applicable visa criteria, no matter how compelling the tribunal believes the person's situation may be.

The Act provides the Minister of Immigration and Citizenship (the Minister) with a range of powers to provide particular benefits to individual cases, if he thinks it is in the public interest to do so. These are commonly referred to as the Minister's public interest powers.
For instance:

- under section 48B of the Act, the Minister can intervene to allow a person who has had a Protection visa (PV) refused or cancelled to make a new PV application onshore
- under sections 351, 391, 417, 454 and 501J, the Minister can substitute a decision more favourable to a person for a decision made by a review tribunal;
- under section 345, the Minister could substitute a decision made by a review officer prior to I June 1999 for another decision in terms to which the applicant agreed.
- under section 195A, the Minister can grant a visa to a person in immigration detention.

The public interest powers provide the Minister with flexibility within the visa framework to assist a person who is in exceptional or unforseen circumstances or subject to unintended consequences of the migration laws.

The Minister's public interest powers are:

- non-delegable – decisions must be made by the Minster personally or where appropriate by the Parliamentary Secretary or another Minister
- non-compellable – the Minister does not have a duty to consider whether to exercise the powers
- non-reviewable – Ministerial decisions made under these powers are not reviewable by the tribunals and cannot be overturned by the courts
- subject to reporting to Parliament – the Minister is required to table in Parliament a statement of reasons when these powers are used.

As Ministerial Intervention is intended to act as a 'safety net', the Minister will generally only intervene in a relatively small number of cases.

Figures presented relate to the number of events (such as a request received, or a visa granted) in a given time period, and represent number of persons rather than cases.

Section 1

Requests and Outcomes

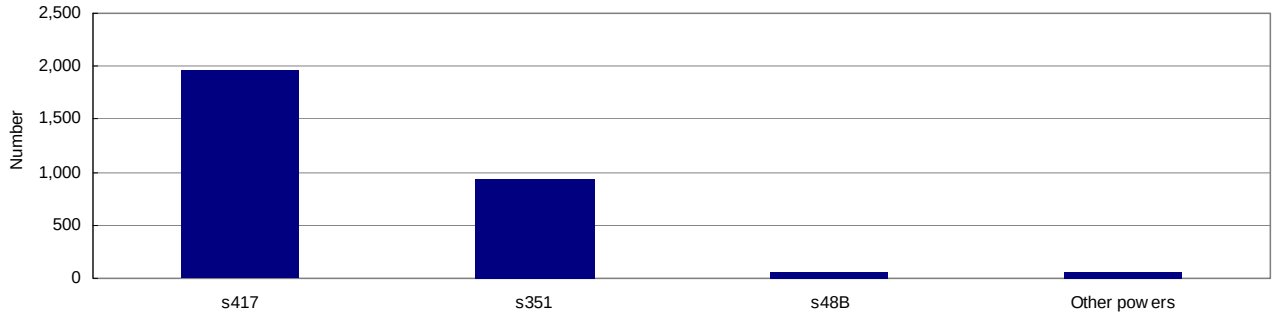
Summary of Ministerial Intervention Requests

Table 1: Summary of Ministerial Intervention Requests and Outcomes[1] during 2010-11

Event	Minister's public interest powers			
	s417	s351	s48B	Other powers[2]
Requests received[3]	2467	1227	714	59
Requests finalised by the Department[4]	951	362	842	1
Requests finalised by Minister (Total)	1952	935	54	58
• intervene to allow client to apply for a further Protection visa (PV)	na	na	31	na
• visa granted	375	300	na	52
• excluding visa grants[5] and decisions to intervene to allow client to apply for further PV	1577	635	23	6
Events as percentages				
Ministerial decisions to allow client to apply for a further PV as a percentage of Minister's finalisations	na	na	57%	na
Visa grants as a percentage of Minister's finalisations	19%	32%	na	90%

Source: DIAC Systems

Figure 1: Requests finalised by Minister under different public interest powers



[1] The number of requests received does not equate number of outcomes – some requests received in previous years may have been finalised in 2010-11. There may have been requests received in 2010-11 which were in the process of being finalised at the time of publication.

[2] Other powers include s195A, s345, s391, s454 and s501J.

[3] Requests for Ministerial Intervention under s345, s351, s391, s417, s454, s501J and s48B are made by either the client or their authorised representative. A review tribunal may refer a case to the Department for Ministerial Intervention. In some circumstances the Department may also initiate requests under powers specified above. However, requests for Ministerial Intervention under s195A can only be initiated by the Department.

[4] For Ministerial Intervention under s345, s351, s391, s417, s454 and s501J, this includes requests finalised as inappropriate to consider, requests finalised as no powers were available, and repeat requests not referred to the Minister as they did not meet the guidelines for referral. For Ministerial Intervention under s48B, this includes requests which did not meet the s48B guidelines and were not referred to the Minister. This outcome is not applicable for Ministerial Intervention under s195A as requests under this section can only be initiated by the Department.

[5] Includes decisions by the Minister to not consider a request, to consider a request but not intervene, and to intervene under another power.

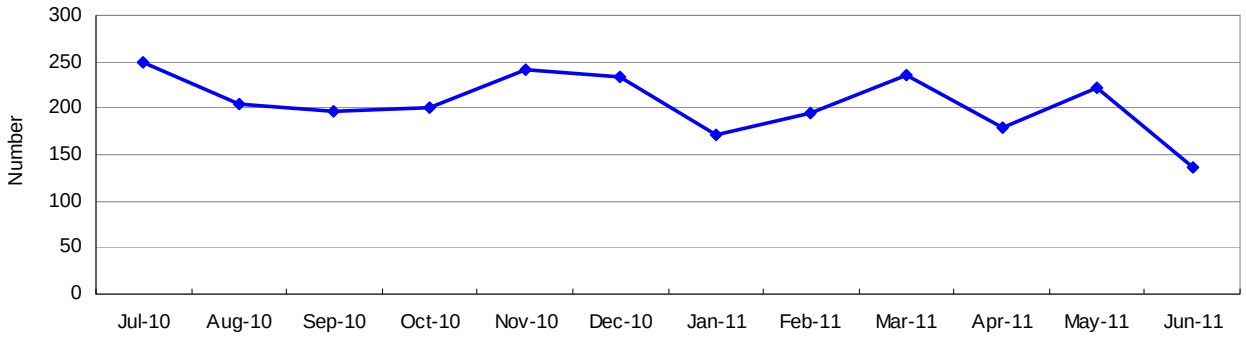
na – Not applicable

Table 2: Ministerial Intervention Requests and Outcomes under s417

Event	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
Requests received[6]	1326	1141	2467
Requests finalised by the Department[7]	463	488	951
Requests finalised by Minister (visa granted)	231	144	375
Requests finalised by Minister (excluding visa grants)[8]	696	881	1577

Source: DIAC Systems

Figure 2: Ministerial Intervention under s417: Requests received by month in 2010-11



[6] Requests for Ministerial Intervention under s417 are made by either the client or their authorised representative. A review tribunal may refer a case to the Department for Ministerial Intervention. In some circumstances the Department may also initiate requests under this power.

[7] For Ministerial Intervention under s417, this includes requests finalised as inappropriate to consider, requests finalised as no powers were available, and repeat requests not referred to the Minister as they did not meet the guidelines for referral.

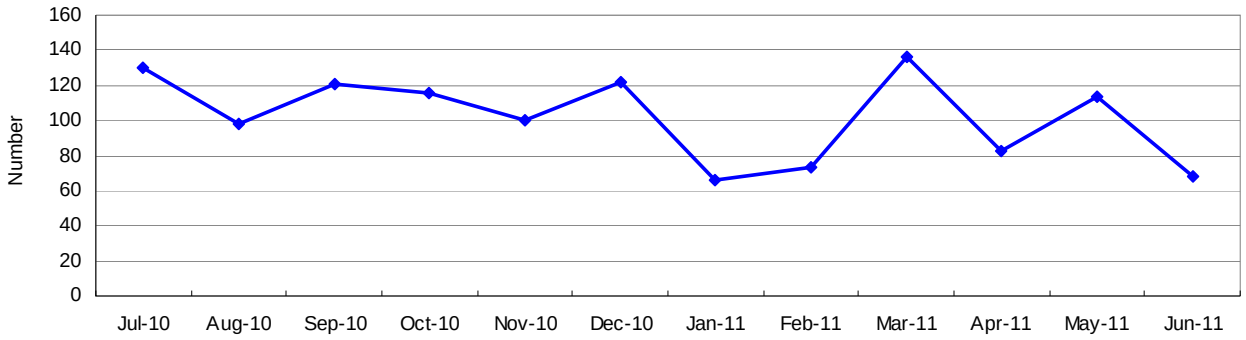
[8] Includes decisions by the Minister to not consider a request, to consider the request but not to intervene, and to intervene under another power.

Table 3: Ministerial Intervention Requests and Outcomes under s351

Event	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
Requests received[9]	687	540	1227
Requests finalised by the Department[10]	201	161	362
Requests finalised by Minister (visa granted)	171	129	300
Requests finalised by Minister (excluding visa grants)[11]	305	330	635

Source: DIAC Systems

Figure 3: Ministerial Intervention under s351: Requests received by month in 2010-11



[9] Requests for Ministerial Intervention under s351 are made by either the client or their authorised representative. A review tribunal may refer a case to the Department for Ministerial Intervention. In some circumstances the Department may also initiate requests under this power.

[10] For Ministerial Intervention under s351, this includes requests finalised as inappropriate to consider, requests finalised as no powers were available and repeat requests not referred to the Minister as they did not meet the guidelines for referral.

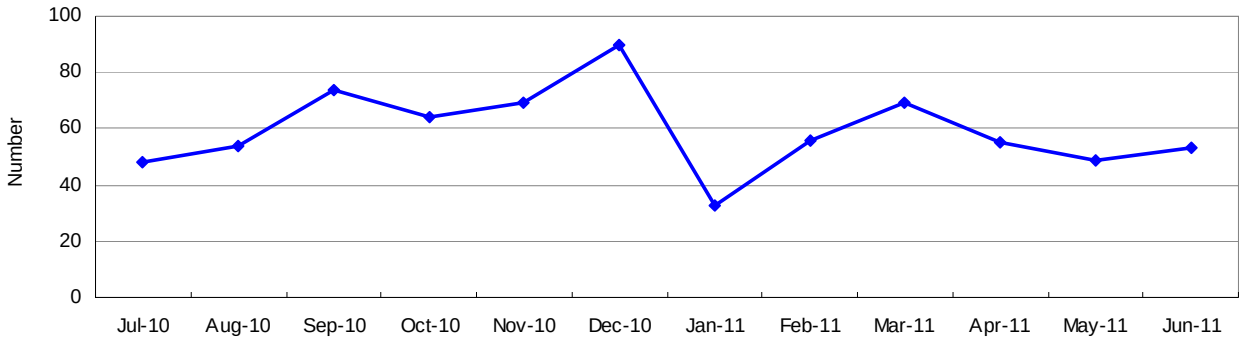
[11] Includes decisions by the Minister to not consider a request, to consider the request but not intervene, and to intervene under another power.

Table 4: Ministerial Intervention Requests and Outcomes under s48B

Event	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
Requests received[12]	399	315	714
Requests finalised by the Department[13]	379	463	842
Requests finalised by Minister (decision not to intervene)	20	3	23
Requests finalised by Minister (intervene to allow client to apply for a further PV)	17	14	31

Source: DIAC Systems

Figure 4: Ministerial Intervention under s48B: Requests received by month in 2010-11



[12] Requests for Ministerial Intervention under s48B are made by either the client or their authorised representative. In some circumstances the Department may also initiate requests under this power.

[13] Requests which did not meet the s48B guidelines and were not referred to the Minister.

Table 5: Ministerial Intervention Requests and Outcomes under sections 195A, 345, 391, 454 and 501J

Event	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
Requests received[14]	25	34	59
Requests finalised by the Department[15]	1	0	1
Requests finalised by Minister (visa granted)	21	31	52
Requests finalised by Minister (excluding visa grants)[16]	3	3	6

Source: DIAC Systems

[14] Requests for Ministerial Intervention under s345, s391, s454 and s501J are made by either the client or their authorised representative. A review tribunal may refer a case to the Department for Ministerial Intervention. In some circumstances the Department may also initiate requests under powers specified above. However, requests for Ministerial Intervention under s195A can only be initiated by the Department.

[15] For Ministerial Intervention under s345, s391, s454 and s501J, this includes requests finalised as inappropriate to consider, requests finalised as no powers were available and repeat requests not referred to the Minister as they did not meet the guidelines for referral. This outcome is not applicable for Ministerial Intervention under s195A as requests under this section can only be initiated by the Department.

[16] Includes decisions by the Minister to not consider a request, to consider the request but not intervene, and to intervene under another power.

Section 2

Citizenship and Visa subclass

Section 417 of the Migration Act

Table 6: Number of Ministerial Intervention requests received under s417 by top 10 countries of citizenship in 2010-11

Citizenship	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. People's Republic of China	266	216	482
2. Fiji	203	164	367
3. India	170	129	299
4. Indonesia	81	80	161
5. Malaysia	73	78	151
6. Bangladesh	70	37	107
7. Lebanon	27	63	90
8. Republic of Korea	43	44	87
9. Sri Lanka	40	29	69
10. Pakistan	41	26	67
10. Philippines	51	16	67
Other	261	259	520
Total	**1326**	**1141**	**2467**

Source: DIAC Systems

Figure 5: Ministerial Intervention requests received under s417 by top 10 countries of citizenship in 2010-11

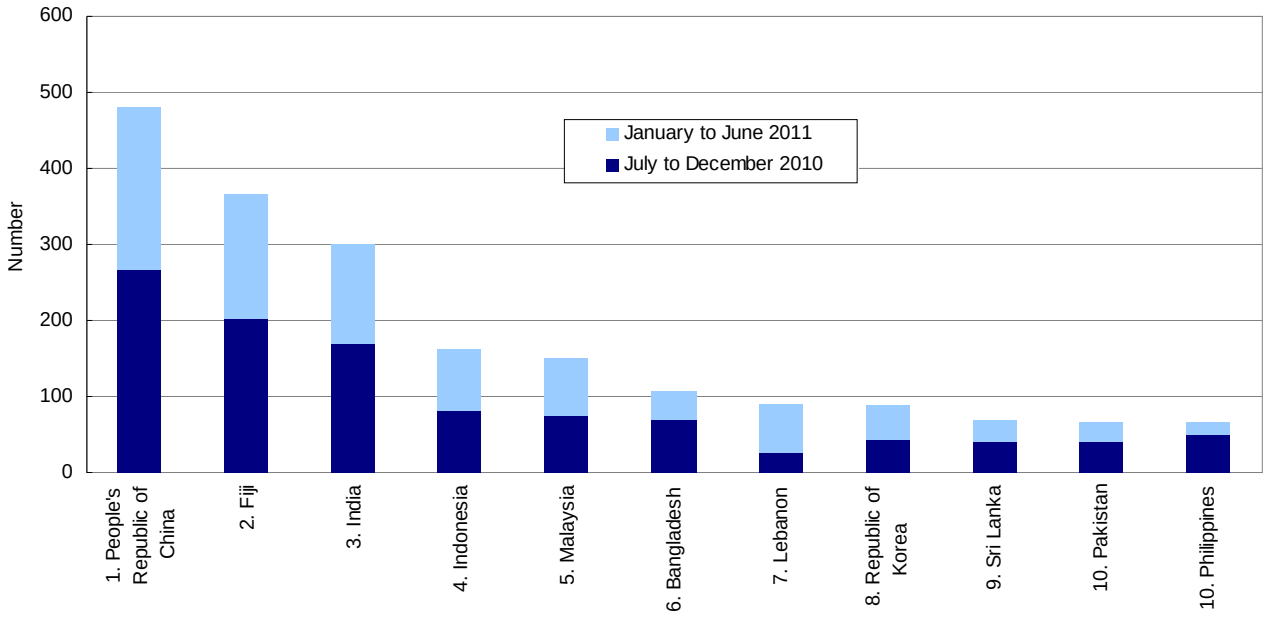


Table 7: Number of visas granted through Ministerial Intervention under s417 by top 10 countries of citizenship in 2010-11

Citizenship	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. Indonesia	44	22	66
2. Republic of Korea	9	29	38
3. People's Republic of China	26	9	35
4. Fiji	23	10	33
5. Bangladesh	23	1	24
6. Philippines	8	13	21
7. Sri Lanka	13	6	19
8. Egypt	8	6	14
9. India	12	2	14
10. Albania	0	8	8
10. Lebanon	7	1	8
Other	58	37	95
Total	**231**	**144**	**375**

Source: DIAC Systems

Figure 6: Visas granted through Ministerial Intervention under s417 by top 10 countries of citizenship in 2010-11

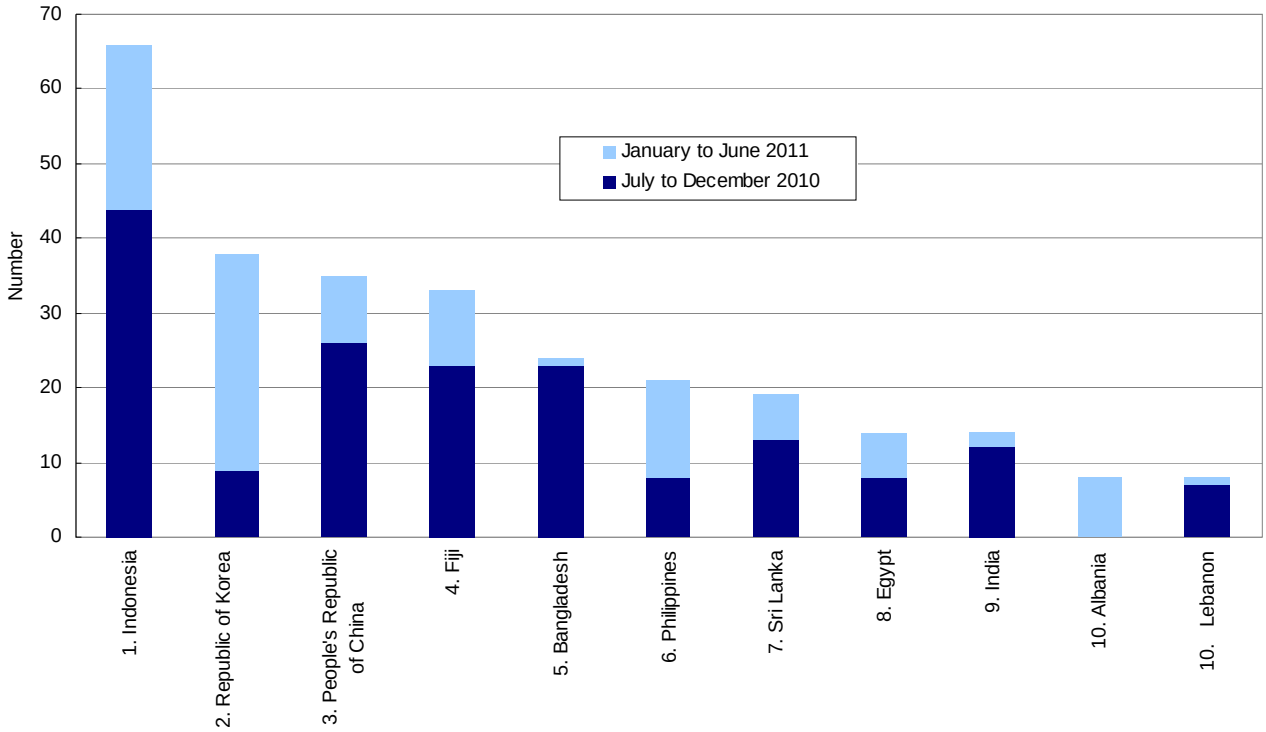
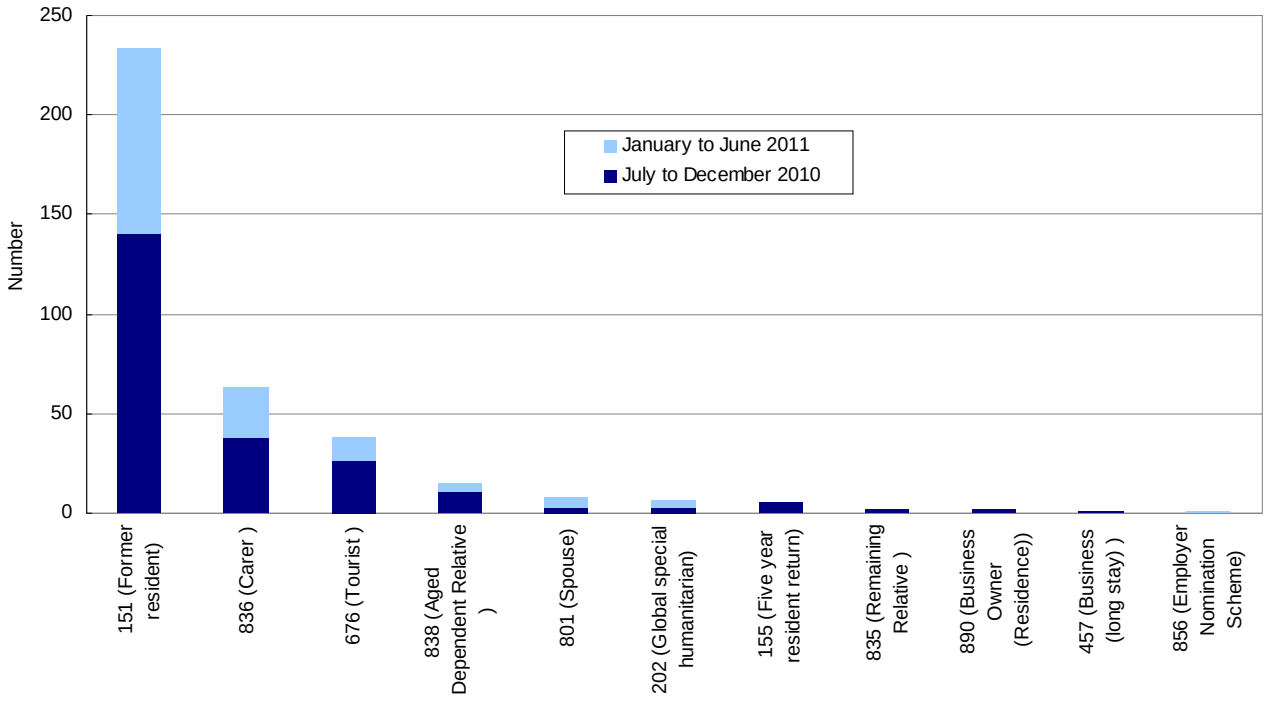


Table 8: Number of visas granted through Ministerial Intervention under s417 by top 10 visa subclasses in 2010-11

Visa subclasses	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. Former Resident (subclass 151)	140	94	234
2. Carer (subclass 836)	38	25	63
3. Tourist (subclass 676)	26	12	38
4. Aged Dependent Relative (subclass 838)	11	4	15
5. Spouse (subclass 801)	3	5	8
6. Global Special Humanitarian (subclass 202)	3	3	6
7. Five Year Resident Return (subclass 155)	5	0	5
8. Remaining Relative (subclass 835)	2	0	2
9. Business Owner (Residence) (subclass 890)	2	0	2
10. Business (Long Stay) (subclass 457)	1	0	1
10. Employer Nomination Scheme (subclass 856)	0	1	1
Total	**231**	**144**	**375**

Source: DIAC Systems

Figure 7: Visas granted through Ministerial Intervention under s417 by top 10 visa subclasses in 2010-11



Section 351 of the Migration Act

Table 9: Number of Ministerial Intervention requests received under s351 by top 10 countries of citizenship in 2010-11

Citizenship	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. India	106	105	211
2. People's Republic of China	90	59	149
3. Republic of Korea	72	60	132
4. Philippines	40	22	62
5. Fiji	36	17	53
6. Lebanon	29	14	43
7. Vietnam	23	16	39
8. United Kingdom	21	17	38
9. Bangladesh	17	20	37
10. Sri Lanka	21	7	28
Other	232	203	435
Total	**687**	**540**	**1227**

Source: DIAC Systems

Figure 8: Ministerial Intervention requests received under s351 by top 10 countries of citizenship in 2010-11

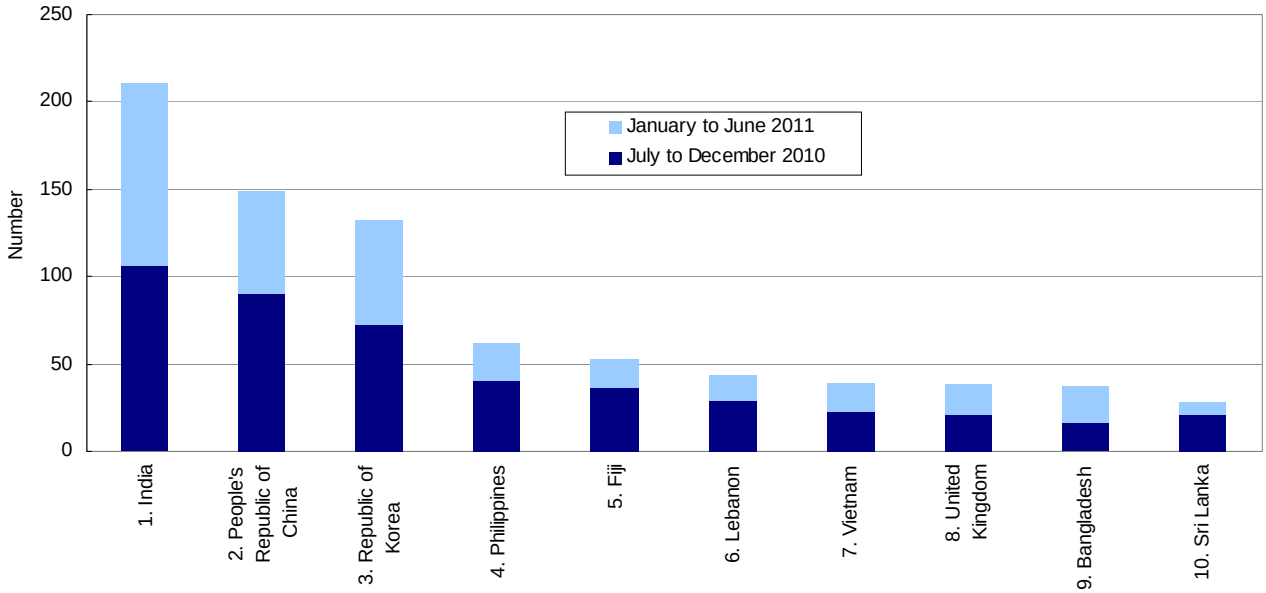


Table 10: Number of visas granted through Ministerial Intervention under s351 by top 10 countries of citizenship in 2010-11

Citizenship	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. United Kingdom	14	21	35
2. Fiji	13	9	22
3. Republic of Korea	3	16	19
4. Tonga	6	13	19
5. People's Republic of China	10	6	16
6. Indonesia	8	7	15
7. Philippines	12	2	14
8. Republic of South Africa	12	2	14
9. India	5	6	11
10. Vietnam	8	2	10
Other	80	45	125
Total	**171**	**129**	**300**

Source: DIAC Systems

Figure 9: Visas granted through Ministerial Intervention under s351 by top 10 countries of citizenship in 2010-11

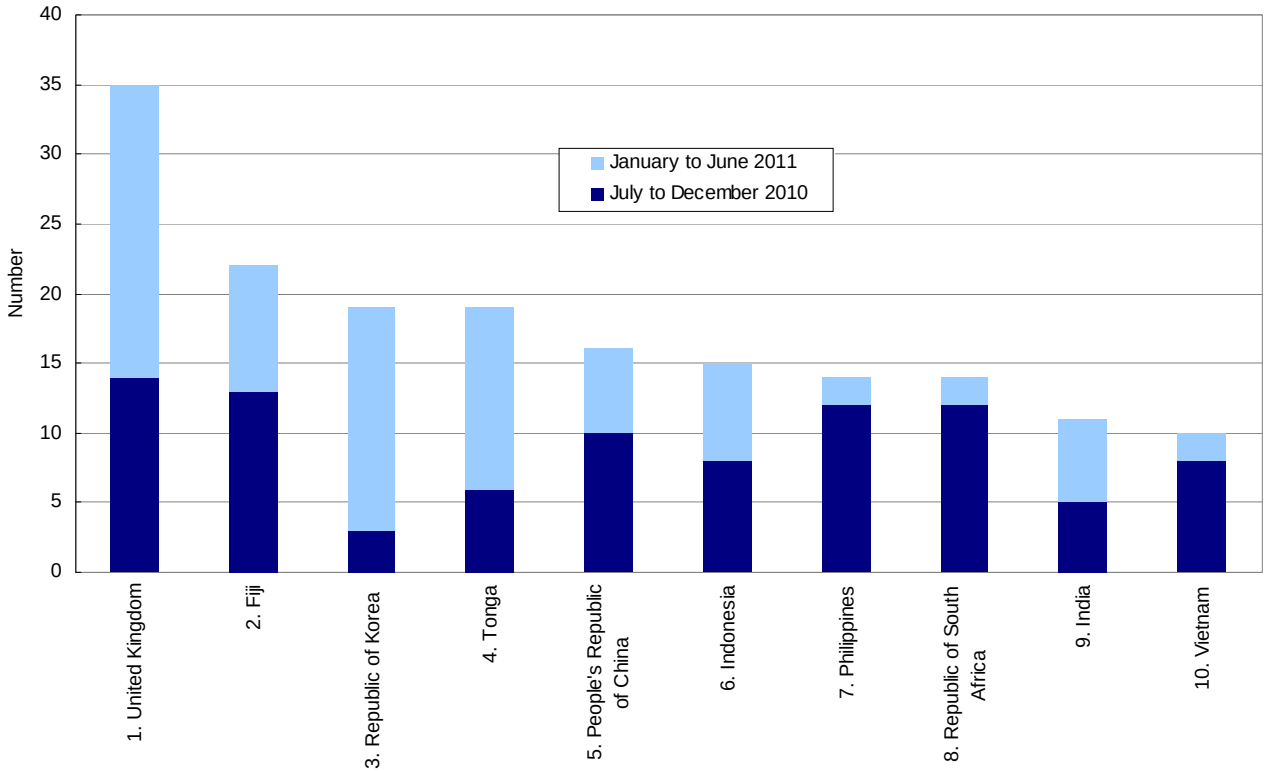
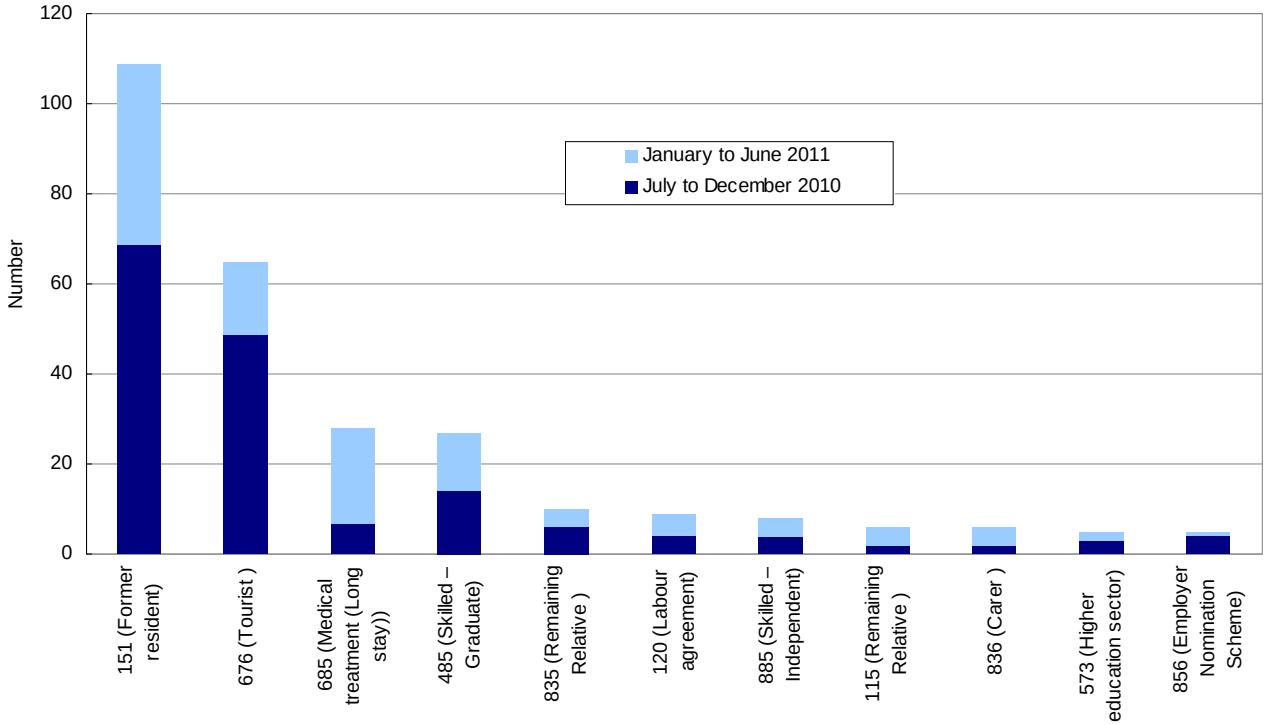


Table 11: Number of visas granted through Ministerial Intervention under s351 by top 10 visa subclasses in 2010-11

Visa subclasses	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. Former Resident (subclass 151)	69	40	109
2. Tourist (subclass 676)	49	16	65
3. Medical treatment (Long stay) (subclass 685)	7	21	28
4. Skilled – Graduate (subclass 485)	14	13	27
5. Remaining Relative (subclass 835)	6	4	10
6. Labour agreement (subclass 120)	4	5	9
7. Skilled – Independent (subclass 885)	4	4	8
8. Remaining Relative (subclass 115)	2	4	6
9. Carer (subclass 836)	2	4	6
10. Higher education sector (subclass 573)	3	2	5
10. Employer Nomination Scheme (subclass 856)	4	1	5
Other	7	15	22
Total	**171**	**129**	**300**

Source: DIAC Systems

Figure 10: Visas granted through Ministerial Intervention under s351 by top 10 visa subclasses in 2010-11



Section 48B of the Migration Act

Table 12: Number of Ministerial Intervention requests received under s48B by top 10 countries of citizenship in 2010-11

Citizenship	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. People's Republic of China	124	94	218
2. Fiji	54	36	90
3. India	42	20	62
4. Bangladesh	44	15	59
5. Sri Lanka	15	17	32
6. Indonesia	9	22	31
7. Egypt	9	21	30
8. Pakistan	17	11	28
9. Republic of Korea	15	5	20
10. Nepal	6	7	13
Other	64	67	131
Total	**399**	**315**	**714**

Source: DIAC Systems

Figure 11: Ministerial Intervention requests received under s48B by top 10 countries of citizenship in 2010-11

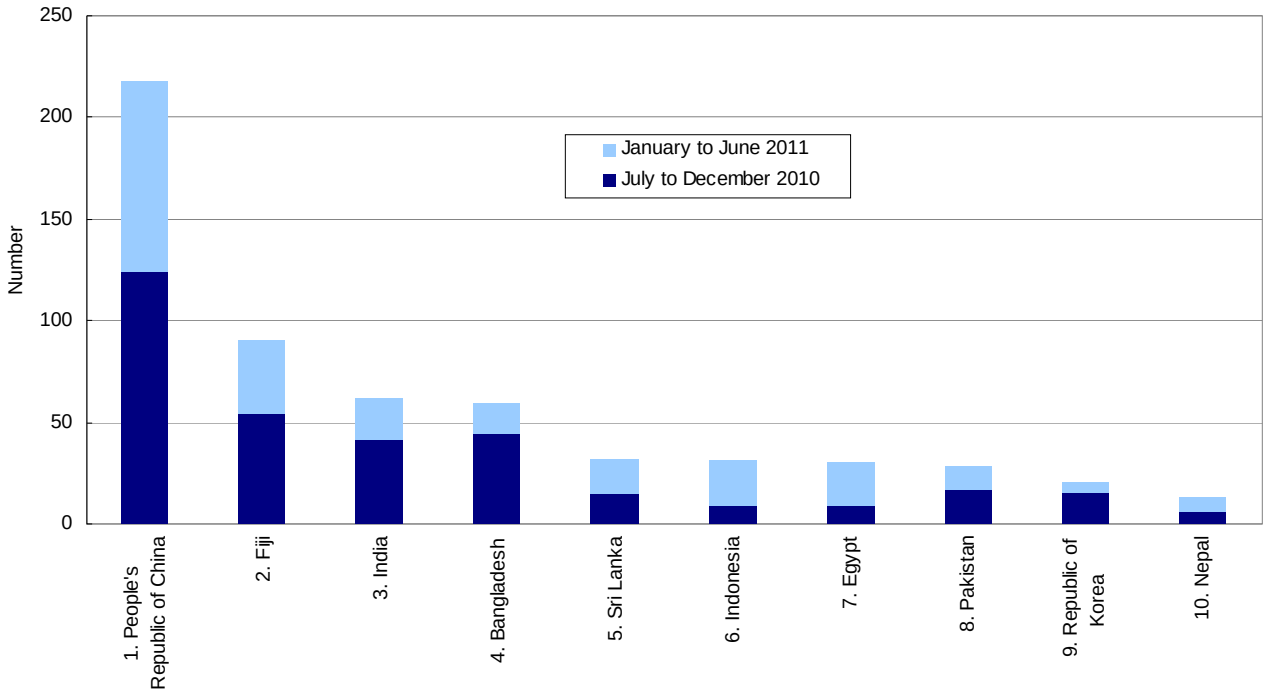
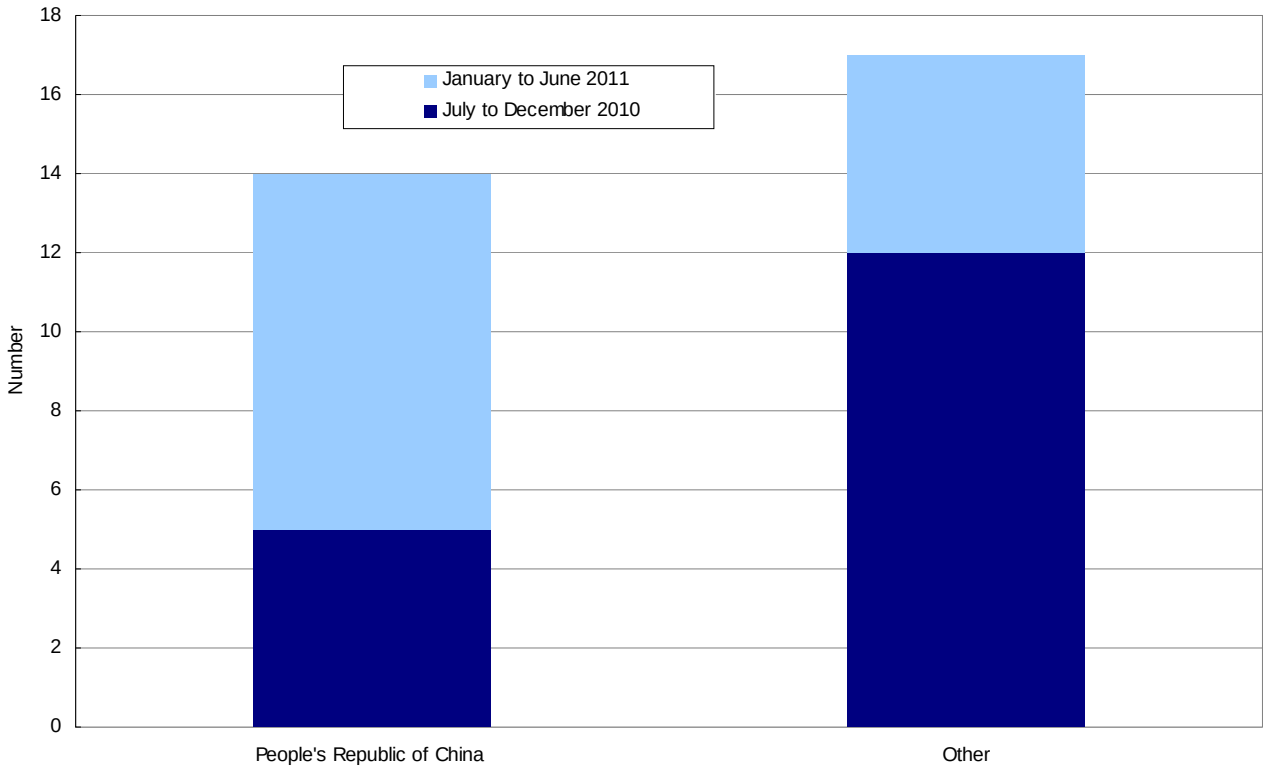


Table 13: Number of requests finalised by Minister to allow client to apply for a further Protection visa under s48B by top 10 countries of citizenship in 2010-11

Citizenship	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. People's Republic of China	5	9	14
2. Albania	..	0	..
3. Iran	..	0	..
4. Egypt	..	0	..
5. Algeria	0	..	..
6. Bangladesh	0	..	..
7. Iraq	0	..	..
8. Jordan	0	..	..
9. Pakistan	..	0	..
10. Thailand	0	..	..
Total	**17**	**14**	**31**

Source: DIAC Systems

Figure 12: Requests finalised by Minister allowing client to apply for a further Protection visa under s48B by countries of citizenship in 2010-11



.. Not published

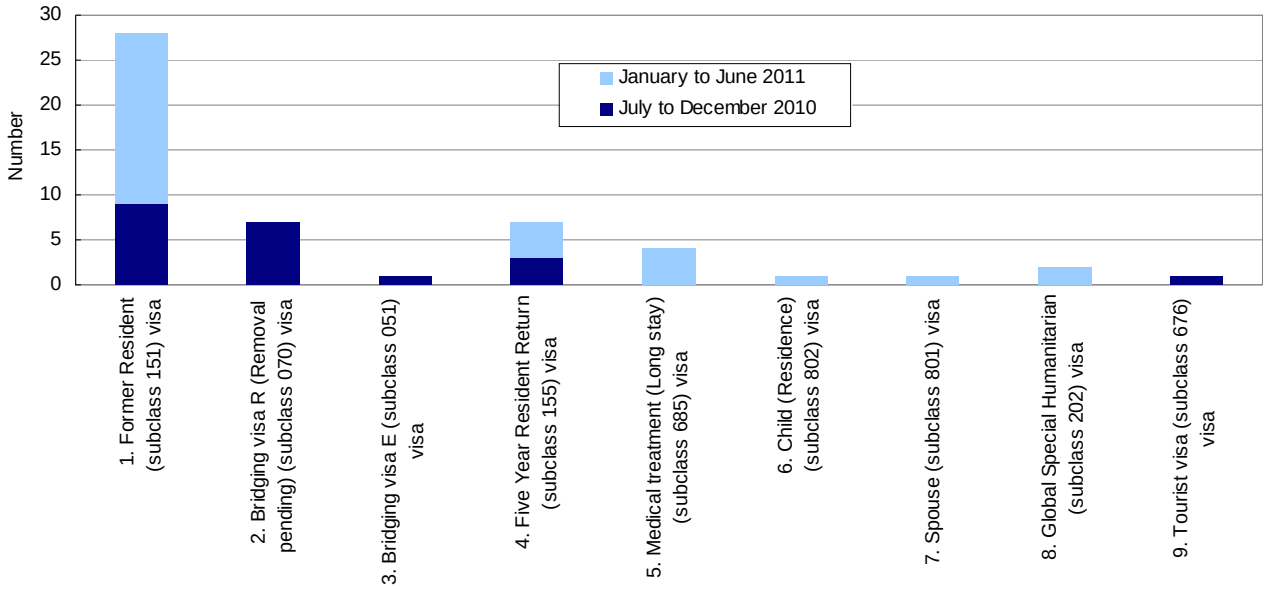
Ministerial interventions (MI) under sections[17] 195A, 345, 391, 454 and 501J of the Migration Act

Table 14: Number of visas granted through Ministerial Intervention under sections 195A, 345, 391, 454 and 501J by visa subclasses in 2010-11

Visa subclasses	2010-11		
	July to December 2010	January to June 2011	2010-11 Total
1. Former Resident (subclass 151)	9	19	28
2. Bridging visa R (Removal pending) (subclass 070)	7	0	7
3. Bridging visa E (subclass 051)	1	0	1
4. Five Year Resident Return (subclass 155)	3	4	7
5. Medical treatment (Long stay) (subclass 685)	0	4	4
6. Child (Residence) (subclass 802)	0	1	1
7. Spouse (subclass 801)	0	1	1
8. Global Special Humanitarian (subclass 202)	0	2	2
9. Tourist visa (subclass 676)	1	0	1
Total	**21**	**31**	**52**

Source: DIAC Systems

Figure 13: Visas granted through Ministerial Intervention under sections 195A, 345, 391, 454 and 501J by visa subclasses in 2010-11



[17] The countries of citizenship of individuals granted visas through Ministerial Intervention under these sections cannot be published, owing to privacy considerations. As the visa grants for some visa subclasses are very small, there is a risk that persons granted these visas under these sections could potentially be identified if information about their country of citizenship is provided.

Explanatory Notes

1. Minister's public interest powers

1.1 Sections 351, 391, 417, 454 and 501J

Under sections 351, 391, 417, 454 and 501J of the *Migration Act 1958* (the Act), the Minister has the power to substitute a decision more favourable to a person for that of a review tribunal if he consider it is in the public interest to do so.

The relevant review tribunals are:

- the former Immigration Review Tribunal (IRT) (ceased operation on 31 May 1999) - s351
- the Migration Review Tribunal (MRT) – commenced operation on 1 June 1999) - s351
- the Refugee Review Tribunal (RRT) – s417
- the Administrative Appeals Tribunal (AAT) on referral from the MRT (s391) or RRT (s454) or in respect of a Protection visa (PV) decision within the AAT's jurisdiction (s501J)

The Minister's powers under these sections of the Act are only available after the relevant tribunal has made a decision. This means that the Minister can only use his discretion if:

- a person has made a visa application to the delegate of the minister who is a departmental officer; and
- the delegate has decided not to grant a visa (the primary decision); and
- the person has applied to the relevant tribunal for merits review of the primary decision; and
- the relevant tribunal has made a decision about the person; and
- it is possible to make a decision more favourable to the person than that of the tribunal.

The Minister's powers under sections 351 and 417 are an avenue to give effect to Australia's obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC) where a person would not otherwise be eligible for the grant of a visa.

There are some situations where the Minister's public interest powers are not available. These include where:

- the primary decision was not reviewable by the relevant tribunal; or
- no review decision has been made by the relevant tribunal; or
- the relevant review tribunal has remitted the case to the Department and a departmental decision maker has made a subsequent decision on the case; or
- the review tribunal has made a decision to set aside a cancellation decision; or
- the Minister has already intervened in a case.

Once the Minister has intervened to substitute a review tribunal decision with the grant of a visa, his public interest powers in respect of that particular review tribunal decision for that particular person are exhausted. He cannot revisit that decision, regardless of whether a subsequent decision would be even more favourable to the person.

1.2 Section 345

Prior to 1 June 1999, under section 345 of the Act, the Minister could substitute a decision of a review officer for another decision in terms of which the applicant agreed, whether or not the review officer (MIRO) had the power to make that other decision. Despite the repeal of section 345, the Minister retains discretion to exercise his public interest powers under section 345.

1.3 Section 48B

Under section 48A of the Act, a person who has had a Protection visa (PV) refused or cancelled, cannot apply again for a PV while in Australia.

However, under section 48B of the Act, if the Minister thinks it is in the public interest to do so, he may determine that a person is not prevented by section 48A from lodging a valid application for a PV, thus enabling the person to make a further PV application.

This ensures that a person who may be able to make a successful claim for protection due to substantial and credible new claims or new information and/or a change of circumstances in their country of nationality is not barred from making a further PV application.

Each further PV application or request for intervention under section 48B is assessed by a departmental officer against guidelines that have been approved by the Minister to determine if it is appropriate for it to be referred to the Minister for his consideration.

A section 48B assessment does not require a departmental officer to be satisfied that the person is a refugee, only that there is an enhanced chance of a successful claim for protection. As such, departmental officers are not required to interview clients, or make a full assessment of their claims.

If the departmental officer is satisfied that a request or further PV application meets the guidelines, a submission is prepared to refer the case to the Minister for consideration. The Minister's power under section 48B is non-compellable, so he is under no obligation to intervene.

If the person raises other humanitarian concerns or other international obligations unrelated to the Refugees Convention, and they are eligible for consideration under another Ministerial Intervention power (refer to 1.1). The case is then presented to the Minister as a joint submission.

1.4 Section 195A

Section 195A states that the Minister may grant a visa to a person who is in detention under section 189 of the Act, if he thinks that it is in the public interest to do so.

In exercising his discretion under section 195A, the Minister is not bound by the provisions of the Act or regulations governing application and grant requirements. The Minister has the flexibility to grant any visa that is considered appropriate to a person's circumstance.

The current guidelines provide that the Minister will not intervene under section 195A where there is an existing visa pathway and nor will he intervene unless the request is put to him by the Department.

2. Requests received/initiated

Ministerial Intervention is not an extension of the visa application or review process

Requests for Ministerial Intervention under sections 48B, 351, 391, 417, 454 and 501J can be made in writing to the Minister by the client or their authorised representative (usually their migration agent). However, requests for Ministerial Intervention under section 195A can only be initiated by the Department.

The Department can also initiate a request on behalf of a client at any time it is considered appropriate, particularly where the Minister has not previously considered the case.

A review tribunal may refer a case to the Department under sections 351, 391, 417, 454 and 501J where they consider that information provided in the course of a review application should be brought to the Minister's attention. In this case, the Department would initiate a request and write to the client or their authorised representative to give them the opportunity to provide any further information or supporting documents.

3. Requests finalised by Department

In line with the Minister's guidelines, these include

- requests for Ministerial Intervention under sections 345, 351, 391, 417, 454 and 501J which were finalised by the Department as there was no power available (see 1.1).

- requests for Ministerial Intervention under sections 345, 351, 391, 417, 454 and 501J which were inappropriate to consider because:

- it was open to a person to make a valid application for a Partner visa onshore
- an application for a Partner visa onshore had been subsequently refused
- there was another visa application concerning the person ongoing with the Department or a review application in relation to a visa application ongoing with a review authority
- there was an ongoing Ministerial Intervention request under a different public interest power
- there was a remittal or a set aside from a review authority or from a court and a subsequent decision had not yet been made by the Department or review tribunal
- decided by MIRO and is now at the MRT and
- the request was made by a person who is not the subject of the request or their authorised representative.

- repeat requests for Ministerial Intervention under sections 345, 351, 391, 417, 454 and 501J which were not referred to the Minister as there was no significant change in circumstances, or new and substantive claims involving unique or exceptional circumstances.

- requests under s48B requests which did not meet the s48B guidelines and hence were not referred to the Minister.

This does not apply for Ministerial Intervention under s195A as requests under this section can only be initiated by the Department.

4. Requests finalised by Minister

A Ministerial Intervention request is considered finalised by the Minister when the Minister decides:

- not to consider a request,
- to consider a request but not intervene,
- to intervene under another power or
- to intervene to grant a visa or allow a client to apply for a further Protection Visa.

Under sections 345, 351, 391, 417, 454 and 501J, all first requests for Ministerial Intervention which do not meet the guidelines are referred to the Minister on a schedule (a short submission) so that he can decide whether he wishes to consider the request. When the Minister does not request any further information on these requests, they are finalised as not considered by the Minister.