

WHAT IF MY PROTECTION VISA APPLICATION IS REJECTED BY THE IAA?

Use this information pack if you are an asylum seeker who came to Australia by boat after 13 August 2012 and the Immigration Assessment Authority (IAA) has made a decision to refuse your protection visa application.

What are
my options?

OPTION 1: Arrange for your voluntary departure

OPTION 2: If you think the IAA process was unfair, your claim was not heard, or there is some other legal error, you can ask the Federal Circuit Court to review the IAA decision

OPTION 3: Ask the Minister for Home Affairs to allow you to re-apply for a protection visa

GET LEGAL ADVICE FIRST

You can get legal advice on your options by contacting:

- Refugee and Immigration Legal Service (RAILS) on 07 3846 9300

Option 1 – Voluntary Departure

If you want to leave Australia, you can:

- Call the International Organisation for Migration (IOM) on 3532 3815 or 1300 116 986 for confidential information on the Assisted Voluntary Return & Reintegration Program (AVRR)

Option 2 – Judicial Review (going to court)

Judicial review only looks at whether the IAA followed the right legal process in coming to its decision. It doesn't review whether the IAA decision to refuse protection was right or wrong. So **IF** your judicial review application is successful then your case has to go back again to the IAA. The IAA then has to look at your case, follow the right legal process, and make a new decision on whether you are owed protection by Australia.

If you decide that you want to start a judicial review application, you can:

- Pay a lawyer to file (give to the Court) the application and affidavit OR
- Fill out the forms and file them yourself. This information pack contains the forms you need to apply for this review OR
- Attend Indooroopilly Uniting Church Form-Filling Clinic to get help filling out the forms and filing them.

The Indooroopilly Uniting Church Form-Filling Clinic is open on Thursdays and Saturdays from 2-5pm and is located at 74 Station Road, Indooroopilly. You do not need to make an appointment.

You must file the application at the Federal Circuit Court within **35 days** from the date of the IAA decision, or apply for an extension of time if you are outside that time.

BE AWARE your bridging visa may end 28 days after you were notified of the IAA decision, so you should apply for judicial review before that deadline. If you do not hold any visa, you may be placed into immigration detention.

After you have lodged a judicial review application, **you will need to apply for a new bridging visa**. To apply, lodge a completed Form 1008 with a sealed (stamped with the court stamp) copy of your judicial review application to the Department of Home Affairs (DHA). If you are in Queensland, you can email your bridging visa application to the Department: BVEapplication.QLD@homeaffairs.gov.au.

It is **important** to get legal advice about your bridging visa status if you are unsure.

Legal Costs

If your application is not successful, you will probably have to pay the government thousands of dollars in legal costs. If you don't repay these costs it can have an impact on whether you are ever able to return to Australia.

Option 3 – New protection claim or new information

If you decide to write to the Minister for Home Affairs, please note:

- If eligible, you may write to the Minister to ask to be allowed to make another Protection Visa application.
- This is only an option if you have significant new claims which could not be raised at the time of your first application and which show that you may now be a person to whom Australia owes protection obligations. For more information see:
<https://www.homeaffairs.gov.au/Trav/Refu/Mini/ministerial-48b>
- There is a very small chance of success with this option and it is not recommended unless your case clearly meets the criteria.

Information Only

All the information in this resource is a general guide only and is not legal advice. See a migration agent/lawyer to get specific legal advice.

JUDICIAL REVIEW APPLICATION FORMS TO BE COMPLETED:

There are three forms that you may need to complete. They are contained in this pack.

- ☐ **Application – Migration Act** ☐ **Affidavit (with the annexure sheet)**
- ☐ **Application for exemption from paying court fees**

Application – Migration Act

This is the main form that you must fill out to file your application in the Federal Circuit Court.

- See the example form attached.
- Families need to complete the application by listing all members of the family who applied for protection visas and were refused. If separate initial visa applications were made, a separate Federal Circuit Court form will need to be filed.
- You need to give the court registry one (1) copy of the application. The registry will accept and seal (stamp) this document. Then the registry will return a sealed copy of the application to you. You need to send sealed copies of this document to both the Minister for Home Affairs and to the IAA. This is called service of documents.
- If you need an interpreter at the hearing, you must also say that on your application form.

Affidavit (a statement used in court as evidence)

This is needed to attach a copy of the IAA decision.

- See the example form attached.
- Only one adult in a family group needs to submit the affidavit.
- Attach a copy of the IAA decision to the annexure sheet.
- If you are filing your application more than 35 days after the date of the IAA decision, the affidavit must explain the reason for the delay.
- You will need to sign this document in front of a lawyer or a Justice of the Peace. If you are not in detention, you can drop in to see a Justice of the Peace at the Indooroopilly Uniting Church Form-Filling Clinic at 74 Station Road, Indooroopilly on Thursdays or Saturdays from 2-5pm.
- You need to give the Court one (1) copy of this document.

Application for exemption from paying fees

- Usually you have to pay a fee to file your application in the Court. If you don't have much money you can apply to pay no fees. Apply for the exemption using the financial hardship exemption form for adults and the general exemption form for children. You need to complete a separate form for each person applying for the exemption.
- You need to sign this form in front of a lawyer, Justice of the Peace or officer of the court. If you are not in detention, you can drop in to see a Justice of the Peace at the Indooroopilly Uniting Church Form-Filling Clinic at 74 Station Road, Indooroopilly on Thursdays or Saturdays from 2-5pm.

FILING YOUR FORMS:

- Fax all the signed forms to the Federal Circuit Court in Brisbane on 07 3248 1240, OR
- Deliver them to the front counter at the Federal Circuit Court registry on Level 6 (The Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane). You can enter the building from Tank Street, OR
- Lodge them online at: <http://www.fedcourt.gov.au/online-services/elodgment>

Remember the Time Limit

You must file online, fax or deliver your signed forms to the Federal Circuit Court for filing as soon as possible. If you are more than 35 days after the date of the IAA decision your application may be rejected.

IN ADDITION TO THE JUDICIAL REVIEW FORMS:

Requests for information from DHA and IAA

It will help your case if you can get copies of all the information that DHA and IAA considered while deciding your application for protection. Indooroopilly Uniting Church Form-Filling Clinic can help you with this. The two forms and recommended wording are:

To ask for documents from DHA, fill out Form 424A.

This form is available online at: <https://www.homeaffairs.gov.au/Forms/Documents/424a.pdf>

- At Part B, Question 11, you can ask for:
In clearly distinguishable, separate electronic folders:
 1. All information before the Minister's Delegate in the making of the decision to deny the Applicant a Protection Visa, dated [write date of Department's negative decision].
 2. All material given by the Secretary under s 473CB of the Migration Act 1958 to the Immigration Assessment Authority in regards to [write your name], IAA reference: [write IAA case number], Departmental ICSE Client ID: [write your DHA Client ID number].

To ask for documents from IAA, fill out Form 6.

This form is available online at: <http://www.iaa.gov.au/IAA/media/IAA/Files/Forms/F6FOI-Request.pdf>

- At Part 2, you can ask for:
All material referred to or relied upon by the Immigration Assessment Authority in its decision to affirm the decision on appeal, IAA reference: [write IAA case number], Department ICSE Client ID: [write your DHA Client ID number].

WHAT TO DO ONCE YOU HAVE APPLIED FOR JUDICIAL REVIEW:

1. SEEK LEGAL ASSISTANCE

If you have no money for a lawyer, LawRight or another pro bono lawyer (lawyer who works for free) may be able to help you.

For LawRight, you will need to complete LawRight's application form in hardcopy or online:

- Go to LawRight's website: <http://www.lawright.org.au/cms/page.asp?ID=60970> to download the form and submit it, OR
- Contact LawRight on 07 3248 1278 to book an appointment and get help with completing the application form, OR
- Attend Indooroopilly Uniting Church Form-Filling Clinic on Thursdays or Saturdays from 2-5pm (74 Station Road, Indooroopilly) to get help with completing the LawRight application form. You do not need to make an appointment.

If LawRight agrees to help you, LawRight will send you a letter of advice to prepare you for the first court date, and explain how LawRight can help going forward. If you need help understanding the letter, contact LawRight, who can explain their advice with an interpreter if required.

2. ATTEND THE FIRST COURT DATE (DIRECTIONS HEARING):

Once you have filed your application you will receive a first hearing date (called a directions hearing), which you **MUST** attend. If you do not attend this hearing, your application may be dismissed and you will have to pay any legal costs.

3. WHEN YOU RECEIVE THE COURT BOOK:

PROVIDE YOUR LAWYER WITH A COPY OF THE COURT BOOK IMMEDIATELY (preferably in electronic version)

If LawRight is assisting you:

- Email the Court Book to fedadmin@lawright.org.au OR
- Take the Court Book to the LawRight office at Level 6 of the Commonwealth Law Courts at 119 North Quay, Brisbane, between 9am to 5pm, Monday to Friday.

LawRight can be contacted on (07) 3248 1278.

Note: A delay in contacting LawRight may reduce your chance of receiving help and obtaining an extension of time from the Court to file an amended application if required.

Once LawRight receives the Court Book, it can refer your matter to a pro bono panel of barristers for advice on the chance of success. As this can take several weeks, at your first hearing you should **request eight to twelve weeks to file an amended application**, from the date you receive the Court Book.

If LawRight is unable to find a lawyer to represent you but LawRight thinks your case has a good chance of succeeding, LawRight can continue to help you to self-represent and will try to find a lawyer who can help you at the final hearing. LawRight cannot promise that a referral for an opinion or representation will be successful.

If LawRight does not think your case has a good chance of succeeding in court, LawRight will be unable to help you further, except to help you discontinue (end) the court proceedings.

IMPORTANT INFORMATION

Legal Assistance

The legal issues concerning the review of migration decisions are complicated. If you have the money to pay a lawyer, that is the best thing to do. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Contacting the Court

You can contact the court registry for information about your case or if you need to give the Court information. You cannot communicate directly with the Judge.

You can contact the registry by calling the interpreter telephone service on 131 450 and asking for an interpreter in your language. Then ask the operator to connect you to the registry on (07) 3248 1100.

It is important that you keep the Court and the Minister of Home Affairs' lawyer advised of your current contact details, as they may need to contact you. If your contact details change, you must advise the Court and the Minister's lawyer in writing as soon as possible by giving them the completed form, 'Notice of Address for Service.'

Acknowledgements

Thank you to Law Access in Western Australia for kindly allowing this information pack to be adapted for use in Queensland.

Thank you to the Refugee and Immigration Legal Service, LawRight, Salvos Legal Humanitarian and Indooroopilly Uniting Church Form-Filling Clinic for their collaboration in preparing this information pack.

Example only

Instructions for completion

APPLICATION – Migration Act

1. This form is used for commencing a proceeding under s.476 of the *Migration Act 1958* (Cth), including where an extension of time is also sought under s.477.
2. You must complete address for service details in the footer on page 1. All correspondence concerning the application will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
3. Each ground of the application must identify a jurisdictional error by reason of which it is claimed that the migration decision under review is not a ‘privative clause decision’ within the meaning given by subsection 474 (2) of the *Migration Act 1958*. Particulars of each ground must be provided which are sufficient to allow the Court to understand how each ground relates to the decision, the reasons for decision, the circumstances of the decision, or the procedures concerned with the making of the decision, as the case may be.
4. An application by an offshore entry person should include details of any recommendation of an Independent Protection Assessment Reviewer which is challenged, and should specify the ground/s for contending that the recommendation was not made in accordance with law. **It is not necessary to seek an extension of time to challenge a future decision (that is; a decision which has not been made yet but which may follow a report or recommendation).**
5. The applicant must file one or more affidavits attaching a copy of the decision and any statement of reasons, and including any other evidence relied upon. If an extension of time is sought, the affidavit must include evidence explaining the delay and showing why the applicant considers that it is necessary in the interests of the administration of justice for the Court to grant an extension (see section 477(2) of the *Migration Act*).
6. If the applicant is unable to raise an arguable case for the relief claimed, the application may be dismissed under Rule 44.12 without a final hearing.
7. If your application is for an extension of time or other interlocutory, interim or procedural orders in a proceeding which has already commenced, you should use the Application in a Case form.
8. Unless the Court orders otherwise, an application and other documents filed with it may not be served less than seven days before the day fixed for the hearing of the application; see Rule 6.19. Service must be by hand, unless the Rules allow otherwise or the Court otherwise orders. The application and other documents may be served by delivering them to the Department of Immigration and Border Protection.
9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
10. Once complete, you need to file the original and a copy of this application for each party to the matter with the court registry. The Court will keep the original and return the sealed copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

**IN THE FEDERAL CIRCUIT COURT
OF AUSTRALIA**

REGISTRY: *BRISBANE*.....

This is the place where the application is to be lodged. Use the city closest to you, eg Brisbane, Perth, Darwin, Sydney, or Melbourne.

File number

Write your whole name.

Ahmed Chan

Applicant(s)

Pseudonym(s) for Applicant(s)
[Registry use only]

MINISTER FOR IMMIGRATION AND BORDER PROTECTION

First Respondent

[or]

IMMIGRATION ASSESSMENT AUTHORITY

Second Respondent

APPLICATION – Migration Act

The applicant applies for an order that the respondents show cause why a remedy should not be granted in exercise of the Court's jurisdiction under section 476 of the *Migration Act 1958* in respect of the migration decision specified on page 2.

First court date

Leave blank.

This application is listed for hearing at (court location):

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

Leave blank.

(for) Registrar

Date:/...../.....

Write your full name.

Filed on behalf of

Prepared by Lawyer's code

Name of law firm

Address for service in Australia

Email DX

Tel Fax Attention 1

Write your full residential address, phone number and email address here.

Applicant/s details

Is the applicant or any of the applicants to this proceeding currently in immigration detention?

☐ Yes

☐ No

Check 'Yes' if you are currently in immigration detention. Check 'No' if you are not.

Migration decision details (select box and insert details of the migration decision)

☐ Decision made by a tribunal

Name of the tribunal:

Date of the decision:/...../.....

Have you applied for a protection visa?

☐ Yes

☐ No

☒ Immigration Assessment Authority

Date of the decision: ...17...../...9.../...2015.....

Check this box and put the date of the decision of the Immigration Assessment Authority which was on the letter you received (day/month/year).

☐ Decision made by the Minister or another person under the Migration Act.

Name of decision-maker:

Office held:

Date of the decision:/...../.....

☐ A future decision or other action by the Minister or an officer under the Migration Act.

Application for extension of time (an extension is required if the application is not made within 35 days of the date of the migration decision)

Does the applicant apply for an order that the time for making the application be extended under section 477 of the *Migration Act 1958*?

Yes ☒

No ☐

If it is more than 35 days (from the date of the decision of the IAA) to make your application check "Yes". If it is less than 35 days check "No".

Grounds of application for extension of time (specify why the applicant considers that it is necessary in the interests of the administration of justice to extend time)

1. I could not

2. I was not aware of

3.

If you checked "Yes" because you need an extension of time you will need to provide the reason why you need an extension of time. For example, if there were things that you were unaware of or could not do, you could tell the Court these things.

Other Interlocutory, interim or procedural orders sought by applicant/s (complete only if other interlocutory, interim or procedural orders are sought)

1. *Leave be granted for the applicant to file and serve an amended application prior to the directions hearing.*

Ask for permission to make changes to your application.

2.

3.

Final orders sought by applicant/s (select boxes and add additional or alternative order/s)

Check these two (2) boxes.



An order that the decision of the tribunal, Immigration Assessment Authority or Minister be quashed.



A writ of mandamus directed to the tribunal, Immigration Assessment Authority or Minister, requiring them to determine the applicant's application according to law.



A declaration that the recommendation of the Independent Protection Assessment Reviewer was not made in accordance with law, by reason of the ground/s of this application.



An injunction restraining the Minister, by himself or by his Department, officers, delegates or agents, from making the future decision or taking the other action the subject of the proceedings.



(state precisely each other order sought by way of final relief)

1.

2.

3.

Grounds of application (see Instructions for completion)

1. *The Assessment was unfair because*_____.

2.

3.

4.

Say why you believe the Immigration Assessment Authority process or decision was not made according to law. Keep in mind the Court cannot re-consider the facts of your case. The Court can only determine if there has been a legal error in the IAA's decision. For example:

- The IAA identified a wrong issue
- The IAA applied the wrong legal test
- The IAA ignored relevant considerations
- The IAA relied on irrelevant considerations

Other Court Proceedings (This section must be completed if the applicant has made a previous application or applications to a court to review the decision – see section 486D of the Migration Act 1958.)

Leave blank.

Person or persons who made each previous application:

Court or courts to which each application was made:

Commencement date of each previous application or applications:

File number of each application:

Outcome of each application:

Language spoken

Does the applicant require an interpreter?

No ☐

Yes ☒

If you need English language assistance check "Yes".

If Yes, what language: *eg Dari, Farsi, Mandarin, Vietnamese*

If you need English language assistance say which language you speak here.

Service of Application

The application must be served on each respondent within 7 days by delivering it to the Department of Immigration and Border Protection at the address below.

[The address will be inserted by the Registry]

Signature of applicant/s or lawyer

Ahmed Chan

Write your whole name.

Signed by (print name/s)

Sign your name.

☒ the applicant/s or ☐ lawyer for the applicant/s

Date:5...../..12...../...2015.....

Write the date (day/month/year) on which you are signing the form.

Lawyer's Certification

 (see section 486I of the Migration Act 1958)

I, [name], the lawyer filing this document commencing migration litigation, certify that there are reasonable grounds for believing that this migration litigation has a reasonable prospect of success.

Leave blank

Signature of the lawyer filing application

Date:/...../.....

IMPORTANT NOTICE TO RESPONDENT/S

To the respondent(s):

of (the address will be inserted by the Registry):

Leave blank

.....

A respondent who intends to contest the application must file a response within 14 days of service of the application. A response must specify each ground of opposition with particulars, including grounds of objection to competency, previous court proceedings, delay, etc. Any evidence relied upon must be detailed in or attached to an affidavit.

A respondent who does not intend to contest the application may file a notice of appearance which submits to the orders of the Court save as to costs.

Example only -Instructions for completion

AFFIDAVIT

1. This form of affidavit may be used in any proceeding where no other form of affidavit is applicable under the *Federal Circuit Court Rules 2001* (the Rules).
2. Each paragraph in this affidavit must be numbered.
3. This affidavit must be sworn or affirmed before a person authorised by law to witness the swearing of affidavits; for example, a lawyer, notary public or Justice of the Peace.
4. Each page must be signed by the deponent (the person making the affidavit).
5. Any alteration in the affidavit must be initialled by the deponent and the witness.
6. You must complete address for service details in the footer on page 1. All correspondence concerning the affidavit will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
7. If the facts in the affidavit are supported by a document, a copy of the document must be attached to this affidavit. This document is then referred to as an 'annexure'. If there is more than one annexure refer to each by a number or letter; for example – 'Annexure 1' or 'Annexure A'. The annexure should also have page numbers. If there is more than one annexure, the page numbers must run consecutively until the last page of the last annexure. If it is impractical to annex a document, it may be separately identified as an exhibit; see Rule 15.28.
8. Each annexure must include a statement signed by the witness identifying the annexure as the document referred to in this affidavit. The wording of the statement is as follows:

This is the document referred to as [*insert annexure identification*] in the affidavit of [*insert deponent's name*] sworn/affirmed at [*insert place*] on [*insert date*] before me [*witness to sign and provide name and qualification*].

The statement must be signed at the same time as the affidavit and by the same witness.

9. The Court may strike out any material which cannot be used in evidence; for example, if it is unnecessary, scandalous or contains opinions of persons not qualified to give them. See Rule 15.29.
10. If the deponent does not have an adequate command of English, a translator must read or give in writing a translation of the affidavit and oath/affirmation in a language which is understood, and must certify in the signing clause that he or she has done so. Use the alternative jurat for the swearing/affirming of the affidavit and the translator's certificate.
11. Once complete, you need to file the original and a copy of this affidavit for each party to the matter with the court registry. The Court will keep the original and return the copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

Remove this instruction sheet before filing

FEDERAL CIRCUIT COURT OF AUSTRALIA

REGISTRY: BRISBANE

This is the place where the application is to be lodged. It should be the same as on the application form.

File number:

COURT USE ONLY

Court
Location

Leave blank.

Court date

Court time

Write your whole name.

Ahmed Chan
Applicant

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
Respondent

IMMIGRATION ASSESSMENT AUTHORITY
Other party

** Repeat as necessary for additional parties*

AFFIDAVIT

Name of deponent: *Ahmed Chan*

Date sworn / affirmed: *5/12/2015*

Write the date on which this form was completed (day/month/year).

I, (full name) *Ahmed Chan*

of (address) *Yongah Hill Detention Centre, Northam, WA* (occupation) *fisherman*

make oath and say / affirm:

- I am the applicant in the proceedings*
- I am applying for the judicial review of the decision of the Immigration Assessment Authority dated 17/11/2015.*

Write your whole name.

Write your address.

Write the work you did before you were detained.

Write the date the
decision was made
(day/month/year).

Write your whole name.

Filed on behalf of

Prepared by Lawver's code

Name of law firm Write your residential address,
email and phone number here.

Address for service in Australia State Postcode

Email DX

Tel Fax Attention

3. Attached and marked "Annexure A" is a copy of the Immigration Assessment Authority decision dated 17/11/2015.  

4. *****If you are outside of 35 days from the date of the decision, write the reasons for your late application here (the same reasons as on the application)*****

Sworn / Affirmed by the deponent

at (place)

on (date)/...../.....


Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:


If an interpreter assists you to complete the affidavit, fill out this part.

[Alternative jurat for non-English speaking affidavit]

Sworn / Affirmed by the deponent through the interpretation of (name of interpreter) of (address of interpreter), (description of interpreter), the interpreter having first sworn that he / she had truly interpreted the contents of this affidavit to the deponent and that he or she would truly interpret to (name of deponent) the oath about to be administered to him / her.

at (place)

on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

I (name of interpreter) certify that I understand the English language and the (name of language used) language, and that I have truly interpreted to the deponent the contents of this affidavit and the oath or affirmation which was administered.

Signature of the interpreter (print name) Date:/...../.....