

Protection Visas: The Application Process

Who can get protection?

A person who arrives in Australia with a valid temporary visa and fears returning to their country can apply for a protection visa (Subclass 866).

The government must give you protection if you can show the Department of Home Affairs you are a 'refugee' - that means that if you are returned to your country you will suffer serious harm because of your race, religion, nationality, political opinion or membership of a social group and there is no area within your country where you would be safe.

If you don't fit the refugee definition you will be assessed for Complementary Protection – this is given if you show you will suffer significant harm if returned to your country but the reason you are at risk doesn't fit into one of the five reasons of refugee protection.

You must also prove there is no other safe country in which you can live, and that you haven't done any serious crimes.

If you prove you are owed protection AND pass character and security checks you can get a permanent protection visa (Subclass 866).

People who arrive in Australia without a valid temporary visa and fear returning to their home country should get legal advice. They cannot apply for a permanent protection visa.

What forms to use

Most people need to do an online application using Home Affairs' visa application system. If you can't do it online you may be able to get special permission from Home Affairs to lodge a paper Form 866. You should not lodge a paper form unless you have permission.

The cost for an application is \$50 or, if you are in detention, there is no fee.

Completing the application

Get advice from an experienced lawyer or registered migration agent before you complete and lodge your application.

Some information about how to apply is available online: from RAILS [here](#); from Refugee Advice and Casework Service [here](#); and from Home Affairs [here](#).

After your application is lodged

After your application is lodged, it may take up to 6 weeks before Home Affairs confirms that your application has been received. You will then be invited to attend a biometrics appointment (fingerprints and digital photograph at Home Affairs' office. You must attend this appointment. If you do not provide biometrics, your application will be invalid and cannot be granted.

If your application has insufficient evidence or details of your protection claims, Home Affairs may refuse your application without giving you an opportunity to provide more information or evidence. It is therefore very important that you provide as much information and supporting evidence about your protection claims as you can in your application.

You may also be invited to provide more evidence about your claims in writing and/or by attending an interview with a Home Affairs officer. **If you are asked to provide more information in writing or you are asked to go to an interview, it is very important that you do this.** If you don't do it by the date that Home Affairs give you, your application could be refused.

The Department Interview

If you are invited to an interview with a Home Affairs officer, they will ask many questions to check your identity, your credibility (whether you are telling the truth) and your refugee claims. They will have all the information you have given them before, even overseas applications if you've made any. They may also have information from other countries in Europe, Canada or the United States.

If you get any new information or evidence to support your claims, you can submit it to Home Affairs before the interview or any time before a decision is made.

What happens after the Department Interview?

After the interview, Home Affairs must complete health, character and security checks for you and others who are part of your application. This can take a very long time. If you applied online, you will be able to check the status of your application through your IMMI account Including any correspondence sent to you.

You will then receive a letter saying that your application has been granted or refused. If it is refused, the letter will include the reasons the Home Affairs officer did not agree that you qualify for protection in Australia.

What if my application fails?

You can apply for a review of Home Affairs' decision from the Administrative Review Tribunal (ART). you **must** apply to the ART within 28 days of the date Home Affairs notifies you. This deadline cannot be extended so it is very important that you don't miss it.

You also may be able to seek review by a court (called 'judicial review'), but this is complex and can be very costly.

You should **urgently** get legal advice about any refusal.