

APPLYING FOR JUDICIAL REVIEW – FEDERAL CIRCUIT & FAMILY COURT OF AUSTRALIA



If you have received a negative decision from the Administrative Review Tribunal (**ART**) or the former Immigration Assessment Authority (**IAA**) you may have the right to ask the Federal Circuit and Family Court of Australia (**FCFCOA**) to review that decision. This process is known as *judicial review*.

We strongly recommend that you obtain legal advice about your individual circumstances as soon as possible if you are considering or in the process of judicial review, and that you secure legal representation if possible. You can find information about obtaining legal assistance from ASRC [here](#), and from other services [here](#).

The role of the FCFCOA

The FCFCOA's role is to determine if a decision was made according to law, including if the decision-maker followed the correct legal procedures and applied the law correctly. The FCFCOA publishes a [video](#) about its role in migration cases.

The FCFCOA **cannot** consider the merits of your claims to protection or whether you should or should not be granted a visa.

If the FCFCOA finds there was a legal error, your case will be sent back to the decision-maker to be considered according to law. This essentially gives you a further chance to make your case for eligibility for a protection visa.

If the FCFCOA finds there was no legal error, you may be able to appeal that decision to the Federal Court of Australia.

Is there a deadline to apply?

You must file your application for review within 35 days of the date of the decision.

This time limit can be extended at the discretion of the court, but you will need to explain why you could not file within the 35-day period: for example, you might have had health issues or issues accessing legal assistance.

How much will it cost?

Fees

Unless you meet the criteria for exemption, there are [fees](#) for filing an application, which generally increase annually. If your application is successful, you may be able to recover these fees.

There is no fee if you are in immigration detention or prison. The court can also waive the fee if you are experiencing financial hardship. You will need to provide the relevant [form](#) with your application to access these waivers.

Legal costs

If your application is unsuccessful, the court may order you to pay the Minister's [legal costs](#), which can exceed \$8,000. Whilst it is appreciated you may not be able to pay immediately or may need a payment plan, that amount becomes a debt to the Commonwealth that may make it harder for you to get a visa in the future until you are able to make arrangements for repayment.

If you are successful, the court may order the Minister to pay a portion of your legal costs.

How do I apply?

You need to file a formal application with the court, including:

- A completed Application – Migration Act (include a request for an extension of time if you are filing outside the 35-day period)
- An affidavit, attaching a copy of the decision you want reviewed, sworn or affirmed by a qualified person (for example, a [justice of the peace](#) or a lawyer).
- Fee payment, or a form for fee waiver.

You can indicate in the forms if you require an interpreter. Given the process is complex and often technical, we recommend requesting an interpreter if you are not confident to ensure you are able to understand and engage. There is no penalty for doing so.

The Court publishes [information](#) about completing the forms.

You will need to identify grounds of review. These are legal errors you believe were made. They might include things like a failure to provide you with procedural fairness, failing to consider a claim or information, applying the wrong legal test, or reaching an unreasonable decision or conclusion. You will have an opportunity to change these grounds later, including if you are able to obtain legal representation.

You can file the documents through [eLodgement](#), or in person at a relevant [Registry](#). You can contact the [court](#) or legal services if you are not sure how to file the documents.

Once the court accepts your lodgement, they will send you official versions. You should serve these on the Minister by emailing them to litigation.applications@homeaffairs.gov.au.

How long will it take to get a decision?

There are currently significant delays in the FCFCOA, which the Australian Government is seeking to address. At present, from lodgement to a decision can take as long as 7 years, but it can also take significantly less time (for example, if the court agrees to hear your matter quickly, or if the Minister agrees there is legal error in your decision).

What does the process involve?

The FCFCOA publishes [useful videos](#) in a range of languages about the court process.

After you have filed your application, the FCFCOA will make orders setting a timeline for when your written arguments are due. You will receive a date for your final hearing later, sometimes after years.

Ensure you monitor your email or mail for any correspondence and [update the FCFCOA](#) if you change your contact details, as there can be serious consequences if you miss important letters or dates. If you are having trouble updating your details, you should contact the [Registry](#). You should also update the Department through [ImmiAccount](#) when you change your contact details.

The final hearing is a critical opportunity to raise legal arguments. It is important to have legal representation. The FCFCOA has a [video](#) available about attending court.

Usually, you will not receive a decision at the final hearing. It may take weeks or months for the court to provide its decision.

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Getting legal representation

Because judicial review is legally complex, it is very important you have ethical, experienced legal representation in court.

A lawyer will not be able to encourage you to make an application or represent you formally until they have assessed that there are reasonable grounds for believing your application has a reasonable chance of success. It may take time for this assessment to happen, so you should seek advice and representation as soon as possible, including about the prospects of success of your application. This will help you make informed decisions about your case.

You can apply to Victoria Legal Aid (VLA) for a grant of legal assistance if you cannot afford to pay a lawyer to represent you at the FCFCOA. To contact VLA and apply for their assistance call [1300 792 387](tel:1300792387). You can find information about obtaining legal assistance from ASRC [here](#), and from other services [here](#).

What if I do not want to continue with my application?

If you decide that you do not want to continue with your application, you can file a form called a [Notice of Discontinuance](#) with the FCFCOA. You may still have to pay some of the Minister's legal fees, so we recommend seeking legal advice and securing agreement about costs prior to discontinuing your case.

What will happen to my bridging visa while I am at court?

If you held a bridging visa when you received the decision you are reviewing in court, that visa will most likely expire 35 days after the date of the decision, meaning you will no longer hold a visa unless you apply for a new one, placing you at risk of detention.

In that case, or if you do not currently hold a bridging visa, you should apply for a new bridging visa without delay, on the basis of seeking judicial review. The simplest way to do so is through your [ImmiAccount](#). If you apply before your current bridging visa expires, your application will likely be for a bridging visa of the same class (A, B, C or E).

The conditions on your visa will depend on your individual circumstances. In many cases, you may not be granted the right to work. You can use [VEVO](#) to check your visa status and conditions.

What are my options if I don't want to apply to court?

If you do not apply to the FCFCOA to review your protection visa refusal, you generally have 3 options:

1. **Seek advice from a private lawyer** about possible visa options available to you, if any.
2. **Request the Minister personally intervene** to grant you a visa or allow you to apply for a visa (this is called applying for [Ministerial intervention](#)). This process can be lengthy, uncertain and stressful.
3. **Consider departure from Australia.** You can contact the [International Organisation for Migration](#) (IOM) to discuss return to your country of origin. We recommend seeking legal advice prior to doing so to ensure you understand your options.

***Disclaimer:** This fact sheet provides general information to people seeking asylum in Australia through the onshore protection visa application process according to the law in October 2024. It does not constitute legal or migration advice. You should not rely on this fact sheet to make decisions about your immigration matter. We strongly recommend that you get independent advice from a legal practitioner.*