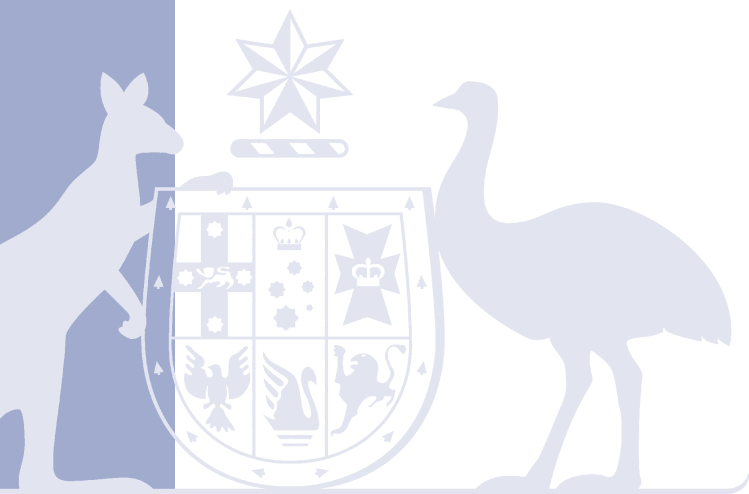




FEDERAL MAGISTRATES COURT OF AUSTRALIA

Review of Migration Decisions by the Federal Magistrates Court



AUSTRALIA

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Magistrates Court cannot provide legal advice.

Review of migration decisions

The Federal Magistrates Court of Australia (the Court) can review some decisions made under the *Migration Act 1958*. These include decisions made by the Minister for Immigration and Citizenship (the Minister), the Refugee Review Tribunal and the Migration Review Tribunal.

The people responsible for making decisions under the Migration Act include the Minister and the Members of the Refugee Review Tribunal and the Migration Review Tribunal (the decision makers). These decision makers look at the merits of your application and whether you should or should not be granted a visa.

Judicial review

The Court may only review a decision in order to determine if a 'jurisdictional error' has been made. This means the Court determines if the decision has been made according to law. The Court is independent of the decision makers. The Court does not consider the merits of your application and whether you should or should not be granted a visa.

If the Court finds a jurisdictional error, it can:

- refer your case back to the decision maker, and
- prevent the Minister from acting on the decision.

The Court cannot:

- reconsider the facts and reasons for your visa application
- take new factual information into account (unless it is relevant to a question of whether the decision maker made a jurisdictional error), or
- grant you a visa.

Who can apply?

If you are unhappy with the decision, you may apply to the Court if you believe a jurisdictional error has been made. You should seek legal advice before filing an application.

Confidentiality

Generally, court hearings are open to the public. In certain circumstances a closed hearing may be ordered. If your case involves a protection visa decision, the Court is not allowed to publish your identity.

Time limits

You must file an application for review within 35 days of the date of the migration decision. The Court may extend the time limit. If you require a time extension, you must ask for it in the application and explain why. The Court will decide whether to grant an extension of time.

Communicating with 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 Federal Magistrate allocated to decide your case outside of the courtroom.

It is important that you keep the Court and the Minister's solicitor 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 solicitor in writing as soon as possible. A Notice of Change of Address form is available at www.fmc.gov.au or from the court registry.

Court forms

To apply for a review of a decision, you must complete:

- an application, and
- an affidavit.

You can get these documents from the Court's website or court registry. For help drafting an affidavit, see the Court's fact sheet 'Preparing an affidavit' which is also available from the Court's website.

Your application must identify what jurisdictional error you believe the decision maker has made. In your affidavit, you must explain all of the relevant facts and circumstances relating to the alleged error. You must attach to your affidavit, a copy of the decision to be reviewed and any statement of reasons for the decision.

You must complete all parts of the application; otherwise it may be returned to you for completion.

Filing and fees

You need to file your application and supporting documents with the Court. You can file court documents in person, by mail, or in certain circumstances by fax or email. Ensure that you file the original along with two additional copies. The Court will keep the original and return the sealed copies to you.

You must pay a fee when you file your application and another fee for the final hearing. The fees do not apply in some cases; for example, if you hold certain government concession cards or you can demonstrate financial hardship. For more information about fees, go to the Court's website or contact the court registry.

Service

After filing, you must give a sealed copy of your application and supporting documents to the Minister and in most cases the Tribunal who made the decision. This process is known as service of documents. You can serve the documents on the Minister via the Department of Immigration and Citizenship (the Department). The Department has offices in each capital city.

Go to www.immi.gov.au or call the Department on 131 881 for address details.

Court hearings

The Court will allocate a time and date for your hearing. On the first court date the Court may give orders and directions for:

- an immediate hearing
- a second or final hearing date
- a stay or interim (temporary) orders
- the filing of amended or further documents.

If the Court orders an immediate or a second hearing before a final hearing, the Court may require you to show that you have an arguable case. If you cannot show that you have an arguable case the Court may dismiss your application without a final hearing.

At each court hearing, the Court will give you an opportunity to address the issues related to your case. If you have a lawyer they will speak for you. The Minister will usually be represented by a lawyer, and you or your lawyer will have the opportunity to respond to what is said in court.

The Court often announces its decision at the end of the final hearing. If not, you will be notified of the date the Court will announce its decision.

NOTE: Unless the Court excuses you from attending, you must attend court whenever there is a hearing. If you fail to attend a hearing, the Court may dismiss your application in your absence and award costs against you.

Interpreters

You can contact the Court by calling the interpreter telephone service on 131 450.

If you need an interpreter to translate for you at the court hearing, you must indicate this on your application form.

Legal costs

Legal costs are the fees and expenses charged to a client by their lawyer. Generally the unsuccessful party has to pay the legal costs of the successful party. If the Court dismisses your application you will probably have to pay the Department's legal costs. The total cost will depend on the length of the case and the amount of work done. Part 2 of Schedule 1 to the *Federal Magistrates Court Rules 2001* sets out the legal costs. The Federal Magistrates Court Rules are available at www.comlaw.gov.au. If you choose to discontinue your case without a hearing, you will generally have to pay a reduced proportion of the Department's legal costs.

Withdrawing your case

If you decide to withdraw your application, you must complete a Notice of Discontinuance and file it with the Court. You must also send a copy of the notice to the Minister's solicitor. If there is less than 14 days before your final hearing, you must obtain the Court's permission to discontinue your case.

Legal advice

The legal issues concerning the review of migration decisions are often complex. You should seek legal advice about your application as soon as possible. You may be able to get some free advice from a legal aid office or community legal centre. Otherwise, you will need to choose your own lawyer and pay for this service.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

More information

For more information, including access to any of the legislation, forms or fees mentioned in this brochure go to the Court's website at www.fmc.gov.au

Registry contact details

AUSTRALIAN CAPITAL TERRITORY

Commonwealth Law Courts
Childers Street, Canberra City ACT 2600
Phone 02 6267 0566

NEW SOUTH WALES

John Maddison Tower
Level 12, 88 Goulburn Street
SYDNEY NSW 2000
Phone 02 9377 5600

NORTHERN TERRITORY

Level 3, Supreme Court Building
State Square, Darwin NT 0800
Phone 08 8941 2333

QUEENSLAND

Level 6, Commonwealth Law Courts
119 North Quay, Brisbane Qld 4000
Phone 07 3248 1100

SOUTH AUSTRALIA

Level 5, Commonwealth Law Courts
3 Angas Street, Adelaide SA 5000
Phone 08 8219 1000

TASMANIA

Commonwealth Law Courts
39-41 Davey Street, Hobart Tas 7000
Phone 03 6232 1715

VICTORIA

Level 7, Commonwealth Law Courts
305 William Street, Melbourne VIC 3000
Phone 03 8600 3333

WESTERN AUSTRALIA

Level 6, Commonwealth Law Courts
1 Victoria Avenue, Perth WA 6000
Phone 08 9268 7100