



Review of Migration Decisions

Who is this brochure for?

This brochure is for people who want the Federal Magistrates Court of Australia (the Court) to review a visa-related decision.

What decisions can the Court review?

The Court can review some decisions made under the *Migration Act 1958*. The people responsible for making decisions under the Migration Act include the Minister of Immigration and Citizenship and the Members of the Refugee Review Tribunal and the Migration Review Tribunal.

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.

What can the Court do?

If your review application is successful, the Court can refer your case back to the people responsible for making the decision. The Court can also prevent the Minister from acting on the decision.

What can't the Court do?

The Court cannot reconsider the merits of your application and whether you should or should not be granted a visa.

Is the Court independent?

Yes, the Court is independent of the people who make decisions under the Migration Act.

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 prior to filing an application.

Is the court hearing private?

Generally, court hearings are open to the public. If your case involves a protection visa decision, the Court is not allowed to publish your identity.

Do time limits apply?

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.

Which forms do I need?

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

- an application, and
- an affidavit.

You can get these documents at www.fmc.gov.au or from a court registry near you.

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.

Who do I need to give the forms to?

Once complete, you need to file your application and supporting documents with the Court. 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.

What happens at the court hearing?

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 hearing 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 they say in court. Unless the Court excuses you from attending, you must attend court whenever there is a hearing.

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.

What about 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.

Do I have to pay any money?

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. If you want to know more about fees, speak to registry staff at the Court.

If the Court dismisses your application you will probably have to pay the Department's legal costs. 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.

Can I withdraw my case?

Yes. If there is less than 14 days before your final hearing, you must obtain the Court's permission to discontinue your case.

Do I need legal advice?

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.