

Judicial Review

To be successful at Judicial Review, you must show that the decision maker made a legal error in the way they made their decision. The Federal Circuit and Family Court of Australia (FCaFCoA) and High Court of Australia (HCA) do not look at whether or not you are a refugee or owed protection by Australia.

Judicial review in the courts

If your visa application at the Department or merits review at the Immigration Assessment Authority (IAA) or Administrative Appeals Tribunal (AAT) has been unsuccessful, you have the right to apply for “judicial review” of the decision in the Federal Circuit and Family Court of Australia (FCaFCoA) or the High Court of Australia (HCA).

An application for “judicial review” involves asking the court to consider whether the decision maker properly applied the law to your application and/or whether the decision maker gave you a fair hearing. The court will not consider the issue of whether or not you are a refugee.

This area of the law is complex and it is difficult to prepare an application for judicial review without the assistance of a solicitor or barrister. While it is preferable to have a lawyer assist you to make the application, it is still possible to prepare and file an application by yourself.

RACS is unable to provide advice or assistance on whether to make an application for judicial review. We strongly recommend that you seek legal advice about whether to make an application for judicial review, as you will be liable to pay costs if your application is unsuccessful.

If the court decides that the decision maker did make an error of law, it will order the decision maker to again consider your application from the beginning.

Time limit for filing an application

According to section 477 of the Migration Act an application for judicial review in the FCaFCoA must be filed within **35 days** of the date of the decision under review.

If you have missed the deadline for filing an application, it may still be possible to file the application “out of time”. You need to ask the court to give you special permission to file the application out of time, and we suggest you seek legal advice on whether this is possible and what you need to do.

Filing Later than 35 Days after Decision

If it has been more than 35 days since the date of the decision under review, you can still try to apply for review. You need to fill out the section on the Application Form ‘Grounds of application for extension of time’ and explain why you think the court should extend the time limit. The court will consider the information but it may not grant you an extension, so you should always try to file within the 35 day time limit.

Legal advice and assistance in relation to making a judicial review application

RACS generally does not provide assistance with applications for Judicial Review. If you require legal advice on whether you should make an application and on how to prepare it, we suggest you contact the following organisations:

- (a) The Law Society of NSW - Pro Bono Scheme
170 Phillip St, Sydney NSW 2000
Tel: (02) 9926 0364
Email: probonoscheme@lawsocnsw.asn.au

Web: <https://www.lawsociety.com.au/for-the-public/pro-bono-scheme> (see list of matters excluded from Pro Bono Scheme)

(b) The NSW Bar Association

Legal Assistance Referral Scheme, Selborne Chambers

Lower Ground Floor, 174 Phillip St, Sydney NSW 2000

Tel: (02) 9232 4055

Email: legalassist@nswbar.asn.au

Web: <https://www.nswbar.asn.au/briefing-barristers/legal-assistance/lars-guidelines>

(c) The Legal Aid Commission of NSW (Government Law Section)

323 Castlereagh St, Sydney NSW 2000

Tel: (02) 9219 5790

Web: <https://www.legalaid.nsw.gov.au/what-we-do/civil-law/immigration-service>

Assistance with filing a judicial review application

If you have any questions about how to file an application, we suggest you contact the Registry of the FCaFCoA:

Registry of the FCaFCoA

Law Courts Building

Level 17, Queens Square, Sydney

Tel: (02) 9230 8567

Unrepresented applicants

If you file an application for judicial review without the assistance of a lawyer, **the court may appoint a lawyer to review your case and possibly represent you**, under the “**Federal Court Legal Assistance Scheme**”.

See the Federal Court website for more information <http://www.fedcourt.gov.au/going-to-court/i-am-a-party/help-with-legal-problem/court-referral-assistance>

Can RACS help me to file within time?

No. RACS does not help people file applications in the FCaFCoA. If you have been refused by or excluded from the IAA and cannot afford to pay for a lawyer, RACS can try to refer your matter to a barrister for an opinion on your prospects of success in the FCaFCoA through our Justice for Refugees (J4R) service. If you have reasonable prospects of success RACS will try to find a small legal team to represent you in the FCaFCoA. You do not have to pay for this service. Details of what we need to help you are set out below.

However, RACS is not allowed to encourage anyone to commence migration litigation if you do not have reasonable prospects of success, or if we have not yet received an opinion on the prospects of your case within the 35 day time limit. So you need to file the application in the FCaFCoA yourself if you intend to seek judicial review.

How can I get help from RACS?

If you are still receiving assistance from an SRSS caseworker, please contact your caseworker for assistance in gathering and submitting the documents we need to consider referring your matter to our network of lawyers and barristers.

If you do not have a caseworker, RACS will book an appointment with you and you will be required to provide RACS with:

- copies of statements for all your bank accounts in Australia for the past 3 months;
- the IAA decision (if applicable);
- the Department decision;
- a copy of your protection visa application and any statement you made;
- the recording the Department made of your protection visa interview;
- any submissions that you or someone else made to the Department or the IAA;
- the recording the Department made of your entry interview.

Please make a real effort to see if you have these documents, as time is now limited to decide if you should make an application for judicial review and it might take too long to get them from the Department again.

You will need to consent in writing to RACS sharing your information with its network of lawyers and barristers and sign relevant Freedom of Information request forms. If you used another migration agent or lawyer when you applied for a protection visa or at the IAA you will also need to sign an Authority to allow RACS to contact them.

Unless we have received an opinion from a barrister that says that you have reasonable prospects of success in the FCaFCoA, RACS can only provide you with the following general information about the process of filing with the FCaFCoA.

Are there any costs and risks to filing for judicial review?

You can apply for an exemption from paying Court Fees if you don't have the money to pay them (see below).

However, if you run your matter in the FCaFCoA and are not successful, then there is a risk that the court will make a costs order against you. This means that you have to pay the Department's legal costs which could be \$5,000 - \$10,000 or more. If you are unable to pay these costs, there is a serious risk that you cannot ever enter Australia again until you pay them. These costs are different to Court Fees and you cannot get an exemption from paying them.

Forms you are required to file

1. Application Form

You will need to print, fill out and sign the form at the following link:

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics/Migration/>

You need to provide your name, contact details, tick the order(s) you want and specify the ground(s) of the review – that is what jurisdictional error you think that the decision maker has made. RACS cannot assist you to draft the grounds. Some examples of jurisdictional error can be found on the Federal Court's website at the following link: <http://www.fedcourt.gov.au/law-and-practice/areas-of-law/migration/introduction>

The examples the Court lists include:

- *identifying a wrong issue;*
- *asking a wrong question;*
- *ignoring relevant material;*
- *relying on irrelevant material; or*
- *an incorrect interpretation and/or application to the facts of the applicable law.*

2. Supporting Affidavit

You will need to complete a supporting affidavit explaining that you are seeking judicial review of your decision and attach a copy of the relevant decision - either your AAT/IAA decision or the Department's decision to refuse to grant you a protection visa if you have been excluded from a review in the IAA. The affidavit needs to be sworn/signed in front of a lawyer or JP. The form is at the link below:

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics/all+jurisdictions/form-fcc-affidavit>

3. Application for Exemption from Paying Court Fees

Financial Hardship

If you were receiving Centrelink/SRSS payments but these have now stopped, or you are working, and you cannot afford to pay any Court Fees, you will need to fill out an Application for Exemption due to Financial Hardship and give the FCaFCoA 3 months' recent bank statements and other documents showing your financial position, including a signed statement from anyone who is helping you by paying rent or other expenses for you. You can download the form and find further information about it at this link on the Federal Court website:

<http://www.fedcourt.gov.au/forms-and-fees/court-fees/exemptions/guide-to-form-financial-hardship>

Note that the form also needs to be sworn/signed in front of a JP.

General

If you are in detention or an unaccompanied minor then you need to use the General exemption form. You can download the form and find further information about it at this link on the Federal Court website:

<http://www.fedcourt.gov.au/forms-and-fees/court-fees/exemptions/guide-to-form>

Note that the form also needs to be sworn/signed in front of a JP.

4. Unaccompanied Minors

If you are under the age of 18 you need to have an adult litigation guardian. You need to ask for an order in the Application Form that the litigation guardian be appointed. The litigation guardian must also swear and then file an affidavit consenting to being appointed as litigation guardian.

How to file?

Before you file, email MigrationTeam@fedcourt.gov.au to obtain a pseudonym (hidden identity). A pseudonym is legally required for certain proceedings relating to protection visas.

You should electronically file your application using [eLodgment](#).

If you cannot electronically file your application and you are in NSW, you can email your application to: nswdr@fedcourt.gov.au.

What happens next?

After you file, the Registry staff will email you stamped copies of the Application Form and other documents you filed. You will need to serve on (give to) the Department a stamped copy of the Application Form.

The Registry staff will also email you Filing and Hearing Details and list your First Court Date. If you don't have an email address, ask the Registry staff for hard copies of the documents. Do not lose the documents as it costs \$50.00 to get copies from the FCaFCoA and this fee can't be waived.

How to serve the copy of the Application Form on the Department?

You can serve the copy of the Application Form on the Department by:

- sending it by **registered post** addressed to:

The Proper Officer
Department of Home Affairs

GPO Box 9984, Sydney NSW 2001

Applying for a further Bridging Visa

Please refer to the RACS Fact Sheet 'Your Options if Refused by the AAT or IAA'.

Getting help from RACS

RACS is entirely independent of the Department of Home Affairs. All assistance is free.

If you would like advice or assistance, RACS offers the following service options:

Service	Day	Time	Address/Number
Client Line	Monday to Friday	11AM to 1PM and 2PM to 4PM	(02) 8355 7227 or admin@racs.org.au
Auburn Drop-in	Wednesday	Register in person from 10 AM to 12 PM	Visit 44A Macquarie Road, Auburn

Please note: This fact sheet contains general information only. It does not constitute legal or migration advice. RACS is independent of the Department of Home Affairs. All assistance is free. This factsheet was prepared in October 2023.