

## Filing for Judicial Review in the Federal Circuit Court

This factsheet is for people who have decided to file an application for judicial review in the Federal Circuit Court ('FCC') without legal help.

### Can Legal Aid ACT help me to file?

Legal Aid ACT is not allowed to encourage anyone to start migration litigation unless the matter has reasonable prospects of success in the FCC. We recommend that you apply for a grant of legal assistance if you are unable to afford a private legal representation.

For more information on how to apply for a grant of legal assistance see our other factsheets titled 'Applying for a Grant of Assistance' and 'Filling out the Form – Applying for a Grant of Assistance Guide'. These factsheets are available on our website.

#### Legal Aid ACT

9.00am-4.00pm Monday-Friday

[www.legalaidact.org.au](http://www.legalaidact.org.au)

Phone: **1300 654 314**

Without a grant of legal assistance, Legal Aid ACT can only provide you with the following general information about how to file.

See:

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/gfl/migration/brochure/>

### Are there any costs and risks?

#### Court Fees

There are fees you must pay the FCC called Court Fees. They are the filing fee (approximately \$615) and the hearing set down fee (approximately \$735). You

can apply for an exemption from paying Court Fees if you do not have the money to pay them (see below).

#### Legal Costs

If you appeal to the FCC and are not successful, then there is a risk that the FCC will make a costs order against you. This means that you have to pay the Minister's legal costs which could be \$7,300 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 not the same as Court Fees and you cannot get an exemption from paying them.

### Forms you are required to file

#### 1. Application Form

You need to print, fill out and sign the application form. Link:

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

You must provide:

- Your name;
- Contact details;
- Tick the order(s) you want;
- Specify the ground(s) of the review – this means what jurisdictional error you think that the decision maker has made.

The decision maker is either the Immigration Assessment Authority ('IAA'), or the Department of Home Affairs (the 'Department') if you have been excluded from a review in the IAA

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Some examples of jurisdictional error can be found on the Federal Court's website. Link:

<http://www.fedcourt.gov.au/law-and-practice/areas-of-law/migration/introduction>

These include:

- Identifying a wrong issue;
- Asking a wrong question;
- Ignoring relevant material;
- Relying on irrelevant material; or
- Incorrect interpretation and/or application of the applicable law to the facts.

### 2. Supporting Affidavit

You need to complete a Supporting Affidavit stating that you are seeking judicial review of the relevant decision and attach a copy of it.

The relevant decision is either your 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 Supporting Affidavit needs to be sworn (signed) in front of a lawyer or Justice of the Peace.

Link:

<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 cannot afford to pay any Court Fees, you can fill out an *Application for Exemption due to Financial Hardship*.

You can download the form and find further information about it at this link on the Federal Court of Australia website (the FCC uses the same form):

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

The *Application for Exemption due to Financial Hardship* is in the form of an affidavit and needs to be sworn (signed) in front of a lawyer or Justice of the Peace.

You also need to provide evidence of your financial situation that shows that you cannot afford to pay the Court Fee.

You do not have to provide evidence that you can support yourself financially until your matter is finalised by the FCC.

The evidence to show you cannot pay the Court Fee could include:

- Statements from all your bank accounts for the last 3 months;
- A lease agreement for where you live if you have one;
- Receipts for rent payments.

If someone is supporting you by paying rent or other expenses, then they should provide a statutory declaration saying this.

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A statutory declaration form can be downloaded from the Attorney-General's Department website.

Link: <https://www.ag.gov.au/Publications/Statutory-declarations/Documents/commonwealth-statutory-declaration-form.pdf>

This is not a complete list of evidence. There may be other documents you can provide which show your financial situation. The FCC Registry staff may ask for more evidence.

If you are not receiving Centrelink payments, do not have a job or are not receiving financial support from anyone you should say this clearly in form.

### Unaccompanied Minors

If you are under the age of 18 then you must have an adult litigation guardian. The litigation guardian must also swear and file an affidavit consenting to being appointed as litigation guardian.

### Where to go?

You file your application in the FCC Registry which is located at:

Nigel Bowen Commonwealth Law Courts  
Building  
Cnr Childers St and University Ave  
Canberra ACT 2600

### What happens next?

When you give all the documents to the FCC Registry staff and the documents are accepted for filing, they will keep the original Application Form, Affidavit and Exemption Form.

They will give you back a copy of the Application Form and the Affidavit with a coversheet called a

*Notice of Filing and Hearing*. This will set out the date of your First Court Date or directions hearing.

Make sure you do not lose the documents as it costs \$50.00 to get copies from the FCC and this fee cannot be waived.

The Registry staff can also email you a copy of the documents. If you have an email address and wrote it on the Application Form, you should ask them to do this.

You then need to give (serve) a copy of the Application Form to the Department of Home Affairs.

### Applying for another Bridging Visa

Once you have filed your application in the FCC, you can then apply to have your Bridging E Visa renewed to allow you to wait for the outcome of your matter in the FCC.

You need to fill out Form 1005 and attach a copy of the FCC Application Form with the Notice of Filing and Hearing on the front.

Link:

<https://www.homeaffairs.gov.au/Forms/Documents/1005.pdf>

If you are in Canberra, the best option for submitting your application for a new Bridging Visa is to scan the completed form (including the FCC Application Form with the Notice of Filing) and email it to the Department of Home Affairs.

Email: [BVEapplication.NSW@homeaffairs.gov.au](mailto:BVEapplication.NSW@homeaffairs.gov.au)

It will take the Department about 2 - 3 weeks to reply letting you know if you have been granted a Bridging

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Visa or not. If you do not hear from the Department in this timeframe you should contact the Department's Community Status Resolution. Service.

### Department of Home Affairs Community Status Resolution

Phone: **1300 853 773**

### General Exemption

If you are in detention or an unaccompanied minor you can submit a General Exemption form to be exempted from paying court fees. Further information and the form can be found on the Federal Court of Australia website. The FCC uses the same form as the Federal Court of Australia.

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

### What if I have missed the 35 day time limit to file?

If it has been more than **35 days** since the date of the IAA decision or the Department's decision (if you have been excluded from review in the IAA), you can still file an application for judicial review.

You must 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.

You should provide supporting information and evidence in your Supporting Affidavit. A judge will consider the information either at a special hearing or just before the Final Hearing of your matter. This will take place several months after you file your application in the FCC Registry.

There is a risk that the judge may decide not to grant you the extension, so you should try to file within the **35 day** time limit.

### Useful Contacts

#### Legal Aid ACT

9.00am-4.00pm Monday-Friday

[www.legalaidact.org.au](http://www.legalaidact.org.au)

Phone: **1300 654 314**

#### Migration Agents Registration Authority (MARA)

[www.mara.gov.au](http://www.mara.gov.au)

#### Migration Clinic – Legal Aid ACT

[www.legalaidact.org.au](http://www.legalaidact.org.au)

Phone: **1300 654 314**

Email: [migration@legalaidact.org.au](mailto:migration@legalaidact.org.au)

*This factsheet was originally developed by the Refugee Advice & Casework Service Sydney (RACS) ([www.racs.org.au](http://www.racs.org.au)).*

*This factsheet is a guide only and is not legal advice. While due care has been taken to ensure the accuracy of the material contained in this factsheet, Legal Aid ACT and the Refugee Advice & Casework Service Sydney cannot take responsibility for any errors or omissions.*