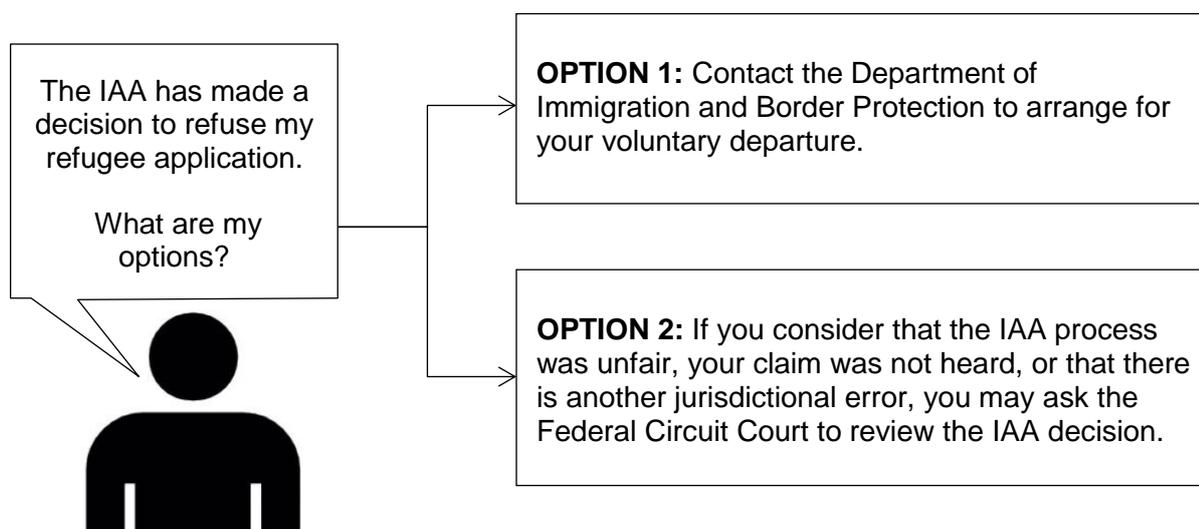


# WHAT IF MY REFUGEE APPLICATION IS REJECTED?

*You may use this information pack if you are an asylum seeker who came to Australia **by boat after 13 August 2012** and the Immigration Assessment Authority (IAA) has made a decision to refuse your refugee application.*

## YOUR OPTIONS:



If you decide that you want to commence a judicial review application ('option 2') you can:

- Pay a lawyer to file the application;
- Ring Legal Aid WA on 9261 6356 to seek an appointment with the Federal Court Duty Lawyer;
- Fill out the forms and file them yourself. This information pack contains the forms you need to apply for this review.

You must file the application at the Federal Circuit Court within 35 days from the date of the IAA decision, or apply for an extension of time if you are outside that period.

## **FORMS TO BE COMPLETED:**

There are three forms that you may need to complete. They are contained in this pack.

- **Application – Migration Act**
- **Affidavit (with the annexure sheet)**
- **Application for exemption from paying court fees**

### **Application – Migration Act**

This is the main form that you must fill out to lodge your application in the Federal Circuit Court.

1. See the example form attached.
2. You need to give the Court three (3) copies of this document.

### **Affidavit**

This is needed to attach a copy of the IAA decision.

3. See the example form attached.
4. Attach a copy of the IAA decision to the annexure sheet.
5. If you are filing your application more than 35 days after the date of the IAA decision, the affidavit must explain the reason for the delay.
6. You will need to sign this document in front of a lawyer or a Justice of the Peace. If you are not in detention, there should be someone at the Federal Circuit Court who can do this when you lodge your application.
7. You need to give the Court two (2) copies of this document.

### **Application for exemption from paying fees**

8. Usually you have to pay a fee to lodge your application in the court. If you don't have much money you can apply for an exemption from paying the fees.
9. You need to sign this form in front of a lawyer, Justice of the Peace or officer of the court. If you are not in detention, there should be someone at the Federal Circuit Court who can do this when you lodge your application.

## FILING YOUR FORMS:

- Fax all the signed forms to the Federal Circuit Court on 08 9268 7208 *or*
- Deliver them to your nearest Federal Court Registry office. If you are in Perth, the Registry is at Level 6, 1 Victoria Avenue, Perth *or*
- Lodge them online at: <http://www.fedcourt.gov.au/online-services/elodgment>

### Remember the Time Limit

You must file online, fax or deliver your signed forms to the Federal Circuit Court for filing as soon as possible. If you are more than 35 days after the date of the IAA decision your application may be rejected.

## WHAT TO DO ONCE YOU HAVE MADE AN APPLICATION TO THE FEDERAL CIRCUIT COURT:

### Hearings

Once you have lodged your application you will receive a first court date, which you **MUST** attend. If you do not attend this court date, your application may be dismissed and you will have to pay any legal costs.

### Legal Assistance

The legal issues concerning the review of migration decisions are complicated. If you have the money to pay a lawyer, that is the best thing to do. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

### Contacting 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 Judge.

It is important that you keep the Court and the Minister of Immigration and Border Protection's lawyer 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 lawyer in writing as soon as possible. You can contact the Court by calling the interpreter telephone service on 131 450.

### Legal Costs

If your application is not successful, you will probably have to pay the Department of Immigration and Border Protection's legal costs. The total amount you have to pay may be thousands of dollars. If you are ordered to pay costs, and you do not do so, this can have an impact on whether you are ever able to return to Australia.

### **Information Only**

*This information is intended as a general guide only and should not be used as a substitute for legal advice.*

## **WHERE TO FIND LEGAL ASSISTANCE AFTER YOU HAVE MADE YOUR APPLICATION TO THE COURT:**

If you cannot afford a lawyer, Law Access may be able to assist you. You will need to provide them with:

1. A copy of the forms you have already filed with the Federal Circuit Court; and
2. The Law Access 'Application for pro bono referral' form.

Post these to:

**Law Access  
M249  
The University of Western Australia  
35 Stirling Highway, Crawley WA 6009**

Or email them to: [lawaccess@lawaccess.net.au](mailto:lawaccess@lawaccess.net.au)

**Note - if you are an “excluded Fast Track applicant” or a “conclusive certificate” has been issued, you will need to apply to a different court. Please see the information sheet for Excluded Fast Track Applicants and Conclusive Certificates.**

# Example only

## Instructions for completion

### APPLICATION – Migration Act

1. This form is used for commencing a proceeding under s.476 of the *Migration Act 1958* (Cth), including where an extension of time is also sought under s.477.
2. You must complete address for service details in the footer on page 1. All correspondence concerning the application will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
3. Each ground of the application must identify a jurisdictional error by reason of which it is claimed that the migration decision under review is not a ‘privative clause decision’ within the meaning given by subsection 474 (2) of the *Migration Act 1958*. Particulars of each ground must be provided which are sufficient to allow the Court to understand how each ground relates to the decision, the reasons for decision, the circumstances of the decision, or the procedures concerned with the making of the decision, as the case may be.
4. An application by an offshore entry person should include details of any recommendation of an Independent Protection Assessment Reviewer which is challenged, and should specify the ground/s for contending that the recommendation was not made in accordance with law. **It is not necessary to seek an extension of time to challenge a future decision (that is; a decision which has not been made yet but which may follow a report or recommendation).**
5. The applicant must file one or more affidavits attaching a copy of the decision and any statement of reasons, and including any other evidence relied upon. If an extension of time is sought, the affidavit must include evidence explaining the delay and showing why the applicant considers that it is necessary in the interests of the administration of justice for the Court to grant an extension (see section 477(2) of the *Migration Act*).
6. If the applicant is unable to raise an arguable case for the relief claimed, the application may be dismissed under Rule 44.12 without a final hearing.
7. If your application is for an extension of time or other interlocutory, interim or procedural orders in a proceeding which has already commenced, you should use the Application in a Case form.
8. Unless the Court orders otherwise, an application and other documents filed with it may not be served less than seven days before the day fixed for the hearing of the application; see Rule 6.19. Service must be by hand, unless the Rules allow otherwise or the Court otherwise orders. The application and other documents may be served by delivering them to the Department of Immigration and Border Protection.
9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
10. Once complete, you need to file the original and a copy of this application for each party to the matter with the court registry. The Court will keep the original and return the sealed copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

**IN THE FEDERAL CIRCUIT COURT  
OF AUSTRALIA**  
REGISTRY: *PERTH*.....

This is the place where the application is to be lodged. Use the city closest to you, eg Perth, Darwin, Sydney, or Melbourne.

File number

Write your whole name.

Ahmed Chan.....

Applicant(s)

Pseudonym(s) for Applicant(s)  
[Registry use only]

**MINISTER FOR IMMIGRATION AND BORDER PROTECTION**

First Respondent

[or]

**IMMIGRATION ASSESSMENT AUTHORITY**

Second Respondent

**APPLICATION – Migration Act**

The applicant applies for an order that the respondents show cause why a remedy should not be granted in exercise of the Court’s jurisdiction under section 476 of the *Migration Act 1958* in respect of the migration decision specified on page 2.

**First court date**

Leave blank.

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): ..... at ..... am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

Leave blank.

(for) Registrar

Date: ...../...../.....

Filed on behalf of .....

Prepared by ..... Lawyer’s code .....

Name of law firm .....

Address for service in Australia ..... Postcode .....

Email ..... DX .....

Tel ..... Fax ..... Attention .....

**Applicant/s details**

Is the applicant or any of the applicants to this proceeding currently in immigration detention?

Yes  No

Check 'Yes' if you are currently in immigration detention. Check 'No' if you are not.

**Migration decision details** (select box and insert details of the migration decision)

Decision made by a tribunal

Name of the tribunal: .....

Date of the decision: ...../...../.....

Have you applied for a protection visa?

Yes  No

Immigration Assessment Authority

Date of the decision: ...17...../...9.../...2015.....

Check this box and put the date of the decision of the Immigration Assessment Authority which was on the letter you received (day/month/year).

Decision made by the Minister or another person under the Migration Act.

Name of decision-maker: .....

Office held: .....

Date of the decision: ...../...../.....

A future decision or other action by the Minister or an officer under the Migration Act.

**Application for extension of time** (an extension is required if the application is not made within 35 days of the date of the migration decision)

Does the applicant apply for an order that the time for making the application be extended under section 477 of the *Migration Act 1958*?

Yes  No

If it is more than 35 days (from the date of the decision of the IAA) to make your application check "Yes". If it is less than 35 days check "No".

**Grounds of application for extension of time** (specify why the applicant considers that it is necessary in the interests of the administration of justice to extend time)

- 1. I could not .....
- 2. I was not aware of .....
- 3.

If you checked "Yes" because you need an extension of time you will need to provide the reason why you need an extension of time. For example, if there were things that you were unaware of or could not do, you could tell the Court these things.

**Other Interlocutory, interim or procedural orders sought by applicant/s** (complete only if other interlocutory, interim or procedural orders are sought)

1.

2.

Leave blank.

3.

**Final orders sought by applicant/s** (select boxes and add additional or alternative order/s)

Check these two (2) boxes.

An order that the decision of the tribunal, Immigration Assessment Authority or Minister be quashed.

A writ of mandamus directed to the tribunal, Immigration Assessment Authority or Minister, requiring them to determine the applicant's application according to law.

A declaration that the recommendation of the Independent Protection Assessment Reviewer was not made in accordance with law, by reason of the ground/s of this application.

An injunction restraining the Minister, by himself or by his Department, officers, delegates or agents, from making the future decision or taking the other action the subject of the proceedings.

(state precisely each other order sought by way of final relief)

1.

2.

3.

**Grounds of application** (see Instructions for completion)

1. *The Assessment was unfair because* \_\_\_\_\_.

2.

3.

4.

Say why you believe the Immigration Assessment Authority process or decision was unfair.

**Other Court Proceedings** (This section must be completed if the applicant has made a previous application or applications to a court to review the decision – see section 486D of the Migration Act 1958.)

Leave blank.

Person or persons who made each previous application: .....

Court or courts to which each application was made: .....

Commencement date of each previous application or applications: .....

File number of each application: .....

Outcome of each application: .....

**Language spoken**

Does the applicant require an interpreter?

No

Yes

If you need English language assistance check "Yes".

If Yes, what language: *eg Dari, Farsi, Mandarin, Vietnamese* .....

If you need English language assistance say which language you speak here.

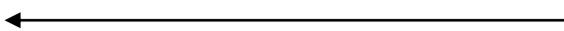
**Service of Application**

The application must be served on each respondent within 7 days by delivering it to the Department of Immigration and Border Protection at the address below.

[The address will be inserted by the Registry]

**Signature of applicant/s or lawyer**

Ahmed Chan



Write your whole name.

Signed by (print name/s)

.....



Sign your name.

the applicant/s or  lawyer for the applicant/s

Date: .....5...../..12...../..2015.....



Write the date (day/month/year) on which you are signing the form.

**Lawyer's Certification** (see section 486I of the Migration Act 1958)

I, [name], the lawyer filing this document commencing migration litigation, certify that there are reasonable grounds for believing that this migration litigation has a reasonable prospect of success.

Leave blank

Signature of the lawyer filing application

Date: ...../...../.....

## **IMPORTANT NOTICE TO RESPONDENT/S**

To the respondent(s):

**Leave blank**

of (the address will be inserted by the Registry):

.....

A respondent who intends to contest the application must file a response within 14 days of service of the application. A response must specify each ground of opposition with particulars, including grounds of objection to competency, previous court proceedings, delay, etc. Any evidence relied upon must be detailed in or attached to an affidavit.

A respondent who does not intend to contest the application may file a notice of appearance which submits to the orders of the Court save as to costs.

# Example only -Instructions for completion

## AFFIDAVIT

1. This form of affidavit may be used in any proceeding where no other form of affidavit is applicable under the *Federal Circuit Court Rules 2001* (the Rules).
2. Each paragraph in this affidavit must be numbered.
3. This affidavit must be sworn or affirmed before a person authorised by law to witness the swearing of affidavits; for example, a lawyer, notary public or Justice of the Peace.
4. Each page must be signed by the deponent (the person making the affidavit).
5. Any alteration in the affidavit must be initialled by the deponent and the witness.
6. You must complete address for service details in the footer on page 1. All correspondence concerning the affidavit will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
7. If the facts in the affidavit are supported by a document, a copy of the document must be attached to this affidavit. This document is then referred to as an 'annexure'. If there is more than one annexure refer to each by a number or letter; for example – 'Annexure 1' or 'Annexure A'. The annexure should also have page numbers. If there is more than one annexure, the page numbers must run consecutively until the last page of the last annexure. If it is impractical to annex a document, it may be separately identified as an exhibit; see Rule 15.28.
8. Each annexure must include a statement signed by the witness identifying the annexure as the document referred to in this affidavit. The wording of the statement is as follows:

This is the document referred to as [*insert annexure identification*] in the affidavit of [*insert deponent's name*] sworn/affirmed at [*insert place*] on [*insert date*] before me [*witness to sign and provide name and qualification*].

The statement must be signed at the same time as the affidavit and by the same witness.

9. The Court may strike out any material which cannot be used in evidence; for example, if it is unnecessary, scandalous or contains opinions of persons not qualified to give them. See Rule 15.29.
10. If the deponent does not have an adequate command of English, a translator must read or give in writing a translation of the affidavit and oath/affirmation in a language which is understood, and must certify in the signing clause that he or she has done so. Use the alternative jurat for the swearing/affirming of the affidavit and the translator's certificate.
11. Once complete, you need to file the original and a copy of this affidavit for each party to the matter with the court registry. The Court will keep the original and return the copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

**Remove this instruction sheet before filing**

**FEDERAL CIRCUIT COURT OF AUSTRALIA**

**REGISTRY: PERTH**

This is the place where the application is to be lodged. It should be the same as on the application form.

File number: .....	
COURT USE ONLY	
Court Location	Leave blank.
Court date	
Court time	

Write your whole name.

**Ahmed Chan**  
Applicant

**MINISTER FOR IMMIGRATION AND BORDER PROTECTION**  
Respondent

**IMMIGRATION ASSESSMENT AUTHORITY**  
Other party

*\* Repeat as necessary for additional parties*

**AFFIDAVIT**

**Name of deponent:** *Ahmed Chan*

**Date sworn / affirmed:** *5/12/2015*

Write the date on which this form was completed (day/month/year).

I, ( full name ) *Ahmed Chan*

of ( address ) *Yongah Hill Detention Centre, Northam, WA* ( occupation ) *fisherman*

make oath and say / affirm:

1. *I am the applicant in the proceedings*

2. *I am applying for the judicial review of the decision of the Immigration Assessment Authority dated 17/11/2015.*

Write your whole name.  
Write your address.  
Write the work you did before you were detained.

Write the date the decision was made (day/month/year).

Filed on behalf of \_\_\_\_\_  
 Prepared by \_\_\_\_\_ Lawyer's code \_\_\_\_\_  
 Name of law firm \_\_\_\_\_  
 Address for service in Australia \_\_\_\_\_  
 State \_\_\_\_\_ Postcode \_\_\_\_\_  
 Email \_\_\_\_\_ DX \_\_\_\_\_  
 Tel \_\_\_\_\_ Fax \_\_\_\_\_ Attention \_\_\_\_\_

3. Attached and marked "Annexure A" is a copy of the Immigration Assessment Authority decision dated 17/11/2015. ← Write the date the decision was made (day/month/year).

4. \*\*\*\*\*If you are outside of 35 days from the date of the decision, write the reasons for your late application here (the same reasons as on the application)\*\*\*\*\*

Sworn / Affirmed by the deponent

at (place) .....

on (date) ...../...../.....

\_\_\_\_\_  
Signature of deponent

Before me:

-----  
Signature of witness

Full name of witness: .....

Qualification of witness: .....

**[Alternative jurat for non-English speaking affidavit]**

Sworn / Affirmed by the deponent through the interpretation of (name of interpreter) ..... of (address of interpreter) ....., (description of interpreter) ....., the interpreter having first sworn that he / she had truly interpreted the contents of this affidavit to the deponent and that he or she would truly interpret to (name of deponent) ..... the oath about to be administered to him / her.

at (place) .....

on (date) ...../...../.....

\_\_\_\_\_  
Signature of deponent

Before me:

-----  
Signature of witness

Full name of witness: .....

Qualification of witness: .....

I (name of interpreter) ..... certify that I understand the English language and the (name of language used) ..... language, and that I have truly interpreted to the deponent the contents of this affidavit and the oath or affirmation which was administered.

-----  
Signature of the interpreter (print name) ..... Date: ...../...../.....