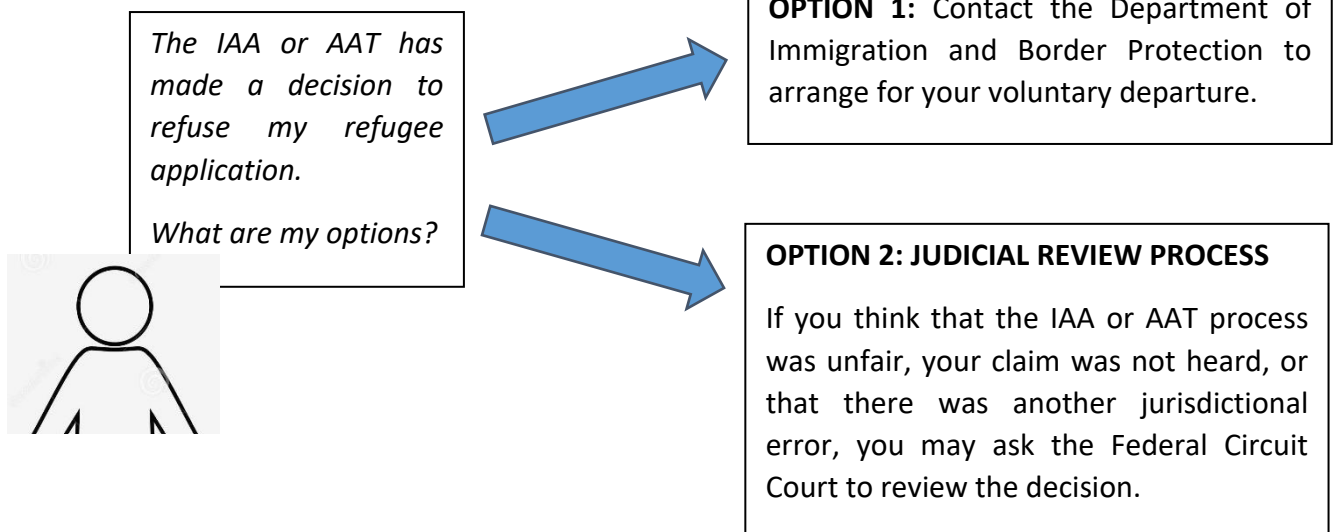# *WHAT IF MY REFUGEE APPLICATION IS REJECTED?*

> **This is an information sheet for use by refugees and asylum seekers based in South Australia who are applying for assistance to JusticeNet SA and who are seeking judicial review of a decision by the <u>Immigration Assessment Authority (IAA)</u> or the <u>Administrative Appeals Tribunal (AAT)</u> to refuse your refugee application.**

YOUR OPTIONS:

The IAA or AAT has made a decision to refuse my refugee application.

What are my options?

OPTION 1: Contact the Department of Immigration and Border Protection to arrange for your voluntary departure.

OPTION 2: JUDICIAL REVIEW PROCESS

If you think that the IAA or AAT process was unfair, your claim was not heard, or that there was another jurisdictional error, you may ask the Federal Circuit Court to review the decision.

> **NOTE: IF YOU ARE AN "<u>EXCLUDED FAST TRACK APPLICANT</u>" OR A "<u>CONCLUSIVE CERTIFICATE</u>" HAS BEEN ISSUED, <u>YOU WILL NEED TO APPLY TO A DIFFERENT COURT</u>. THIS INFORMATION PACK DOES NOT APPLY TO YOU.**

If you choose to begin a judicial review application ('OPTION 2'):

If you cannot afford a lawyer, then you can apply to **JusticeNet SA** for pro bono (free) legal assistance by completing our application form online at https://www.justicenet.org.au/get-help/refugee-and-asylum-seekers. If you meet our eligibility criteria, then JusticeNet will find you a free migration lawyer to represent you in your matter.

However, due to funding constraints, JusticeNet SA cannot currently assist with:

- Preparing or filing your Court Forms starting your Court proceedings; or
- Providing a lawyer to represent you or assist you before or at your preliminary directions hearing (the first court date in your matter).

This **information pack** is designed to help to prepare and lodge your Court forms, and help you in the early stages of your judicial review proceedings. Some things to note:

- This information pack can be used on your own or in conjunction with a friend, family member or other support person who is helping you.

- The information pack has **SIX (6) STEPS** as a guide for you preparing and lodging your Court forms → **SEE BELOW**

- This information pack also contains helpful information about the early stages of your Court proceedings and what you can expect → **SEE BELOW**

- It is **information only** and should not be used as a substitute for legal advice.

Alternatively, if you want legal assistance to complete your Court Forms, then you can find a migration lawyer to prepare them for you. However, you may have to pay the lawyer for that assistance.

IMPORTANT: TIME LIMITS ON FILING YOUR APPLICATION FOR JUDICIAL REVIEW
You must file your application to the Federal Circuit Court WITHIN 35 DAYS of the date of the IAA or AAT decision. If you apply after the 35 day period, you must also apply for an extension of time. However even if you apply for an extension, your application may still be rejected if it is filed more than 35 days after the date of your decision. Therefore you should file your application as soon as possible after you receive the IAA or AAT decision.

==SIX (6) STEPS TO LODGE YOUR JUDICIAL REVIEW APPLICATION==

STEP 1: Download the following three (3) forms from the Court's website

a. APPLICATION FORM – Migration Act

*This is the application form which you **must** complete.*

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

b. AFFIDAVIT

*This is a supporting document which you **must** file with the Application Form attaching the IAA or the AAT decision*

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics/All+Jurisdictions/form-fcc-affidavit

c. APPLICATION FOR EXEMPTION FOR PAYING COURT FEES – Financial hardship

This is an optional form that you need to complete if you want to seek a waiver from paying the Court lodgement fees

https://www.fedcourt.gov.au/forms-and-fees/forms/administrative-forms

STEP 2: Complete the Application Form

- Complete the form called 'Application Form' by entering all information requested.
- You may wish to use the ==Example Application Form== at the end of this information pack which is a helpful guide to completing the form. ==→ SEE BELOW==
- You must give the Court **three (3) copies** of this document.

STEP 3: Complete the Affidavit and Annexure Sheet

- An Affidavit is a written statement and the main way of presenting the facts of your case to the court. See the ==Example Affidavit== attached. ==→ SEE BELOW==
- Attach a copy of the IAA or AAT decision to an annexure sheet. An example ==Annexure Sheet== is attached. ==→ SEE BELOW==
- If you are filing your application more than 35 days after the date of the IAA or AAT decision, the affidavit must also explain the reason for the delay.
- You will need to sign this **Affidavit** in front of a **lawyer, Justice of the Peace or Court officer**. Your witness also needs to sign the **Annexure Sheet** at the same time.
- If you are not in detention, a staff member at the Federal Circuit Court Registry may be able to witness your affidavit when you go to the Court to lodge your application.
- You must give the court **three (3) copies** of this document.

STEP 4: Complete the 'Application for exemption for paying court fees – Financial hardship' form'

- Usually you have to pay a fee to lodge your application in the Court. If you are under financial hardship you can apply for an exemption from paying Court fees by completing the form.
- You will 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, someone at the Federal Circuit can do this when you lodge your application.

STEP 5: File your forms

Choose <u>one of three ways</u> to do this:

a. Deliver them to your nearest Federal Court Registry. If you are in Adelaide, the Registry is at **Level 5 of the Roma Mitchell Commonwealth Law Courts Building, 3 Angas St, Adelaide SA 5000; OR**

b. Fax all the signed forms to the Federal Circuit Court on (08) 8219 1001; **OR**

c. Lodge them online at: http://fedcourt.gov.au/online-services/elodgement.

**IMPORTANT: TIME LIMITS ON FILING YOUR APPLICATION

- You must file your application to the Federal Circuit Court <u>WITHIN 35 DAYS of the date of the IAA or AAT decision</u>. This time limit **is very important**.

- If you apply after the 35 day period, you must also apply for an extension of time. However even if you apply for an extension, your application may still be rejected if it is filed more than 35 days after the date of your decision.

- **You should therefore file online, fax, or deliver your signed forms to the Federal Circuit Court for <u>filing as soon as possible</u>. If you are more than 35 days after the date of the IAA or AAT decision, your application may be rejected.**

STEP 6: 'Serve' your Court forms on the Department of Home Affairs

- After filing application, you must give **one (1) copy** of your application to the Department for Home Affairs. This is called '**service**.'

- You can serve your application by:

  o Emailing it to litigation.applications@homeaffairs.gov.au;

  o Physically attending the Department of Home Affairs Office at 70 Franklin Street, Adelaide SA 5000; **OR**

  o Post a sealed copy of your application and supporting documents to

    Department of Home Affairs
    GPO Box 2399
    ADELAIDE SA 5001

We would recommend you use as many of the above methods as possible.

1. **THE FIRST COURT DATE**

- Once you have lodged and served your application you will receive a **first Court Date or 'directions hearing'**, which will usually be held within a few weeks of lodgement. The date is usually written on the front page of the Court sheet attached to your application.

- This is a preliminary directions hearing before a Registrar of the Court. It is **administrative**. The Court will usually timetable your final hearing, and the Minister will file a 'Court Book' with all relevant documents for your matter. It will **not** be the final hearing in your matter.

- JusticeNet SA will **not** be able to find you a lawyer before this first hearing date.

- Unless the Court tells you otherwise, you **MUST ATTEND THIS HEARING IN PERSON**. If you do not attend, your application may be dismissed and you may have to pay the Minister's legal costs.

- The Minister's solicitor may contact you before this date and ask you to agree to standard administrative orders. If this happens, and the Court accepts them, then you might not need to attend the first hearing date. However, unless the Court tells you otherwise, you **must** attend the hearing in person.

2. <u>LEGAL ASSISTANCE</u>

- The legal issues concerning the review of migration decisions are complicated. Receiving legal assistance from a lawyer is the best thing to do.

- Court staff can help you with questions about Court forms and Court processes, but they cannot give you legal advice.

- **If you cannot afford a lawyer, JusticeNet's Pro Bono Connect may be able to refer you for pro bono ("free") legal assistance.** If you want to apply to JusticeNet then you need to do so as soon as possible after receiving the IAA or AAT decision.

  a. Download the application form for Refugees and Asylum Seekers at

     https://www.justicenet.org.au/get-help/refugee-and-asylum-seekers

  b. Complete the application form;

  c. Email a copy of the application from to help@justicenet.org.au along with a copy of the IAA's or AAT's Decision Record and any application you have already filed in the Federal Circuit Court.

- As above, JusticeNet **does not** currently have the resources to assist you to complete the Court Forms. Therefore, we recommend you either use this guide to help you complete them yourself or find a lawyer to help you.

3. 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 to keep the Court and Minister for Immigration and Border Protection's lawyer advised of your current contact details, because they might 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. If you have applied to JusticeNet for assistance, you should also advise us as soon as possible.

4. LEGAL COSTS

- If your application for judicial review of the IAA or AAT Decision 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 do not pay them, this can have an impact on whether you are able to return to Australia.

'APPLICATION FORM' - EXAMPLE ONLY

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

File number

....
Applicant(s)

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

MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS
First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL [or]
IMMIGRATION ASSESSMENT AUTHORITY [or]
INDEPENDENT PROTECTION ASSESSMENT REVIEWER [or]
OTHER NAMED PERSON [delete as applicable]
Second Respondent

> *This is the place where the application is being lodged. Use the closest city to you, "Adelaide"*

> *Choose which authority is correct depending on who made your decision.*

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

> *Write your whole name*

Prepared by

> *Write "THE APPLICANT"*

Lawyer's code

Name of law firm

Address for service in Australia

> *Write your postal address*

                    State   Postcode

Email

> *Write your email address*

DX

Tel   Fax   Attention

> *Write your phone number*

Applicant/s details

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

☐ Yes   ☐ No

Migration decision details (select box ....)

☐ 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: ..../......./..............

☐ 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

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.   "I was unable to…"

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

1.

2.

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

☐ 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. "The decision-maker made an error because…"

3.

4.

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.)

Person or persons who made each previous application: .... **Leave blank** ....

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?

If you need English language assistance, check "yes"

☐ Yes   ☐ No

If Yes, what language: ....

If you need English language assistance, write 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 for Immigration, Citizenship, Migrant Services and Multicultural Affairs at the address below. [The address will be inserted by the Registry]

Signature of applicant/s or lawyer

Write your whole name

Signed by (print name/s)

Sign your name

....

☐ the applicant/s or ☐ . lawyer for the applicant/s

Tick this box

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

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):

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

……………………………………………………………………………………….

A respondent who intends to contest the application must file a response within 28 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.

Form approved pursuant to Rule 44.05(1)

MIGAPP_FCC_0619.V1

'AFFIDAVIT' - EXAMPLE ONLY

FEDERAL CIRCUIT COURT OF AUSTRALIA

File number: ....

COURT USE ONLY
Court Location
Leave blank
Court date
Court time

REGISTRY: ....

This is the place where your application is being lodged.

It should be the same as on the application form ("Adelaide", or the closest city to you).

....
Applicant

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
Respondent

Choose which authority is correct depending on who made your decision.

IMMIGRATION ASSESSMENT AUTHORITY [or]
ADMINISTRATIVE APPEALS TRIBUNAL
Other party (if applicable)

AFFIDAVIT

Write your whole name

Name of deponent: ....

Write the date this form was completed day/month/year

Date sworn / affirmed: ..../........./..............

Write your whole name

Write your address

I, (full name) .... of (address, including State or

Territory) ....

and (occupation) .... make

oath and say / affirm:

Write the work you do. If you are not working, write "unemployed"

1. *I am the applicant in these proceedings*

2. *I am applying for judicial review of the decision of the Immigration Assessment Authority dated XX/XX/XXXX*

You need to tell the Court that you are the the applicant, and that you are applying for review of the IAA or AAT decision. Write the date the decision was made (day/month/year)

Filed on behalf of		*Write your whole name*
Prepared by		Lawyer's code
Name of law firm		*Write "THE APPLICANT"*
Address for service in Australia		*Write your postal address*
	State	Postcode
Email		DX
Tel	Fax	Attention

Write your phone number

Write your email address

3.   *Attached and marked "Annexure A" is a copy of the Immigration Assessment Authority OR Administrative Appeals Tribunal decision dated XX/XX/XXXX*

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

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: ..../.........../..............

'AFFIDAVIT ANNEXURE SHEET' - EXAMPLE ONLY

Applicant

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
Respondent

IMMIGRATION ASSESSMENT AUTHORITY [or]
ADMINISTRATIVE APPEALS TRIBUNAL
Other party (if applicable)

> **Write your name here**

This is the document referred to as 'Annexure A' in the affidavit of _____,

sworn/affirmed at _____ on _____

> **Write the place where you swore/affirmed the affidavit eg. 'Adelaide'**

> **Write the date you swore/affirmed the affidavit**

before me _____
Name of Witness

_____
Signature of Witness

> **The lawyer, Justice of the Peace or Court Officer witnessing the affidavit will write their name and sign this document**

_____
Qualification of Witness

1