

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 Home Affairs. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
9. 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.

Remove this instruction sheet before filing

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

File number

.....

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

MINISTER FOR HOME AFFAIRS
First Respondent
[or]

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

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.

.....
(for) Registrar

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

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 _____

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

- 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.
- 2.
- 3.

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

- 1.
- 2.
- 3.

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.
- 2.
- 3.

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:

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?

- Yes
- No

If Yes, what language:

Service of Application

The application must be served on each respondent within 7 days by delivering it to the Department of Home Affairs at the address below.

[The address will be inserted by the Registry]

Signature of applicant/s or lawyer

.....

Signed by (print name/s)

.....

- the applicant/s or lawyer for the applicant/s

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

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.

.....
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)

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