



*Federal Court of Australia
found the AAT has power to extend time limit to
apply for migration review*

On 19 November 2018, the Federal Court of Australia decided in the case of **Brown v Minister for Home Affairs (No. 2) [2018] FCA 1787** that the Administrative Appeals Tribunal (“AAT”) has power to extend time for making application in migration and refugee review matters. Before this decision, the general position was that the AAT did not have power to extend the time limit to apply for review after a visa refusal or visa cancellation.



The main reason for the court deciding differently this time is because prior to 1 July 2015, migration review is applied to the Migration Review Tribunal which is an independent Tribunal established under the Migration Act 1958. The Migration Review Tribunal and Refugee Review Tribunal merged with the AAT on 1 July 2015 resulting the establishment of the

current Migration & Refugee Division of the AAT. AAT is a general Tribunal established under the Administrative Appeals Tribunal Act 1975 (“AAT Act”). Under s.29 of the AAT Act, the AAT has power to extend a time limit to apply for review if it is **“reasonable in all the circumstances to do so”**. The court found the Migration Act 1958 did not exclude the operation of s.29 of AAT Act in relation to extension of time. Accordingly, the court found the AAT has power to extend to the time limit to apply for merits review in migration matters.

David Gu, Solicitor Director of ProActive Legal and Accredited Specialist in Immigration Law, said “there is real likelihood that the Minister will appeal this judgement as the impact is huge but having read the judgement, I think the reasoning given by Justice Greenwood is correct and the Minister is unlikely to win on any appeal.” He also said, “I expect the Government may be looking at introducing amendments to the Migration Act quickly to stop the AAT’s power to extend the time limit in migration review cases in case they loss any appeal.”

This judgement of the Federal Court gives advantages to anyone whose visa has been refused but for good reasons did not lodge a merits review application within the time limit

or has had their review determined by the AAT to have been lodged out of time. These applicants for a visa may have an opportunity to benefit from this judgement.

Please contact us if you need further information.

ProActive Legal

Disclaimer: This communication is for information purposes only. It should not be construed as providing migration or legal advice and should not be relied upon as such advice. You must always seek specific migration or legal advice for your particular circumstances from a registered migration agent or a lawyer authorized to provide advice in your jurisdiction.