

ASYLUM SEEKERS

In 2015, Australia received

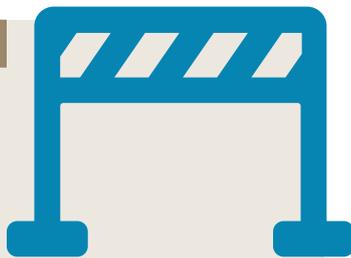
16,117

asylum applications,
(0.5% of the global total).¹



BARRIERS:

- Asylum seekers face significant barriers to accessing justice. Generally, they:
 - lack familiarity with Australian laws and bureaucracy
 - lack financial resources and social networks
 - face cultural and linguistic challenges in presenting their cases
 - are often traumatised and/or suffering from mental health conditions
 - distrust authorities due to previous experiences of persecution
- Geographic isolation makes accessing lawyers particularly difficult, in addition to limited communication facilities and unexpected transfers between centres.²



Relevant laws and policies which impact upon rule of law and international human rights law principles include: mandatory detention, offshore processing, discrimination based on mode of arrival, fast-track merits review, the treatment of unaccompanied minors and children in detention, and visa cancellation powers.



COSTS AND CONSEQUENCES:

Without assistance, poorly made or incomplete applications could result in wrong decisions, with the consequence that asylum seekers are returned to countries where they face persecution and other forms of serious harm such as torture or death.³

GAPS IN SERVICES

The restriction of the Immigration Advice and Application Assistance Scheme, including its withdrawal from asylum seekers who have arrived without a valid visa, has left many navigating complex legal systems without access to essential legal assistance. Only around **20%** of asylum seekers are eligible for the free Primary Application Information Service.⁴

The 'Legacy Caseload' deadline resulted in a **300% increase** in demand for some legal assistance services.⁵ Many legal services had waiting lists for over a year.⁶

- Refugee Legal reportedly had more than **2000** asylum seekers on its waiting list in June 2017.⁷

A lack of legal assistance is linked with increases in court workloads and consequential delays.

- In 2016-17, the Federal Circuit Court's general federal law filing workload increased by **12%**, most noticeably in migration law, which increased by 40%.⁸ In the five years to 2015-16, its migration filings had already increased almost three-fold.⁹
- As of September 2017, migration matters were being listed for final hearing more than **18 months after** the first court date.¹⁰
- Migration appeals constituted **90%** of appeals commenced by self-represented litigants in the Federal Court in 2015-16.¹¹

United Kingdom findings indicate that giving asylum seekers **early access** to good legal representation results in faster, higher quality and more sustainable decisions.

Lack of access to qualified, impartial interpreters is a critical issue for asylum seekers.



ASYLUM SEEKERS



Priorities in this area include:

- To achieve more efficient, sustainable and fairer outcomes regarding asylum seekers' protection claims, and reduce downstream pressures on courts and tribunals:
 - reinstate Immigration Advice and Application Assistance Scheme funding for all asylum seekers in need, regardless of their mode of arrival; and
 - ensure access to free, qualified and trained interpreters for asylum seekers at all stages of their protection visa claims.
- Review policies and procedures to facilitate prompt access to legal assistance amongst asylum seekers in detention or in offshore processing centres.
- Establish a legislative framework which:
 - ensures that asylum seekers are only detained where it is necessary, reasonable in all the circumstances and proportionate to a legitimate purpose, based on a detailed assessment of an individual's particular circumstances and clear objective criteria;
 - ensures that detention is subject to statutory maximum limits and effective, statutory periodic review requirements; and
 - ensures that the best interests of the child be a primary consideration in all actions concerning children. Detention of children, which should only occur as a matter of last resort and for the shortest appropriate period of time, should be community-based detention.
- Review Australia's offshore detention and turn-backs policies in accordance with the principles and obligations set out in the Law Council's Regional Processing Policy Statement and its Asylum Seeker Policy, and with a view to achieving more sustainable, cost-effective solutions.
- Enact and apply a consistent legal process for determining protection status that does not discriminate against applicants based on their mode of arrival.
- Ensure that asylum seekers who enter Australia are not penalised for doing so without a valid visa, provided they present themselves to authorities without delay and show good cause for their entry and presence.
- Replace temporary protection visas with durable, permanent protections for those found to invoke Australia's protection obligations.
- Enable access to full merits review for all administrative decisions concerning the protection status of asylum seekers, regardless of their mode or timing of arrival.
- Appoint an independent legal guardian for all unaccompanied minors who arrive in Australia.
- Review statutory frameworks regarding asylum seekers to ensure that Executive decisions which fundamentally affect them, including their liberty, possible removal and right to make protection claims, should be made according to principles laid down by parliament, and are subject to meaningful judicial oversight.

1. UNHCR, 2016.

2. Crépeau, 2017; McAdam and Chong, 2014.

3. McAdam and Chong, 2014.

4. RACS, 2015.

5. Asylum Seeker Resource Centre, 2017.

6. The Guardian, 2017.

7. The Guardian, 2017.

8. Federal Circuit Court of Australia, 2017.

9. Federal Circuit Court of Australia, 2016.

10. Federal Circuit Court of Australia, 2017.

11. Federal Court of Australia, 2016.