

Factsheet

DO PEOPLE SEEKING ASYLUM RECEIVE LEGAL ASSISTANCE?

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Fair asylum procedures ensure public confidence in the legal system and compliance with our international obligations, but Australia's current restrictions on who can access legal assistance falls short of comparable nations' standards and international best practice.

What is international best practice regarding legal assistance for people seeking asylum?

Although the Refugee Convention and its 1967 Protocol do not establish procedures for refugee status determination, fair and efficient asylum procedures are [essential to giving full effect to the Refugee Convention](#). Thus, the [UN High Commissioner for Refugees \(UNHCR\)](#) recommends that countries who have signed the Refugee Convention should provide free legal advice and representation at all stages of the asylum procedure, including at first instance and in appeal proceedings.

In 2010, the European Council on Refugees and Exiles developed [recommendations](#) for governments in relation to legal aid for people seeking asylum. These include:

- Providing sufficient public funding to ensure legal aid providers can effectively assist and represent people seeking asylum;
- Where States apply a means test this should be based on the presumption that asylum seekers do not have sufficient resources to afford paid legal aid, unless there is clear evidence to the contrary; and
- Ensuring legal aid is available at all stages of the asylum procedure so that lawyers are able to assist in preparing the asylum application, accompany applicants to the preliminary interview and assist with any subsequent appeals.

What legal assistance is available to people seeking asylum in Australia?

Only a small proportion of people seeking asylum have had access to funded legal assistance in Australia. Those who arrived in Australia on a valid visa and who met specific criteria of disadvantage were eligible for limited legal assistance under the Federal Government funded [Immigration Advice and Application Assistance Scheme \(IAAAS\)](#). However, access was strictly limited to unaccompanied minors, and those who are extremely vulnerable and do not have the capacity to complete an application (such as people who have mental health concerns or other conditions affecting cognitive function).

If a person who arrived in Australia without a valid visa wishes to access legal assistance for an asylum claim, they must do so at their own expense. A small number of people who are considered [exceptionally vulnerable](#) (such as unaccompanied minors) were eligible for government-funded assistance under the [Primary Application Information Service](#) (PAIS) for their initial application. However, eligibility for PAIS is at the discretion of the Department of Home Affairs. PAIS does not assist with merits review or judicial review. For more information on the challenges that this has created for people seeking asylum, see the our [factsheet on the 'Legacy Caseload'](#).

Further information about legal services for people seeking asylum can be found [here](#).

How does Australia compare with other countries?

In New Zealand, eligible people seeking asylum are entitled to [government-funded legal assistance](#) for most stages of the visa application process – from the initial claim to proceedings before the Immigration and Protection Tribunal, and any later appeals. Under sections 7, 10 and 11 of the [Legal Services Act 2011](#), a person's eligibility for legal aid is influenced by factors such as their income and disposable capital, and their prospects of success.

In the UK, eligible asylum seekers are entitled to government-funded legal assistance with their claim for a protection visa (as established in Schedule 1 of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)). Factors such as the person's financial circumstances and prospects of success will be assessed to determine eligibility for legal aid. Unlike in Australia, legal aid is available for appeal proceedings, except in immigration cases where the same, or substantially the same, issue was the subject of an adverse judicial review or appeal outcome in the past 12 months. Since 2011, cuts to legal aid funding have triggered the closure of two major legal aid providers for people seeking asylum, [Refugee and Migrant Justice](#) and [Immigration Advisory Service](#), which went into administration after the [funding cuts](#).

What does Australia's current policy mean for people seeking asylum?

Australia's current policy concerning legal assistance for people seeking asylum falls short of comparable nations' standards and international best practice. Legal assistance is crucial to ensuring that people seeking asylum are afforded due process, enabling them to navigate a complex legal system, properly present their protection claims, and challenge erroneous decisions. This is particularly important because people seeking asylum may experience language and cultural barriers, trauma and vulnerability in the community.

Legal assistance helps to ensure that applications are presented in a coherent way in accordance with evidentiary and legal requirements, thereby reducing the burden on decision-making officials and the courts. Cutting legal assistance funding compromises the quality, cost-effectiveness and efficiency of the asylum application process, and may erode public confidence in the fairness of Australia's asylum procedures. Lack of access to legal assistance means people seeking asylum are exposed to a greater risk of being returned to their home country where they face persecution, which would place Australia in [breach of its international legal obligations](#).