

Factsheet

THE 'LEGACY CASELOAD'

Last update: November 2020

Defined by when and how they arrived, a certain group of asylum seekers in Australia – known as the 'legacy caseload' – faces different rules, with no access to permanent protection.

What is the legacy caseload?

The 'legacy caseload' refers to a group of around [30,000 asylum seekers](#), most of whom arrived in Australia by boat between 13 August 2012 and 1 January 2014. This group of asylum seekers arrived in Australia during the Labor government's term of office and were barred from making an application for protection for [up to four years](#) following their arrival. The succeeding Coalition government termed this group the 'legacy caseload' and introduced exceptional legislative restrictions to their eligibility for protection visas.

How is the legacy caseload being processed by the Australian government?

In late 2014, the Coalition government established a fast-track process for assessing protection claims made by asylum seekers in the legacy caseload. Under the *Migration Act*, fast-track applicants must wait for the Minister to formally invite them to apply for asylum. From that point, applicants are required to submit a written visa application to the Department of Home Affairs and to undergo an interview. Asylum seekers in the legacy caseload are not permitted to apply for any permanent visas. Instead, they are limited to making applications for a three-year [Temporary Protection Visa \(TPV\)](#) or a five-year [Safe Haven Enterprise Visa \(SHEV\)](#), for which they will have to periodically re-apply to renew.

If the Department's decision is negative, the case may be referred to the Immigration Assessment Authority (IAA) for a review on the facts. Generally, the IAA will only be able to consider the written material that was available to the Department in the original application. This can be contrasted with the review process available for non-fast-track applicants, who may have their cases reviewed at a hearing before the Administrative Appeals Tribunal (AAT), which is subject to important procedural fairness safeguards.

For more information, see our [Research Brief on Fast-Track Processing](#).

What challenges do asylum seekers in the legacy caseload face?

In 2014, the government abolished publicly-funded legal assistance for most asylum seekers who had arrived in Australia without a valid visa, which included the majority of the legacy caseload. Australia's immigration law is complex and dynamic, such that [legal assistance](#) is essential to ensuring that people seeking protection can navigate the legal requirements and articulate their claims. Many asylum seekers additionally experience vulnerability in the Australian community in the absence of support networks and may also face language and cultural barriers in presenting their case.

In May 2017, the government also announced that all asylum seekers in the legacy caseload were required to lodge an application for protection by 1 October 2017 or be deported from Australia immediately. This required individuals and families who formed part of the legacy caseload to complete, in English, a lengthy application form concerning their claim for protection and experiences of trauma and harm with [severe time pressures](#).

In early 2018, these challenges were exacerbated by the government's decision to withdraw all income support from people who did not meet an extremely high threshold of vulnerability (and even where an extremely vulnerable person is granted access to income support the payment amounts are below the poverty line). This income support scheme previously provided a basic allowance to people waiting for their protection claims to be decided, at a rate below the poverty line.

Many asylum seekers in the legacy caseload have had to wait years for their asylum claim to be assessed. Many have faced prolonged periods in extreme financial hardship while waiting for their protection claims to be decided. This coupled with the prolonged uncertainty of their situation have had a profound and severe negative impact on the physical and mental health and well-being of asylum seekers, including families and young children.

Even when people within this cohort are found to be refugees, they are only eligible for temporary visas, and need to go through the process of re-applying every few years. Current policy denies them the right to be reunited with family members, and therefore face the prospect of being separated from their families. UNHCR has described these conditions as '[punitive](#)' and noted their damaging effect on asylum seekers' mental health.

What legal services are available to people in the legacy caseload?

A small number of people who are considered most vulnerable (such as unaccompanied minors) were eligible for government-funded assistance under the [Primary Application Information Service](#) (PAIS). Eligibility for PAIS was determined at the discretion of the [Department of Home Affairs](#). The assistance available under PAIS was limited to an asylum seeker's initial application and did not extend to any application for review before the IAA (except for unaccompanied minors for whom the Minister of Immigration is the guardian under the *Immigration (Guardianship of Children) Act 1946* (Cth)). Further, PAIS was only available to a small percentage of people seeking asylum, who were judged by the Department as being exceptionally vulnerable.

This placed [significant strain](#) on independent community legal centres and non-government organisations that operate to provide legal assistance to people seeking asylum.

How many people in the legacy caseload have been granted refugee status?

As of [October 2020](#), 26,313 (84.3%) applicants in the legacy caseload had a decision made on their application by the Department. However, there remained 4,884 people waiting for a decision from the Department. At that time, 17,777 people from the legacy caseload had been granted a visa, which includes those whose visa was granted after the decision was remitted to the Department following merits or judicial review.

See our factsheets on [Legal assistance for asylum seekers](#) and on [TPVs and SHEVs](#).