

POSITION ON LEGAL REPRESENTATION FOR ASYLUM-SEEKERS

Independent government-funded legal representation for all asylum-seekers experiencing financial hardship is an essential requirement at each stage of Australia's refugee status determination process. This is particularly the case for asylum-seekers in the so-called 'fast track' refugee status determination process which has inadequate procedural safeguards.

The legal framework and procedures for determining recognition of international protection in Australia is complex. Asylum-seekers experience difficulties articulating the elements relevant to their claim without qualified advice and translation services. This is particularly so for asylum-seekers with special needs, such as survivors of torture and trauma, and those with limited English ability.

Independent government-funded legal advice and assistance is available to disadvantaged asylum-seekers who arrive in Australia with a visa and subsequently seek asylum. This service (Immigration Advice and Application Assistance Scheme or IAAAS) has been a key feature of the Australian refugee status determination process for decades. It represents a recognition of the fact that such a service enhances the overall efficiency of the determination process by enabling asylum-seekers to submit well prepared statements and identify relevant evidence to support claims.

It is recognized that providing free legal advice and translation services to disadvantaged asylum-seekers not only enhances fairness and efficiency, but also decreases the financial costs for the Government by:

- (a) reducing the burden on decision makers to work out the material elements of an asylum-seeker's claim;
- (b) strengthening the quality of decisions, resulting in reduced appeal rates; and
- (c) enabling asylum-seekers to understand procedures resulting in appropriate engagement in the process and the ability to meet relevant time limits.

After eligibility to the IAAAS was removed in 2014 for those who arrived without a visa, an accelerated asylum procedure was introduced. This 'fast track' procedure raises significant procedural fairness concerns. At first instance, the duration of interviews and timeframes to submit information have been reduced. Further, some asylum-seekers have no access to merits review and those who do are not entitled to appear in person or present new information unless there are 'exceptional circumstances'. Consequently, the application and primary decision are critical to the final outcome of the refugee status determination.

The application and determination process creates significant challenges for unrepresented asylum-seekers, many of whom have been waiting in Australia for several years to be granted permission to lodge an application for a temporary three or five-year visa. This uncertainty, together with the prohibition on family reunification has resulted in a significant deterioration of mental health and general wellbeing. This makes access to legal representation and translation services even more critical.

Providing government-funded legal representation and translation services not only accords with key principles of procedural fairness but also significantly decreases the risk of erroneously returning a refugee to a place of persecution, in violation of Australia's obligations under the 1951 Refugee Convention.