

4 November 2013

Access to Justice Arrangements  
Productivity Commission  
PO Box 1428  
Canberra City ACT 2601

**By email: [access.justice@pc.gov.au](mailto:access.justice@pc.gov.au)**

**Due date for submissions: 4 November 2013**

To the Commission

## **Access to Justice Arrangements**

### **Submission by the Refugee Advice & Casework Service (Aust) Inc.**

The Refugee Advice & Casework Service (RACS) is a community legal centre that provides free legal advice and assistance to people seeking refugee status in Australia. It is a specialised refugee legal centre and has been assisting asylum-seekers on a not-for-profit basis since 1988.

RACS would like to make comments in relation to those areas of the Access to Justice Arrangements enquiry that are relevant to our service, namely the access to justice issues facing asylum seekers in Australia.

A summary of our comments and a coversheet is also attached.

#### **1. The level of demand for legal services**

The demand for legal services for asylum seekers is high in Australia. Until recently, this need was met in some part under the Immigration Advice and Application Assistance Scheme (IAAAS).

IAAAS was established in 1997 to reduce the possibility that a person with genuine protection claims might, contrary to Australia's international obligations, be returned to danger because of lack of access to independent and professional advice in making a protection claim. The Scheme makes legal available to asylum seekers in detention, and

other asylum seekers who demonstrate financial hardship and are disadvantaged for reasons such as their illiteracy, age, non-English speaking background or other cultural issues, physical or psychological disability, or location in a remote area. The legal aid available under IAAS ensures representation or advice for asylum seekers at the departmental and merits review stages, but not for judicial review.

To quote the Department's Annual Report 2012-13, "IAAAS providers ... are registered migration agents with experience in immigration legislative, policy and procedural requirements. They help their clients to complete and submit Protection visa applications, liaise with the department, provide advice on immigration matters, explain outcomes of applications, and provide information and advice on further options available in the event of a refusal decision. IAAAS assistance is also available at the merits review stage, but not to those seeking judicial review of an immigration decision." P201

In 2012-13, the total cost of providing all these services to 7980 Irregular Maritime Arrivals was \$25.191 million or only \$3156.77. These costs may cover in some cases both primary and review applications.

In August 2013, the Coalition released a policy document<sup>1</sup> proposing the withdrawal of immigration assistance under IAAAS for those people arriving by boat or by plane without a valid visa or who are otherwise not immigration cleared, in order to save, they claimed, \$100 million over 4 years. In place of legal assistance, the Government has indicated it will provide 'information kits' in a number of languages to explain the process involved in applying for a protection visa. Where asylum seekers wish to have legal advice or representation, they will need to do so at their own expense.

The Department of Immigration has indicated it will "provide clear instructions in multiple languages setting out the application and assessment process and will provide interpreters and DIAC staff, separate from those making the assessments, to answer any questions about the process." (p5 of policy) Information kits in multiple languages provided by the decision making agency will replace independent legal advisors using interpreters. Many clients do not read nor write, many are severely traumatised and find disclosing details of their persecution difficult – they either clam up or spend much of the time with their lawyers crying as it is often the first time they have disclosed their horrific stories. Information kits will not provide the human support required during this process.

Under amendments to the law from 2012, a person arriving by boat is subject to mandatory immigration detention, is transferred to a designated regional processing country and is not able to institute or continue certain legal proceedings (including the lodgement of a valid application for a visa) unless the Minister personally thinks it is in the public interest to allow the person to do so.

---

<sup>1</sup> The Coalition's Policy to Withdraw Tax Payer Funded Assistance to Illegal Boat Arrivals available at: <http://www.sciencemediacom.au/downloads/2013-8-31-1.pdf> (accessed 28.10.13).

Around 30,000 asylum seekers who arrived in Australia after 30 August 2012 are in Australia awaiting notification from the Department of Immigration as to whether the Minister will “lift the bar” and allow them to apply for protection in Australia.

The availability of legal assistance for those arriving without a valid visa by plane is not yet clear. Currently those in this situation are being detained and are not being referred by the Department to a lawyer under IAAAS.

There is huge demand for legal services amongst these two groups. No legal service provider is currently able to provide any legal assistance to these people because no referrals have been made by the Department under IAAAS. As such, these two groups represent a current significant area of unmet legal need in Australia.

In addition to these groups, there are those who arrive with a valid visa and are immigration cleared who then make an application for protection in Australia. Currently there is some IAAAS funding under “Category A” but this does not cover the number of people wishing to make such an application in Australia. As such, this is another area of significant unmet legal need in Australia.

#### What are the implications of cutting IAAAS assistance for asylum seekers?

Asylum seekers often lack the financial resources to pay for legal advice and representation. Without legal aid, asylum seekers will be left to present their protection visa applications on their own. This is problematic because, as UNHCR has noted, ‘[a]sylum seekers are often unable to articulate the elements relevant to an asylum claim without the assistance of a qualified counsellor because they are not familiar with the precise grounds for the recognition of refugee status and the legal system of a foreign country’.<sup>2</sup>

Asylum seekers are in a uniquely vulnerable position compared to other groups of people who may need legal aid: they ordinarily lack family or other social support structures in Australia, most come from non-English speaking backgrounds and therefore face cultural and linguistic challenges in presenting their cases, and many have suffered trauma and are fearful of authorities due to experiences in their countries of origin.<sup>3</sup> As a result, asylum seekers may find it difficult to share information with a decision-maker in the context of a

---

<sup>2</sup> UNHCR, Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards (2 September 2005) <<http://www.refworld.org/pdfid/432ae9204.pdf>>.

<sup>3</sup> UNHCR, Comments on New Zealand Legal Aid Quality Framework (14 October 2010) <<http://unhcr.org.au/unhcr/images/UNHCR%20Final%20Submission%20Legal%20Aid%20Quality%20Framework%2019%20Oct.pdf>>; Refugee Council of Australia, ‘Denial of Legal Advice Would Put Asylum Seekers’ Lives at Risk’ (Media Release, 1 September 2013) <<http://www.refugeecouncil.org.au/n/mr/130901-Legal-aid.pdf>>.

short interview, since it takes time to build up trust and share personal details. Asylum seekers may also be unable to lucidly recount their experiences due to trauma. These circumstances may compromise the quality of the decision-making process. This is particularly problematic in the context of asylum applications since a decision as to whether to grant a protection visa may mean the difference between finding safety and being sent back to grave danger. A number of asylum seekers are illiterate in any language.

Given the multi-factored nature of the disadvantage and vulnerability faced by asylum seekers, information kits designed to assist people in bringing their claims will be vastly inadequate and cannot in any way replace appropriate legal representation and advice. In RACS experience, many asylum seekers will not be able to access or utilise these kits due to their low levels of literacy and/or limited education. A 'do-it-yourself' kit may in some cases be useful in supplementing formal legal representation, but is ill-adapted to enabling asylum seekers to navigate a very complicated area of law and policy.

Erroneous decisions not only entail serious consequences for asylum seekers, but also place Australia at risk of breaching its non-refoulement obligations under the Refugee Convention and international human rights law (that is, the obligation not to return people to countries where they face persecution or other forms of serious harm). As UNHCR has emphasised, '[f]air and efficient procedures are an essential element in the full and inclusive application of the [Refugee Convention]. They enable a State to identify those who should benefit from international protection under the Convention, and those who do not.'<sup>4</sup> Providing access to legal advice and representation is a key part of ensuring fair and efficient asylum procedures.<sup>5</sup>

Moreover, although the Coalition has suggested that the removal of legal aid funding under IAAAS will cut costs, it is likely that its policy will in fact generate unforeseen costs associated with the increased burdens on decision-makers and courts. Lawyers provide a kind of 'triage' service, helping to ensure that evidence is presented to decision-makers in a manner that is coherent and relevant to the requirements of Australia's migration laws. This raises the concern, as the Law Council of Australia has noted, that '[t]he removal of claims assistance

---

<sup>4</sup> UNHCR, Global Consultations on International Protection: Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 31 May 2001, 2  
<<http://www.refworld.org/docid/3b36f2fca.html>>.

<sup>5</sup> Ibid; UNHCR, Comments, above n 3.

will place unreasonable pressure on Australian immigration officials who will be left to make decisions on the basis of poorly prepared and incomplete applications.<sup>6</sup>

Moreover, legal advice and representation promote efficiency by helping asylum seekers to understand national asylum procedures and the nature of their rights and obligations, thereby fostering a relationship between asylum seekers and national authorities that is based on trust and cooperation.<sup>7</sup> The Coalition's proposals may lead to increased delays in decision-making or poorly made decisions being appealed in the courts at significant cost.<sup>8</sup> It also risks undermining public confidence in the fairness of Australia's asylum procedures.<sup>9</sup>

## 2. The costs of legal assistance and representation

The costs of providing legal assistance and representation to a client under IAAAS are available from the Department of Immigration.

By way of example using IAAAS costing figures (which have not increased since this time), in 2008-2009<sup>10</sup> it cost:

- \$0.7 million for application assistance to 361 protection visa applicants in immigration detention (at nearly \$2,000 per person);
- \$1 million for application assistance to 604 disadvantaged visa applicants in the community (\$1655 per person); and
- \$0.6 million for immigration advice to 6,056 disadvantaged persons in the community (\$99 per person).

At page 116 of the Department of Immigration's annual report for 2013-2013 \$3.234 million was quoted for 983 application assistance services to people in immigration detention and clients in the community and 6941 immigration advice services, with 8308 non-IMA protection visas being lodged.

---

<sup>6</sup> Refugee Council of Australia, 'Denial of Legal Advice Would Put Asylum Seekers' Lives at Risk' (Media Release, 1 September 2013) <<http://www.refugeecouncil.org.au/n/mr/130901-Legal-aid.pdf>>.

<sup>7</sup> ECRE, European Council on Refugees and Exiles (ECRE), Survey on Legal Aid for Asylum Seekers in Europe (October 2010), 9–11 <<http://www.ecre.org/component/downloads/downloads/268.html>>.

<sup>8</sup> Ibid.

<sup>9</sup> Refugee Council of Australia, above n 3;.

<sup>10</sup> Resolving Immigration Status: Comparative Case Studies, Social Policy Research Centre University of New South Wales Report for Department of Immigration, available at: <http://www.immi.gov.au/media/publications/pdf/unsw-report-2.pdf>, accessed 28 October 2013.

The fees currently charged by IAAAS providers represent a fair estimate of the work involved, with one important caveat. Namely, that it is impossible to accurately cost a refugee case in advance. Refugee clients can be particularly traumatised by their experiences of persecution and discrimination. Many of the commonly observed symptoms associated with victims of persecution and torture such as depression and feelings of guilt or loss of self esteem can significantly interfere with a person's ability to access and utilise their internal resources to their full potential.

RACS's casework can involve taking statutory declarations from individuals with complex histories and who find it difficult to express themselves. In most cases the necessary assistance of an interpreter adds to the time required by this process. A critical aspect of due process<sup>11</sup> demands that such clients are allocated enough time to tell their story and that they have the proper opportunity to be heard.

Another aspect of RACS's work involves framing legal submissions to fit each client's case. We note that case law changes frequently in the immigration jurisdiction and it requires expert advice in order to ensure that those affected by changes to the law brought about by case law have the opportunity to have those issues considered by their decision maker at the earliest possible level of intervention to avoid further appeals.

The costs of assisting a client in documenting their claims for protection and completing an application for protection rise significantly if decisions are not made correctly at primary level (by the Department) and require appeal to the Refugee Review Tribunal or judicial review.

From our experience with clients who lodged their protection visa applications unrepresented, we can confirm that legal representation makes a significant difference in a decision-maker's ability to quickly grasp and assess a person's claims for protection, allowing quicker and less costly decision-making.

### **3. The number of persons who cannot afford to secure legal services but who do not qualify for legal assistance services**

The large majority of protection visa applicants with meritorious claims who seek assistance from RACS are eligible to receive assistance under the Asylum Seeker Assistance Scheme (ASA). This scheme provides eligible asylum seekers with publicly funded financial assistance to provide health and welfare support while their protection visa applications are being considered at the primary or merits review stages. Service delivery is administered through the Australian Red Cross.

In RACS's experience the numbers of clients who would be in a position to afford to secure legal services in the refugee jurisdiction would be extremely low.

RACS sees large numbers of clients who have come to Australia seeking protection having lost everything: their homes, their jobs, contact with their family and friends, all because of

---

<sup>11</sup> I Durst "Lost in Translation: Why Due Process Demands Deference to the Refugee's Narrative" 53 Rutgers L Review (2000) 127;

persecution based on a convention reason, namely race, religion, nationality, membership of a particular social group or political opinion, or under complementary protection grounds. It is our observation that there is often very little choice involved in these decisions. RACS sees some clients who have paid large sums of money to escape from dangerous situations.

Many of our clients are financially disadvantaged and are not be in a position to afford to pay for legal representation. The amount of financial assistance they are entitled to receive in Australia represents 89% of the lowest income support payment provided by Centrelink. Their families overseas are also generally not in a position to support them financially.

To expect asylum seekers to facilitate and pay for their own legal representation assumes a familiarity with social and legal processes and an availability of funds which in reality just simply does not exist amongst most asylum seekers in Australia.

#### **4. The impact of structures and processes of legal institutions on the costs of accessing and utilising these institutions.**

Refugee status determination structures and processes have a direct impact on the on the costs involved in accessing these legal processes, For example, the recent introduction of Temporary Protection Visas involves an unnecessary duplication of work which will increase both the economic and social costs for asylum seekers and society more broadly..

There are a number of ways RACS would suggest in order to reduce the impact of refugee status determination structures and processes on the costs involved, as set out below.

##### The unnecessary duplication of work necessitated by TPVs

Temporary Protection Visas, which were introduced on 18 October 2013 under the *Migration Amendment (Temporary Protection Visas) Regulation 2013* only last three years and currently there is no avenue for a permanent visa to ever be granted. Temporary Protection Visas involve not one assessment of a person's claims for protection by the Department of Immigration, but several – at least once every three years a person is required to prove their claims and have their claims re-assessed by the Department of Immigration. We note that this necessitates huge administrative costs for the Department of Immigration and for the Australian tax payer.

Australia's previous experience with Temporary Protection Visas demonstrated that, at the expiration of their temporary visas, few visa holders were found to longer face a real chance of serious harm for a convention reason in their country of origin. The policy of putting clients whose situations will clearly not change in any real way during the next three or five years operates very unfairly, particularly towards stateless clients who have no prospect of return, such as Rohingya and Palestinian clients.

The uncertainty and restricted access to family reunion amongst other things under Temporary Protection Visas also has a significant emotional toll for asylum seekers. This in

turn translates as financial costs as increased burden are placed on social and psychological support structures and medical treatment.

#### Not investing in early intervention legal assistance

Legal assistance as set out below plays a crucial role in correct early intervention decision making at primary level, reducing the need for appeals.

#### **Alternative mechanisms to improve equity and access to justice and achieve lower cost civil dispute resolution including early intervention measures; and**

#### **Reforms in Australian jurisdictions and overseas which have been effective at lowering the costs of accessing justice services and promoting equality in the justice system.**

RACS solicitors currently play a crucial role in early intervention in the refugee jurisdiction. RACS solicitors are able to effectively present an asylum seeker's claims in the form in which they are most efficiently able to be processed by the Department of Immigration.

The value of legal assistance and immigration advice to asylum seekers and particularly those in detention has been extensively documented internationally. The following studies from overseas detail the positive effects legal assistance can provide to asylum seekers including:

- savings in overall costs and faster and more sustainable primary decisions<sup>12</sup>.  
In a UK study these cost savings were estimated to be on average 47,205.50 UK Pounds for every 100 cases proceeding to appeal because more sustainable decisions were made in the first instance and there was a subsequent reduction in allowed appeals;<sup>13</sup>
- better expectation management, reducing the need for and cost associated with compliance procedures and detention;<sup>14</sup>

---

<sup>12</sup> Aspden, J. (2008). Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission: UKBA and LSC. Accessed 01.12.2009 at <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1107.pdf>. p. 66 for cost saving

<sup>13</sup> Aspden, J. (2008). Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission: UKBA and LSC. Accessed 01.12.2009 at <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1107.pdf>.

<sup>14</sup> Field, O., & Edwards, A. (2006). Alternatives to detention of asylum seekers and refugees Legal and protection policy research series. Geneva: United Nations High Commissioner for Refugees, p 45.

- increased likelihood of complying with hearing requirements;<sup>15</sup>
- increased efficiency of immigration proceedings, reducing overall bed days in detention[ by 4.2 days per detainee]<sup>16</sup>. A US study estimated the cost of detention of \$65.61 per day, and total cost savings at \$12.8 million US;
- benefits to the government by ensuring that the immigration monitoring and detention systems comply with national and international human rights obligations;<sup>17</sup>
- crucial problem solving support for those applying for review of immigration decisions when needed, such as assistance to find interpreters, translators, transportation for hearings, housing, medical care, job information;<sup>18</sup>
- supporting successful protection visa applicants in the “arduous journey of jump-starting their lives”;<sup>19</sup>
- Moving applicants through the courts faster, receiving fewer in absentia removal orders, allowing applicants to effectively prepare a matter to proceed and reducing adjournments and delays, monitoring and ensuring detention conditions are adequate, and increasing court efficiency according to Immigration Judges in a US study.<sup>20</sup>

### How does Australia compare to other countries?

#### *New Zealand*

---

<sup>15</sup> Sullivan, E., Mottino, F., Khashu, A., & O'Neil, M. (2000). Testing community supervision for the INS: An evaluation of the appearance assistance program Volume 1. New York: Vera Institute for Justice. Page 7. Accessed 11.11.2010 at <http://www.vera.org/content/testing-community-supervision-ins-evaluation-appearance-assistance-program>

<sup>16</sup> Field, O., & Edwards, A. (2006). Alternatives to detention of asylum seekers and refugees Legal and protection policy research series. Geneva: United Nations High Commissioner for Refugees, p 239.

<sup>17</sup> The New Zealand Immigration Act 2009 Schedule 3 Enactments Amended provided for legal advice in a broader set of circumstances for immigration matters. The Regulatory Impact Statement: stated that legal aid for migration matters: “...will benefit the government through ensuring that the immigration monitoring and detention system complies with national and international human rights obligations.”

<sup>18</sup> LIRS (Lutheran Immigration and Refugee Service). (2009). Alternatives to detention programs: An international perspective. Washington, D.C.: LIRS.

<sup>19</sup> LIRS (Lutheran Immigration and Refugee Service). (2009). Alternatives to detention programs: An international perspective. Washington, D.C.: LIRS.

<sup>20</sup> Siulc, N., Cheng, Z., Son, A., & Byrne, O. (2008). Legal orientation program: Evaluation and performance and outcome measurement report, Phase II. New York: Vera Institute of Justice. Accessed 10.02.2011 at [http://www.vera.org/download?file=1778/LOP%2Bevaluation\\_updated%2B5-20-08.pdf](http://www.vera.org/download?file=1778/LOP%2Bevaluation_updated%2B5-20-08.pdf)

In New Zealand, legal aid is granted to eligible asylum seekers in respect of the processing of their initial claim for a protection visa, proceedings before the Immigration and Protection Tribunal to appeal a decision to decline to grant a protection visa, and subsequent appeal or review proceedings.<sup>21</sup> Eligibility is assessed by reference to a number of factors, which are laid down in the *Legal Services Act 2011* and *Legal Services Regulations 2011*, including the asylum seeker's levels of income and disposable capital, and their prospects of success.<sup>22</sup>

### *European Union*

The European Union's Asylum Procedures Directive requires as a minimum standard that Member States ensure that asylum seekers receive legal aid on request, although only in the event that a negative decision on their application has been made.<sup>23</sup> Member States may limit access to legal aid by reference, among other things, to the asylum seeker's sufficiency of resources, the likelihood of success, and to particular stages of the appeal process (for example, provision of legal aid only for appeals at first instance).<sup>24</sup> Member States may also impose monetary and/or time limits on the provision of legal aid, and provide that asylum seekers are not to be treated more favourably than nationals in the provision of legal aid.<sup>25</sup>

### *United Kingdom*

Legal aid is available to eligible asylum seekers in the UK in respect of their claim for a protection visa.<sup>26</sup> Legal aid is also available for judicial review proceedings, except in immigration cases where the same, or substantially the same, issue was the subject of a previous judicial review or an appeal to a court or tribunal in the last 12 months, and in that previous judicial review or appeal, the court, tribunal or other decision-maker found against the individual on that issue.<sup>27</sup> Eligibility for legal aid is assessed by reference to factors including the asylum seeker's financial situation and their prospects of success.<sup>28</sup> In recent

---

<sup>21</sup> Legal Services Act 2011 (NZ) s 7(1).

<sup>22</sup> Legal Services Act 2011 (NZ) ss 10–11; New Zealand Ministry of Justice, Can I Get Civil Legal Aid? <<http://www.justice.govt.nz/services/legal-help/legal-aid/civil/eligibility>>.

<sup>23</sup> Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status [2005] OJ L 326/13, art 15(

<sup>24</sup> Council Directive 2005/85/EC, above n 23, art 15(3); ECRE, above n7, 14.

<sup>25</sup> Council Directive 2005/85/EC, above n 23, art 15(5).

<sup>26</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 (UK) Schedule 1, Part 1, para 30.

<sup>27</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 (UK) Schedule 1, Part 1, cl 19.

years, the UK has cut legal aid funding for asylum seekers, a move which has been blamed for the closure of two major legal aid providers for asylum seekers, Refugee and Migrant Justice and Immigration Advisory Service, which went into administration following the funding cuts.<sup>29</sup> The UK cuts it should be noted, have not removed access to legal assistance at the primary Refugee Status Determination phase.

#### What is international best practice?

UNHCR recommends that '[a]t all stages of the [asylum] procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel. Where free legal aid is available, asylum-seekers should have access to it in case of need.'<sup>30</sup>

In 2010, the European Council on Refugees and Exiles (ECRE) published a detailed report on legal aid for asylum seekers in Europe.<sup>31</sup> It made a number of recommendations, including:

- Adequate government funding should be made available to ensure the provision of free and effective legal advice and representation to asylum seekers;
- Legal aid should be available to asylum seekers who lack resources at all stages of the asylum procedure, including early stages (preparation of the application, and lawyers' attendance at asylum interviews) and later stages (any initial and ongoing appeals);
- Where the provision of legal aid is means tested, it should be presumed that asylum seekers do not have sufficient resources unless there is clear evidence to the contrary;
- Where the provision of government-funded legal representation is based on the merits of an asylum seeker's claim, the merits test should not be so stringent as to have the practical effect of denying asylum seekers access to an effective remedy; and

---

<sup>28</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 (UK) ss 11, 21; Immigration Law Practitioners' Association, New Legal Aid Proposals (Information Sheet, 2 May 2013) <<http://www.ilpa.org.uk/data/resources/17812/13.05.02-Legal-Aid-new-provisions.pdf>>.

<sup>29</sup> See John Baron, 'Migrants Charity Goes Into Administration', The Guardian, 19 June 2010 <<http://www.theguardian.com/leeds/2010/jun/19/refugee-migrant-justice-administration>>; Owen Bowcott, 'Tens of Thousands Lose Support as Immigration Advisory Service Closes', The Guardian, 12 July 2011 <<http://www.theguardian.com/law/2011/jul/11/immigration-advisory-service-closes-blames-government>>; Patrick Barkham, 'The Asylum Seekers Facing a Kafkaesque Legal Nightmare', The Guardian, 5 August 2011 <<http://www.theguardian.com/uk/2011/aug/04/asylum-seekers>>.

<sup>30</sup> UNHCR, above n 4, 12.

<sup>31</sup> See ECRE, above n **Error! Bookmark not defined..**

- Access to government-funded legal advice should not be based on merits testing.<sup>32</sup>

Legal assistance is a crucial element of a fair and efficient justice system founded on the rule of law. It helps to ensure fairness and public confidence in the way that justice is administered. It helps to eliminate barriers that impair access to justice for those otherwise unable to afford legal representation. It helps governments to correctly identify protection needs, and ensure that they do not violate their international legal obligations by removing refugees to persecution and other forms of serious harm.

#### The benefits of not-for-profit assistance for asylum seekers

In a 2009 study for the Department of Immigration,<sup>33</sup> the use of the private sector in status resolution services was identified as “controversial for three reasons:

- Problems were identified with the management of costs;
- A lack of oversight was found to lead to poor service delivery; and
- Structural flaws meant that co-dependent relationships between the private industry and the government’s immigration enforcement apparatus were more likely.”

On the other hand this study identified the non-profit sector as offering good mechanisms for resolving status including referrals to asylum shelters together with legal assistance.

RACS strongly supports the continued funding of not-for-profit legal assistance for asylum seekers.

RACS and other community legal centres are uniquely placed to provide accurate, efficient and specialised legal assistance to people seeking immigration advice. RACS and organisations like us have been effective at lowering the cost of access to legal services and promoting equality in the justice system for asylum-seekers experiencing financial hardship.

The level of disadvantage and vulnerability experienced by asylum seekers makes the provision of legal representation and assistance vital for this group. The financial and non-financial costs associated with the removal of legal aid for asylum seekers needs to be properly assessed and the broader impact on Australian society taken into consideration.

To discuss the contents of this submission, please contact us on (02) 9114 1600.

Yours sincerely,

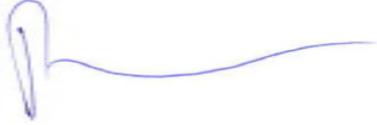
---

<sup>32</sup> Ibid 160–2. In ECRE’s report, ‘legal advice’ and ‘legal assistance’ have the same meaning (referring to where a legal aid provider provides only legal advice to an asylum seeker, but does not act on his or her behalf): ibid 10.

<sup>33</sup> Resolving Immigration Status: Comparative Case Studies, Social Policy Research Centre University of New South Wales Report for Department of Immigration, available at: <http://www.immi.gov.au/media/publications/pdf/unsw-report-2.pdf>, accessed 28 October 2013.

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:



Tanya Jackson-Vaughan  
Executive Director



Katie Wrigley  
Principal Solicitor

**SUMMARY OF RACS'S RECOMMENDATIONS:**

1. An acknowledgment of the high level of demand for legal services for asylum seekers in Australia.
2. An acknowledgment of the value of legal advice and representation of asylum seekers, including that such advice and representation:
  - a. promotes efficiency by helping asylum seekers to understand national asylum procedures and the nature of their rights and obligations, thereby fostering a relationship between asylum seekers and national authorities that is based on trust and cooperation;
  - b. represents an early intervention and cost saving measure removing the risk of poorly made decisions being appealed;
  - c. is in the interests of due process and the rule of law and enables public confidence in the fairness of Australia's asylum procedures.
3. An acknowledgment that asylum seekers often lack the financial resources to pay for legal advice and representation and that without publicly funded assistance, self-representation will be problematic because:
  - a. of their own particular vulnerabilities and inability to lucidly articulate their claims;
  - b. of the risk of Australia breaching its non-refoulement obligations towards those people we have obligations to protect;
  - c. of the significant additional costs which will be incurred as a result including the pressure on Australian immigration officials and decision-makers, and the increased costs associated with less sustainable primary decisions and pressure on the higher appeal bodies including the courts.
4. Continued legal service provision to those seeking asylum in Australia, under IAAAS providers including RACS.
5. A commitment to guaranteed IAAAS contracts to not-for-profit IAAAS providers to allow for proper planning and service delivery including RACS, RILC, RAILS and Case for Refugees;
6. A commitment to prompt access to permanent protection for refugees, regardless of asylum-seekers' mode of arrival;
7. Management of a timely and fair system of refugee status determination.