

## QRAR CAMPAIGN FOR PERMANENT PROTECTION FOR REFUGEES & ASYLUM SEEKERS IN THE LEGACY CASELOAD

### What is the Legacy Caseload?

In 2014, the Australian government brought in new laws adversely affecting people who had come by sea to seek safety in Australia. The laws removed many of the safeguards enshrined in the UN Refugee Convention -an international treaty to which Australia is a signatory. For example, the new laws:

- retrospectively change the status of newborn children;
- limit or exclude access to merit based reviews;
- grant the relevant Minister powers to detain people at sea and transfer them to any country the Minister chooses without Parliamentary scrutiny.

The laws were called The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014.

### Who does the Legacy Caseload refer to?

‘The Legacy Caseload’ refers to: approximately 30,000 people seeking asylum who arrived in Australia by boat between 13th August 2012 and 1st January 2014; **plus** people who came to Australia by boat before 13th August 2012, but who had not had their protection visa application finalised by 18 September 2013.

If granted refugee status, these people will **NOT** be eligible for permanent protection. Family reunion will **NOT** be permitted, and they will **NOT** have the same access to services and residency as refugees who hold a Permanent Protection Visa.

By August 3rd, 2020, **17,643** of this group had been recognised as refugees under the UN Convention but were still not entitled to permanent protection, **8341** had been refused, with many of those refused now in an Appeals process, and **about 5000** people were still waiting to be interviewed or for their results.

### The dangers of temporary protection visas

Temporary protection visas require refugees to continually reapply for protection every few years. They are denied the right to be united with family and may be sent back to a country where they fear persecution. UNHCR has described these conditions as ‘punitive’ and noted their damaging effect on refugees’ mental health.

### The Australian government has denied refugee status for some people, saying it is safe to go back to their country. Is it?

UN Special Rapporteur Ben Emmerson’s July 2018 report on Sri Lanka, noted:

*“The Tamil community remains stigmatised and disenfranchised, while the trust of other minority communities is being steadily eroded.”* For example, there are *“distressing testimonies of very brutal and cruel methods of torture, ...asphyxiation using plastic bags drenched in kerosene, pulling out of fingernails... use of various forms of water torture ... and mutilation of genitals.”* Reports from Human Rights Watch, Amnesty International and the International Crisis Group also do not support the Australian government’s view that it is safe for these asylum seekers and refugees to go back.

### Strengths refugees bring to our Australian communities

Refugees benefit Australian society both economically and culturally. They bring with them determination, motivation, diversity, creativity, a willingness to learn, work hard and contribute to their new country.

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ASYLUM SEEKERS IN THE LEGACY CASELOAD**

Imagine you are Muttiah, one of the 'Legacy Caseload' asylum seekers

<b>MUTTIAH'S STORY</b>	<b>PROCESS</b>
<p><b>2012</b></p> <ul style="list-style-type: none"> <li>• Arrive in Australia by boat having fled your country in a hurry. You fear for your life, your community is consistently persecuted.</li> <li>• Not allowed to apply for asylum for 4 years because you arrived by boat.</li> <li>• Kept in a detention centre and later released into the community on a Bridging Visa E.</li> <li>• Survive through support from community groups.</li> </ul>	<ul style="list-style-type: none"> <li>• December <b>2014</b>, Australian law is changed to a 'fast tracking' process limiting rights and preventing boat arrivals from gaining permanent protection.</li> </ul>
<p><b>May 2017</b></p> <ul style="list-style-type: none"> <li>• You must make a temporary protection claim application for a 3-year or 5-year visa by October 1, 2017 or be deported.</li> <li>• You have some English but can only write in your own language.</li> </ul>	<ul style="list-style-type: none"> <li>• Application is <b>~46</b> pages with <b>~101</b> questions.</li> <li>• An additional personal statement from you. <b>~21 pages</b></li> <li>• <b>You will</b> also need to provide proof of identity documents.</li> </ul>
<ul style="list-style-type: none"> <li>• You really need professional help (immigration lawyer/migration agent) to complete the application. It is in English. There will be no other chance to state your case.</li> </ul>	<ul style="list-style-type: none"> <li>• Because many in the legacy caseload of 30,000 people are concurrently given permission to submit their claims, there is huge pressure on pro bono lawyers.</li> <li>• A private lawyer costs <b>~\$3,000</b> plus interpreter fees</li> </ul>
<p>Your protection claim is lodged and looked at by a case officer from the Department of Home Affairs.</p>	<ul style="list-style-type: none"> <li>• This can take anything from 2 months to over 2 years.</li> </ul>
<b>MUTTIAH'S CLAIM IS SUCCESSFUL</b>	
<ul style="list-style-type: none"> <li>• <b>2018</b> - You have been granted temporary refugee status on a Safe Haven Enterprise Visa for 5 years.</li> <li>• Must re-apply to renew this temporary visa at least 3 months before it ends</li> </ul>	<ul style="list-style-type: none"> <li>• The forms, process and costs may have changed.</li> <li>• The rules may be changed again.</li> </ul>
<b>MUTTIAH'S CLAIM FAILS</b>	
<p><b>2018-</b> Your claim is rejected. You have 28 days to appeal to the Immigration Assessment Authority (IAA). This is a limited paper review. You will not be re-interviewed. You remain on a Bridging Visa E.</p>	<ul style="list-style-type: none"> <li>• Lawyer cost <b>~\$3,300</b></li> </ul>
<ul style="list-style-type: none"> <li>• Your IAA Appeal is rejected. Your Bridging Visa E will be terminated in 28 days.</li> <li>• You need to obtain a Merits Review of your case by a Barrister</li> <li>• <b>No opportunity to submit new information to your appeal.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Barrister checks if it has merit to go to Federal Circuit Court (FCC). IF not, you are not allowed by law to be represented. You will need to go it alone in the FCC.</li> <li>• Merits Review cost: <b>\$2190~</b></li> </ul>
<ul style="list-style-type: none"> <li>• You have 28 days to lodge an application of appeal to the Federal Circuit Court and then apply for another Bridging Visa E.</li> </ul>	<ul style="list-style-type: none"> <li>• Costs: <b>~\$665</b> to register FCC application: <b>~ \$770</b> for the lawyer.</li> </ul>
<ul style="list-style-type: none"> <li>• Full representation at the Federal Circuit Court</li> </ul>	<ul style="list-style-type: none"> <li>• Costs: <b>~ \$9950</b> for a barrister and lawyer.</li> </ul>
<ul style="list-style-type: none"> <li>• Visa revoked</li> </ul>	<p><b>Sent back to country of origin.</b></p>

**Sources:** Department of Home Affairs, Kaldor Centre for International Refugee Law; Human Rights Council; Refugee Council of Australia; Australian Human Rights Commission; Australian Parliamentary Library; case studies from asylum seekers