



Law Council
OF AUSTRALIA

Next steps to improve Australia's settlement and integration of refugees

Department of Home Affairs

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 90,000¹ lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2022 Executive as at 1 January 2022 are:

- Mr Tass Liveris, President
- Mr Luke Murphy, President-elect
- Mr Greg McIntyre SC, Treasurer
- Ms Juliana Warner, Executive Member
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member

The Acting Chief Executive Officer of the Law Council is Ms Margery Nicoll. The Secretariat serves the Law Council nationally and is based in Canberra.

¹ Law Council of Australia, *The Lawyer Project Report*, (pg. 9,10, September 2021).

Acknowledgement

The Law Council thanks the Law Institute of Victoria (**LIV**), the Law Society of New South Wales and the Migration Law Committee in its Federal Litigation and Dispute Resolution Section for their input into this submission.

Executive Summary

1. The Law Council welcomes the opportunity to make a submission to the Office of the Coordinator General for Migrant Services in the Department of Home Affairs (**Department**) in relation to its discussion paper 'Next steps to improve Australia's settlement and integration of refugees' (**discussion paper**).
2. According to the discussion paper, the upcoming tender and grants process for Australian Cultural Orientation Program (**AUSCO**), Humanitarian Settlement Program (**HSP**) and Settlement Engagement Transition Support Program (**SETS**) has provided the Department with an opportunity to consider whether changes to these services and how they are delivered could assist to improve settlement outcomes.
3. The Law Council understands that these programs are directed to persons who have been recognised as a refugee and have been either granted a permanent Refugee or Humanitarian visa or a permanent or temporary protection or humanitarian visa. However, in the course of obtaining input from its constituent bodies on this issue, the LIV provided input about the experience in Australia of asylum seekers. These asylum seekers may ultimately be recognised as refugees and at which point, they may then come within the purview of these programs. The experience in Australia of asylum seekers is likely to affect their ability to settle into the community if and when they are recognised as a refugee. For this reason, the experience of asylum seekers is worth taking into account in the context of developing policy about the settlement of refugees.
4. As such, this submission is divided into two parts: the first part addresses the settlement experience of refugees – that is, people subject to these programs; and the second part addresses the submissions about asylum seekers.
5. Further, none of the questions in the discussion paper expressly address access to justice or legal supports. However, Law Council considers that access to justice is critical to ensuring a positive settlement experience for newly arrived refugees, and settlement services should be designed in a manner which aids access to justice. Specifically, the Law Council recommends that:
 - free legal assistance and interpreter services should be provided to all asylum seekers through the Immigration Advice and Application Assistance Scheme (**IAAAS**); and
 - the Australian Government should commit to additional, ongoing and evidence-based resourcing to community legal centres responsible for refugee legal services.
6. The Law Council has not addressed all of the questions in the discussion paper – it has focused on housing, health community relationships, and capability and self-agency. On these matters, it recommends:
 - increased funding and access to crisis accommodation for non-citizens who are victims of family violence; and
 - steps should be taken to ensure that such accommodation is accessible to women without income or means to pay and who do not have permanent rights to remain in Australia.

PART 1 – Settlement experience of refugees that are subject to the AUSCO, HSP, & SETS programs

The programs

7. According to the Department's website, the HSP supports 'humanitarian entrants and other eligible visa holders during their initial settlement' by helping new arrivals to 'integrate into Australian life by building the skills and knowledge they need to become self-reliant and active members of the community'.² It is ordinarily available to persons who arrive from offshore on a permanent Refugee or Global Special Humanitarian visa.³ However, Specialised and Intensive Services (**SIS**), a component of the HSP, is also available to permanent protection and temporary protection and humanitarian visa holders with complex needs and offers 'short term needs-based support to help them access appropriate mainstream services and develop the necessary skills to manage their needs independently'.⁴
8. According to the Department's website, the SETS program appears directed to newly arrived migrants 'who do not have family and other community supports to rely on' and seeks to address their settlement needs, in order to improve social participation, economic well-being, independence, personal well-being and community connectedness'. This program is directed to permanent Refugee and protection visa holders, and limited cohorts of temporary humanitarian visa holders, but not temporary protection visa holders.⁵
9. The AUSCO program is offered offshore to permanent Refugee or Global Special Humanitarian visa holders to provide practical advice about their trip to Australia and post-arrival expectations.
10. The Law Council queries the selective availability of these programs to only some refugees.

General observations

11. The Law Council, with the input of the LIV and the Law Society of New South Wales, offers the following general observations about the experience in Australia of refugees, particularly those on temporary visas.
12. The Law Council considers this context is relevant in understanding the refugee experience and is worth keeping front of mind as policy is developed in this area.
13. The LIV offers the following two overarching suggestions directed at improving the settlement experiences of refugees, in general:

² Department of Home Affairs, 'Humanitarian Settlement Program (HSP) – About the program' (webpage), <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/about-the-program>, accessed on 1 June 2022.

³ Ibid.

⁴ Department of Home Affairs, 'Humanitarian Settlement Program (HSP) – Specialised and Intensive Services' (webpage), <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/specialised-and-intensive-services>, accessed on 1 June 2022.

⁵ Department of Home Affairs, 'Humanitarian Settlement Program (HSP) – Specialised and Intensive Services' (webpage), <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/specialised-and-intensive-services>, accessed on 1 June 2022.

- (a) extensive and inclusive consultation should be undertaken with refugee-led organisations and community organisations to ensure settlement services are suitable and effective; and
 - (b) it is important to improve the public and political discourse around refugees as this affects most aspects of settlement.
14. The Law Society of New South Wales raised a similar point, noting that a lack of a pathway to a permanent visa in Australia for many refugees is a significant factor which leads to continuing poor health and wellbeing outcomes. The Law Council's Justice Project cites the studies and evidence provided in support of this point.⁶
 15. The Law Society of New South Wales states that a person's temporary visa status causes ongoing uncertainty, instability and limits a refugee's ability to plan for the future or to build deeper connections and foundations in Australia. It cites current research, which suggests the significant economic benefits of the transition from temporary to permanent visas, including an estimated increase in labour force participation rates by 23 per cent and a greater than 50 per cent reduction in unemployment rates.⁷
 16. The Law Society of New South Wales also emphasises the need for an effective family reunification program. It notes the statement by the Australian Human Rights Commission that 'resettlement outcomes are vastly improved for people who have the support of their family, whereas family separation has devastating impacts on a person's mental health, economic situation and social integration'.⁸
 17. The LIV submits the Federal Government should ensure information about how to access and seek referrals to obtain settlement services is easily accessible.

Access to justice

Legal issues faced by newly arrived refugees

18. Recent arrivals in Australia are likely to have limited familiarity with the Australian legal system and their own rights under Australian law, and as a result, may not recognise that they have a legal problem. However, as identified in the Law Council's Justice Project, newly arrived migrants are vulnerable to a range of complex legal difficulties, particularly during the initial settlement phase.⁹ These difficulties include exploitation or unfair work practices, unfair consumer practices, driving infringements, specific family violence issues, wills and estates, discrimination and housing insecurity.
19. As the Law Society of New South Wales points out, refugees are not a homogenous group and legal services need to be accessible, designed in collaboration with refugees and their communities, and trauma-informed.
20. The Justice Project identified that recently arrived migrants are more likely to seek legal assistance from informal sources, such as leaders in their community or peers,

⁶ Law Council of Australia, 'The Justice Project – Final Report – Part 1 – Asylum Seekers' (August 2018), [link](#), 15.

⁷ John van Kooy, 'Supporting economic growth in uncertain times: Permanent pathways for Temporary Protection visa and Safe Haven Enterprise visa holders' (14 September 2021), 2 <https://apo.org.au/node/314128>.

⁸ Australian Human Rights Commission, Submission to the Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, Inquiry into the efficacy, fairness, timeliness and costs of visas for family reunion (30 April 2021) 6.

⁹ Law Council of Australia, 'The Justice Project – Final Report – Part 1 – Recent Arrivals to Australia' (August 2018), [link](#), 3.

or from non-legal service providers, like settlement services or migrant resource centres than from formal legal or government mechanisms.¹⁰ This is due to factors including limited English language skills, cultural isolation, lack of awareness of services, limited financial means, fear or distrust of authorities, including a fear of deportation, and a preference to resolve certain issues within communities.¹¹

21. As a result, it is necessary to build legal literacy in newly arrived migrants and the importance of strong referral networks between legal and migrant services, which must extend to rural, regional and remote areas with high recent arrival populations.¹²
22. Other issues raised by the Justice Project, include:
 - legal assistance should be delivered in a way that is culturally competent and appropriate for persons from linguistically diverse backgrounds;¹³
 - cultural or community liaison officers play an important role in breaking down barriers between recent arrivals and legal assistance services, fostering community legal education, requests for assistance and culturally competent service delivery;¹⁴ and
 - it is critical that newly arrived migrants have access to free, professional and appropriately-skilled interpreter services, given that 'limited English language skills impacts individuals' ability to engage with the justice system at every stage: dealing with police, engaging with support services, completing forms and understanding paperwork, communicating with legal and court staff and participating in proceedings and understanding court orders'.¹⁵

Comment on the present programs

23. Based on a review of the publicly available information about the Department's present support services, AUSCO, HSP and SETS, it appears that these services do provide for connections and referrals with community legal services or do themselves seek to build legal literacy to some degree.
24. For example, the SETS – Client Services program, which delivers services on a needs-based approach, undertakes a range of 'justice' activities, which may include casework, providing referrals to legal services and providing information about:¹⁶
 - *Australia's legal framework, government systems, court proceedings, accessing legal representation and key justice agencies.*
 - *Improving relations between migrants and law enforcement and justice workers (for example, police, protection workers, etc.) through cross-cultural training.*
 - *Australian law, including information on a range of issues such as spouse abuse and domestic violence (including apprehended violence orders), family law issues including divorce and child protection legislation and child labour laws, legal aid and administrative law issues.*

¹⁰ Ibid.

¹¹ Ibid and see also, 11-19.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid, 4.

¹⁵ Ibid.

¹⁶ Department of Home Affairs, 'Settlement Engagement and Transition Support (SETS) - Client services – Types of services and support – Justice' (webpage), <https://immi.homeaffairs.gov.au/settling-in-australia/sets-program/sets-client-services>, accessed on 1 June 2022.

- *Legal issues relating to private rental and public housing.*
25. Under the HSP program, a refugee who can ‘demonstrate an inability to independently engage with appropriate supports and be impacted by multiple or complex barriers that may include ... legal issues’ may qualify for access to SIS.¹⁷
 26. Finally, the AUSCO program, includes a course title ‘Australian law’, which appears to be quite high-level.¹⁸
 27. Noting that the SETS and SIS programs appear to be needs- or request-based, the Law Council suggests the Department reflect on whether these services are directed towards providing *all* newly arrived refugees clear and specific information on:
 - the kinds of legal issues identified in [18] to assist them identify and prepare pro-actively to address possible legal issues which may arise; and
 - how to get in contact with specialist legal support services, including in rural, regional and remote areas, which can provide culturally competent assistance tailored to their experience.

Funding access to justice

28. As noted, the contact that refugees have with the Australian legal system is not confined to obtaining immigration advice on refugee and humanitarian visas.
29. As the Law Society of New South Wales notes, investment in legal aid, including the proper funding of community legal centres, is central to achieving access to justice for refugees.
30. The Law Council considers that properly funded access to legal assistance to navigate these challenges would serve as a protective factor for the health, wellbeing and integration of refugees in Australian society.
31. The Law Council has called on the new Australian Government to commit to ‘additional, ongoing and evidence-based resourcing for Community Legal Centres including specialist community legal centres’¹⁹ and this includes community legal centres responsible for refugee legal services.

Recommendations

- **The Australian Government should commit to additional, ongoing and evidence-based resourcing community legal centres responsible for refugee legal services.**

¹⁷ Department of Home Affairs, ‘Humanitarian Settlement Program (HSP) – Specialised and Intensive Services’ (webpage), <https://immi.homeaffairs.gov.au/settling-in-australia/humanitarian-settlement-program/specialised-and-intensive-services>, accessed on 1 June 2022.

¹⁸ Department of Social Services, AUSCO – Australian Cultural Orientation Program – Australian law’, <https://immi.homeaffairs.gov.au/settlement-services-subsite/files/english-ausco-australian-law.pdf>.

¹⁹ Law Council of Australia, ‘Call to Parties’ (April 2022), <https://www.lawcouncil.asn.au/publicassets/919cc01e-23b9-ec11-944c-005056be13b5/Call%20To%20Parties%20Final-Web.pdf>, 5.

Housing

Introduction

32. The discussion paper asks:

Given the pressures in finding affordable housing in Australia, are there any changes we need to make to settlement services' approach to housing refugees?

33. The Law Council's Justice Project addressed the housing insecurity issues faced by newly arrived migrants, in particular refugees.²⁰

34. Studies cited in that Project have identified that an absence of secure and low-cost housing underlays the reluctance of newly arrived migrants to address tenancy problems and that the lack of housing, as well as culturally responsive housing assistance and tenancy advocacy services, leaves refugees disadvantaged in dealing with landlords and agents.²¹

Family Violence and Crisis Accommodation

35. A recent study conducted by the Monash University Migration and Inclusion Centre which examined the family violence experiences of 1392 migrant and refugee women in Australia before and during the March-September 2020 COVID-19 lockdown,²² found that 40 per cent of temporary visa holders had experienced DFV, compared with 32 per cent of Australian citizens and 28 per cent of permanent visa holders.²³

36. The impact of family violence on temporary migrants can be exacerbated by a number of factors, including language barriers and reliance on interpreters to seek help, lack of familiarity with Australian laws and processes, mistrust of police as a result of past experiences, isolation from family and mainstream society and a lack of access to social supports, and a concern that speaking out would betray or bring shame to their extended family and community.²⁴

37. The shame and stigma associated with family violence, particularly for women from refugee and migrant backgrounds, is a major hurdle to seeking assistance and ending the abusive relationship.²⁵

38. The LIV notes that increasing the availability and access to crisis accommodation for family violence victims is crucial, given a consistent finding from the Royal Commission into Family Violence and other recent reports is that men utilise women's

²⁰ Law Council of Australia, 'The Justice Project – Final Report – Part 1 – Recent Arrivals to Australia' (August 2018), [link](#), , 8.

²¹ Ibid, 24, citing: Katie Fraser, Footscray Community Legal Centre, Out of Africa and into court: the legal problems of African refugees (2009), 18 and Laura Berta, Footscray Community Legal Centre, Making it Home: Refugee Housing in Melbourne's West (March 2012), 3.

²² Marie Segrave et al, 'Migrant and Refugee Women in Australia: The Safety and Security Survey' (2021) Monash University.

²³ Ibid, 31.

²⁴ Law Council of Australia, 'Developing the next National Plan to Reduce Violence against Women and their Children' (13 August 2021), <https://www.lawcouncil.asn.au/publicassets/d1fe54d0-bb0e-ec11-9440-005056be13b5/4063%20-%20National%20Plan%20to%20Reduce%20Violence%20against%20Women%20and%20their%20Children.pdf>, [140].

²⁵ Mission Australia, 'Out of the shadows, Domestic and Family Violence: A Leading Cause of Homelessness in Australia' (2019) <https://www.missionaustralia.com.au/newsletters/winter-newsletter-2019/out-of-the-shadows>.

temporary visa status and financial dependence to invoke a fear of deportation as a means of control and coercion.²⁶

39. The Law Council has previously submitted that it is essential that services are appropriately resourced so that people affected by family violence have timely access to suitable and safe accommodation and trauma-informed health, legal and other support services.
40. The LIV notes that women on temporary visas face significant barriers in accessing long-term public housing, are often unable to access Centrelink payments and have limited working rights and entitlements. Moreover, their access to temporary crisis accommodation services is restricted as providers may 'have to refuse to accommodate women because there is no certain pathway beyond the refuge'.²⁷
41. To address these issues, the Law Council recommends:
 - improving funding and access to crisis accommodation for non-citizens who are victims of DFV; and
 - steps be taken to ensure that such accommodation is accessible to women without income or means to pay and who do not hold a permanent visa.

Recommendations:

- **there should be increased funding and access to crisis accommodation for non-citizens who are victims of DFV; and**
- **steps should be taken to ensure that such accommodation is accessible to women without income or means to pay and who do not have permanent rights to remain in Australia.**

Community relationships

42. The discussion paper asks:

How could we create greater opportunities for all refugees to build deeper relationships and friendships with the wider Australian community?

43. As noted, English language skills, literacy and cultural differences are significant barriers for refugees to integrate into Australian society. The LIV members raised that more accessible English and literacy classes run by people from similar language/ethnic groups and interpreting services would assist in learning.
44. The LIV submits that creating greater opportunities for refugees to build relationships with the wider Australian community requires a two-way approach. It suggests that awareness and educational campaigns should be targeted at Australian society to

²⁶ Royal Commission into Family Violence, Reports and recommendations (Parl Paper No 132, 2014-16) 104. See also, Law Council of Australia, 'Developing the next National Plan to Reduce Violence against Women and their Children' (13 August 2021), <https://www.lawcouncil.asn.au/publicassets/d1fe54d0-bb0e-ec11-9440-005056be13b5/4063%20-%20National%20Plan%20to%20Reduce%20Violence%20against%20Women%20and%20their%20Children.pdf>, [145].

²⁷ National Advocacy Group on Women on Temporary Visas Experiencing Violence, Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children (2018) 17 https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2018-12/Path%20to%20Nowhere_0.pdf.

reduce racism and xenophobia and help communities become more aware of cultural differences and other challenges facing refugees.

PART 2 – Experience of asylum seekers

Introductory comments

45. The Law Council understands that the Department's settlement programs are directed towards people who have been recognised as refugees. The LIV has provided a number of submissions about the experiences of asylum seekers, noting this experience is highly likely to be relevant to their settlement into the community if and when they are recognised as a refugee- and that this experience is worth taking into account in the context of developing policy about the settlement of refugees.
46. These submissions are included in the following discussion, in addition to some points addressing the Law Council position on the legal assistance which it considers should be made available to asylum seekers during the refugee status determination process.
47. The LIV makes the general comment that visa uncertainty and delays in processing can significantly jeopardise settlement outcomes, and to address this, improvements should be sought to visa processing, to ensure that it is fast, fair, transparent and supported by access to quality legal advice, representation and access to other services throughout the process.

Access to justice

48. In relation to the latter point in the previous paragraph, the Law Council's policy position is that the principle of non-refoulement and other relevant international obligations apply to all people seeking asylum in Australia regardless of their mode or time of arrival.²⁸ The Law Council's view is that these principles require that Australia enact robust safeguards in place to protect against refoulement,²⁹ including practical access to independent legal or migration advice for all people seeking Australia's protection.
49. The Law Council also considers that rule of law principles require that all people seeking protection in Australia must have access to legal assistance so as to understand their legal rights and the legal processes that apply to the determination of their protection status. This access to legal advice should cover all stages of the determination process and extend matters arising from the application of detention policies.³⁰
50. The IAAAS provides Government-funded access to professional immigration advice and application assistance. However, the withdrawal of the IAAAS from asylum seekers who have arrived without a valid visa³¹ has left many navigating complex legal systems without access to essential legal assistance.³² In addition to affecting a

²⁸ Law Council of Australia, Asylum Seeker Policy, <https://www.lawcouncil.asn.au/publicassets/129a0b1b-bed6-e611-80d2-005056be66b1/Policy-Statement-Asylum-Seeker-Policy.pdf>, [7].

²⁹ Ibid, [7(b)(ii)].

³⁰ Ibid, [9(c)].

³¹ Department of Home Affairs, 'Getting help from the Immigration Advice and Application Assistance Scheme (IAAAS)', (webpage), <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/protection-866/iaaas>, (accessed on 27 May 2022).

³² Law Council of Australia, 'The Justice Project – Final Report – Part 1 – Asylum Seekers' (August 2018), [link](#), 23-25.

person's ability to properly make their protection claims, this has placed critical pressures on the legal assistance and pro bono sectors and increased burdens on decision-making officials and the courts.³³

51. The Law Council has long maintained and continues to do so through its recent Call to Parties document, that access to free legal assistance and interpreter services should be provided to all asylum seekers to enable more efficient processing and assure procedural fairness.³⁴

Recommendations

- **Free legal assistance and interpreter services should be provided to all asylum seekers through the IAAAS.**

Capability and self-agency

52. The discussion paper asks:

How do we design programs to respond well to people's individual needs and aspirations, and to help strengthen their capability and self-agency?

Status resolution support services

53. Another key policy setting which shapes the experience of refugees and asylum seekers is their access to support payments. Support payments are made to refugees and asylum seekers on a sliding scale – with fewer payments provided depending on the type of visa held.
54. In all cases, social security payments are payable to an Australian resident³⁵ – which includes a person who resides in Australia and is either an Australian citizen or permanent visa holder.³⁶ Temporary protection visa holders may qualify for some social security payments, including special benefit, family tax benefit and parental leave pay, but not others like JobSeeker or Carer Payment.³⁷

³³ Ibid.

³⁴ Law Council of Australia, 'Call to Parties' (April 2022), <https://www.lawcouncil.asn.au/publicassets/919cc01e-23b9-ec11-944c-005056be13b5/Call%20To%20Parties%20Final-Web.pdf>, 34.

³⁵ See, for example, the table at Attachment A of the Law Council's submission, 'Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021' to the Senate Community Affairs Legislation Committee (5 August 2021), <<https://www.lawcouncil.asn.au/publicassets/348538fd-1efe-eb11-9440-005056be13b5/4054%20-%20Social%20Services%20Legislation%20Amendment%20%20Consistent%20Waiting%20Periods%20for%20New%20Migrants%20%20Bill%202021.pdf>>

³⁶ See for example, subsection 7(2) of the *Social Security Act* 1991 (Cth).

³⁷ See, for example, the table at Attachment A of the Law Council's submission, 'Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021' to the Senate Community Affairs Legislation Committee (5 August 2021), <<https://www.lawcouncil.asn.au/publicassets/348538fd-1efe-eb11-9440-005056be13b5/4054%20-%20Social%20Services%20Legislation%20Amendment%20%20Consistent%20Waiting%20Periods%20for%20New%20Migrants%20%20Bill%202021.pdf>> and see Department of Social Services, '9.2.10 Visa subclasses 700-799 payment eligibility', <<https://guides.dss.gov.au/social-security-guide/9/2/10>>, accessed on 30 May 2022. See Subclass 785 Temporary Protection visa.

55. However, asylum seekers on bridging visas awaiting determination of protection visa claims do not qualify for any social security payments,³⁸ although some may qualify for the Status Resolution Support Services (**SRSS**) payment.³⁹ Practitioners have indicated that, anecdotally, the refugee status determination process, including appeals, can take 7-8 years.
56. Formal statistics also suggest the process can take several years:
- primary application – information provided by the Department under freedom of information indicates that the time taken to process protection visa applications can extend from one to two and a half years;⁴⁰
 - merits review – in 2020-21, 20 per cent of migration and refugee matters before the Administrative Appeals Tribunal (**AAT**) were decided within 12 months and the median time for deciding a migration matter was 98 weeks and 104 weeks (728 days) for a refugee matter.⁴¹ According to the AAT website, the average time taken to resolve a protection visa matter between 1 November 2021 and 30 April 2022 was 884 days – almost two and a half years;⁴² and
 - judicial review – the courts do not distinguish between protection and non-protection matters in their statistics, but in 2020-21, 57 per cent of all migration cases in the Federal Circuit Court were disposed of after 12 months,⁴³ and in the Federal Court of Australia, exactly one fifth of all migration matters were over two years old.⁴⁴
57. The Law Council notes that the above statistics suggest that any reform designed to reduce the length of the refugee status determination process would require consideration of a number of processes within the control of different entities and statutory schemes. The Law Council acknowledges that this would be a large-scale undertaking, beyond the scope the present consultation. However, again, these submissions are included to depict the asylum seeker experience, given its relevance to the settlement of asylum seekers who are ultimately recognised as refugees.
58. According to annual reports produced by community legal centres which provide services to asylum seekers and refugees, some, but not all, asylum seekers may

³⁸ Department of Social Services, '9.2.1 Visa subclasses 010-099 payment eligibility', <<https://guides.dss.gov.au/social-security-guide/9/2/1>>, accessed on 30 May 2022. See Subclass 051 Bridging (Protection Visa Applicant) visa. 'Refugees and asylum seekers – Payments', Services Australia (webpage), <https://www.servicesaustralia.gov.au/payment-for-refugees-and-asylum-seekers?context=60041> accessed on 30 May 2022.

³⁹ Department of Social Services, 'Status Resolution Support Services Payment (SRSS)' (webpage), <https://www.servicesaustralia.gov.au/status-resolution-support-services-payment-srss?context=60041>, accessed on 30 May 2022.

⁴⁰ Department of Home Affairs, FOI Request – FA 21/08/00829, 2 September 2021, 5 and Department of Home Affairs, FOI Request – FA 21/07/00275, 10 September 2021, 4.

⁴¹ Administrative Appeals Tribunal, Annual Report 2020-21 (24 September 2021), 55.

⁴² Administrative Appeals Tribunal, 'What happens after lodgement?' (website), <https://www.aat.gov.au/steps-in-a-review/migration-and-refugee/refugee/what-happens-after-lodgement> (accessed on 30 May 2022).

⁴³ Federal Circuit Court of Australia, Annual Report 2020-21, <https://www.fcfcga.gov.au/sites/default/files/2021-10/21496%20FCC%20Annual%20Report%202020-21%20Web.pdf>, 39.

⁴⁴ Federal Court of Australia, Annual Report 2020-21, https://www.fedcourt.gov.au/_data/assets/pdf_file/0011/88265/FCA-Annual-Report-2020-21.pdf, 22.

qualify for work rights while holding the bridging visa⁴⁵ and most clients were financial disadvantaged⁴⁶ and many had no income at all.⁴⁷

59. This leaves a number of asylum seekers, in particular, in a precarious social situation. The LIV points out that those with no income may be fully dependent on 'hand to mouth' charity in order to survive.

60. In its 2020-21 Annual Report, RAILS stated that:⁴⁸

48% of clients were unemployed when we assisted them. With no Federal government financial assistance available to them, they are wholly dependent on charities and organisational collaborations such as ASRA and subsist on extremely low incomes.

61. For example, the Parliamentary Library, reporting on the COVID-19 pandemic effects on refugees and people seeking asylum in May 2020, stated that:⁴⁹

... [A]sylum seekers living in the community on bridging visas while they await processing of their claim, and refugees who have been granted temporary protection visas, are (like other temporary visa holders) not eligible for income support, such as the [JobSeeker](#) and [JobKeeper](#) payments. Charities that support refugees and asylum seekers have [reported significant increases in demand from asylum seekers](#) in need of assistance due to the pandemic. Some state and territory governments (for example, [Victoria](#) and the [ACT](#)) are assisting charities in supporting asylum seekers and temporary migrants who have lost their income due to COVID-19, but these measures are relatively small and do not extend nation-wide.

62. The LIV suggests the Australian Government should immediately restore SRSS eligibility criteria to 2014 measures and ensure that people seeking asylum have the opportunity to access basic financial assistance, casework, torture and trauma counselling, and other supports required to help resolve their immigration status. Access to basic assistance and support services is necessary to aid refugees and asylum seekers develop self-agency and settle in the community.

63. It notes that data from a 2018 Refugee Council survey showed that 79 percent of SRSS recipients are at risk of homelessness and destitution without SRSS support,⁵⁰ however following the 2018-2019 amendments to the eligibility requirements, people who do not meet a high threshold of vulnerability will be exited from the program and are expected to secure employment without additional support. Financial support and access to services must be accessible through the SRSS, as it is the only government welfare program available for people seeking asylum.⁵¹

⁴⁵ The Asylum Seeker Resource Centre (ASRC) 2020-21 Annual Report ([link](#), 5) recorded that 66 per cent of its clients had no work rights, while the Refugee and Immigration Legal Service (RAILS) 2020-21 Annual Report ([link](#), 7) stated that '[s]ome asylum seekers who have arrived by boat continue to live in the community unlawfully without access to Medicare or work rights despite their best efforts to renew their bridging visa'.

⁴⁶ RAILS, 2020-21 Annual Report ([link](#), 6) recorded that 81 per cent of clients were financial disadvantaged.

⁴⁷ RAILS, 2020-21 Annual Report ([link](#), 6) recorded that 17 per cent of clients had no income and ASRC, 2020-21 Annual Report, ([link](#), 5) recorded that 86 per cent of clients had no income.

⁴⁸ RAILS, 2020-21 Annual Report, [link](#), 16.

⁴⁹ Commonwealth of Australia Parliamentary Library, 'Seeking asylum in the time of the coronavirus: COVID-19 pandemic effects on refugees and people seeking asylum in May 2020', 19 May 2020, https://www.aph.gov.au/About/Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/May/COVID-19_-_impacts_on_refugees_and_asylum_seekers.

⁵⁰ Refugee Council of Australia, An Unnecessary Penalty: Economic impacts of changes to the Status Resolution Support Services (SRSS) (Policy Paper, September 2018), 8.

⁵¹ *Ibid*, 11.

64. The LIV submits that the Australian Government should revise eligibility requirements for temporary residents to access support services, including financial, medical and housing support. Many obstacles exist by virtue of seeking asylum, however, the experience of women and children at risk are unique. This is reflected in the UNHCR Women at Risk Program instituted in 1989, which was designed to facilitate the effective resettlement of women 'identified as having experienced high levels of rape and violence,' as well as their children.
65. Moreover, women on temporary visas experiencing family violence face further vulnerabilities due to language barriers, understanding their rights and avenues to assert them, as well as an underlying fear of deportation and loss of custody. The eligibility requirements for temporary residents to access support services such as Medicare and Centrelink should be revised to support vulnerable temporary residents.
66. The Law Council supports a review of the sufficiency of these social supports measures in light of some of the evidence of risk of homelessness and destitution faced by asylum seekers contained in recent community legal centre annual reports.

Allowing applications for Bridging visas for boat arrivals

67. Under section 46A of the *Migration Act 1958* (Cth) (**Act**), a person who arrived in Australia by boat cannot lodge a valid application for a bridging visa E without personal intervention by the Minister. The LIV submits that in a number of cases, the Minister has not intervened to allow asylum seekers to lodge bridging visa applications, which has resulted in a cohort of asylum seekers living in the Australian community without a visa. These asylum seekers effectively have no right to work, no access to Medicare, and find it difficult to access basic services due to their 'unlawful' status in the community. This cohort experience extreme financial hardship for long periods lasting many years. Resolving this legal technicality, by allowing all protection visa applicants to hold a bridging visa while they await the outcome of their application would encourage self-sufficiency and settlement into the community.
68. The LIV recommends that section 46A be amended to allow all protection visa applicants to apply for a bridging visa while they await the outcome of their protection application.

Health

69. The discussion paper asks:

How could we improve refugee health outcomes?

70. As the Law Council's Justice Project points out, asylum seekers often suffer from mental health conditions, which is exacerbated by the long period to resolve protection claims and the associated uncertainty, combined with the prohibition on family reunification for many.⁵²
71. The LIV notes that the absence of work rights or access to Medicare (for those asylum seekers in that situation) has a drastic impact on health outcomes, as often people cannot afford appropriate treatment for their medical conditions. The LIV observes, that by the time such persons are granted refugee status several years after lodging their application, an applicant's physical and mental health has often deteriorated, and more drastic intervention is required. A full recovery is not always possible whereas if

⁵² Law Council of Australia, 'The Justice Project – Final Report – Part 1 – Asylum Seekers' (August 2018), [link](#), 13-15.

there was early access to medical treatment, illness could have been prevented or mitigated. The LIV recommends that access to appropriate medical treatment, such as counselling, should be made available at all stages of the refugee determination process, together with access to information about health and de-stigmatisation of health issues in community.

Social Housing

72. The LIV points out that people seeking asylum have specific risk factors for homelessness due to the time taken to resolve their protection claims and the paucity of social supports during that period, as discussed above. The Asylum Seeker Resource Centre reported that housing stress was the most pressing issue its clients faced in 2020-21,⁵³ and RAILS reported in its 2020-21 Annual Report that 54 per cent of its clients were at risk of homelessness and 4 per cent of its clients were homeless when RAILS assisted them.⁵⁴ In this context, the LIV notes that government housing services must be accessible for asylum seeker cohorts, given their limited working rights and uncertain visa status.
73. To that end, the LIV recommends that the Australian Government should support the states and territories to increase access to medium term and supported housing options for people seeking asylum, particularly those with higher or specific needs. It suggests this is crucial given the complex physical and mental health issues often experienced by refugees as a result of pre-arrival experiences.

⁵³ ASRC, 2020-21 Annual Report, [link](#), 8

⁵⁴ RAILS, 2020-21 Annual Report, [link](#), 7