

## Who is impacted by the Fast Track process?

Right now, there are close to 8,500 people seeking asylum living with uncertainty in our community. Failed by the notoriously flawed Fast Track refugee status determination process, people have been forced into destitution and poverty for years as they attempt to rebuild their lives while facing an unknown future and fear of deportation.

The Fast Track process was introduced by the Abbott Government in 2014 and applies retrospectively to people who:

- sought asylum by sea; *and*
- arrived in Australia from 13 August 2012 to 31 December 2013.<sup>1</sup>

The Fast Track process also applies to children born to parents within this group.

## Why is the Fast Track process unfair?

The Fast Track process has failed refugees and people seeking asylum on many levels. It has produced unfair and legally incorrect decisions, caused extended delays, re-traumatised people and resulted in refugees being deported to countries where they face persecution and serious harm.

Under the Fast Track process, if a person seeking asylum has their protection visa application refused by the Department of Home Affairs (Department), they only have limited appeal rights (also known as merits review) before the Immigration Assessment Authority (IAA).<sup>2</sup>

The IAA is not required to observe minimum standards of procedural fairness, which means that people seeking asylum who arrived by sea:

- do not have a right to a hearing to present their protection claims. IAA decisions are generally based on a paper review of information before the Department;
- are only allowed to provide a 5 page submission, which must be provided within 3 weeks from the date their case is referred to the IAA from the Department; and
- generally cannot provide new information to the IAA about their protection claims that was not considered by the Department.

The Fast Track process unfairly disadvantaged people seeking asylum who arrived by sea, who do not have the same appeal rights as people seeking asylum who arrive by plane. Limited appeal rights mean that people seeking asylum do not have a fair opportunity to present their protection claims, including updates to their situation such as family violence or changes in their country of origin.

Consequently, the IAA's decision-making has been riddled with errors. Since 2020, over 34% of IAA decisions (i.e. over 460 decisions) reviewed by the courts were found to be unlawful;<sup>3</sup> many people would not have been able to access judicial review or legal representation, meaning the number of unlawful decisions is likely to be considerably higher. There is a real concern that the Department's errors

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<sup>1</sup> See the definition of 'fast track applicant' under section 5, *Migration Act 1958* (Cth).

<sup>2</sup> The IAA is a review body within the Administrative Appeals Tribunal (AAT), which is responsible for independent merits review of administrative decisions made by the Australian Government.

<sup>3</sup> Administrative Appeals Tribunal Annual Reports 2021-22 and 2022-23, Chapter 4 - Immigration Assessment Authority, <https://www.transparency.gov.au/publications/attorney-general-s/administrative-appeals-tribunal/administrative-appeals-tribunal-annual-report-2021-22/chapter-4-immigration-assessment-authority/performance>; <https://www.transparency.gov.au/publications/attorney-general-s/administrative-appeals-tribunal/administrative-appeals-tribunal-annual-report-2022-23/chapter-4-immigration-assessment-authority/performance> (appeals remitted in relation to total appeals finalised).

are not rectified through the review process, with the IAA affirming close to 90% of Department decisions.<sup>4</sup>

The Australian Government also compounded the unfairness of the Fast Track process by:

- Imposing arbitrary deadlines such as requiring all people seeking asylum under the Fast Track process to lodge their protection visa applications by 1 October 2017 (yet taking several years to process these applications, including for over 1,000 people who are still waiting at the start of the process for a decision from the Department); and
- Significantly reducing government-funded legal assistance to people seeking asylum since 2014, which completely ceased in August 2022.

## How many people have been failed by Fast Track?

### Breakdown of people in Fast Track process and their access to permanency

Stage of application	Numbers (at 31 July 2024) <sup>5</sup>	Current Pathway to Permanency
Initial TPV/SHEV <sup>6</sup> application undecided (at the Department)	1,173	Only via Fast Track process - Department must find that person is owed protection
Refused TPV/SHEV - at merits review before Immigration Assessment Authority (Fast Track review body)	187	Only via Fast Track process - IAA must find that person is owed protection; very unlikely as IAA affirms 90% of Department decisions <sup>7</sup>
Refused TPV/SHEV - at judicial review (i.e. case is before the courts)	4,520	Only via Fast Track process - both judicial and merits reviews must be successful
Refused and no ongoing matters	2,452	No pathway
TPV/SHEV visa cancelled or expired (onshore)	149	People with expired TPV/SHEVs can apply for Resolution of Status Visas. <sup>8</sup> People with cancelled TPV/SHEVs do not have a pathway
<b>Total</b>	<b>8,481</b>	

<sup>4</sup> Ibid.

<sup>5</sup> Department of Home Affairs, UMA Legacy Caseload, 31 July 2024, <https://www.homeaffairs.gov.au/research-and-stats/files/unauthorised-maritime-arrivals-bve-31-july-2024.pdf>.

<sup>6</sup> Fast Track applicants were initially only eligible for two types of temporary protection visas called Temporary Protection Visas (TPV) or Safe Haven Enterprise Visas (SHEV).

<sup>7</sup> From 14 October 2024, the Administrative Review Tribunal (ART) will replace the Administrative Appeals Tribunal (AAT) and the Immigration Assessment Authority (IAA) as the federal body that reviews government administrative decisions, including Department of Home Affairs' decisions about protection visa applications. Cases before the IAA where no decision is made before 14 October 2024 will be transferred to the ART for finalisation.

<sup>8</sup> From March 2023, people who were granted Temporary Protection Visas (TPV) or Safe Haven Enterprise Visas (SHEV) via the Fast Track process could apply for a permanent Resolution of Status Visas (RoSV). Also, TPV/SHEV holders who applied for renewal of their visas have had their applications converted to RoSV applications. This process affects around 20,000 people. As at 31 July 2024, 18,543 TPV/SHEV holders have been granted a permanent RoSV.

## Why are people protesting outside the Department of Home Affairs?

People seeking asylum subjected to the Fast Track process have been living in Australia for over 12 years, indefinitely separated from their families who are overseas, and at risk of being returned to harm and permanently separated from their family in Australia (including permanent Australian residents and citizens). During this time, many people have been denied the right to work or study, access to healthcare and any form of income support, which has forced some people seeking asylum into destitution and poverty.

In 2019, the Australian Human Rights Commission (AHRC) published a report on the impact of the Fast Track process and temporary protection on refugees and people seeking asylum, which confirmed that the Fast Track process has inflicted immeasurable harm on refugees and people seeking asylum.<sup>9</sup>

A heartbreaking aspect addressed in AHRC's *Lives on Hold* report looks at the impact of growing up with trauma and an uncertain future on the mental health and wellbeing of children raised in families failed by Fast Track.

"Their parents [are] struggling mentally and they're not coping. That has an impact on children's ability to develop normally and ability to engage in school and all of that. The domino effect of that is that if the parents aren't coping, that then impacts the whole entire family, and specifically the children."<sup>10</sup>

People seeking asylum and their families, who have been failed by the Fast Track process, want to rebuild their lives in safety and with dignity, and deserve the opportunity to thrive and contribute to their communities.

## What is the ALP's position on Fast Track?

The ALP has long recognised the failures of the Fast Track process and its 2021 platform committed to end the Fast Track process, including abolition of the IAA:

"Labor will create an independent Refugee Review Tribunal and abolish the Immigration Assessment Authority. The Tribunal will allow for procedurally fair, simple, affordable and accessible processes and procedures, including in relation to adverse credibility findings, for the review of refugee related decisions."<sup>11</sup>

While in opposition, Labor also spoke about the challenges for people seeking asylum failed by Fast Track and attempting to rebuild their lives in Australia.

"We should be clear about this: the successive Liberal governments have failed to treat asylum seekers and refugees living in a shared Australian community with the respect that they deserve. Asylum seekers and refugees are some of the most vulnerable people living in Australia. They have fled persecution, and that's the definition by which they are determined to be refugees. They have faced trauma and torment..."

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<sup>9</sup> Australian Human Rights Commission, *Lives on Hold: Refugees and asylum seekers in the 'Legacy Caseload*, 2019, [https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_lives\\_on\\_hold\\_2019.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_lives_on_hold_2019.pdf).

<sup>10</sup> *Ibid* p 40.

<sup>11</sup> Australian Labor Party, ALP National Platform – As Adopted at the 2021 Special Platform Conference, 2021, p 124.

"Our national platform also makes it clear the existing fast-track assessment process under the auspices of the Immigration Assessment Authority and the limitation of appeal rights do not provide a fair, thorough and robust assessment process for persons seeking asylum.<sup>12</sup>"(Senator Kim Carr, 2018)

The ALP has committed to end the Fast Track process which will be abolished from 14 October 2024 when the Administrative Review Tribunal (ART) will replace the Administrative Appeals Tribunal (AAT) and the IAA as the federal body that reviews government administrative decisions.

Abolishing the IAA and Fast Track process will not fully remedy the injustice experienced by people exposed to the unfair Fast Track process, in particular for people who no longer have a review process on foot and cannot benefit from the new Tribunal.

It is illogical for the ALP to acknowledge the flaws of the Fast Track process while still recognising the IAA's decisions as valid assessments for thousands of people still waiting for a just outcome.

## What is the solution?

After seeking asylum for over a decade, living with uncertainty and being separated from their families, the moral and humane response is for the Australian Government to provide a clear and swift pathway to permanent residency for all people seeking asylum impacted by the unfair and cruel Fast Track system. This could be achieved by:

- Granting permanent residency to all people seeking asylum failed by Fast Track. This amnesty-type approach is the ASRC's preferred option as it reduces further delay and trauma for people and is less resource-intensive for the Department.
- Alternatively, provide an expedited and fair re-application process to assess people's protection claims. This process must be accompanied by broader Ministerial intervention guidelines to grant permanent residency to people who have compelling and compassionate reasons to remain in Australia (e.g. people with Australian citizen family members).

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<sup>12</sup> Commonwealth, [Parliamentary Debates](#), Senate, 13 November 2018, 8013-8014 (Kim Carr, Senator).