

## **Additional guidance on PAIS eligibility criteria and assessment process**

### **Background**

The Primary Application Information Service (PAIS) is a Government-funded service to help certain illegal arrivals apply for a protection visa where assistance will result in a significantly faster and more efficient resolution of the person's status. Government policy is that PAIS is only available to a small percentage of protection visa applicants and funding for this programme reflects this position. PAIS has been introduced to assist the department to more efficiently and effectively process the post-13 August 2012 cohort of the Irregular Maritime Arrival (IMA) legacy caseload.

### **The PAIS service**

The department has engaged two PAIS service providers to provide assistance at the primary stage. Unaccompanied minors (UAMs) for whom the Minister is guardian under the *Immigration (Guardianship of Children) (IGOC) Act 1946* will also receive PAIS assistance at review.

The services provided under PAIS are provided by a registered migration agent and include:

- meeting the applicant to:
  - explain the agent/client relationship
  - explain the protection claims process and
  - gather claims and documentation to support an application for a protection visa
- lodging the visa application and supporting documentation
- attending the department's protection claims interview with the applicant and
- conveying and explaining the decision made on the visa application.

### **Eligibility criteria**

The department assesses PAIS eligibility using the following criteria.

A non-citizen who is:

- An unlawful air arrival (UAA) who entered Australia on or after 13/4/15; or
- An irregular maritime arrival (IMA) who arrived in Australia on or after 13/8/12;

may be eligible for assistance under the PAIS if the non-citizen satisfies either criteria 1-3 **or** criterion 4 below.

1. At the time of the relevant PAIS assessment, the non-citizen *has not engaged a registered migration agent* for assistance in relation to a temporary or permanent protection visa application; and
2. The non-citizen has *not previously had a valid protection application considered in Australia*; and
3. The non-citizen is, at the time of assessment, an adult in relation to whom the department considers it to be *in the best interests of government* to provide assistance to ensure their claims are presented and able to be considered, in particular, non-citizens regarded as being *exceptionally vulnerable*.

**OR**

4. The non-citizen is, at the time of assessment, an unaccompanied minor.

Please note that a person must either satisfy criteria 1 and 2 and 3 OR may satisfy criterion 4 alone in order to be considered eligible for PAIS assistance.

### **Further guidance on PAIS eligibility criteria**

#### *Criterion 1 – has not engaged a registered migration agent*

Non-citizens who are engaged with a migration agent at the time of the PAIS assessment have demonstrated their capacity to engage an agent and the department does not consider them to be in the category of people who are ‘most vulnerable’ and those to whom the Government should provide assistance.

As such, a person will not meet this criterion if they are receiving assistance from a registered migration agent *at the time of the PAIS assessment*. However, if a person has previously engaged a migration agent, but has since disengaged, they will meet this criterion.

#### *Criterion 2 - not previously had a valid protection application considered in Australia*

This criterion ensures that the department does not provide Government funded assistance more than once to an individual. It also acknowledges the level of assistance and amount of information that will already have been received as part of the first application.

#### *Criterion 3 - In the best interests of the government*

It is in the best interests of government to provide assistance to a non-citizen where this will result in significantly faster and more efficient resolution of the person’s status than will occur without assistance. This will contribute to the timely and efficient management of the legacy caseload.

For instance, assistance is in the best interests of government if it facilitates applications from non-citizens at risk of a protracted period of detention following the lifting of the application bar.

In addition, assistance is also in the best interests of government where individuals are identified as exceptionally vulnerable and, because of their specific circumstances, are likely to find it difficult to actively participate in the protection process without expert assistance. If a person has difficulty understanding the matters to be considered in a protection assessment process and in articulating their claims for protection, assistance will ensure they make a valid, complete application, allowing the department to more rapidly and effectively consider their case. Difficulties may be the result of intellectual or cognitive disability, mental illness or other incapacitating health conditions.

Guidance in relation to a range of possible circumstances is set out below. The key factor for an officer assessing whether to provide PAIS to a person with a condition included in these examples is the resulting functional impairment and the impact of the condition on a person’s ability to engage in the protection process.

In each case, the assessment of PAIS eligibility must take account of all of the available information in relation to an individual’s circumstances, including the cumulative effect of these circumstances where the individual has a number of conditions affecting their capacity to understand and articulate their claims.

### *Conditions affecting Cognitive Function*

A broad range of conditions may affect an individual's cognitive function and therefore their ability to understand and engage in the protection process. These conditions may include disabilities, such as Down Syndrome, autism or intellectual disabilities, or health conditions, such as dementia. Some individuals may have acquired brain injuries with impact on their cognitive functioning through illness (such as a brain tumour or stroke) or accident. Depending on the severity of their condition, these individuals may be regarded as exceptionally vulnerable for the purpose of PAIS eligibility.

### *Mental Illness*

Mental illness may also result in diminished cognitive capacity. Some people with diagnosed mental illness do not experience an impaired level of function in their daily lives. However, individuals experiencing serious mental illness, such as schizophrenia, severe depression or post-traumatic stress disorder are likely to experience difficulty engaging in the protection process without support.

It is acknowledged that a person may experience symptoms of mental illness for a considerable period before diagnosis. While diagnosis may explain diminished capacity, it is not required for a person to be considered exceptionally vulnerable under this criterion.

Serious mental illness and incapacity associated with drug addiction may also lead to an assessment of exceptional vulnerability if the condition is preventing the person from engaging in the protection process.

Less serious mental illness, such as anxiety or less severe depression, will not normally restrict an individual's capacity to engage in the protection process or articulate their protection claims.

### *Torture and trauma*

Additional difficulties engaging in official government processes may also be associated with past experiences of torture or trauma. Individuals who have received recent torture and trauma treatment may be considered for an assessment of exceptional vulnerability where their cumulative experiences have had a significant impact on the person's ability to understand the protection assessment process and in articulating their claims for protection.

### *Incapacitating Illness*

There may be circumstances in which an individual is very seriously ill and their ill health and treatment (such as protracted hospital stay or medication diminishing their awareness or mental capacity) affects their ability to engage in the protection process and present protection claims. Depending on all their circumstances, serious illness may lead to an assessment of exceptional vulnerability.

Chronic and other serious health conditions (such as diabetes, chronic heart disease or cancer) would not normally lead to an assessment of exceptional vulnerability unless they affect an individual's capacity to understand and present their claims.

### *Difficulty completing an application form*

Individuals who may experience difficulties in physically completing an application form, for instance because they are not able to read or write in English, are illiterate or are vision impaired, would not normally be regarded as exceptionally vulnerable. While these individuals may require physical assistance to complete their application, in isolation these circumstances do not affect the individual's capacity to understand and articulate their claims for protection without expert migration assistance.

All applicants, including those who do not receive PAIS, have access to an interpreter at interview. In addition, applicants can access the Protection Application Information and Guides (PAIG) which provide instruction about the protection application and assessment process. The PAIG are available in ten languages.

### *Criterion 4 – the non-citizen is an unaccompanied minor*

The term 'unaccompanied minor' refers to those minors who have come to Australia not in the care of a parent or another adult relative. It also applies to minors who are no longer in the care of a parent or another adult relative at the time of the PAIS assessment.

Consistent with guardianship obligations, the department will facilitate access to, and pay for, migration advice and assistance for unaccompanied minors for whom the Minister is guardian under the Immigration (Guardianship of Children) Act 1946 (IGOC minors) in the preparation of their protection claims. However due to the age and related vulnerability of UAMs, the department provides PAIS to all UAMs not only IGOC minors.

Any departmental age determination will take precedence over the claimed age of the applicant. The age of the UAM should be under 18 years at the time of the PAIS eligibility assessment.

### **Review**

No-one seeking protection, including those eligible for PAIS, will receive Government-funded assistance at review, except for IGOC minors.

In recognition of the particular responsibilities accruing to him as Guardian, the Minister decided that PAIS will also be available at review for unaccompanied IGOC minors who are found not to engage Australia's protection obligations during primary processing. UAMs of whom the Minister is not guardian are not eligible for PAIS at review.

### **Assessing PAIS eligibility**

The department can identify and refer applicants for PAIS assistance at any time between inviting them to apply for a Temporary Protection Visa (TPV) or Safe Haven Enterprise Visa (SHEV) and making a primary visa decision. An assessing officer may consider a person eligible for PAIS based on information held on departmental systems and/or after observing or being notified of certain vulnerabilities.

The department has two assessment processes:

- an initial assessment – a departmentally initiated assessment which considers all IMAs using information on departmental systems and

- a subsequent assessment – a referral based assessment whereby anyone can request a PAIS eligibility assessment for an individual and can submit supporting information for consideration.

There is no legislation that provides for merits review of a PAIS eligibility assessment.

Further detail on each assessment process is provided below.

### **Initial assessment**

IMA Protection Support (IMAPS) considers all IMAs and UAAs that arrived within the set dates against the eligibility criteria, prior to sending the invitation to apply for a TPV or SHEV.

IMAPS assesses eligibility by examining information held on departmental systems at the time of assessment. Officers make assessments against the eligibility criteria primarily based on diagnostic evidence.

All departmental officers who have contact with non-citizens in this cohort should regularly update departmental systems to accurately reflect the person's vulnerabilities and ensure supporting documentation and other relevant information is readily available.

Similarly, service providers, including Status Resolution Support Service (SRSS) providers, should ensure they place up to date information about the person's vulnerabilities on the CCMDS Portal, including where there is a change in the person's circumstances. This will allow IMAPS to make a complete assessment at the time of invitation.

Other external stakeholders may provide information to the person's case manager or SRSS provider for inclusion on departmental systems.

IMAPS will notify applicants who are found to be PAIS eligible of the outcome of their eligibility assessment in writing. At the same time, they will also invite the person to accept the offer of PAIS and ask them to consent to the department providing their details to their allocated PAIS provider.

IMAPS will not notify those applicants who are not found to be PAIS eligible.

### **Subsequent assessment**

A departmental officer, an external stakeholder, or an applicant may request a subsequent assessment of PAIS eligibility at any time after the department has invited the person to apply where:

- They have additional information which the department did not consider in the initial assessment
- They disagree with the outcome of the initial assessment
- The person is in held detention and has not engaged with the application process after receiving an invitation to apply or
- A decision maker observes vulnerabilities while engaging with the applicant which may indicate that the person cannot participate in the process without assistance (see below for further information).

The PAIS Assessment Officer conducts all subsequent PAIS eligibility assessments. The officer will review all information on systems against the above eligibility criteria, along with information in the referral about the person's functional capacity and ability to engage in the protection process. In addition, where necessary, the officer may request additional information or evidence from the applicant and/or seek medical advice from a Medical Officer of the Commonwealth.

Requests for a subsequent assessment of PAIS eligibility should be sent to [PAIS@border.gov.au](mailto:PAIS@border.gov.au).

The PAIS Assessment Officer will notify applicants and their case manager (where relevant) of the outcome of their eligibility assessment in writing. They will also invite eligible applicants to accept the offer of PAIS and ask them to consent to the department providing their details to their allocated PAIS provider. Where the officer assesses that a person is not eligible and this assessment is based on third party information, they will provide details of the information to the applicant.

### **Decision maker requests for assessment**

As mentioned above, visa decision makers may make observations about an applicant's functional capacity and ability during engagement that will suggest they require PAIS assistance. For instance, the person may have presented poorly articulated claims, be exhibiting certain vulnerabilities or a decision maker may have had to cease an interview due to a person's inability to engage.

Where a decision maker believes PAIS assistance will assist a person to engage in the protection process, they should refer the person to the PAIS Assessment Officer for assessment and include details of their observations. In general where this occurs, the officer may make an assessment on the basis of the officer's observations combined with other behavioural information without diagnostic evidence.

The PAIS Assessment Officer will inform the decision maker of the PAIS assessment outcome.

### **Referral to a service provider**

Once a person has accepted an offer of PAIS, IMAPS/the PAIS Assessment Officer will forward the person's details to Refugee & Humanitarian Assistance Section (RHAS) who will subsequently pass relevant information to a PAIS service provider.

### **Family groups**

The department assesses PAIS eligibility on an individual basis. Eligible individuals can indicate that they are part of a family unit when they return their consent form. Because the assessment is made prior to the family making a visa application, RHAS will refer the whole family group for PAIS assistance.

### **Further assistance**

For further guidance on PAIS operational policy please email [PAIS.Inbox@border.gov.au](mailto:PAIS.Inbox@border.gov.au).

Please send requests for subsequent assessments to [PAIS@border.gov.au](mailto:PAIS@border.gov.au).