



Refugee Council  
of Australia

## DELAYS CONTINUE FOR REFUGEES AWAITING CITIZENSHIP

This is a brief for media, politicians and policy advisors. If you are waiting for citizenship please see our advice at [www.refugeecouncil.org.au/getting-help/waiting-australian-citizenship/](http://www.refugeecouncil.org.au/getting-help/waiting-australian-citizenship/)

There are currently over 10,000 people of refugee background who are awaiting the granting of Australian citizenship. The Refugee Council of Australia (RCOA) has been researching and advocating about this issue for the last two years.

In December 2016, RCOA, together with pro-bono lawyers successfully challenged the Minister's delay in deciding these applications in the landmark case of **BMF16 v Minister for Immigration and Border Protection [2016] FCA 1530**.<sup>1</sup> The Federal Court found that the Minister for Immigration had unreasonably delayed in deciding whether to grant citizenship to two of these former refugees who were waiting for over 14 month. We expect this will mean that the Department of Immigration will process people's applications faster.

However, despite this ruling, thousands of former refugees continue to face lengthy delay, with thousands of people waiting over one year. These delays deny people of refugee background in Australia their basic rights to stability, security, and family reunion, leaving many families in war zones and unsafe environments while they wait to reunite with family in Australia.

### Why is this happening?

There are two main reasons why these delays are occurring. First, the number of people applying, including people who have been refugees, is much larger than before, yet the Government has not allocated additional funding to process these applications.

Second, there have been changes to the way the Department confirms a person's identity. The Department is now looking for identity information from people arrived in Australia. This additional checks are taking much longer and using significantly more resourced.

### Case Study – Amir

Amir submitted his application and passed his citizenship test in March 2015, yet he has not been contacted regarding his ceremony. Amir's daughter is still in Pakistan, and is in need of urgent medical attention. Amir is the only one who can safely take her on the 24-hour bus journey from her home to Islamabad, where there is a good hospital, but he cannot return to Pakistan until his citizenship application is processed.

### BMF16 v Minister for Immigration and Border Protection

In 2016, the RCOA, together with pro bono legal partners, supported two people to bring a complaint against the Minister for Immigration. Both applicants were granted a permanent visa in 2010, and sat and passed the citizenship test in late 2014 and early 2015. In 2016, the Applicants brought proceedings in the Federal Court of Australia on the grounds that the Minister has not exercised his power within a reasonable time and that there has been an unreasonable delay. By the time of the hearing, the applicants had been waiting over 14 months for a response from the Minister.

While the Department of Immigration claimed the citizenship cases they were dealing were "complex" and would therefore take more time to decide, the Federal Court found that there had been unreasonable delay for significant periods while processing these applications. Justice Bromberg held that a delay of

<sup>1</sup> *BMF16 v Minister for Immigration and Border Protection* [2016] FCA 1530 (16 December 2016), available at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2016/1530.html>

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more than three months cannot be justified simply because the cases were considered “complex” and required additional processing.<sup>2</sup>

Case Study – Mohammad

Mohammad was 21 years old when he lodged his citizenship application in April 2015. He still has not been invited to sit the test. He feels that he had wasted two years and is unable to continue his studies until he receives his citizenship. Mohammed feels that the Department is taking “way too long” in processing his application, and that they are discriminating against him.

Further, the Court held that “inactivity in the processing of a citizenship application of more than a few months duration is unlikely to be reasonably explained by reference to a lack of resources.” In fact, Justice Bromberg held that the Department “took no steps to progress [the plaintiffs’] cases for some 14.5 months”. This is far beyond the Department’s own service standard, which provides that 80% of citizenship applications are processed within 80 days of an application being made.

**Statistics**

In February 2017, as a follow up to our October 2015 report,<sup>3</sup> RCOA conducted a second survey of nearly 980 people of refugee background. Of these, 928 were still awaiting a response to their citizenship application. Figure 1, below, shows the date of application for people still waiting.

The Federal Court decision found that a delay of over six months is unreasonable and unlawful – yet 92% of respondents have experienced delays greater than this length. The average waiting time was over 16 months. Two-thirds of those waiting have been waiting over a year, while 13% (120 people) have been waiting over two years.

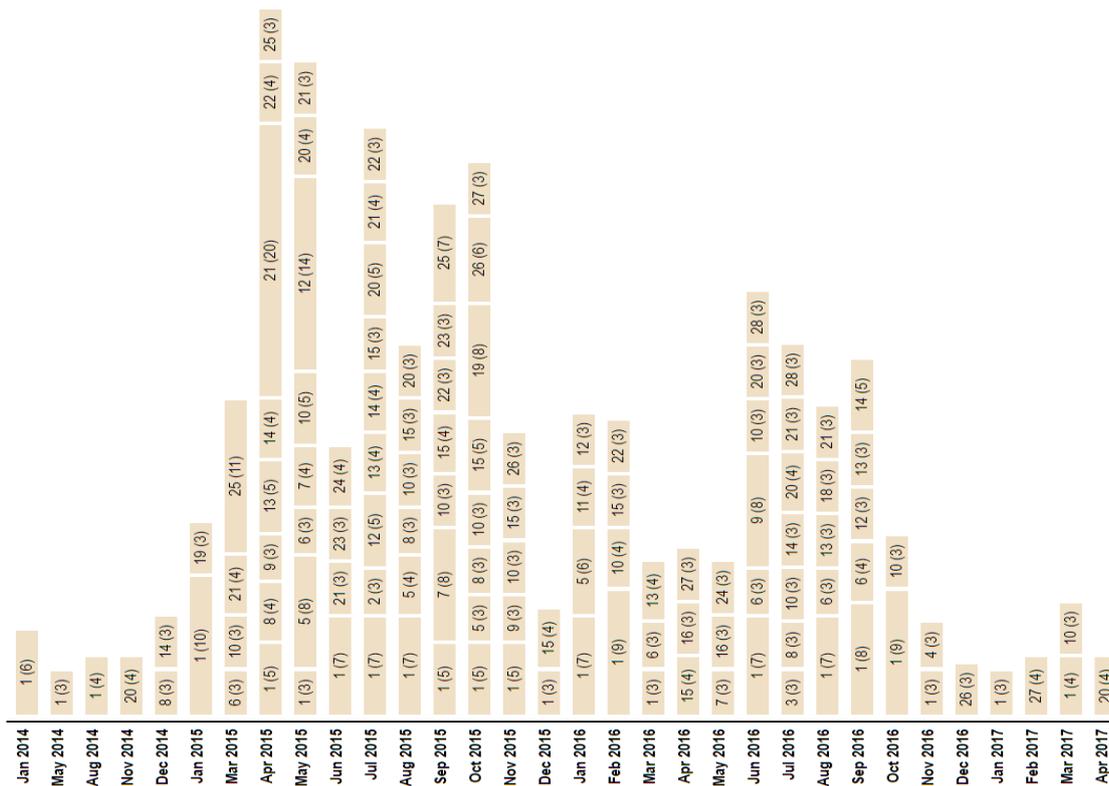


Figure 1 Date of application for citizenship for people still awaiting an outcome as of 28 March 2017. Source: RCOA

<sup>2</sup> BMF16 v Minister for Immigration and Border Protection [101].

<sup>3</sup> <http://www.refugeecouncil.org.au/wp-content/uploads/2015/10/1510-Citizenship-Delays-for-Permanent-Refugees.pdf>

People also reported that they had not heard from the Department for many months regarding the processing of their application. 37% reported not being contacted by the Department for over a year, while 69% haven't heard from the Department for at least six months.

A vast majority of respondents, 88%, have not yet been booked in for a citizenship test. 89% arrived in Australia by boat, indicating a clear policy directed towards people who sought asylum in this manner.

These responses to RCOA's survey reflect similar statistics provided to the Court by the defendant, as outlined in Figure 2.<sup>4</sup> These court documents show that over 3,000 people are waiting longer than one year, with 478 people waiting longer than 18 months.

Number of applications* for conferral of Australian citizenship lodged from 1 July 2014 to 10 July 2016 which were not finalised as at 10 July 2016, by time since lodgement	
Time since lodgement of application	No. of applications
A. Less than 1 month	302
B. Between 1-3 months	1,124
C. Between 3-6 months	1,808
D. Between 6-12 months	3,974
E. Between 12-18 months	2,545
F. More than 18 months	478
<b>Grand Total</b>	<b>10,231</b>

Figure 2 Number of applications for conferral of Australian citizenship by time since lodgement, 1 July 2014 to 10 July 2016. Source: BMF16 v Minister for Immigration and Border Protection [77].

### Impact of delays

Citizenship has particular significance for refugee and humanitarian entrants. Refugees are, by definition, unable to return to their country of origin because of a well-founded fear of persecution or other forms of serious harm. Australian citizenship is therefore often the first effective and durable form of protection that many refugees receive, and is celebrated and cherished by them. For those who know what it is like to live without freedom and democracy, obtaining citizenship in a free and democratic country is particularly meaningful.

The impacts of indeterminate waiting can cause anxiety and prevent refugees from feeling a sense of belonging in Australia. Further, obtaining citizenship is especially important for people who wish to sponsor family members to come to Australia. While refugees on permanent visas can sponsor family members to come to Australia, Ministerial Directive 72<sup>5</sup> places the family members of boat arrivals at the lowest processing priority, which means that in practise it is impossible for these people to sponsor their family. Gaining citizenship is one way in which people hope to be able to sponsor their family, many of whom are at risk of persecution and death overseas.

### Case Study: Kamal

Kamal is a 45-year-old Hazara man living in Dandenong. Over 22 months have passed since Kamal applied for Australian citizenship. Kamal feels deeply anxious about the fact that his family are "not safe", living in a country where no safety is provided to the Hazara people from the threat of ISIS. Kamal has a medically diagnosed mental impairment that makes it difficult for him to retain information and pass the citizen test. Despite an application for special consideration, he still has not been informed if he is exempt from the test. Every time that Kamal has called the Department he is told that his application is being processed and he must continue to wait.

In addition to not being able to sponsor family to come to Australia, the lack of citizenship makes it very difficult for people to visit their family overseas. Without an Australian citizenship, many expressed concern that their lives would still be in danger if they were to travel to their country of origin, as they are not afforded diplomatic protection as they would once they receive citizenship. While most people are eligible for an Australian travel document, many countries do not issue visas to those with such documents. For example, Indonesia does not provide a visa to a person with an Australian travel document, leaving one participant to express frustration regarding the delays: "My mother is very sick in Indonesia. I want to go visit them. I am

worried it will be the last time I will see them. If something happens I can't forgive myself."

<sup>4</sup> BMF16 v Minister for Immigration and Border Protection [77].

<sup>5</sup> Replacing Directive 62.

## **Next steps**

RCOA, and thousands of applicants, expect that the Department will follow the ruling of the Federal Court and process all applications for citizenship within a reasonable time. As the Court found, this should generally be within 6 months of the application, and a lack of resources is not a reasonable justification for the delays. However, in order to process these applications within a reasonable time, more resourcing of the Immigration Department is needed. RCOA recommends:

1. The Australian Government provide additional resourcing of the Citizenship Branch of the Department of Immigration to process this backlog of applications within 6 months. This may include additional financing and the secondment of staff from other areas within the Department.
2. The Department of Immigration improve their communication with applicants, including informing applicants of an expected timeline to have their application processed and updating them at regular periods.
3. The Department of Immigration work with the Refugee Council of Australia and its members in disseminating key information to community members.