

Briefing Kit: Temporary Protection Visas (TPVs), Safe Haven Enterprise Visas (SHEVs) and permanent visa pathways

Contents

Kinds of protection visas.....	2
What is the difference between a TPV and a SHEV?	2
Declaration for a SHEV – an intention to work or study in regional Australia.....	3
More detail on how the work / study test applies	3
The “bar” on visa applications by people who came by boat.....	4
The 3.5 year SHEV work/study test	4
Possible consequences of not meeting the SHEV work/study test	4
Where are the prescribed areas for the SHEV work/study test?	5
What kind of work counts?	5
What kind of study counts?	5
Who can help me find work in a declared area?	6
What are the costs of studying?	6
What social security payments can I receive on a TPV or a SHEV?	6
Special Benefit – Basic conditions of eligibility	7
How much will I get paid after I hold a TPV or a SHEV?	7
Can I study while receiving Special Benefit?.....	7
How to avoid problems with Centrelink	7
Some examples of how a person could meet the SHEV work/study test	8
What visas could I apply for if I meet the SHEV work/study test?	8
Who can give me advice on the qualification criteria for these visas?	10
Simple answers to some frequently asked questions	10
How does RACS help fast track applicants wanting to lodge a TPV or a SHEV application?	12

Kinds of protection visas

There are now three types of protection visas that the government can grant to people who are recognised as refugees in Australia:

- Permanent Protection Visa – PPV - subclass 866
- Temporary Protection Visa – TPV – subclass 785
- Safe Haven Enterprise Visa – SHEV – subclass 790

People who arrived to Australia by plane holding a valid visa and passing through immigration clearance may apply for a permanent protection visa at any time.

People who arrived to Australia by boat do not have permission to make an application for any kind of visa without Ministerial permission. Once that permission is granted, the only kinds of protection visa they may apply for are either a TPV or a SHEV.

These temporary visas are also the only kinds of protection visas which may be granted to people who arrived by plane without a valid visa which was in effect when they entered Australia or were otherwise not immigration cleared.

All 3 of these visas can only be granted to people *after* they have had their case to be a refugee assessed and have been successful (that is, once the Department of Immigration accepts that a person is a refugee).

The information in this kit is intended to provide more information to migration agents and caseworkers who are assisting people seeking asylum under fast track processing who are hoping to plan for their future.

We note however, that of higher priority for any person who has not yet had their protection obligations positively assessed, is the effective presentation of their claims to the Department or the Immigration Assessment Authority.

What is the difference between a TPV and a SHEV?

There are some similarities and some differences between these visas. Both visas have the same conditions regarding work, study, social security and healthcare.

- Both visas allow permission to work, access Centrelink benefits, Medicare, job seeker assistance and short-term counselling for torture or trauma.
- Children under 18 can attend school.
- People aged 18 or over can access the Adult English Migrant Program (AMEP), however, will not be eligible for Commonwealth-funded subsidies for other study.

Both visas have the same conditions regarding citizenship, family reunion and overseas travel.

- Neither visa allows citizenship.
- Neither visa allows sponsorship family members for permanent migration to Australia.
- Neither visa allows travel outside of Australia and then return, unless the Minister for Immigration has granted permission. Department of Immigration policy states that visiting close relatives in some circumstances may be considered compelling and compassionate.

For further information on requesting permission to travel, see: <http://www.border.gov.au/ima>.

On both TPVs and SHEVs, the Department of Immigration must be notified of a change of address within 28 days.

There are two significant differences between the TPV and the SHEV: the duration of the visa and visa options after the expiry of the visa.

	TPV	SHEV
Duration	3 years	5 years
Visa options after expiry	<ul style="list-style-type: none"> • Can apply for another TPV or SHEV. • Cannot apply for a permanent protection visa. • Cannot apply for any other visa. 	<ul style="list-style-type: none"> • Can apply for another TPV or SHEV. • Cannot apply for a permanent protection visa. • Can apply for a work, student or family visa if the regional work/study pathway requirements are met.

Declaration for a SHEV – an intention to work or study in regional Australia

When a person applies for a SHEV they must sign the following declaration on their application form:

Declaration of intention to work and/or study in regional Australia (required for a SHEV)

You must indicate in writing an intention to work or study while accessing minimal social security benefits in regional Australia to lodge a valid application for a Class XE subclass 790 (Safe Haven Enterprise) visa.

Please sign this declaration before lodging your application.

WARNING: Giving false or misleading information is a serious offence.

Declaration

- *I understand which areas of Australia are designated as regional Australia.*
- *I understand that it is my responsibility to find work or study opportunities in regional Australia.*
- *I, or one or more member(s) of the same family unit included in this application, intend to work or study in regional Australia while accessing minimum social security benefits.*

The declaration asks a person to sign to confirm that:

- they understand which areas of Australia are designated, that
- they accept responsibility for finding work or study opportunities there, and that
- they intend to work or study in regional Australia while accessing minimum social security benefits.

The declaration appears to reflect the policy intention behind the SHEV, rather than the actual legal entitlements and conditions. This can be confusing for people seeking asylum.

People can access social security while on a SHEV. But if they do and they are working at the same time, that period of work won't count towards the 3.5 year work/study test.

More detail on how the work / study test applies

To understand how the test applies, it is necessary to look at the "bar" on visa applications which applies to people who came to Australia by boat and its exceptions.

The “bar” on visa applications by people who came by boat

People who have come by boat to Australia are barred from making any application for a visa without the Minister’s permission.

For people in the Fast Track process, the Minister is currently allowing people to apply by lifting the bar and sending them a letter which invites them to apply for either a TPV or a SHEV. They apply by filling out the relevant application form: Form 866 for a TPV or Form 790 for a SHEV.

However if a SHEV is granted and the person then meets the SHEV work/study test, they are not barred from making a subsequent application for prescribed kinds of visas (see page 9 for a list of these visas)

A person is not barred from these visa applications as soon as they have met the 3.5 year work/study test. However for the application to be successful, they must meet the qualification criteria for the visa they have applied for.

The 3.5 year SHEV work/study test

Some important things to note about the 3.5 year test:

- The 3.5 year or 42 months period need not be continuous.
- It is possible to make up the time over several SHEV visas if a person is successfully granted subsequent SHEV visas. Time spent studying full time or working at any point can count towards meeting the test. It’s possible to do work for 24 months on this SHEV, and study for 18 months on the next SHEV.
- Only time spent while holding a SHEV and working / studying counts towards the 3.5 years. It’s not possible to accrue time from prior to when a SHEV was granted.
- Only time spent studying or working in an approved area while holding a SHEV counts towards the 3.5 years.
- It’s possible to combine work and study over different periods.
- It’s not required that a person live in a prescribed area.
- Study has to be full time and on an approved course.
- Work only counts if the person is not receiving Special Benefit at the same time.
- For a person who is a part of a family unit, only one member of the family needs to satisfy these requirements.

Possible consequences of not meeting the SHEV work/study test

The consequence of *meeting* the test is that the bar on visa applications for specified visas then does not apply. However, complying with the 3.5 year test is not a condition of a SHEV visa. Therefore, if a person doesn’t comply with the 3.5 year test or doesn’t work or study in a declared area, their visa can’t be cancelled.

Two possible consequences of *not* meeting the test relate to future visa options:

- (1) The person could remain barred from making applications for prescribed visas.
- (2) At the end of the SHEV visa, their ability to apply for another TPV or SHEV depends on the Minister agreeing to lift the bar. This means it is possible that the Minister could decide not to allow them to apply for another SHEV if they did not attempt to meet the requirements. There is no policy available about whether this is likely to occur and in what circumstances.

Where are the prescribed areas for the SHEV work/study test?

Areas are prescribed by postcode. Currently the only prescribed areas are all of Tasmania and parts of New South Wales and include the following postcodes:

NEW SOUTH WALES
2311 to 2312
2328 to 2411
2420 to 2490
2536 to 2551
2575 to 2594
2618 to 2739
2787 to 2898

To see whether any new areas have been prescribed, check [here](#).

What kind of work counts?

Work counts if it is for remuneration pursuant to an agreement and the performance of the work takes place in a prescribed area.

The work:

- Only counts if it is done while a person is not receiving Special Benefit and where the work is in a declared area.
- Social security benefits only include Special Benefit, so it is possible to receive Family Tax Benefit, Child Care Benefit, Crisis Payment or any add-ons, just not an income support payment (a payment designed to support a person as their “income”).
- Employment must be in a prescribed regional area.
- Work must be performed for remuneration pursuant to an agreement.
- There is no minimum number of hours.

What kind of study counts?

The study:

- Must be full time.
- Must be in a prescribed area.

- Can be primary school or secondary school but must be face-to-face.
- For tertiary study:
 - must be a course leading to the award of an Australian Qualifications Framework Level 1 qualification or higher
 - must be full time
 - must be face-to-face or involve a face-to-face component
 - cannot be wholly online or by distance.

Who can help me find work in a declared area?

- A person can get help finding work by registering with Centrelink and providing some identification.
- Even if a person doesn't want to receive Centrelink benefits, they can register as a voluntary referral if they are not working more than 15 hours per week, and not studying full time.
- A person can also register if they are a fulltime student seeking an apprenticeship or traineeship.
- Usually Centrelink will connect a person with an Employment Services Provider. If a person wants to [find their own provider](#), they can.
- Once a person registers, Centrelink assesses them into one of four streams depending on what level of support they're likely to need to get a job. On stream A (which means not much help needed) a person gets a maximum of six months job active services which includes assistance with self-help facilities and undertaking monitored job search.

What are the costs of studying?

- Children under 18 are able to study at school for free.
- Adults aged 18 or over will be able to study under the Adult English Migrant Program (AMEP) for free (510 hours of English tuition).
- No entitlement to other Commonwealth-funded subsidies for non-school study. Required to pay full fees.
- Some individual tertiary and vocational institutions may provide reduced fees for refugees or income support recipients – can ask institution.
- If course is longer than 12 months, not eligible for Special Benefit.

What social security payments can I receive on a TPV or a SHEV?

Both TPV and SHEV visa holders:

- are entitled to Special Benefit payment;
- are eligible for a Health Care Card;
- may be eligible for supplementary payments.

Receiving supplementary payments won't affect the person's compliance with the work / study test if they are working. Supplementary payments include the following:

- Rent Assistance;
- Crisis Payment;
- Family Tax Benefit;
- Child Care Benefit;
- Parental Leave Payment and Dad and Partner Pay.

Recipients of Special Benefit must satisfy the activity test, which means demonstrating attempts to find work. A person is exempt for the first 13 weeks, and after this time, activity tested. The person can satisfy the activity test by looking for work. It's also possible to satisfy the activity test by studying full-time, but each course can only be up to one year.

Special Benefit – Basic conditions of eligibility

To be eligible for Special Benefit, a person must be:

- In financial hardship and unable to earn a sufficient livelihood for themselves and their dependents due to reasons beyond their control.
- Not able to get any other income support payment.
- For short-term payment, available funds must not be more than the applicable fortnightly Newstart or Youth Allowance rate.
- For long-term payment available funds must be no more than \$5,000.

How much will I get paid after I hold a TPV or a SHEV?

The rate of Special Benefit is discretionary, but it cannot exceed the rate of Newstart, Youth Allowance or Austudy that the person would otherwise have received if they were qualified to receive those payments. Current rates are available on the [Department of Human Services' website](#).

What if I earn income – what is the income test that applies to Special Benefit?

Special Benefit is reduced by one dollar for each one dollar of income. While receiving Special Benefit, the person must tell Centrelink every time money is earned (during that fortnight) to avoid having a debt raised later.

Can I study while receiving Special Benefit?

Because Special Benefit is an activity tested payment, any full time study done:

- must be approved by the Employment Services Provider as part of the person's plan to find a job;
- ideally should be part of the person's plan to find work;
- can't be approved where the course is longer than 12 months.

It's possible to study part-time on an activity tested payment to complete a longer course (for example a degree), but that won't count towards periods of time towards meeting the 3.5 year work / study test as for that test, study needs to be full-time.

How to avoid problems with Centrelink

If receiving Special Benefit from Centrelink:

- Centrelink must be informed of any changes to circumstances including changes to address, whether or not the person is studying or working, how much income is earned (and tell them during the fortnight it is earned).
- Appointments must be attended with an Employment Services Provider or Centrelink or a person must call in advance to tell them why they can't make it.

Failure to do either of the above could lead to payments getting cut, periods without payment, or debts raised against the person for Commonwealth money they weren't entitled to receive.

Some examples of how a person could meet the SHEV work/study test

To satisfy the 3.5 year test, it's possible to:

- Work (either full-time or part-time or any amount of time) for 3.5 years so long as the person is not receiving Special Benefit; or
- Do a full time study course that is less than 12 months while receiving Special Benefit then stop Special Benefit as soon as the person have found work. The person would then no longer be barred once the person had worked for 2.5 years while not receiving Special Benefit.
- Do a series of full time study courses approved by the Employment Services Provider of less than 12 months duration between times that the person is either working and not receiving Special Benefit or looking for work.

What visas could I apply for if I meet the SHEV work/study test?

Some of the visas a person could apply for after passing the 3.5 year work / study test include:

Family stream visas:

- Partner (820 and 801)
- Child (802)
- Parent (contributory and aged parent) (143, 804, 864, 884)
- Carer (836)
- Orphan relative (837)

Example:

Partner visa (820 and 801)

- If a SHEV holder is in a married or de facto relationship with a settled Australian permanent resident or citizen.
- The relationship is genuine and continuing.
- They pay a fee: \$6865
- What if the person was previously married overseas? They would have to obtain a divorce and provide evidence of divorce. If the spouse is missing or deceased, they would have to provide evidence of this.

Skilled stream visas:

- Employer Nomination Scheme (186) and Regional (187)
- Skilled – Independent (189)
- Skilled – Nominated (190)

Comments

- These visas have English language requirements – usually level 5 or 6 required in each IELTS band. This is a very high standard, applicants ordinarily need to do courses to achieve this.
- Skilled Occupation List – changes from time to time. It is difficult to know which trades or professions will be on the list in 4 years time, but the current lists are indicative.

The skilled occupation list for 189, 190 and 485 visas can be viewed here:
<http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/SOL>

The combined skilled occupation list (CSOL) for all the skilled visas and sponsored visas eg: 457, 186, 187 can be viewed here: <http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/CSOL>

- Professions which have consistently been on list for many years include medical or engineering related professions, and certain trades including plumbing, electricians, mechanics.
- For people wanting to choose courses now with no previous background skills or education to build on, the best advice is that they should look at the current list of Trade / Profession work on the 457 list and take it to their appointment with a Centrelink Employment Services Provider with a couple of options highlighted.

The full list of visas a person may apply for once they have passed the 3.5 year work / study test on a SHEV is set out in Regulation 2.06AAB:

Visas for which holders and certain former holders of safe haven enterprise visas may apply¹	
Item	Visa subclass
1	Subclass 132 (Business Talent)
2	Subclass 143 (Contributory Parent)
3	Subclass 186 (Employer Nomination Scheme)
4	Subclass 187 (Regional Sponsored Migration Scheme)
5	Subclass 188 (Business Innovation and Investment (Provisional))
6	Subclass 189 (Skilled — Independent)
7	Subclass 190 (Skilled — Nominated)
8	Subclass 402 (Training and Research)
9	Subclass 405 (Investor Retirement)
[10]	[Subclass 416 (Special Program) omitted by MA(POM)R 2015 with effect on and from 18/04/2015 - LEGEND note]
11	Subclass 445 (Dependent Child)
12	Subclass 457 (Temporary Work (Skilled))
13	Subclass 476 (Skilled — Recognised Graduate)
14	Subclass 489 (Skilled — Regional (Provisional))
15	Subclass 570 (Independent ELICOS Sector)
16	Subclass 571 (Schools Sector)
17	Subclass 572 (Vocational Education and Training Sector)
18	Subclass 573 (Higher Education Sector)
19	Subclass 574 (Postgraduate Research Sector)
20	Subclass 575 (Non-Award Sector)
21	Subclass 580 (Student Guardian)
22	Subclass 801 (Partner)
23	Subclass 802 (Child)
24	Subclass 804 (Aged Parent)

¹ These prescribed visas are specified in regulation 2.06AAB.

Visas for which holders and certain former holders of safe haven enterprise visas may apply¹	
Item	Visa subclass
25	Subclass 820 (Partner)
26	Subclass 835 (Remaining Relative)
27	Subclass 836 (Carer)
28	Subclass 837 (Orphan Relative)
29	Subclass 838 (Aged Dependent Relative)
30	Subclass 858 (Distinguished Talent)
31	Subclass 864 (Contributory Aged Parent)
32	Subclass 884 (Contributory Aged Parent (Temporary))

Who can give me advice on the qualification criteria for these visas?

Generally private Migration Agents (money needs to be paid for their advice).

There are no pro bono or free services for skilled visas.

It's possible to try IARC or RACS for advice about or help with a family stream visa such as a spouse or child visa if the person already has an Australian permanent resident spouse or parent.

Alternately, there is information about these visa types on the Department of Immigration's website.

Simple answers to some frequently asked questions

1. In which regional areas can I work or study to meet the SHEV pathway requirement?

You must work or study in a *designated* regional area. Currently, designated areas include all parts of Tasmania and all parts of New South Wales other than areas in and around Sydney, Newcastle and Wollongong. The postcodes of designated areas in NSW are: 2311–2312; 2328–2411; 2420–2490; 2536–2551; 2575–2594; 2618–2739; 2787–2898. Areas in other states and territories may be designated in the future.

2. If I study, how much will it cost?

Children under 18 are able to study at school for free. Adults aged 18 or over will be able to study under the Adult English Migrant Program (AMEP) but will not be entitled to other Commonwealth-funded subsidies for study. Individual colleges and TAFEs might provide scholarships or subsidies for holders of TPVs or SHEVs.

3. I am working or studying in a regional area now but I don't yet have a SHEV. Can I count this time towards satisfying the SHEV pathway requirement?

No. You can only count time spent working or studying in a regional area while you hold a SHEV.

4. If I meet the 3 and a ½ year criteria, when could I apply for another visa?

You could apply for another visa as soon as you have completed the required period of regional work or study (42 months). You would not have to wait until the end of the SHEV before applying.

5. What if I don't meet the pathway requirements to apply for another kind of visa at the end of my SHEV?

If you don't satisfy the regional work or study requirements at the end of your SHEV, then you will not be able to apply for another visa without permission of the Minister, and the Minister can decide which type of visa you can apply for. The Department of Immigration says that you will only be able to apply for another TPV or SHEV. If you have made a genuine effort to satisfy the pathway requirements, then you may be granted permission to apply for another SHEV. However, if you have not attempted to work or study in a regional area, you may only be allowed to apply for a TPV.

6. What happens if I am granted a SHEV and don't move to a regional area?

Living in a regional area is not a condition of your SHEV and your SHEV cannot be cancelled on this basis. However, failure to do this when you expressed an intention of doing this in your SHEV application could affect whether the Minister gives you permission to apply for another SHEV in the future.

7. I am currently working in Sydney. If I am granted a SHEV do I have to quit my job? Should I have applied for a TPV instead?

You have permission to work on both a TPV or a SHEV and you are legally allowed to keep working in your current job in Sydney while holding your SHEV. If you do find work or study in a declared area after 3.5 years you may then receive the benefit of being able to apply for other kinds of visas in the future. However you are not required to work or study in a declared area as a condition of a SHEV visa: your visa can not be cancelled if you don't.

8. I am in a relationship with an Australian citizen or permanent resident. Can we get married?

You can get married in Australia. However, in order to remain in Australia permanently, you would need to apply for and be granted a permanent Partner visa. If you hold a SHEV, and you meet the regional work or study requirements, then you would be able to apply for a Partner visa. If you do not meet the requirements, or you do not hold a SHEV, and you arrived in Australia by boat, then it is likely that you would be barred from applying for a Partner visa. If you are allowed to apply for a Partner visa, you would still need to demonstrate that you meet the requirements for that visa, for example, you need to pay an application fee (currently over \$6000) and prove that your relationship is genuine and continuing.

9. I have a child who attends school. Can we go to a regional area on a SHEV?

If you are in a family, only one member of the family unit needs to meet the pathway requirements (a family unit generally includes a partner (married or de facto) and dependent children). For example, if you have a child under 18, and you move to a specified regional area, and your child attends the local school for a minimum of 3.5 years, the whole family unit could meet the SHEV pathway requirements, even if the family receives Centrelink benefits.

10. Can I study online or by correspondence?

No. Study must be full-time and face-to-face.

How does RACS help fast track applicants wanting to lodge a TPV or a SHEV application?

Once a person has their entry interview back from the Department after an FOI request, we seek their consent to request an extension of time to the 60 day bar lift request, and arrange appointments for their statement and forms to be completed.

We provide pre-lodgement advice to people about to lodge their statement and forms with a Registered Migration Agent. For fast track applicants refused by the IAA our Justice for Refugees Project will seek to obtain an opinion on the merits to a legal appeal to a Court, and if merit can be found, will seek to connect the person with pro-bono or no-win-no-fee legal representation.

Fast track applicants can contact RACS directly by coming to one of our drop in advice times or by calling RACS for telephone advice on a Tuesday from 10-11.30am. Numbers attending our drop in advice services are currently very high. We would love to receive referrals from caseworkers to avoid numbers becoming unmanageable.

To refer a fast track applicant to RACS who is wanting help lodging an application, it would help us if caseworkers could:

- Confirm that they are unable to pay for a private migration agent which they could see with far less waiting time.
- Ask if they consent to RACS' seeking an extension of time to their 60 day time limit from the Department;
- Email admin@racs.org.au the PDF of their entry interview and the clients name, boat ID, preferred language, date of bar lift letter, and best contact details.

To refer a fast track applicant to RACS' Justice for Refugees Project where they have been refused by the IAA, case workers can email J4R@racs.org.au and ask for our current referral form. (This email address is not for use by clients.)

Please note: This briefing kit contains general information only. It does not constitute legal or migration advice. If you would like more detailed information on any aspect, please refer to RACS fact sheets available at www.racs.org.au. RACS is independent of the Department of Immigration. All assistance is free. This kit was prepared in October 2016.