

People who arrived in Australia via Ashmore Reef

This fact sheet is for asylum seekers who arrived **before 1 June 2013** by boat landing at Ashmore Reef. The government initially thought that by taking a detour through that lagoon, the asylum seekers would become “offshore entry people”.

In 2018, the Federal Court disagreed in the case of [DBB16](#) and found asylum seekers taken to Ashmore Reef before 1 June 2013 don't need Ministerial approval to apply for visas as they are not unauthorised maritime arrivals.

This case meant that the “Ashmore Reef” group could make valid applications onshore, for example partner visas. It also meant they have the right to appeal a refusal of their TPV or SHEV application to the Administrative Appeals Tribunal (AAT) rather than the Immigration Assessment Authority (IAA).

But when some of this group applied for protection visas, the Department refused to process their applications on the grounds that on 14 October 2014 the Minister purported to exercise his power in s195A of the Migration Act to grant subclass 449 Temporary Safe Haven Visas (TSHVs). People who have been granted a TSHV are not allowed to apply for any visa in Australia under section 91K of the Migration Act without approval from the Minister under section 91L of the Migration Act.

In 2017, in the case of [CBW20](#), a Vietnamese asylum seeker whose boat had landed at Ashmore Reef applied for a SHEV and it was refused. At the AAT they considered the validity of his application for a SHEV, asking: was the grant of the TSHV valid back in 2014?

If the grant of the TSHV from 2014 was valid, section 91K of the Migration Act meant the asylum seeker was barred from applying for any visa other than another TSHV without approval from the Minister. If the grant of the TSHV from 2014 was not valid, the asylum seeker could apply for a SHEV without approval from the Minister.

In 2021, the Federal Court found that the grant of the TSHV from 2014 was invalid, so the asylum seeker, and any other people who arrived in Australia via Ashmore Reef, were free to apply for a SHEV, or any other visa, without approval from the Minister.

In 2020, prior to the decision in [CBW20](#), a cohort of asylum seekers who arrived in Australia via Ashmore Reef received letters from the Department inviting them to lodge a second TPV or SHEV application, because the Department still believed that their first TPV or SHEV application had been invalid. They then lodged new applications as invited to do so.

After the decision in [CBW20](#), however, the Department have now been sending letters telling people to withdraw one of their applications.

These letters are difficult to understand, and essentially now say the second application you lodged in 2020 was invalid and ask the person to withdraw it.

Most people have a protection visa on foot because they applied when the request came through.

However, there may currently be about 48 people with no protection visa on foot around Australia.

If you come across any letters asking a person to withdraw a protection visa application, or referring to the case of CBW20, or giving a limited time to respond, please seek legal advice.

There are also people who have been granted a TPV or SHEV and subsequently a Resolution of Status (RoS) visa who may not know if they are part of this group. If you have been granted a RoS and you arrived in Australia via Ashmore Reef before 1 June 2013 and you are seeking legal advice about, for example, bringing your family to Australia, let your lawyer know that you may be part of this group.

Getting Help from RACS

RACS is entirely independent of the Department of Home Affairs. All assistance is free.

Service	Day	Time	Address/Number
Telephone Advice (including Family Reunion)	Monday to Friday	11AM to 1PM and 2PM to 4PM	(02) 8355 7227 or admin@racs.org.au
Auburn Drop-in	Wednesday	10AM to 12PM	Visit 44A Macquarie Road, Auburn

Please note: This fact sheet contains general information only. It does not constitute legal or migration advice. RACS is independent of the Department of Home Affairs. All assistance is free. This factsheet was prepared in October 2023.