

91K - Ashmore Reef Affected – DBB16

Who is this Infosheet for?

This Infosheet is for **any person who arrived in Australia by boat via Ashmore Reef** between the periods of **23 January 2002 – 1 June 2013**. In this Infosheet, *‘Ashmore Reef’* refers to the Territory of Ashmore and the Cartier Islands. You may have received letters from the Department of Home Affairs (DHA) informing you of changes to your application under sections 91K and 91L of the *Migration Act 1958 (Vic)* (‘the Act’). This Infosheet explains those changes and what it means for your application for asylum.

Note: It is not uncommon for terminology like “*Ashmore Reef affected*”, “*91K or 91L impacted*”, “*DBB16*” or a combination of the above wording to be used interchangeably. For the purposes of clarity, we will use the terms “*Ashmore Reef affected*” in this Infosheet.

IMPORTANT:

- If you receive a letter from the Department of Home Affairs notifying you that you are Ashmore Reef affected, you need to seek immediate legal advice and assistance. The information contained in this Infosheet is general information and should not be relied upon as legal advice or migration advice.
- If you have submitted a protection visa in the past, it will be *invalid* if you are Ashmore reef affected. This means the Department of Home Affairs will not consider your previous application for a TPV/SHEV.
- In November 2019 the Minister decided that if you are Ashmore Reef affected you will in the coming weeks or months (if you have not already) be invited to lodge a new valid application for a TPV/SHEV, however only within a very limited timeframe.
- You will only have seven (7) days to lodge a new application from the date of your letter. You cannot get an extension for this deadline. You will not be able to submit a new protection visa application after the deadline expires.
- Being Ashmore Reef Affected does not make you eligible for a permanent protection visa. However it is beneficial as it gives you a fresh chance to get a protection visa. It also means that if your application is rejected by the Department, you will have access to a fairer review process before the Administrative Appeals Tribunal, rather than the Immigration Assessment Authority.
- If you are Ashmore Reef affected and already married to an Australian permanent resident or citizen, you may be able to also lodge an application for a partner visa or

another visa category that is not a permanent protection visa¹. However you should also still ensure that you lodge a TPV/SHEV application within the 7 days as well

- **If you currently hold a TPV or SHEV visa, the Ashmore Reef situation does not have any immediate impact on your visa.**
 - **It is very important you obtain legal advice from a lawyer with expertise in migration law as soon as you receive the letter. You should not submit a new protection visa application without seeking legal advice.**
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What is the current law for people who arrived in Australia via Ashmore Reef?

- In a court case in 2018 (*DBB16 v Minister for Immigration and Border Protection* [2018]) it was decided that asylum seekers who arrived via Ashmore Reef between 2002 – 2013 are not subject to the Fast Track process.
- The outcome of this court case means if you are Ashmore Reef affected, you will need to reapply for a TPV or SHEV visa after you receive an invitation to do so. Any previous applications you made are deemed invalid. This power comes from section 91K of the Act.
- The Minister of Home Affairs decided that asylum seekers that are Ashmore Reef affected can submit a new application for protection within a prescribed time frame. The power to allow you to reapply for your protection visa comes from section 91L of the Act.
- You only have seven (7) working days from the date you received the letter to make a valid application for a TPV/SHEV. **Your application will be INVALID if you do not make it within seven (7) days.**

What do I need to do now?

The Department is currently sending letters to people who are Ashmore Reef affected. You do not need to contact the Department yourself but make sure the Department has your most recent contact details.

It is strongly recommended that if you receive letters relating to Ashmore Reef, you urgently obtain independent legal and/or migration advice. Due to the demand for pro bono (free) legal services you should seek legal advice when you get the first letter or at the earliest opportunity before the expiration of the 7 working days. Here are some examples of what the letters will look like:

¹ There are large application fees and other costs when you apply for a partner visa or any other visa in Australia. If this may be an option for you, you must also meet the conditions and eligibility criteria for the other visa category and pay for legal assistance.

(1) The first letter will state that your earlier TPV/SHEV application is invalid under section 91K:

10 March 2020

Example Person
214-218 Nicholson Street
Footscray VIC 3011

In reply quote:

Client name	Example PERSON
Date of birth	26 August 1986
Date of visa application	16 March 2017
Application ID	1234567891011
Transaction reference number	EGOS15LABC
File number	BCC2017/123456
Visa application charge receipt number	98765432100

Transmission method Email

Dear Example Person

Notification of invalid application for a Temporary Protection (subclass 785) visa

The application made by the following applicant was not valid.

Client name	Example Person
Date of birth	26 August 1986
Date of decision	10 March 2020

**In the sample example the person is notified of an invalid TPV application, but you can also be notified of an invalid SHEV application.*

(2) The second letter will inform you that you can now apply for a TPV/SHEV visa. The time period will start from the date of the letter ending after the seventh (7th) working day after the notice is given.

24 March 2020

Example Person
214-218 Nicholson Street
FOOTSCRAY vic 3011

In reply quote:

Client name	Example Person
Date of Birth	26 August 1986
Client ID	12345612478311

Transmission method Post

Dear Example Person

Notice under subsection 91L(1) of the Migration Act 1958

This notice relates to the following client.

Client Name	Example Person
Date of Birth	26 August 1986
Client ID	12345612478311

In the example above, the letter was received on 24 March 2020 which means the applicant (you) will need to submit the new application by 2 April 2020 (7 “working days” excludes Saturday and Sunday).

Failing to make a valid application within the time limit **will** have serious consequences as unless the Minister decides to make an exception, you will **not** be able to make a valid application for a TPV or SHEV after those seven days. You will then be unlawful and unable to apply for a bridging visa or any other visa.

To lodge your application, you can do this either online through **ImmiAccount** or by **post**. You cannot lodge the application in person. You will have to pay a fee (currently \$40) to lodge your application.

What happens if my application is refused?

If you have already made an application after you were invited to, and that application was refused, you are **entitled to seek a review of the decision by the Administrative Appeals Tribunal (AAT)**. **You must apply for review within 28 days of the Department refusal (including the date of notification)**. This will involve a hearing where a Member of the AAT will decide your case all over again.

How can the ASRC help me?

The ASRC's Human Rights Law Program (HRLP) may be able to provide you with legal assistance or advice. To access the HRLP, you can contact us by calling our Legal Triage helpline:

Legal Triage Helpline 0478 700 605

– available Mondays & Thursdays from 10:30am to 12pm

Due to high demand, the line may be busy when you call. Please keep trying if this is the case, and one of our Triage staff will be with you as soon as they can.