The process for deciding refugee claims in Australia varies depending on how an asylum seeker arrives in the country. Those arriving with a valid visa access a standard refugee status determination process, as explained below. Those arriving without a valid visa subject to a ‘fast-track’ process with diminished procedural rights.

What is ‘refugee status determination’?

Refugee status determination (RSD) in Australia is the process by which a person (asylum seeker) may be recognised by the government as a refugee. Asylum seekers have the opportunity to put forward the reasons why they fear that they will be persecuted or subjected to other significant harm if they are returned to their country.

Strictly speaking, RSD does not ‘make’ someone a refugee but simply recognizes or ‘declares’ that the person is a refugee. This is because under international law, a person is a refugee as soon as they meet the definition set out in the Refugee Convention. This may be the time when they leave their country or after their arrival in Australia (‘sur place’). In reality, a person needs to be officially recognized as a refugee in order to receive the rights and entitlements that attach to refugee status.

The Refugee Convention does not set out procedures that must be followed in an RSD system, but there are many non-binding international standards. For Australia to comply with its obligations under the Refugee Convention, it must have a procedure in place that enables the government to identify accurately the people to whom it owes protection.

RSD in Australia—how it applies

Currently different asylum processes apply for people who arrive in Australia with a valid visa, and those who arrive without a valid visa. Only people who arrive with a valid visa may access the ‘regular’ RSD process. These are mostly individuals who enter Australia by plane with a valid visa, such as a tourist or student visa, and apply for refugee status after arrival. Some arrive intending to claim refugee status; some learn of the possibility of applying for refugee status after they are here; others apply because circumstances change in their home country while they are in Australia that make it unsafe for them to return.
If a person arrived in Australia with a valid visa, they can make a claim for protection to the Department of Home Affairs. Their initial claim is considered by a government official and, if the claim is successful, the person is recognised as a refugee and granted a protection visa. If the claim is rejected, then the person may appeal to the Migration and Refugee Division of the Administrative Appeals Tribunal (MRD-AAT) to have the claim reviewed by an independent decision-maker. If again unsuccessful, appeals can be made to the courts or, as a last resort, to the Minister.

The same process is used to determine whether a person is entitled to complementary protection, based on serious human rights violations under the International Covenant on Civil and Political Rights and the Convention against Torture (see our factsheet on [complementary protection](#)).

Asylum seekers who arrived by boat are no longer entitled to access the RSD process described in this factsheet. Instead, all 'unauthorised maritime arrivals' (as they are termed in the Migration Act 1958 (Cth)) are barred from applying for a protection visa, unless the Minister exercises a personal, non-compellable discretion to allow them to do so (known as 'lifting the bar'). This has resulted in asylum seekers waiting up to four years to submit their initial application.

A ‘fast track process’ now applies to asylum seekers who arrived without a valid visa between 13 August 2012 and 1 January 2014, which curtails appeal rights and, in some instances, removes the opportunity of an independent review altogether. This process is described in our [research brief on ‘fast track’ refugee status determination](#).

**‘Regular’ RSD process in Australia—an overview**

- the asylum seeker lodges an application, using Form 866, which is submitted to the Department of Home Affairs
- an officer of the Department makes a primary decision as to whether the asylum seeker is entitled to protection (as a refugee or beneficiary of complementary protection)
- if refused, the asylum seeker may apply for merits review by the MRD-AAT
- if the refusal is upheld, the asylum seeker may appeal to the Federal Circuit Court, Federal Court, or in exceptional cases the High Court, for judicial review based on a legal error in the decision-making process (not merits review)
• as a last resort, the asylum seeker may request that the Minister personally intervene to grant him/her a visa