



Tell Me About: Temporary Protection Visas

1. What are Temporary Protection Visas?

Temporary Protection Visas (TPVs) are a type of visa available to people who arrive in Australia without a visa and are found to be owed protection obligations.¹

As its name suggests, a TPV only permits the holder to remain in Australia temporarily (this can be contrasted with a Permanent Protection Visa (PPV), which grants the holder permanent resident status). TPVs can last for up to three years, but some may be given for shorter periods. After a TPV expires, the holder can reapply for another TPV.

TPV holders are permitted to work (potentially subject to certain restrictions), and have access to Medicare. They are eligible for some income assistance, but the level and terms of this assistance are within the discretion of the Minister for Immigration and Border Protection (the Minister has indicated that access to benefits will be subject to mutual obligation conditions).²

If the holder of a TPV leaves Australia, the TPV does not entitle him or her to return. TPV holders also are not able to sponsor family members for Australian visas, or be granted any substantive visa while in Australia.

2. Which people have been granted TPVs?

TPVs were (re)introduced by the Australian Government on 18 October 2013 through a regulation.³ However, on 2 December 2013 the TPV regulation was disallowed by the Senate, with the consequence that no more TPVs can be granted.

While the regulation was in force, between 18 October and 2 December 2013 at least three TPVs were granted to asylum seekers who arrived in Australia without a visa and were found to be owed protection.⁴ TPVs which were granted prior to the disallowance of the regulation on 2 December 2013 remain valid.

3. What is the difference between a TPV and a bridging visa?

Like TPVs, bridging visas are temporary visas. They allow people (including asylum seekers) to legally reside in the Australian community while they are applying for a longer term visa, appealing a decision relating to their visa, or making arrangements to leave Australia.

The key difference is that bridging visas are granted to asylum seekers *before* any decision is made about whether they should be granted protection in Australia. The purpose of granting a bridging visa to an asylum seeker is to allow them to remain in the community while their protection claims are being assessed.⁵

TPVs, on the other hand, are granted to people *after* their protection claim has been assessed, when the person is found to be owed protection obligations.

4. What are the Commission's concerns about TPVs?

The Commission raised serious concerns about TPVs when they were used in Australia (with similar conditions attached) from 1999 to 2008.⁶ Based on the negative impacts of TPVs on refugees when they were last used, the Commission is concerned that the reintroduction of TPVs may lead to breaches of Australia's international human rights obligations, for the following reasons.

Mental health impact of TPVs

Under international human rights law, all people have a right to the highest attainable standard of physical and mental health.⁷ The granting of protection to refugees only on a temporary basis had a significant detrimental impact upon their mental health when TPVs were last used.

The temporary nature of the protection granted under a TPV creates uncertainty and insecurity in the life of refugees, as they live with the possibility of being forcibly removed to face persecution in their country of origin when the TPV ends. These feelings of insecurity and fears of repatriation can contribute to ongoing mental health problems.⁸ Refugees on TPVs were likely to suffer from higher levels of anxiety, depression and post-traumatic stress disorder than those on PPVs, despite the fact that the two groups had experienced similar levels of past trauma.⁹

The uncertainty and anxiety of temporary residency status had a strong impact on children. It was reported that as a result of the uncertainty, children exhibited physiological and psychological symptoms including constant headaches, sleeping problems, problems with concentration and memory, and signs of depression.¹⁰

The Commission's National Inquiry into Children in Immigration Detention found in 2004 that granting temporary protection was more likely to compound mental health problems for these children than facilitate their rehabilitation and integration into Australian society.¹¹ It concluded that the use of TPVs for refugee children had resulted in breaches of those children's rights to mental health, maximum possible development and recovery from past torture and trauma.¹²

The Senate Legal and Constitutional References Committee which reviewed the *Migration Act 1958* (Cth) in 2006 acknowledged the negative impact that the temporary protection regime had on those subjected to it. It concluded that 'there is no doubt that its operation has had a considerable cost in terms of human suffering.'¹³

Prolonged separation from family members

Australia has obligations under international law to support families to reunify.¹⁴ However, the effect of denying refugees on TPVs the ability to sponsor family members to join them in Australia is that they may potentially be separated from their family indefinitely.¹⁵ The Commission is therefore concerned that the prohibition on family reunion, combined with the restrictions on travel outside of Australia whilst on a TPV, may result in breaches of Australia's human rights obligations.

Of particular concern are the consequences of these restrictions for unaccompanied refugee children who are granted TPVs. As the National Inquiry noted, the practical consequence of these restrictions last time TPVs were used was that children on TPVs whose parents were outside Australia were prevented from seeing them for the duration of their visa.¹⁶ The restrictions on family reunion and overseas travel may have directly contributed to the increase in the number of family members, particularly women and children, risking their lives by making the boat journey to Australia.¹⁷

Discrimination and penalisation

The TPV regime established by the now-disallowed regulation distinguished between asylum seekers who arrived in Australia with a valid visa, and those who did not. If asylum seekers entered Australia with a valid visa, they could apply for (and, if found to be owed protection, be granted) a PPV. If they arrived without a visa, they could only apply for a TPV.

Under international human rights law, asylum seekers who arrive without a visa have a right to non-discrimination.¹⁸ The TPV regime would therefore breach Australia's non-discrimination obligations unless the criteria for differentiation underpinning the TPV regime were reasonable, objective, and for a legitimate aim.¹⁹

The differential treatment of asylum seekers who arrive unauthorised also raises issues under article 31 of the *Convention on the Status of Refugees*.²⁰ Article 31 prohibits States Parties from penalising asylum seekers on account of their unauthorised arrival in a country when they are coming directly from a territory where their life or freedom was threatened. The Commission is concerned that the provision of temporary protection to asylum seekers who arrive unauthorised may amount to a penalty contrary to article 31.

5. What does the Commission recommend?

The Commission recommends that all asylum seekers who are found to be owed protection obligations should be granted a PPV, with the associated entitlements to sponsor family members to come to Australia, and to travel outside of Australia.

6. Useful links

- [A Last Resort? National Inquiry into Children in Immigration Detention](#) (April 2004), Chapter 16
- [The end of temporary protection visas for refugees is a step forward for human rights](#) (Commission media release, 14 May 2008)
- [TPVs part of an inhumane system](#) (Commission news story, 3 December 2013)

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- ¹ These protection obligations are set out in s 36 of the *Migration Act 1958* (Cth).
- ² Minister for Immigration and Border Protection, the Hon Scott Morrison MP, 'Operation Sovereign Borders, incident on Manus Island' (Interview, 21 October 2013). At <http://www.minister.immi.gov.au/media/sm/2013/sm208933.htm> (viewed 12 December 2013).
- ³ *Migration Amendment (Temporary Protection Visas) Regulation 2013* (Cth).
- ⁴ Evidence to the Senate Standing Committee on Legal and Constitutional Affairs (Estimates), Canberra, 19 November 2013, (Ms Alison Larkins, First Assistant Secretary, Department of Immigration and Border Protection). At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F70373bf4-1745-474d-be50-7e04b2a90004%2F0000%22> (viewed 12 December 2013).
- ⁵ For more information on asylum seekers on bridging visas, see the Commission's Factsheet *Tell Me About: Bridging Visas for Asylum Seekers*, available at: <http://www.humanrights.gov.au/publications/tell-me-about-bridging-visas-asylum-seekers>.
- ⁶ See, for example, Human Rights and Equal Opportunity Commission (HREOC), *A last resort? National Inquiry into Children in Immigration Detention* (2004), Ch 16. At <http://www.humanrights.gov.au/last-resort-report-national-inquiry-children-immigration-detention-2004> (viewed 12 December 2013).
- ⁷ *International Covenant on Economic, Social and Cultural Rights*, 1966, art 12.
- ⁸ Z Steel *et al*, 'Impact of immigration detention and temporary protection on the mental health of refugees' (2006) 188 *British Journal of Psychiatry* 58, p 63.
- ⁹ S Momartin *et al*, 'A Comparison of the Mental Health of Refugees with Temporary versus Permanent Protection Visas' (2006) 185 *Medical Journal of Australia* 357. See also Z Steel *et al*, 'Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies' (2011) 72 *Social Science & Medicine* 1149.
- ¹⁰ HREOC, note 6, section 16.2.1.
- ¹¹ HREOC, above, section 16.2.3.
- ¹² *Convention on the Rights of the Child*, 1989 (CRC), arts 6(2), 24(1) and 39.
- ¹³ Senate Legal and Constitutional References Committee, Parliament of Australia, *Administration and operation of the Migration Act 1958* (2006), para 8.33. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2004-07/migration/report/c08 (viewed 12 December 2013).
- ¹⁴ *International Covenant on Civil and Political Rights*, 1966 (ICCPR), art 23; Human Rights Committee, *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23)*, UN Doc HRI/GEN/1/Rev.6, 149 (1990), paras 3 and 5.
- ¹⁵ Explanatory Statement, *Migration Amendment (Temporary Protection Visas) Regulation 2013* (Cth).
- ¹⁶ HREOC, note 6, section 16.2.2.
- ¹⁷ HREOC, above, section 16.2.2. See also Evidence to the Senate Standing Committee on Legal and Constitutional Affairs (Estimates), Canberra, 24 February 2009, p 73 (Senator Chris Evans, Minister for Immigration and Citizenship). At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F11640%2F0001%22> (viewed 12 December 2013).
- ¹⁸ ICCPR, arts 2(1) and 26, Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc HRI/GEN/1/Rev.9 (Vol. I) (1986), paras 2, 5, 7, 9 and 10.
- ¹⁹ Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc CCPR/C/21/Rev.1/Add. 1 (1989), para 13.
- ²⁰ *Convention Relating to the Status of Refugees*, 1951, as amended by the *Protocol Relating to the Status of Refugees*, 1967.