Factsheet
Temporary Protection Visas

What are TPVs?

The TPV (Temporary Protection Visa) is a class of visa that was introduced in Australia by the Howard Government in October 1999 and abolished by the Rudd Government in August 2008. Under the Howard Government’s TPV regime, the class of visa granted to asylum seekers who were assessed to be refugees was dependent upon the individual’s mode of entry into Australia. Those who had arrived in Australia with a visa – typically by plane – were eligible for a permanent Protection Visa (PV), allowing them to live permanently in Australia. However, those who had arrived in Australia without a visa – typically by boat – were eligible only for a TPV. The TPV was valid for three years, after which time the TPV recipient was required to re-apply for protection to remain in Australia.

Initially, the policy allowed TPV recipients to apply for a permanent PV at the point of re-application. However, following amendments to the TPV regime in 2001, this became much more difficult. TPV recipients who had spent seven days or more in a country where they could have sought and obtained protection en route to Australia were rendered ineligible for permanent PVs and could only apply for another TPV. This was known as the ‘seven day rule’. This meant that most refugees who arrived by boat would remain indefinitely on a TPV.

Under the Howard Government’s policy, refugees on TPVs were granted work rights but denied other rights that were available to refugees on permanent PVs, including the right to family reunion and the right to re-enter the country if they decided to leave Australia. They were also denied a range of services available to refugees on permanent PVs, including community support programs and English language tuition.

Approximately 11,000 TPVs were issued between 1999 and 2007, and approximately 90 per cent of TPV holders eventually gained permanent visas.

What is the Abbott Government’s policy on TPVs?

On 18 October 2013, Abbott Government reintroduced TPVs under a policy similar to that which operated under the Howard Government. Asylum seekers who arrive by boat and are found to be refugees or in need of complementary protection would be eligible only for TPVs, not permanent PVs. Under the policy, the duration of TPVs was to be determined on a case-by-case basis, although no TPV would exceed three years in duration. If a person was still found to be in need of protection at the end of the three-year period, he or she could apply for a subsequent TPV.

On 2 December 2013, the Senate disallowed the Migration Amendment (Temporary Protection Visas) Regulation 2013 under which TPVs had been re-introduced. During that intervening period, 22 TPVs had been issued. In commenting on the disallowance, Minister for Immigration, Scott Morrison, told ABC radio that the government would continue to refuse asylum seekers permanent visas, but did not state how this would be achieved. On the same day, the Minister made a determination capping the number of protection visas for the 2013-2014 financial year at 1,650. However, this determination was revoked on 20 December 2014, days before a legal challenge in the High Court of Australia.
On 5 February 2014, the Abbott Government announced that asylum seekers found to be refugees or in need of complementary protection, who have arrived without a prior visa, may now be granted a Temporary (Humanitarian Concern) Visa (Sub-class 786).14 This was a pre-existing visa category customarily granted to holders of a temporary ‘Safe Haven’ visa (Sub-class 449) who needed to extend their stay in Australia in order to receive further trauma counselling or other medical services.15 Accordingly, people found to be in need of protection will first be invited to accept the 449 Humanitarian Stay (Temporary) Visa (‘Safe Haven’), which will then enable the Department of Immigration to grant them a Temporary (Humanitarian Concern) Visa. For more on this visa, see our Temporary Humanitarian Concern Visas factsheet.

On 4 March 2014, the Minister made a new determination capping protection visas for the 2013-2014 year at 2,773.16 However, on 20 June 2014, the High Court of Australia ruled that these determinations were invalid, because the Act did not authorise the capping of protection visas.17 On 22 July 2014, the Minister granted permanent protection to the asylum seeker involved in the High Court challenge.18

The table below summarizes the key differences between the Temporary (Humanitarian Concern) Visa, the previous TPVs and permanent PVs under the government’s current policy.

<table>
<thead>
<tr>
<th>Temporary (Humanitarian Concern) Visa</th>
<th>Temporary Protection Visa</th>
<th>Permanent Protection Visa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visa provision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary (Humanitarian Concern) Visa issued for periods of up to three years; may be for a shorter period, as assessments made on a case-by-case basis. Holders will need to have their claims for further protection assessed before the visa expires, in order to obtain another temporary visa.</td>
<td>TPVs issued for periods of up to three years. TPV holders may apply again when the visa expires.</td>
<td>Immediate permanent residency.</td>
</tr>
<tr>
<td>Income assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to social security benefits (Centrelink).</td>
<td>Eligible for benefits set at Minister’s discretion; may have mutual obligation restrictions (e.g. ‘Work for the Dole’).</td>
<td>Access to a full range of social security benefits.</td>
</tr>
<tr>
<td>Settlement support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to job-matching and short-term counselling for torture or trauma.</td>
<td>Access to services and support unclear. The Minister has discretion to grant access to settlement services or support, but there is no entitlement to such support.</td>
<td>Access to full range of settlement support services.</td>
</tr>
<tr>
<td><strong>Work rights/Employment</strong></td>
<td>Permission to work.</td>
<td>Permission to work, but possible restriction based on geographic location. Ability to find employment impeded by temporary status.</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Health care</strong></td>
<td>Access to Medicare.</td>
<td>Eligible for a temporary Medicare card.</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>Able to study, but details as to whether school students will have to pay domestic or international fees unclear (and depend on individual schools and state/territory policies). Adults may study but must pay enrolment fees for courses.</td>
<td>Education access and fee requirements unclear.</td>
</tr>
<tr>
<td><strong>Language training</strong></td>
<td>Holders are able to complete any Department of Immigration and Border Protection-funded ESL programmes that they were already participating in at the time of being granted the visa.</td>
<td>Eligibility for English language education unclear.</td>
</tr>
<tr>
<td><strong>Family reunion</strong></td>
<td>No rights to family reunion.</td>
<td>No rights to family reunion.</td>
</tr>
<tr>
<td><strong>Overseas travel</strong></td>
<td>No right of return; 786 visa forfeited upon leaving Australia.</td>
<td>No right of return; TPV forfeited upon leaving Australia.</td>
</tr>
</tbody>
</table>

Sources: [Refugee Council of Australia](2013); Department of Immigration and Border Protection, Temporary Humanitarian Concern Visa (Factsheet, February 2013); [Expert Panel on Asylum Seekers](2012)

The rationale for the Coalition’s policy is the same as that which underpinned the Howard Government’s TPV regime: to deter asylum seekers from coming to Australia without a prior visa (unauthorised arrival by boat or by plane) by denying them rights that are available to asylum seekers who arrive in Australia by authorised means. 19
What are the impacts of TPVs on refugees?

In 2006, the Senate Legal and Constitutional Affairs Committee, in its Inquiry into the Administration and Operation of the Migration Act 1958 (Cth), found there was ‘no doubt’ that the operation of the TPV regime had a ‘considerable cost in terms of human suffering’. By introducing the risk that refugees might be removed to the country where they had feared persecution, and by denying refugees the right to be reunited with their families, TPVs had detrimental effects on the mental health of refugees. These detrimental effects were compounded by limiting the entitlements of TPV holders to access accommodation, language training, health care and other essential services. Moreover, refugees who faced the prospect of ‘rolling’ TPVs were placed in a state of ongoing legal limbo. A study by mental health experts in 2006 found that refugees on TPVs experienced higher levels of anxiety, depression and post-traumatic stress disorder than refugees on permanent PVs, even though both groups of refugees had experienced similar levels of past trauma and persecution in their home countries.

The particular impacts of TPVs on children were documented in 2004 by the Australian Human Rights Commission, which found that the uncertainty created by TPVs detrimentally affected the mental health of children and their ability to fully participate in educational opportunities in Australia. TPVs also had the effect of separating children from their parents and family for long, and potentially indefinite, periods of time. In addition to the human costs of TPVs, the TPV regime was also bureaucratically inefficient. It required the full reassessment of an individual’s protection claim from scratch at the expiration of the TPV.

Are TPVs consistent with international law?

Under international law, temporary protection is an exceptional measure that is generally only applied in situations of mass movements of asylum seekers, when individual refugee status determination is impracticable because of those large numbers. Temporary protection is also used to grant protection to a broader class of individuals than those who are covered by the Refugee Convention, such as those fleeing armed conflict or other emergencies. By contrast, the Australian TPV regime is used to grant protection to all asylum seekers who had been individually assessed to be Convention refugees, simply on the basis that they have arrived in Australia without a visa.

The Australian TPV regime has significant implications for Australia’s compliance with international human rights law. By creating two classes of refugees – those who come to Australia by boat and those who come by authorized means – the TPV regime may constitute a breach of the right to non-discrimination. Its explicitly punitive underpinning may also constitute a penalty in violation of article 31 of the Refugee Convention. Moreover, by denying refugees the ability to reunite with their families, the TPV regime may also infringe the right to family and the freedom from arbitrary interference with family life. It is possible that the cumulative impact of these factors, including on refugees’ mental health, may constitute cruel, inhuman or degrading treatment in violation of Australia’s obligation under article 7 of the ICCPR.

Do other countries use TPVs?

European Union
Under the European Union’s Qualification Directive, individuals found to be refugees are granted residence permits that are valid for at least three years and renewable. Unlike in Australia, residence permits in the EU are also granted to family members of refugees, which are valid for less than three years and renewable. The UNHCR has expressed its concern about these provisions, indicating that ‘short-term residence permits are detrimental to refugees’ security and stability’ and that ‘provisions in the Qualification Directive on the duration of residence permits … may not be conducive to integration’.

In practice, most States grant refugees permanent protection either upfront, or on renewal. They do not issue rolling temporary visas like the Australian approach.

Since 2011, under the EU’s amended Directive concerning the Status of Third-Country Nationals who are Long-Term Residents, refugees who have legally resided in a Member State for five years may claim a long-term residence permit. A long-term residence permit is ‘a permanent status that gives the holder a right to equal treatment with nationals in relation to the areas mentioned in the Directive, including access to employment, education, social security and social assistance.’

For instance, in Germany refugees are granted a residence permit valid for three years, and if found to be in need of continued protection at the expiration of this period, are eligible for a settlement permit, which provides them with a permanent status. Unlike the Australian TPV policy, refugees on a German residence permit are given the same status as Germans within the social insurance system and have a right to family reunion. In Denmark, refugees are granted a residence permit valid for seven years, and if found to be in need of continued protection at the expiration of this period, are eligible for permanent residency.

New Zealand

New Zealand has recently passed laws designed to address ‘mass arrivals’ of asylum seekers (that is, asylum seekers arriving in NZ in a group of 30 or more). As part of the changes, asylum seekers who arrive in NZ as part of a ‘mass arrival’ and who are found to be refugees are to be granted temporary visas and to have their status reassessed after three years before they are eligible for permanent residence. Under the changes, immediate family members may be sponsored only after residence has been granted, and extended family members are ineligible for sponsorship. According to the Immigration Minister Michael Woodhouse:

‘These policy changes are considered to be an important deterrent to a mass arrival. Asylum seekers may be less likely to endanger their lives by attempting to travel to New Zealand by sea if they know they must wait for three years and have their claim reassessed before they can apply for residence, and if they are unable to reunite with extended family members.’

United States

Asylum seekers who are found to be refugees in the US become eligible to apply for permanent residence after one year if they continue to be a refugee. They may apply for family reunion upon being granted refugee status in the US.

Canada

Asylum seekers who are found to be refugees in Canada may apply for permanent residence upon being granted refugee status.
Do TPVs deter asylum seekers?

There is little evidence that TPVs have a deterrent effect. Indeed, after TPVs were introduced by the Howard Government, there was an increase in the numbers of women and children who arrived in Australia by boat. According to personal accounts, this was because the TPV regime precluded family reunion.  

The following tables, which provide a breakdown of boat arrivals by age and gender in the two years before and after the introduction of TPVs, show an increase in the number of women and children arriving in Australia after the introduction of TPVs.

<table>
<thead>
<tr>
<th>Arrival year/month</th>
<th>Total</th>
<th>Adult</th>
<th>Minor</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/1997</td>
<td>8</td>
<td>6</td>
<td>2</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>01/1998</td>
<td>52</td>
<td>40</td>
<td>12</td>
<td>16</td>
<td>36</td>
</tr>
<tr>
<td>02/1998</td>
<td>22</td>
<td>21</td>
<td>1</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>04/1998</td>
<td>8</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>05/1998</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>16</td>
</tr>
<tr>
<td>06/1998</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>07/1998</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>09/1998</td>
<td>12</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>11/1998</td>
<td>22</td>
<td>22</td>
<td>0</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>12/1998</td>
<td>52</td>
<td>51</td>
<td>1</td>
<td>10</td>
<td>42</td>
</tr>
<tr>
<td>01/1999</td>
<td>18</td>
<td>14</td>
<td>4</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>02/1999</td>
<td>63</td>
<td>63</td>
<td>0</td>
<td>0</td>
<td>63</td>
</tr>
<tr>
<td>03/1999</td>
<td>103</td>
<td>90</td>
<td>13</td>
<td>21</td>
<td>82</td>
</tr>
<tr>
<td>04/1999</td>
<td>91</td>
<td>90</td>
<td>1</td>
<td>4</td>
<td>87</td>
</tr>
<tr>
<td>05/1999</td>
<td>271</td>
<td>268</td>
<td>3</td>
<td>2</td>
<td>269</td>
</tr>
<tr>
<td>06/1999</td>
<td>279</td>
<td>282</td>
<td>17</td>
<td>12</td>
<td>267</td>
</tr>
<tr>
<td>07/1999</td>
<td>92</td>
<td>88</td>
<td>6</td>
<td>1</td>
<td>91</td>
</tr>
<tr>
<td>08/1999</td>
<td>288</td>
<td>257</td>
<td>29</td>
<td>26</td>
<td>260</td>
</tr>
<tr>
<td>09/1999</td>
<td>121</td>
<td>116</td>
<td>5</td>
<td>3</td>
<td>118</td>
</tr>
<tr>
<td>10/1999</td>
<td>421</td>
<td>387</td>
<td>34</td>
<td>22</td>
<td>399</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1953</strong></td>
<td><strong>1825</strong></td>
<td><strong>128</strong></td>
<td><strong>128</strong></td>
<td><strong>1825</strong></td>
</tr>
<tr>
<td><strong>% of total</strong></td>
<td><strong>100%</strong></td>
<td><strong>93%</strong></td>
<td><strong>7%</strong></td>
<td><strong>7%</strong></td>
<td><strong>93%</strong></td>
</tr>
</tbody>
</table>
The ineffectiveness of TPVs is the very reason that they were abolished by the Rudd Government. As the Immigration Department explained, ‘[t]he evidence clearly shows TPVs did not have any deterrent effect. In fact, there was an increase in the number of women and children making dangerous journeys to Australia.’

Last updated 6 February 2014
Parliament of Australia, *Disallowance Alert 2013*


Refugee Council of Australia, *Use of Temporary Humanitarian Concern Visas as an alternative to Temporary Protection Visas* (Factsheet, 6 February 2014).


Momartin et al, above n 17.


See *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH* of 2004 [2006] HCA 53, [38]–[39].

29 UNHCR, above n 28. See, e.g., United States Citizenship and Immigration Services, ‘Temporary Protected Status’ <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f72e0745210VgnVCM100000082ca60aRCRD&vgnextchannel=848f72e0745210VgnVCM100000082ca60aRCRD>.


32 Edwards, above n 31, 206–7; McAdam and Garcia, above n 30, 26; Commonwealth Parliamentary Joint Committee on Human Rights, above n 30, 38–9.


34 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9, art 24(1).

35 Directive 2011/95/EU, above n 34, art 24(1).


Further reading


‘Coalition Promises Return of Temporary Protection Visas’, ABC News, 16 August 2013

Department of Immigration and Border Protection, Temporary Humanitarian Concern Visa (Factsheet, January 2013)


Human Rights Watch, Commentary on Australia’s Temporary Protection Visas for Refugees (13 May 2013)

Leach, Michael, ‘Back to the Future on Temporary Protection Visas’, The Conversation, 27 August 2013

Liberal Party of Australia and National Party of Australia, The Coalition’s Policy to Clear Labor’s 30,000 Border Failure Backlog (August 2013)

Mansouri, Fethi, Michael Leach and Amy Nethery, ‘Temporary Protection and the Refugee Convention in Australia, Denmark and Germany’ (2010) 26 Refuge 135


McAdam, Jane and Tristan Garcia, Submission to the National Human Rights Consultation, 10 June 2009, 26


Phillips, Janet, Temporary Protection Visas (Research Note No. 51, Parliamentary Library, 11 May 2004)

Refugee Advice and Casework Service, The Introduction and Disallowance of Temporary Protection Visas (Factsheet, December 2013)

‘Refugees to Be Denied Permanent Residency under Coalition Plan to “Determine Who Comes Here”’, ABC News, 16 August 2013

Refugee Council of Australia, Position Paper on Australia’s Use of Temporary Protection Visas for Convention Refugees (September 2003)

Refugee Council of Australia, Temporary Protection Visas (Policy Brief, 24 September 2013)

Refugee Council of Australia, Use of Temporary Humanitarian Concern Visas as an alternative to Temporary Protection Visas (Factsheet, 6 February 2014)


‘Temporary Protection Visas Disallowed by Senate’, ABC Radio, 3 December 2013