

Research Brief

TEMPORARY PROTECTION VISAS (TPVs) AND SAFE HAVEN ENTERPRISE VISAS (SHEVs)

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Introduction

Temporary Protection Visas and Safe Haven Enterprise Visas are types of temporary visas available to asylum seekers in Australia. Holders of a temporary visa do not have the same access to services, rights and residency or citizenship pathways as refugees who hold a (permanent) Protection Visa (PV). The key difference between asylum seekers eligible for a Protection Visa and those eligible for a temporary visa is their method of arrival in Australia, not the merit of their protection claim.¹

Types of Temporary Visas

a) Temporary Protection Visas (TPVs)

The TPV is a class of visa that was introduced in Australia by the Howard Government in October 1999 and abolished² by the Rudd Government in August 2008.³ Approximately 11,000 TPVs were issued between 1999 and 2007, and approximately 90 per cent of TPV holders eventually gained permanent visas.⁴

On 25 September 2014, under the Abbott Government, then Minister for Immigration Scott Morrison introduced the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, which provided for the reintroduction of TPVs. After consideration by the Parliamentary Joint Committee on Human Rights,⁵ the Senate Standing Committee for the Scrutiny of Bills⁶ and the Senate Legal and Constitutional Affairs Committee,⁷ the Bill was finally passed on 5 December 2014.

The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* provided that TPVs can be granted for up to three years, and holders are entitled to work.⁸ However there is no right to family reunification. In order to remain in Australia beyond the three-year period, the TPV holder must apply for a subsequent TPV or SHEV (outlined below).⁹

b) Safe Haven Enterprise Visas (SHEVs)

The creation of a new Safe Haven Enterprise Visa (SHEV) was announced by the Abbott Government on 25 September 2014. Under the scheme, TPV holders have the opportunity to transition to a five-year SHEV if they agree to move to a regional area (defined in the Regulations), and engage in study at an approved institution (to be defined in the Regulations) or undertake work that means they are not reliant on income support for more than 18 months in the five-year period.

What are the SHEV pathways?

At the end of the five years, SHEV holders will be eligible to reapply for another SHEV or TPV.¹⁰ Applications will be assessed based on the applicant's ongoing need for protection.

From 2 April 2019, people applying for subsequent TPVs or SHEVs must apply through the 'fast track' refugee status determination process. This removes access to the Migration and Refugee Division of the Administrative Appeals Tribunal and refers reviews to the Immigration Assessment Authority.

SHEV holders who, for at least 42 months of the five years, have engaged in regional employment without depending on social security benefits or have engaged in full-time study in regional Australia or both, will be eligible to apply for standard onshore migration visas that may give rise to permanent residence.¹¹ Applicants may apply to the Department of Home Affairs as soon as they have satisfied the requirements. They do not need to wait for their SHEV to expire.

Statements by former Minister for Immigration, Scott Morrison, suggest that the SHEV is not intended as a long-term residency solution for most. He stated that the threshold for applying for a migration visa will be very high, and, of those who wish to apply for one, said: 'Good luck to them if they choose to do that and if they achieve it'.¹²

Furthermore, there are concerns that SHEV may not be a viable option¹³ for refugees with physical or mental disabilities, or who are unable to work, such as young adults or those who arrived in Australia as unaccompanied minors. Regional farming groups¹⁴ have also noted that seasonal farm work may not necessarily guarantee employment¹⁵ for SHEV holders.

Differences between TPVs, SHEVs and permanent visas

The table below summarizes the key differences between TPVs, SHEVs and Permanent Protection Visas under the Australian government's current policy.

Table: Differences between temporary and permanent visas

	Temporary Protection Visa	Safe Haven Enterprise Visa	Permanent Protection Visa
Visa provision	<p>Issued for periods of up to three years. TPV holders may apply for another TPV or SHEV when the visa expires.</p> <p>Holders will need to have their claims for further protection assessed to obtain another temporary visa.</p>	<p>Issued for periods of up to five years. SHEV holders may apply for another TPV or SHEV when the visa expires.</p> <p>SHEV holders eligible for the pathways scheme* may apply for standard onshore migration visas.</p> <p>Holders will need to have their claims for further protection assessed to obtain another temporary visa.</p>	<p>Immediate permanent residency.</p>
Income assistance	<p>Access to social security benefits.</p>	<p>Access to social security benefits.</p>	<p>Access to a full range of social security benefits.</p>

	Temporary Protection Visa	Safe Haven Enterprise Visa	Permanent Protection Visa
Settlement support	Access to job-matching and short-term counselling for torture or trauma.	Access to job-matching and short-term counselling for torture or trauma.	Access to full range of settlement support services.
Work rights/ Employment	Permission to work, although ability to find employment may be impeded by temporary status.	Permission to work. Must work or engage in study in regional Australia. Work may be full time, part time, casual, or seasonal.	Permission to work and access to all employment services.
Health care	Access to Medicare.	Access to Medicare.	Access to Medicare.
Education	Access to primary and secondary education for children. Fee requirements for adults unclear.	Access to primary and secondary education for children. Fee requirements for adults unclear.	Same access to education as any other permanent resident; some additional supports available based on need.
Language training	Eligibility for English language education unclear.	Eligibility for English language education unclear.	510 hours of English language education.
Family reunion	No rights to family reunion.	No rights to family reunion.	May apply to sponsor immediate family members (spouse and children).
Overseas travel	Must obtain permission in writing. Department has advised that travel will only be allowed if the TPV holder can show compassionate or compelling circumstances. TPV holders are not allowed to travel to the country from which they sought protection.	Must obtain permission in writing. Department has advised that travel will only be allowed if the SHEV holder can show compassionate or compelling circumstances. SHEV holders are not allowed to travel to the country from which they sought protection.	May leave and re-enter Australia.

** Refers to SHEV holders who have, for at least 42 months of the five years, have engaged in regional employment without depending on social security benefits, or in full-time study in regional Australia, or both. If you have other family members on the same visa, only one family member needs to meet the pathway requirements.*

Sources: Asylum Seeker Resource Centre (2016);¹⁶ Department of Home Affairs, Temporary Protection visa (subclass 785) (2018);¹⁷ Department of Home Affairs, Safe Haven Enterprise visa (subclass 790) (2018);¹⁸ Refugee Council of Australia (2013);¹⁹ Expert Panel on Asylum Seekers (2012).²⁰

What is the Australian Government's policy on TPVs and SHEVs?

The Morrison Government has maintained the same policy on TPVs as the Abbott and Turnbull Governments. As at June 2018, approximately 18,000 applications for TPVs and SHEVs had been finalised, while almost 13,000 were in the process of being assessed.²¹ Of the total number of applications finalised, more than 60% of applicants were granted a TPV or a SHEV.²²

On 21 May 2017 the Minister for Immigration and Border Protection announced that asylum seekers who arrived in Australia by boat without a valid visa, between 13 August 2012 and 1 January 2014, and who had not yet lodged an application for protection, must apply for a TPV or SHEV by 1 October 2017 or risk being removed from Australia.²³ Many of these asylum seekers were prevented from applying earlier due to government policy.²⁴ As many asylum seekers faced difficulties completing the 41-page English-language application form on their own and were unable to afford legal fees, pro bono legal service waiting lists were inundated with requests.²⁵ The government abolished publicly-funded legal advice and translation services for asylum seekers who arrived by boat in 2014.²⁶

Due to an influx of volunteer legal assistance after the Minister's May 2017 announcement, 7123 asylum seekers submitted applications for protection before this deadline. Services nevertheless faced a waiting list of thousands of people and 71 asylum seekers only received legal assistance and submitted their applications after the deadline.²⁷ The ministerial discretion to intervene in individual case was refused for late applicants.²⁸ UNHCR expressed concerns after these late applicants were forced to leave, citing potential breaches of Australia's *non-refoulement* obligations under the Refugee Convention and Protocol and fears some of those forced to leave were met with arrest and possible torture.²⁹

What are the impacts of temporary protection measures on refugees?

A Senate Inquiry found that TPVs can cause a considerable amount of human suffering.³⁰ Additionally, the Inquiry found that TPV holders can be forced into a state of on-going legal limbo while faced with the prospect of removal to a country where they fear harm or persecution.³¹ One consequence of this uncertainty is that TPV holders often experience higher levels of anxiety, depression and post-traumatic stress disorder when compared to permanent protection visa holders, despite similar backgrounds and experiences.³² These detrimental effects can be compounded by the restrictions placed on TPV holders for access to accommodation, language training, health care, family reunion and other essential services.³³

TPVs can also have the effect of separating children from their parents and family for long, and potentially indefinite, periods of time. The impact of TPVs on children was documented in 2004 by the Australian Human Rights Commission, who 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.³⁴

Is temporary protection 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.³⁵ In the European Union, for example, temporary protection is also contemplated for people fleeing situations of armed conflict and generalised violence (without requiring a link to a Convention ground). By contrast, in Australia, Convention refugees who arrived without a visa are only eligible for temporary protection.

The Australian TPV regime has significant implications for Australia's compliance with international law. By creating two classes of refugees – those who come to Australia by boat and those who come by authorised means – the TPV regime may constitute a breach of the right to non-discrimination.³⁶ The explicitly punitive underpinning of the TPV regime may also constitute a penalty in violation of article 31 of the Refugee Convention.³⁷ Moreover, by denying refugees the ability to reunite with their families, the regime may also infringe the right to family and the freedom from arbitrary interference with family life.

In summary, 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 International Covenant on Civil and Political Rights.³⁸

Do other countries use temporary protection measures?

European Union

Most countries in the European Union (EU) generally grant refugees permanent protection either upfront, or on renewal of temporary protection visas, rather than issuing rolling temporary visas like Australia. Under the EU's 2011 *Qualification Directive* individuals found to be refugees are granted residence permits that are valid for at least three years which are renewable.³⁹ Unlike Australia, residence permits in the EU are also granted to family members of refugees, which are valid for less than three years but may be renewed. These provisions of the *Directive* may be overridden, however, if there are "compelling reasons of national security or public order" justifying their non-observance.⁴⁰ UNHCR has expressed concern regarding such provisions, indicating that '[s]hort-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'.⁴¹

Pursuant to the 2001 *Temporary Protection Directive*, refugees who arrive in "a mass influx of displaced persons" may immediately acquire one-year temporary protection visas.⁴² The idea behind this Directive is to ensure that refugees are offered prompt assistance and protection without subjecting them to lengthy screening processes. The Directive can only be triggered by a decision of the Council, and it never has been and thus, the Directive has never been used.⁴³

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.⁴⁴ A long-term residence permit gives the holder 'the same treatment and rights as nationals in certain areas', including access to (self-)employment, education, social protection and assistance and goods and services.⁴⁵ Free movement between EU member states is also possible under certain conditions. The UK, Ireland and Denmark are excluded from these long-term residence arrangements.⁴⁶

For instance, in Germany, refugees are granted a residence permit valid for one to three years,⁴⁷ and if found to be in need of continued protection at the expiration of this period, are eligible for a settlement permit if they meet a high level of German language and income requirements, which provides them with a permanent status. These language and income requirements are slightly relaxed for those who have lived on a residence permit for at least five years.⁴⁸ Unlike the Australian TPV policy, refugees on a German residence permit are given the same status as Germans within the social insurance system⁴⁹ and have a right to family reunion.⁵⁰ In Denmark, refugees are granted a renewable residence permit valid for two years, and if found to be in need of continued protection at the expiration of four to six years, are eligible for permanent residency depending on their satisfaction of a number of supplementary requirements design to encourage "integration".⁵¹

New Zealand

In New Zealand, all recognised refugees and protected persons may apply for a temporary entry class visa or permanent resident visa. While adults will be immediately given work visas, school-aged children will generally be granted student visas. Dependent children who are not studying will be granted visitor visas instead.⁵²

In 2013, laws were passed 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.⁵³ 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 then-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.⁵⁴

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.⁵⁵ After five years, they may apply for US citizenship.⁵⁶ They may apply for family reunion two years after being granted refugee status in the US.⁵⁷

Canada

Asylum seekers who are found to be refugees in Canada may apply for permanent residence upon being granted refugee status.⁵⁸

Do temporary protection measures deter asylum seekers?

There is little evidence that introducing temporary protection measures have a deterrent effect. Indeed, after TPVs were introduced by the Howard Government, there was an increase in the number of women and children who arrived in Australia by boat. According to personal accounts, this was because the TPV regime precluded family reunion.⁵⁹ The ineffectiveness of TPVs is the very reason that they were abolished by the Rudd Government.

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.⁶⁰

Number of boat arrivals by month, age group and gender, 2 years before TPV introduction (November 1997 to October 1999)					
Arrival year/month	Total	Adult	Minor	Female	Male
11/1997	8	6	2	4	4
01/1998	52	40	12	16	36
02/1998	22	21	1	3	19
04/1998	6	6	0	0	6
05/1998	16	16	0	0	16
06/1998	10	10	0	0	10
07/1998	8	8	0	1	7
09/1998	12	12	0	0	12
11/1998	22	22	0	0	22
12/1998	52	51	1	10	42

Number of boat arrivals by month, age group and gender, 2 years after TPV introduction (November 1999 to October 2001)					
Arrival year/month	Total	Adult	Minor	Female	Male
11/1999	1248	1089	159	100	1148
12/1999	728	565	163	162	566
01/2000	279	243	36	23	256
02/2000	364	306	58	68	296
03/2000	261	204	57	49	212
04/2000	141	120	21	17	124
05/2000	83	67	16	16	67
06/2000	151	119	32	38	113
07/2000	89	84	5	1	88
08/2000	74	54	20	15	59
09/2000	227	169	58	55	172
10/2000	289	239	50	54	235
11/2000	237	196	41	38	199
12/2000	743	535	208	129	614
01/2001	332	245	87	58	274
03/2001	753	545	208	204	549
04/2001	561	448	113	88	473
05/2001	199	148	51	31	168
06/2001	633	455	178	149	484
08/2001	1645	1126	519	415	1230
09/2001	561	363	198	178	383
10/2001	619	436	183	153	466
Total	10217	7756	2461	2041	8176
% of total	100%	76%	24%	20%	80%

Source: Budget Estimates 2012-2013, Senate Legal and Constitutional Affairs, Immigration and Citizenship Portfolio, Reply to Question on Notice BE12/0265

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- ⁵⁸ Government of Canada, *Application for Permanent Residence in Canada – Protected Persons and Convention Refugees* <<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/application-permanent-residence-canada-protected-persons-convention-refugees.html>> accessed 25 July 2018.
- ⁵⁹ See Senate Legal and Constitutional Affairs Committee, *Questions Taken on Notice, Budget Estimates Hearing 21–22 May 2012, Immigration and Citizenship Portfolio*. See also Sue Hoffman, 'Temporary Protection Visas & SIEV X,' *Sievx.com*, 6 February 2006 <http://sievx.com/articles/challenging/2006/20060206SueHoffman.html>; Sue Hoffman, 'The Myths of Temporary Protection Visas', *The Drum*, 14 June 2011.
- ⁶⁰ These tables are sourced from Senate Legal and Constitutional Affairs Committee, *Questions Taken on Notice, Budget Estimates Hearing 21–22 May 2012, Immigration and Citizenship Portfolio*.