

REFUGEE COUNCIL OF AUSTRALIA

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POSITION ON TEMPORARY PROTECTION VISAS

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Introduction:

On 13th October 1999 the Minister for Immigration and Multicultural Affairs announced that unauthorised arrivals who are successful in their applications for refugee status in Australia will no longer be granted permanent residence but instead given a three year temporary entry visa (Visa Subclass 785). Asylum seekers who arrived lawfully will still be granted permanent residence visas (Visa Subclass 866). Two classes of refugees have thus been created and both have very different entitlements:

	Permanent Visa	Temporary Visa
Social Security	Immediate access to the full range of social security benefits	Access only to Special Benefits for which a range of eligibility criteria apply.
Education	Same access to education as any other permanent resident.	Access to school education subject to state policy. Effective preclusion from tertiary education due to imposition of full fees.
Settlement Support	Access to full range of DIMA settlement support services	Level of access is not yet defined.
Family Reunion	Able to bring members of immediate family (spouse and children) to Australia.	No family reunion rights (including reunion with spouse and children).
Work Rights	Permission to work.	Permission to work but ability to find employment influenced by temporary nature of visa.
Language Training	Access to 510 hours of English language training.	No clarity yet regarding entitlements.
Medical Benefits	Automatic eligibility for Medicare.	Eligibility for Medicare subject to lodgement of application for a permanent visa.
Travel	Will be able to leave the country and return without jeopardising their visa.	No automatic right of return.

Problems with the new Regime:

The Refugee Council of Australia is strongly opposed to the position of the Government on this issue for the following reasons:

(i) The motivation behind the new regulations fails to acknowledge the reality of contemporary population movements. Australia, like all western countries, is a country of first asylum. We cannot think of ourselves as immune from global trends or exempt because we are also a country of resettlement. Further, the fact that is so often ignored in the debate here is that the numbers arriving in Australia are very small in comparison with those arriving in Europe and North America and have been relatively steady^[1] for the last few years.

(ii) The measures introduced by the Government constitute an attempt to block access to protection without ensuring that adequate measures have been taken to ensure effective provision in countries closer to the refugees' homelands.

(iii) The new measures are arguably contrary to Australia's obligations under international law.

The 1951 Convention Relating to the Status of Refugees provides that:

The Contracting State shall:

- not impose penalties, on account of their illegal entry, on refugees coming directly from a territory where their life or freedom was threatened... (Article 31);^[2]
- accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals. (Article 23);
- issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory... (Article 28).

Further, at the October 1999 meeting of the Executive Committee of the United Nations High Commissioner for Refugees, Australia was one of the countries that passed, by consensus, a Conclusion on the Protection of the Refugee's Family which, inter alia:

- re-emphasises that the family is the natural and fundamental group unit of society and is entitled to protection by the society and the state;
- underlies the need for the refugee family to be protected by ... (i) measures which ensure respect for the principle of family unity, including those to reunify family members separated as a result of refugee flight.

(iv) The Government's justification of the measures has also been linked to expressed community concerns about the impact of the onshore program on the humanitarian program and on the view that people are coming directly to Australia rather than "waiting in queues". This is exactly what RCOA said would happen when the Government linked the onshore and offshore programs in July 1996. At the time the Refugee Council issued a statement prophesying that the linking would:

- create a significant pull factor ie by reducing the number of places available for offshore applicants, it would become more attractive for people with strong claims to come directly to Australia rather than wait in countries of first asylum for selection under the resettlement program;
- impact most on communities that rely heavily on the Special Humanitarian Program such as the Afghans and Iraqis;
- result in tension arising between communities anxious to sponsor friends and relatives overseas and refugees who come directly here.

We argue that the “problem” is of the Government’s making and should be solved by unlinking the onshore and offshore programs (as is recommended by UNHCR), not by the imposition of draconian measures.

(iv) As set out in the introduction, the new measures create two tiers of refugee status. On the one hand there are the people who were legally in Australia at the time they made their application. They are granted permanent residence, which provides certainty about the future and access to the full range of benefits afforded to other permanent residents. Those people who, for one reason or another, are not able to use regular migration channels - but who have been determined to have a claim for refugee status no less credible than those in the other group - get lesser rights. They will be left in limbo for several years, with no prospects of being reunited with their family and with limited support while here. This will have a significant impact on their long term settlement prospects and their psychological health, particularly if they are victims of torture and trauma.

vi. Possibly the most profound limitation on those with temporary visas is that which precludes family reunion. Under the new provisions, a man coming to Australia to seek protection and granted a temporary visa is likely to be separated from his wife and children for a period in excess of 5 years. In addition to the aforementioned violation of the refugee’s right to be reunited with his family, the separation is likely to:

- cause significant psychological distress to the refugee;
- result in the refugee being impoverished in Australia as any money that is earned will be sent to support his family;
- extend the period during which his family is in danger. Women and dependent children without male support are especially vulnerable in refugee camps and also in certain countries of origin (especially if it is known that a member of the family has sought asylum).

(vii) Recent unauthorised arrivals have come from countries such as Iraq and Afghanistan where there have been protracted problems and there is no current indication that the human rights situation is likely to improve. Thus the probability is that people granted temporary visas now will subsequently be granted residence in Australia. The three years they have spent in limbo will significantly impair their settlement prospects and increase the likelihood that they will be a financial burden to the state.

(viii) It is of great concern that there is as yet no clarity about the nature and level of settlement services that 785 visa holders will be eligible for, in particular social security benefits and DIMA funded settlement services. Exclusion from essential support services could result in the creation of an impoverished subclass who will be an additional burden for the already overstretched welfare agencies.

(ix) The grant of a temporary visa will require that the circumstances of the individual will have to be reassessed after three years. This will have significant resource and cost implications.

(x) While there is general agreement at the international level that temporary protection has a valid place in the refugee protection framework, Australia’s application in this case is contrary to accepted standards. Temporary protection is seen as valid in cases of mass influx where individual status determination is not practicable due to numbers. In this case it is being used solely as a punishment to those who sought to circumvent immigration controls and as a deterrent to future arrivals (with no guarantee that it will in fact achieve this end).

(xi) For a short period in the early 1990s Australia granted temporary protection visas to all successful refugee applicants. This policy was considered unworkable and overturned before the expiry of the first visas granted. If it did not work then, what guarantee do we have that it

will work now? After all, the Government criticised Pauline Hanson when she suggested its use.

(xii) The introduction of the grant of temporary visas to Convention refugees crosses a very dangerous threshold. Previously the Government made much of the distinction between “genuine refugees” and those who seek to abuse the system. Now we have two classes of refugees. Who will be the next scapegoats?

Conclusion:

The section above contains 12 good reasons why the creation of Visa Subclass 785 should be opposed.

It is the position of the Refugee Council that the regulation enacting the implementation of this visa subclass is both legally and morally questionable and will have dire consequences on people to whom Australia has protection obligations.

Australia has played a crucial role in the promotion of human rights in this region - and most recently in the protection of the rights of the East Timorese people. The same high ideals must apply in Australia's treatment of people who have, by definition, been persecuted by their own governments and who have come here seeking our help.