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QUESTIONS AND ANSWERS ABOUT AUSTRALIA'S TEMPORARY PROTECTION VISA REGIME

What is a Temporary Protection Visa?

Temporary Protection Visas (TPVs) are a special subclass of visa granted to people who have been determined to be Convention refugees but who either:

- sought refugee status after arrival in Australia;
- were accepted for resettlement to Australia after having left a country of first asylum.

TPVs are granted for 3 years, after which time the refugee is required to undergo refugee status determination again and only if successful, will be allowed to remain in Australia.

When were TPVs introduced?

TPVs have been progressively introduced since 1999. The first were the visa subclass 785 for unauthorised entrants to Australia determined to be refugees. In 2001 two further kinds of TPVs were introduced (visa subclasses 449 and 451) for refugees who had moved from the country of first asylum. This included refugees from the camps on Nauru and Manus Island and those accepted from Indonesia. On 28th August 2003 the Minister for Immigration introduced regulations that extended the use of TPVs to all successful onshore applicants. These regulations are under debate and at the time of writing, their ongoing application is uncertain.

Why were TPVs introduced?

TPVs were introduced as a deterrent. At the time of their introduction the Minister for Immigration stated:

Australia simply cannot afford to be seen as a potential soft target by forum shoppers and the increasingly sophisticated people smuggling rackets. ... The legislation will prevent unauthorised arrivals from obtaining permanent protection visas and the benefits, particularly family reunion, which appear to attract traffickers and forum shoppers.

Philip Ruddock. Media Release. 13 October 1999.

How is a TPV different to a Permanent Visa?

TPV holders have only some of the entitlements of refugees on permanent visas – i.e. those who entered under the offshore humanitarian program. They are allowed to work and have access to Medicare. They do not, however, have access to the full range of social security benefits, they cannot use most settlement services, they cannot make use of DIMIA-funded English language programs and they have no right of re-entry if they leave. Of particular significance, they have no right to be reunited with their spouse and dependent children.

How many people have been granted TPVs?

As at July 2003, over 8,500 people have been granted TPVs in Australia. The vast majority of these people are from Iraq and Afghanistan. In addition, over 250 people have been granted the offshore TPVs.

What will happen to the TPV holders?

The future for TPV holders depends on when they lodged their repeat application for refugee status and whether they are determined to be in need of ongoing protection when this application is considered. Lucky ones could be granted permanent residence after redetermination. Others might be required to return to their countries of origin, even if they are still afraid to do this, or find themselves on another temporary visa.

Is it against the Refugee Convention to grant temporary protection to refugees?

It is not against the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) to give refugees a temporary visa. It is, however, against the Refugee Convention to deny refugees access to the same entitlements as afforded to other people legally resident in a country.

Do other countries grant temporary protection to refugees?

A number of European countries give refugees temporary visas. These differ from those granted by Australia in that they do not require a refugee to undergo further status determination and they give refugees access to the same services as residents.

What is wrong with Australia's TPV regime?

The Refugee Council of Australia argues that the current TPV policy in Australia is deeply flawed for a number of reasons:

- the Temporary Protection Visa regime, in so much as it denies access to certain entitlements, is in breach of Australia's obligations to refugees;
- the requirement that refugees undergo periodic re-examination of their status as refugees is contrary to international practice and the spirit of the Convention;
- the TPV regime result in significant trauma to the refugees who hold TPVs;
- the creation of a social underclass has the potential to impact negatively on the wider community.

What should Australia be doing?

The Refugee Council considers it is legitimate to use temporary visas when events unfold overseas that require the evacuation of displaced persons, as happened in the case of people from Kosovo and East Timor and when conflict arises overseas and nationals of that country already in Australia are unable to return. The Council does not, however, accept the legitimacy of a country with an active migration program granting temporary protection to Convention refugees and argues that all Convention refugees should have permanent status.

For further examination of the issues presented here, see RCOA's Position Paper on the Use of Temporary Protection Visas for Refugees.