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POSITION PAPER ON AUSTRALIA'S USE OF TEMPORARY PROTECTION VISAS FOR CONVENTION REFUGEES

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1. Introduction

Since October 1999, when the policy of granting Temporary Protection Visas (TPVs) to successful refugee claimants who arrived in Australia without authorisation was introduced, there has been considerable attention given to the impact of this policy. As will be discussed later, a considerable body of research has been done and many support groups have been established.

While the deleterious impact of Australia's policy of granting TPVs to refugees has been well documented[1], less attention has been given by Australian commentators to the concept of temporary protection, in particular to the following questions:

- * what does the Refugee Convention say about this?
- * what do other countries do?
- * how does Australia's policy fit with internationally accepted usage?

This paper seeks to provide answers to these questions – unpacking the broader framework of temporary protection and exploring how it is used in various contexts. It will then consider how Australia's current Temporary Protection Visa regime fits within these parameters.

2. Temporary versus Permanent Protection

There is nothing in the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) that says that refugee status is permanent. All that is stipulated is that refugees must not be sent back to a situation where their life or freedom would be threatened for any of the Convention related reasons (race, religion, nationality, membership of a particular social group or political opinion). The United Nations High Commissioner for Refugees (UNHCR) emphasises that:

The purpose of international protection is not ... that a refugee remain a refugee for ever, but to ensure the individual's renewed membership of a community and the restoration of national protection, either in the homeland or through integration elsewhere.[2]

For the majority of the world's refugees, their experience of exile is temporary. They flee their country of origin, remain in a neighbouring country for a period (sometimes months, sometimes years) and then return home when conditions there have changed for the better

or, as is happening far too frequently, when conditions in the country of first asylum have deteriorated to such an extent that return is considered the “least worst option”. This is the pattern that has traditionally, but not exclusively, been the domain of the developing world where refugee protection typically arises in situations of mass influx.

Western states have tended, however, to adopt a different approach. There has been a general acceptance that once a refugee has been determined as having a legitimate claim and has spent some time in the new country, it is unreasonable to expect that person to return to their country of origin when conditions change. For this reason, most western states have traditionally granted permanent protection to Convention refugees.[3]

The decision to grant permanent protection is underpinned by legal, practical and humanitarian considerations:

§ Article 1C of the Refugee Convention expressly recognises that a refugee’s prior experiences of persecution might justify refusal to return, even if the conditions that caused them to flee no longer apply;

§ once a refugee has been in a country for a period of time, connections will be made to the community, relationships formed, family reared ... such that forcing the refugee to return will cause undue hardship not only to the refugee but to others in the community;

§ granting a refugee permanent status provides the security that is seen as fundamental if the refugee is to regain a sense of control and self-worth and to heal the wounds cause by past trauma.

The granting of permanent protection does not, of course, preclude voluntary return by the refugee at some point down the track when the refugee decides that he/she wishes to resume their life in the country of origin.

3. Refugee Rights

Regardless of the duration of refugee status, the Refugee Convention is clear on the conditions that apply to those who have been granted refugee status. Beyond the classic prohibition of the refoulement (sending back) of refugees to the risk of persecution, the Refugee Convention mandates respect for a series of crucial civil and socio-economic human rights. These span the spectrum from freedoms of association, movement and religion to rights of access to key social institutions, including employment, education and social assistance.

Principal amongst the rights afforded to refugees are the following:

§ freedom from expulsion (Article 32) refugees lawfully in the territory have the right not to be expelled, except for reasons of national security or public order;

§ freedom of movement (Article 26);

§ freedom of association (Article 15);

§ access to wage earning employment (Article 17) – refugees lawfully in the country have the same rights as afforded to most favoured foreigners, with no restrictions after 3 years or if a spouse or child is a citizen;

§ access to public relief (Article 23) and social security (Article 24) – for refugees lawfully staying in the territory, the same rights are afforded as to nationals. This is intended to guarantee access to critical programs such as health care, social assistance, unemployment assistance, old age security and disability allowances.

While the right to family reunification is not expressly guaranteed by the Refugee Convention, it was, however, included in the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951) at Article iv.B[4] and guidelines for its application are contained in Excom Conclusion 24[5].

Further, it must not be forgotten that general international human rights law applies equally to refugees as to all other people. The International Covenant on Civil and Political Rights (ICCPR), for the most part, extends full rights protection to all persons under a State's authority, not just to nationals (Article 2(1)). The International Covenant on Economic, Social and Cultural Rights (ICESCR) is of similarly general application to persons subject to the jurisdiction of a developed State, though it is within the discretion of a developing state to determine to what extent rights will extend to non-nationals (Article 2(3)). Further guidance can be sought from the Convention on the Rights of the Child and the Convention Against Torture.

4. International Application of Temporary Protection

There is value in looking at the application of temporary protection in an international context. For this purpose it is useful to consider separately how it is used in situations of mass influx and where refugees have gone through an individual determination process and have been determined to be in need of protection.

4.1. In Situations of Mass Influx

In the international context, temporary protection is most often associated with situations of mass influx. It is seen as a pragmatic and flexible tool that can be used when it is not possible to make individual determinations and until such time as decisions can be made about durable solutions.

For the first 40 years of UNHCR's existence, mass influxes were largely the domain of the developing world. The partition of Pakistan, the decolonisation of Africa and the Vietnam War all resulted in population movements measured in hundreds of thousands and in some cases millions. In an effort to provide a framework for response to such mass influxes and to promote the principle of international burden sharing, UNHCR's Executive Committee adopted two Conclusions: Excom Conclusion No. 19 (1980) on Temporary Refuge and Excom Conclusion No. 22 (1982) on Protection of Asylum Seekers in Situations of Large Scale Influx.[6]

It took the conflict in the former Yugoslavia to bring the notion of using temporary protection in situations of mass influx to the West. Here was a major humanitarian emergency on Western Europe's doorstep and large numbers of refugees were fleeing into countries that traditionally had to deal with only modest numbers of asylum seekers. Soon after the outbreak of the conflict, UNHCR issued a paper[7] in which it proposed that people fleeing this conflict and who are in need of international protection should be able to receive it on a temporary basis. This was in recognition of the impracticality of employing individualised asylum procedures for such a large number of people (though, at least in theory, those wishing to make individual claims under the Refugee Convention were not precluded from doing so).

In discussing temporary protection at that time, UNHCR emphasised that while refugee protection does not presuppose permanent exile, refugees must be provided with some sense of stability. Further, UNHCR asserted that those in receipt of temporary protection be afforded substantially the same treatment as formally recognised refugees and that temporary measures do not supplant the duties set out by the Refugee Convention.[8]

In July 1992 UNHCR felt compelled to issue a formal request to European countries to provide temporary protection to persons fleeing the widespread conflict and severe human rights abuse in former Yugoslavia. This came about because of suggestions at the time that some states were considering refusing admission to these people.

Most European countries responded by developing ad hoc legislation, in some cases drawing on and expanding past measures that had been employed for the much smaller number of nationals they had provided protection to from countries involved in civil wars (eg Sri Lanka, Sudan, Rwanda and Haiti). The rights afforded to those granted temporary protection varied significantly from country to country and often failed to comply with basic international requirements, including the right to seek refugee status.[9]

The movement to harmonise European asylum practice brought about a regional approach to temporary protection. The European Council, at its special meeting in Tampere in October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between member states. This agreement was translated into legislation that was to become the first to flow from the asylum agenda of the Amsterdam Treaty. This legislation, the Directive on Temporary Protection (2001/55/EC) of 20 July 2001, applies to almost all European Union (EU) states.[10]

The Directive establishes a EU mechanism and minimum standards for granting temporary protection. It defines, at Article 2(a), temporary protection as:

A procedure of exceptional character to provide, in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects on its efficient operation, in the interests of the persons concerned and other persons requesting protection.

The Directive stipulates, at Articles 2(c) and (d), that a mass influx may be caused both by spontaneous arrivals in the Union and in the case of evacuation programs. There is an Exclusion Clause, along the lines of Article 1F of the Refugee Convention, in Article 28.

Article 3 of the Directive states:

1. Temporary protection shall not prejudice recognition of refugee status under the [Refugee] Convention;
2. Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement.

The duration of temporary protection is one year (Article 4) and it may be extended automatically by six monthly periods for a maximum of one year, after which a more secure status must be granted if return is not possible.

The decision about application of the Directive will be made by the European Council, which will in turn provide information to States about the specific groups to which temporary

protection will apply, the date on which the temporary protection will take effect and an estimation of the scale of the movements of the displaced persons (Article 5(1)).

Where temporary protection is used, States are required (under Articles 12-15) to respect the rights of those persons covered by it, including the right to employment, social security, education, accommodation and medical care (including special care for victims of torture, rape or other forms of psychological, physical or sexual abuse). The right to family reunification applies for spouses, de facto spouses and unmarried minor children.

Article 17 stipulates that persons enjoying temporary protection must be able to lodge an application for asylum at any time. The examination of any such application, however, is not required to proceed before the end of the designated period of temporary protection.

When the Council decides that temporary protection no longer applies, and where a person has either not lodged an application for refugee status or has been determined not to be a refugee, Member States are required (at Article 21) to take the necessary measures to facilitate voluntary return in conditions of safety and dignity. It is also required that any forced return is conducted with due respect for human dignity. Further, where a person does not wish to return, States are required to consider on a case by case basis any compelling humanitarian reasons which may make return impossible or unreasonable (Article 22).

The Directive provides for a responsibility sharing mechanism among Member States that determines who shall receive persons eligible for temporary protection (Article 25). States hosting temporary residents are eligible to seek financial support from the European Refugee Fund.

The European Council on Refugees and Exiles (ECRE), the peak non-government organisation in Europe, responded positively to the Directive,[11] noting that it stresses the exceptional character of temporary protection and guarantees access to the asylum determination procedure.

According to ECRE, further positive aspects of the Directive include:

- a reasonable standard of rights to be conferred (with the exception of access to health care which establishes a minimum of emergency care and essential treatment);
- provisions for especially vulnerable groups;
- the fact that, in principle, temporary protection is granted for a limited time only;
- the primacy of voluntary returns, and the need for respect for human dignity; and
- the establishment of a solidarity mechanism between Member States.

This being said, there are a number of areas that ECRE highlighted as not meeting its expectations. These include:

- the Directive is not designed to deal specifically with situations of sudden mass influxes which would overburden national asylum systems. The latter is only mentioned by way of an example for the exceptional character of temporary protection, but not as a pre-requisite for it. There is thus a danger that temporary protection might be used in situations where the granting of refugee status or of another form of international protection is the more appropriate response;

- the Directive does not seem to do anything to ease admission to the territory for persons arriving outside evacuation programmes, nor does it prevent the imposition of non-entrée measures on nationals from countries experiencing large refugee outflows;
- the Directive does not contain any general provision for procedures, and in particular no reference to a right to appeal against the denial of temporary protection;
- the possibility for Member States to withdraw temporary protection from a person who applies for asylum, as long as this application is processed. Depending on the rights agreed in the context of the Directive on reception, this could result in the withdrawal or reduction of rights upon lodging an application for asylum.

Non-EU European countries such as Norway and Switzerland have incorporated similar provisions in their domestic legislation and Denmark, which while being an EU member state is not legally bound to follow EU asylum decisions, has introduced specific short term legislation to enable the provision of protection to people in emergency situations.

On the other side of the Atlantic, the United States of America[12] uses Temporary Protected Status for nationals of designated countries who are unable to return home because of ongoing armed conflict, an environmental disaster or some other extraordinary and temporary situation. It is a means of granting nationals of designated countries[13] (including people found to be unlawfully present in the United States) a set of rights, including the right to work and a limited right of travel outside the U.S. Temporary Protected Status does not preclude the lodgement of a refugee status application. Individuals who have been rejected from refugee status and have held Temporary Protected Status for many years may be able to adjust their status to permanent residence under other provisions of U.S. Law.

4.2. For Convention Refugees

At this point it is important to make a distinction between the use of temporary protection for persons who flee a “catastrophic event” such as a civil war – where there is an expectation that the majority of those who flee will be able to return once the conflict has subsided – and its use for those who have on-going protection needs.

The European position on temporary protection in situations of mass influx has evolved quite independently to the way it grants visas to people who have either been determined to be Convention refugees or who have been granted a visa on humanitarian grounds.

A number of European countries[14] initially grant Convention refugees a limited term visa. These include:[15]

COUNTRY

TYPE OF VISA

Denmark

Both Convention and de facto refugees are issued with a one-year residence permit, renewable twice. After three years of residence, they may apply for a permanent residence permit.

France

Refugees are issued with a residence permit valid for ten years and renewable.

Greece

Refugees are issued with a refugee identity card, which enables them to receive a residence permit that is valid for five years. This permit is then renewable on a five-year basis, unless withdrawn in accordance with the provisions of the Refugee Convention.

Ireland

Refugees are granted a residence permit for one year, which is automatically renewed.

Italy

Refugees are granted a residence permit, which is valid for two years and renewable.

Netherlands

Refugee status is permanent, although in practice the residence permit has to be renewed every year. The status can only be withdrawn if the refugee renounces the protection granted, for instance by moving back or spending holidays in his/her country of origin, or if it appears that the refugee had lied on the circumstances, which made him/her leave his/her country of origin. Although such provision exists in the Aliens Act, refugee status is not withdrawn when the situation in the country of origin improves.

Norway

Persons granted refugee status are issued with a residence permit valid for one year and renewable annually. After three years, they are entitled to permanent residence.

Switzerland

Refugees are issued with a residence permit (B-permit) valid for one year and renewable on a yearly basis. Renewal is only refused in a very limited number of cases. After five years, recognised refugees are entitled to a settlement permit (C-permit), valid for 10 years and renewable.

The countries that receive the highest number of asylum seekers – the United Kingdom and Germany – both grant permanent residence to Convention refugees, as does Austria, Belgium, Spain and Sweden. Similarly, both Canada and the United States of America also grant permanent residence to Convention refugees.

It is important to note that in those countries in which temporary visas are granted to Convention refugees:

- there is no requirement that the refugees undergo refugee status determination to have their visas renewed;

- renewal of the visa is viewed as an administrative formality;
- the only circumstances whereby visas are not renewed are if the Cessation Clause (Article 1C of the Refugee Convention) is invoked, the person has willingly renewed contact with the country of origin, or if the person has committed an offence. Both occur infrequently and are appealable;
- refugees on temporary visas have access to the full range of entitlements as residents, including family reunification and travel rights.

5. Use of Temporary Protection in Australia

There have been a number of occasions over the years when Australian Governments have used temporary visas for people with humanitarian needs:

§ In the 1980s and early 1990s, temporary humanitarian visas were granted to people in Australia at the time when conflict erupted in their homeland. Such visas were granted to nationals of, inter alia, Sri Lanka, Lebanon and the Former Yugoslavia.

§ For a period in the early 1990s, temporary visas were granted to people determined to be refugees. This policy was reversed prior to the expiry of the visas and all were automatically converted to permanent protection visas.

§ Temporary Safe Haven Visas were used when Australia participated in an emergency rescue program for Kosovars and East Timorese in 1999.

It is, however, its present application that has proved the most contentious. Temporary protection visas are granted to:

§ asylum seekers who arrived without proper documentation and/or who were not immigration cleared, and were subsequently determined to be refugees. This policy has been in place since October 1999; and

§ people outside Australia who had moved from the country of first asylum, i.e. for people granted visas in Indonesia, the Pacific States or one of Australia's excised zones.

On 28th August 2003 the Minister for Immigration introduced Regulations that extended the use of Temporary Protection Visas to all successful onshore applicants for refugee status, irrespective of their mode of arrival. It is possible that these Regulations will be the subject of a Disallowance Motion and it is thus uncertain whether this application will continue.

The Minister for Immigration has discretionary powers under s417 of the Migration Act that enable him to grant temporary rather than permanent visas where he chooses to exercise these powers.

It is significant to note that the current policy can be traced to the One Nation Party.

The humanitarian program will be replaced by a program of temporary refuge for those who meet the UN definition of a refugee, with repatriation when the situation resolves.

When this suggestion was raised, it was initially rejected outright, even by key Government figures. The Minister for Immigration, Philip Ruddock, responded thus to the One Nation suggestion:

What One Nation would be saying is that they have no place in Australia. They are only to be here temporarily ... Can you imagine what temporary entry would mean for them? It would mean that people would never know whether they would be able to remain here. There would be uncertainty, particularly in terms of attention given to learning English, in addressing the torture and trauma so they healed from some of the tremendous physical and psychological wounds they have suffered. So I regard One Nation's approach as being highly unconscionable in a way that most thinking people would clearly reject.

Philip Ruddock. 1998.[16]

By the end of the following year, however, Philip Ruddock had introduced the very measures One Nation was suggesting. In justifying this policy shift, Mr Ruddock asserted:

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.

The current TPV regime:

- requires that TPV holders apply for refugee status again after 3 years in the country (and in some instances, every 3 years after that). If they are determined at this time to no longer be refugees, their right to remain in Australia lapses;
- dictates that refugees on a TPV do not have access to the same services as refugees who hold a permanent visa (i.e. those who have arrived as part of the offshore Refugee and Special Humanitarian program or who have been granted refugee status in Australia after having arrived with a valid passport and visa). The differences in entitlements are outlined in the following table:

Permanent Visa
Temporary Protection Visa

Social Security

Immediate access to the full range of social security benefits

Access only to Special Benefit for which a range of eligibility criteria apply. Ineligible for Newstart, Sickness Allowance, Parenting Payment, Youth Allowance, Austudy and a range of other benefits.

Education

Same access to education as any other permanent resident.

Access to school education subject to state policy. Effective exclusion from universities due to the imposition of full fees. Access to TAFE courses is dependent on the policies of the respective state governments.

Settlement Support

Access to full range of DIMIA settlement support services.

Not eligible for most DIMIA funded services such as MRCs and ethno-specific community welfare agencies. Can use Early Health Assessment and Intervention Programs.

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 and poor English skills.

Ineligible for most employment assistance programs.

Language Training

Access to 510 hours of English language training.

Not eligible for DIMIA funded English language programs: the Adult Migrant English Program (AMEP) or the Advance English for Migrants Program (AEMP). Some TPV holders are now eligible for DEST funded language classes (400 hours).

Medical Benefits

Automatic eligibility for Medicare.

Eligible for temporary Medicare cards.

Travel

Will be able to leave the country and return without jeopardising their visa.

No automatic right of return if the TPV holder leaves the country.

6. Problems with the Australian Model

As has been explained in earlier sections of this paper, Australia is not in breach of the Refugee Convention when it grants temporary status to Convention refugees and other western asylum countries do likewise. Does this mean that the Australian policy is defensible or are there aspects of the policy that are the cause for legitimate concern?

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.

Each of these will be explored below.

6.1. Compliance with Treaty Obligations

While the temporary nature of the TPV is not a breach of the Convention, there are many grounds on which to argue that the conditions attached to the current TPV regime, especially in so much as they are discriminatory and limit access to support services, are contrary to Australia's international obligations towards refugees.

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);[17]

but eligibility for a TPV, as opposed to the more generous permanent residence protection visa, is determined solely on method of arrival;

- 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);

but TPV holders access to social security payments is limited;

- issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory... (Article 28).

but TPV holders have no automatic right of re-entry should they leave Australia.

Of all of the restrictions imposed on refugees with a TPV, however, it is the denial of family reunion that arguably causes greatest anguish. The importance of family unity is well defined in international law.

The Universal Declaration of Human Rights proclaims that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (Article 15(3)). Further:

- the UN Covenant on Economic, Social and Cultural Rights requires that “the widest possible protection and assistance be accorded to the family, which is the natural and fundamental unity of society, particularly for its establishment and while it is responsible for the care and education of dependent children” (Article 10.1); and
- the Convention on the Rights of the Child requires that “applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by State parties in a positive, humane and expeditious manner” (Article 10.1).

When considering this issue in relation to refugees, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951) sets out at Article iv.B:

CONSIDERING that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unit is constantly threatened, and

NOTING with satisfaction that ... the rights granted to a refugee are extended to members of his family,

RECOMMENDS Governments to take the necessary measures for the protection of the refugee’s family especially with a view to:

(1) Ensuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.

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;

UNHCR actively promotes the principal of “Derivative Protection” which provides that if one member of a family is determined to be a refugee, all other members of the immediate family (usually spouse and dependent children) should be afforded the same status and encourages States to facilitate family reunion. It is the usual practice of States to apply derivative protection and Australia does this in relation to refugees on permanent visas. It is only the refugees on TPVs who are denied the right to family unity.

6.2. Reassessment of Claims

As explained in Section 4.2, where temporary status is used for Convention refugees elsewhere, there is no requirement that the refugee undergo any further status determination in order to remain in the country, unless it is determined that there have been substantial changes in the country of origin and the Cessation Clause has been invoked.

The Cessation Clause is a provision (at Article 1C) in the Refugee Convention. It recognises that where circumstances in a country change, people from that country might no longer need protection but also makes it clear that such changes must be of a substantial and durable nature. Professor James Hathaway, author of the definitive text on refugee law,[18] sets out the following as guidelines on indicators of “substantial change”:

- the change must be of substantial political influence in that the power structure under which the persecution took place no longer exists;
- there must be reason to believe that the substantial political change is truly effective, in other words, there has to be a fundamental change in the nature of the government (not just a change in government) and the new government must have put in place effective mechanisms to protect human rights;
- the change of circumstances must be shown to be durable. Cessation is not a decision to be taken lightly on the basis of transitory shifts in the political landscape but must be reserved for situations where there is reason to believe that the positive conversion of the power structure is likely to last.

In requiring refugees on TPVs to submit fresh claims for refugee status in the absence of UNHCR’s use of the Cessation Clause with respect to any of the countries from which the refugee come, the Australian Government is acting contrary to internationally accepted practice and is ignoring the internationally agreed framework for determining when a refugee ceases to be in need of international protection.

6.3. Impact on the Refugees

In the over 50 years of experience Australia has had resettling refugees from many parts of the world, much has been learnt about what support is needed for refugees to become productive members of the community and to be able to overcome the trauma of their past. The services provided to refugees with permanent resident reflect this accumulated wisdom. As has been outlined, the TPV regime is antithetical to successful settlement in so much as it denies these refugees access to the services considered essential for settlement.

Since the introduction of the TPV regime in 1999, there have been a number of studies that have documented the impact of the denial of services to refugees who hold a TPV. Principal amongst these have been:

Temporary Protection Visa Holders in Queensland. Renae Mann for Multicultural Affairs Queensland. 2001.

Politics of Social Exclusion: Refugees on Temporary Protection Visas in Victoria. Fethi Mansouri, Deakin University and Melek Bagdas, VASS. 2002.

Call on the NSW Government to Support Refugees on TPVs. Eva Cox. University of Technology Sydney. 2003.

Temporary Protection, Permanent Uncertainty: The experience of refugees living on temporary protection visas. Greg Marston for the Centre for Applied Social Research. RMIT. 2003.

A Life Devoid of Meaning: Living on a Temporary Protection Visa in Western Sydney. Dr Diane Barnes for the Western Sydney Regional Organisation of Councils (WESROC). 2003.

We're Working With People Here: the impact of the TPV Regime in NSW. Dr Sharon Pickering and Roslyn Richardson for Charles Sturt University. (Due for release in Spring 2003).

These studies have been consistent in their findings and have highlighted the following adverse implications for Convention refugees:

- difficulties gaining access to employment: there are many reasons for this, not least being lack of recognition of qualifications, poor English, lack of understanding of the job market and the temporary nature of their visas;
- difficulties finding accommodation: the fact that TPV holders have no tenancy record, are on low incomes and are often single men make finding secure and affordable accommodation especially problematic;
- the challenge of learning English: a person's ability to interact meaningfully in society is dependent on language skills but TPV holders are not eligible for DIMIA funded language classes permanent humanitarian visa holders can attend. This significantly limits their options for learning English.

Since the introduction of the TPV regime, state and local governments and the community sector have done much to compensate for the service gaps, though access opportunities and entitlements vary significantly from state to state. These services have developed out of recognition of the potential problems of having a group of highly disadvantaged people in the community.[19]

It is, however, much easier to compensate for the lack of access to services than it is to counter the psychological damage done by the TPV regime. The RMIT report reveals:

The research findings illustrate a clear and unequivocal connection between the visa status of refugees on TPVs and their self-reported feelings of distress, despair and depression. The deep uncertainty associated with the TPV severely restricts the capacity of refugee participants to recover from a traumatic past, as well as to dream for a better future.[20]

The factors that contribute to the refugees' anguish include:

- i. The inability to be reunited with family:

The absence of any prospect of being able to see their spouse or children without forfeiting the protection they have been given in Australia takes a heavy toll. A significant number of TPV holders are men whose wives and children are either in their country of origin or in countries of first asylum. Without a male head of household, their families are both physically and economically vulnerable. The refugees in Australia are typically:

- * preoccupied with worrying about their family;
- * economically constrained by the necessity of sending money overseas to support their family;

- * lonely – yet unable to enter without guilt into a new relationship;
- * despondent about the separation from their children; and
- * consumed with guilt because they have been unable to reunite their family.

Refugees will never be able to make any real connection to this country until their family is intact. They will remain outsiders, forced to live outside the stereotypical image of happy family life to which most aspire.

ii. Insecurity about the Future

Refugees have severed contact with their country of origin because of the dangers that await them on return. Most have experienced substantial trauma, and in many cases torture, in their country prior to flight. Their ability to heal psychologically as well and physically is, in large part, dependent on how secure they feel in their new environment.

In addition to denying refugees access to essential services and supports, the temporary nature of the visas and the requirement that refugees undergo refugee status determination has had many detrimental effects. It has resulted in, inter alia:

- high levels of stress and anxiety;
- self harm and suicidal ideation;
- the inability to make decisions about the future;
- high levels of mobility.

The stress levels within TPV holding communities are especially high at the time of writing because the first group of refugees to undergo the second round of refugee status determination are awaiting decisions. Most of these refugees:

- come from countries (eg Afghanistan, Iraq and Sri Lanka) where there has been substantial change since they received refugee status;
- do not have access to legal advice to assist them to lodge their second application;
- have, at best, a limited understanding of how the changes in their country affect them;
- are deeply fearful that they will be forced to return to a country which has been the sources of great trauma;
- are very confused by all of the information and misinformation that has been circulating in their communities about the re-application process.

In the second half of 2003 and throughout 2004 it is highly probable that there will be an exacerbation of the problems outlined as more and more refugees face adjudication.

iii. Community Attitudes

The politicisation of asylum has resulted in refugees from the Middle East being seen by the general public as “illegals”, despite their status as refugees having been recognised. Many have experienced discrimination and abuse. Despite the valiant efforts of many TPV Support Groups, the message the refugees get from the general public and the media is that they are not welcome and should go home.

As the RMIT report commented:

Negative stereotyping is a form of cultural injustice, reinforcing the social injustice associated with being denied access to economic and social resources.[21]

When combined with the trauma from their past and the deleterious impact of the detention experience, exposure to community hostility exacerbates the psychological fragility of many refugees. While many refugees can separate the negative and positive encounters they have with community members at an intellectual level, the subliminal impact of racist incidents cannot be discounted. At best the refugees will feel ambivalent about this country. At worst, they will feel betrayed and that their lives are devoid of hope. Their future, as they see it, is one of permanent separation from their families, exclusion from the community and inability to rebuild any semblance of a dignified life.

6.4. Impact on Society

Australia is, unambiguously, a multicultural society. Almost a quarter of all Australians were born overseas. Since the late 1970s there have been policies in place to ensure that the people who have entered this country, regardless of background or language capacity, are able to gain access to necessary services. These have been backed up by the development of an array of specialist settlement services[22] second to none in the world. In recent years too, we have seen government initiatives such as the "Living In Harmony" campaign, which is expressly designed to promote tolerance and respect for the refugees and migrants in the community.

This has, however, to be juxtaposed against the political rhetoric about "illegals", "queue-jumpers" and "criminals" so frequently used in relation to asylum seekers who come by boat. These negative messages fall on fertile ground, feeding pre-existing stereotypes of "foreigners" and legitimising xenophobic attitudes. The problem is exacerbated by the fact that many members of the public are unable to make the distinction between asylum seekers and refugees, or between refugees and migrants and that the negative traits are ascribed to anyone who looks different.

The government's efforts to promote community harmony are thus being undermined. The positive images are countered by negative rhetoric which at best, leaves the public feeling confused. This has an effect on everyone who has come to this country, undermining their sense of safety and acceptance.

It is also, the Council suggests, a dangerous presence denying one group of refugees access to the very services we know are necessary for their participation in society. The policy is thus creating a situation which increases the chances that TPV holders' lives will be characterised by poverty, discrimination, alienation and despair. Without access to language instruction and work-placement assistance, many TPV holders are finding it difficult to enter the workforce in any meaningful way. Further, many have family members overseas dependent on them for money. TPV holders are trapped in a cycle of poverty and dependency from which there is little chance of escape and where the most fragile could well be pushed to the edge of endurance.

It is the view of the Council that in pursuing this policy the Government is treading a dangerous path that could well have immense social repercussions, not just for the refugees but for the community as a whole.

7. Conclusion

The Refugee Council remains deeply opposed to the current TPV regime for a number of reasons, not least:

- the regime results in breaches of Australia's international treaty obligations;
- the denial of basic services is preventing refugees from participating in the Australian community and is condemning many to a life of dependency;
- the failure to allow family reunion is causing immeasurable anguish to the refugees in Australia and their families overseas and is potentially placing family members in highly dangerous situations; and
- the requirement that the refugees undergo refugee status determination at three yearly intervals leaves the refugees in a state of nervous limbo from which no healing of past trauma is possible.

For as long as Australia persists with the policy of granting Temporary Protection Visas to Convention refugees (irrespective of where they are processed), the Government will be perpetuating suffering, threatening social cohesion and wasting precious human and fiscal resources.

The Refugee Council reiterates its previously stated position that the circumstances in which there are legitimate uses for temporary protection visas are as follows:

- when events unfold overseas that require the evacuation of displaced persons, as happened in the case of people from Kosovo and East Timor;
- when conflict arises overseas and nationals of that country already in Australia are unable to return;

... and notes that this position is consistent with internationally accepted policy.[23]

The Council does not, however, accept the legitimacy of a country with an active migration program granting temporary protection to Convention refugees. We thus call on the Australian Government to repeal the TPV regime and grant permanent visas to all people determined to be Convention refugees.

[1] See section 6.3.

[2] UNHCR Handbook on Voluntary Repatriation. 1996.

[3] In practical terms if not always in type of visa granted.

[4] See RCOA Position Paper on Family Unity and Reunification. August 2001. p1.

[5] Ibid. p2.

[6] For the full text of these conclusions see www.unhcr.ch.

[7] A Comprehensive Response to the Humanitarian Crisis in the Former Yugoslavia. HCR/IMFY/1992/Y.

[8] The Scope of International Protection in Mass Influx. EC/1995/SCP/CRP.3 at 4.

[9] Some countries limited access to social assistance, employment and freedom of movement. Most precluded family reunion.

[10] The exceptions are Denmark and Ireland.

- [11] ECRE Information Note on the Council Directive on minimum standards for giving temporary protection. September 2001.
- [12] Information from Human Rights Watch. May 2003.
- [13] As of February 2003, the countries (or parts thereof) that were designated were Angola, Burundi, El Salvador, Honduras, Liberia, Montserrat, Nicaragua, Sierra Leone, Somalia and Sudan.
- [14] In this context it is relevant to note that unlike Australia, most European countries do not see themselves as countries to which migrants come (though this perception usually belies contemporary reality). Many European countries require "foreigners" to live in the country for many years (sometimes in excess of 10 years) before they can be considered for citizenship, so the fact that refugees are granted temporary status is not as discriminatory as it is in the Australian context.
- [15] Table developed from country information on the website of the European Council on Refugees and Exiles (www.ecre.org).
- [16] In Fethi Mansouri and Michael Leach: Temporary Protection of Refugees: Australian Policy and International Comparisons. 2002.
- [17] Many genuine refugees are in fact unable to gain access to valid travel documents.
- [18] James C Hathaway: The Law of Refugee Status. Butterworths.1991.
- [19] The unfortunate reality, however, is that the state in which the highest number of TPV holders is found, NSW, the state government has done the least to accommodate the needs of this group.
- [20] Greg Marston: Temporary Protection – Permanent Uncertainly. Centre for Applied Research RMIT. 2003. p4.
- [21] Greg Marston: Temporary Protection – Permanent Uncertainly. Centre for Applied Research RMIT. 2003. p4.
- [22] Such as the National Forum of Torture and Trauma Agencies, the Adult Migrant English Program and the Migrant Resource Centres.
- [23] For example the Conclusions of the Tampere Meeting of EU States. 1999.