

# REFUGEE COUNCIL OF AUSTRALIA

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## **Submission to the SENATE COMMUNITY AFFAIRS COMMITTEE ON THE FAMILY AND COMMITTEE SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002**

October 2002

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### 1. Introduction

The Refugee Council of Australia (RCOA) welcomes the opportunity to provide input to the Senate Community Affairs Committee on the Family and Committee Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

The Refugee Council of Australia is the peak non-governmental agency in Australia concerned with issues relating to refugees and asylum seekers. The Council works to promote humane, flexible and legally defensible policy towards refugees, asylum seekers and displaced peoples by the Australian Government and the Australian community.

The Council's concerns about the deleterious consequences of the current Temporary Protection Visa (TPV) regime are well documented. It is the view of the Council that the limitations placed on access to essential settlement services and restrictions on entitlements are already causing significant hardship to a group of people to whom Australia has protection obligations and have the potential to result in serious consequences for the community as a whole.

The Council is deeply opposed to any further restrictions being placed on this vulnerable group of people unless commensurate measures are taken to minimise the impact of these restrictions.

### 2. The Target Group: Refugees with a Temporary Protection Visa

TPV holders have all been determined by the Australian Government to have a well-founded fear of persecution in their home country and thus to be entitled to refugee status. They have also undergone health checks and have passed the character checks that are a prerequisite to having a visa issued.

The reason they have been granted a temporary rather than permanent protection visa rests not on the basis of their need but because of their mode of arrival in Australia. They have either arrived without valid entry documents or have not been immigration cleared. The law as it currently applies requires that such people are detained for the duration of the determination process and that if they are determined to be refugees, that they be given a Temporary rather than Permanent Protection Visa. The Temporary Protection Visa differs in many ways from the Permanent Protection Visa. Key differences are set out in RCOA Information Paper on Temporary Protection Visas.

When first introduced, the TPVs were granted for 3 years. At the end of this time, the TPV holder could lodge a further application for refugee status and, if this was granted, he/she would be eligible for a permanent protection visa.

In September 2001 new legislation was introduced which, inter alia:

§ determined that TPV holders who had not lodged their application for a permanent protection visa as at the date the legislation was introduced, would be unlikely ever to be eligible for the grant of a permanent visa;

§ introduced two new temporary visa classes (subclasses 447 and 451) for 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. Entitlements are essentially the same as for TPVs granted onshore.

Approximately 8,500 TPVs have been issued to date. Over 90% of the recipients have been from two countries: Iraq and Afghanistan. The remainder has come from various countries including Iran, Sri Lanka and Palestine.

All available evidence indicates that TPV holders are a high need, high-risk group. Key issues for TPV holders include:

§ significant traumatisation caused by their time in detention and the perception of public antipathy. This affects the way they view Australia and Australian people;

§ the debilitating effects of institutionalisation caused by prolonged detention which affects their ability to operate independently upon release;

§ ongoing effects of past trauma in their country of origin. Many have experienced torture or other deeply traumatic events;

§ alienation from the Australian community due to their lack of language skills and the absence of support programs they can access;

§ despair at the prospect of indefinite separation from immediate family members (spouse and children);

§ anxiety about their future because of the short term nature of their visa and the prospect that they may be returned;

§ poverty brought on by difficulties in obtaining employment due to language skills, lack of recognition of qualifications, lack of local experience and the short-term nature of their visas.

While some TPV holders might be assessed as being no longer in need of protection at the 3 year mark, it is reasonable to assume that large numbers will be granted ongoing protection. Some will be granted permanent visas but the majority will have ongoing TPVs.

### 3. Refugees and Work

For many refugees, getting a job is seen as being the most important goal after arrival because:

- they want to feel that they are making a contribution;
- employment gives them status/self worth;
- they need the income to support family members overseas;
- they feel compelled to fulfil the expectations of those left behind.

Refugees who hold a TPV, however, face many obstacles in entering the workplace including but not limited to:

- lack of English: whereas all other refugees are entitled to 510 hours of subsidized language instruction, TPV holders are not. There are some community run language classes but these in no way cover the need;
- lack of local work experience and referees: employers typically look for people with a demonstrated work history;
- lack of understanding of the Australian workplace: TPV holders are typically unfamiliar with the process of applying for jobs in Australia and about how to translate their experience into the Australian context;
- lack of skills recognition: some TPV holders are highly qualified in their own countries – as doctors, lawyers, engineers and the like. Because these qualifications are not recognized in Australia, they find it very hard to find jobs allied in any way to their area of experience;
- their ineligibility for the free translation service available to other refugees that would enable them to have their employment-related documents translated into English;
- the temporary nature of the visa: many employers are wary about employing someone on a temporary visa, fearing that they will have to leave and the employer will then have to go through the recruitment process again;
- community prejudice: since the events of 11th September, there has been a marked increase in community suspicion about people from the Middle East. As the vast majority of TPV holders fall into this category, they are affected. The existence of anti-discrimination laws does not provide sufficient protection for people from Islamic backgrounds seeking employment in the current climate of fear and distrust.

### 4. Employment Support for TPV Holders

Under the current arrangements, TPV holders have only very limited access to any assistance to help them find employment.

They are:

- eligible for the Job Network job matching service; and

- entitled to use the facilities at Centrelink Customer Service Centres such as the touch screens, fax and photocopier.

They are not eligible for any other Job Network services including:

- Job Search Training: this can include help with application writing and interview skills and advice on how to market skills and experience to employers;
- Intensive Assistance: this is one-on-one support to assist an individual to get and keep a job. It is offered to job seekers who have had, or are likely to experience, difficulty in getting a job. It can include vocational training, work experience, language and literacy training, help in job search techniques and support after finding a job. It may also include employer incentives to take on employees such as paying for work place adjustments or paying a wage subsidy;
- Personal Support Program: this provides intensive assistance to people with multiple barriers to employment and who are not job ready;
- New Enterprise Incentive Scheme (NEIS): this provides assistance to turn a business idea into practice, and thereby assist an individual to become self-employed. The scheme includes training in business management skills, business plan development and business advice and mentor support.

The Job Network services which TPV holders are excluded from are precisely the forms of assistance that many TPV holders would require to seek and obtain employment in a new country. Intensive Assistance, in particular, is a highly appropriate service to individuals with limited English language skills and who face a range of other barriers to obtaining employment. Meanwhile the services they are eligible for are both minimal and inappropriate for the target group. The job matching service is simply a list of vacancies on display - in English - in the Centrelink and Job Network agencies and the the touch screen technology presupposes not only that the user has the language skills but also is comfortable with computer technology. Many TPV holders are deficient in both.

In addition, TPV holders are not eligible for:

- Work for the Dole programs, which are limited to over-18 year olds on full-rate Newstart or Youth Allowance. While this program is arguably problematic, it does enable the unemployed an opportunity to obtain experience; and
- the National Office of Overseas Skills Recognition (NOOSR) loan scheme to support bridging training for overseas trained professionals. This scheme provides overseas trained professionals with interest-free, deferred payment loans to cover the costs of tuition to assist them to meet formal professional recognition requirements in Australia.

## 5. Income Support for TPV Holders

Because of limitations associated with their visa type, TPV holders are not eligible for the full range of Social Security benefits. The Special Benefit is approximately 80% of the normal unemployment benefit, with no additional provisions being available for people with disabilities.

Unlike other clients of Newstart and Youth Allowance programs, TPV holders in receipt of Special Benefit have their payment reduced dollar for dollar for any earned income. This approach is a strong disincentive to seek part-time or casual work, which is a common path into the labour market. In recognition of this, recipients of Newstart, for example, are entitled

to earn up to \$62 per fortnight without penalty, and a higher income leads to a reduction in benefit on a scale of 50c then 70c in the dollar .

Further, TPV holders in receipt of a Special Benefit are subject to Newstart conditions such as the requirement to lodge forms fortnightly and demonstrate that they have sought employment from a minimum of six employers per fortnight but are not subject to the breaching regime.

## 6. The Proposed Legislation

The Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 will introduce compulsory activity testing and mutual obligation for Temporary Protection Visa holders receiving a Special Benefit.

When the legislation was first foreshadowed in the 2002 FaCS Portfolio Budget Statement, the community sector was given the impression that the imposition of activity testing would be introduced with certain compensatory measures, in particular access to language instruction, job search assistance and vocational training. This would have given the TPV holders a chance to meet the requirements being imposed upon them.

The absence of these safety nets in the legislation is a real concern to the Refugee Council. Because of their limited English skills, unfamiliarity with the Australian environment and other factors disadvantaging them in securing employment, significant numbers of TPV holders will not be able to comply with the complex mutual obligation requirements. Consequently they will be breached, in other words, lose their sole source of income. Unlike people established in the community, they have neither savings to fall back on nor a network of family and friends from whom to seek help.

RCOA is unclear about exactly when it is intended to impose activity testing. Currently refugees who come in as part of the offshore program are exempt for the first 13 weeks after arrival. This is out of recognition that some time is required for entrants to find a house, link up with local services, attend English classes and solve other basic settlement needs before they can start looking for work. If the same sort of exemption period is not provided for TPV holders and activity testing commences from the day they are released from detention, there will inevitably be a high rate of breaching.

The conditions of the breaching regime mean that if beneficiaries do not respond to letters sent by Centrelink they may be breached. Refugees with a TPV are a highly mobile group. According to Centrelink data, as at 4 October 2002, only 38% of TPV holders in receipt of Special Benefit remained in the same state in which it had been originally granted and it must be remembered, this does not include moves within the state. As a result, administering the breaching regime will undoubtedly create practical difficulties for Centrelink and a considerable number of breaches unrelated to the aims of compliance.

While it may be possible for TPV holders to apply for exemptions from activity testing on a case-by-case basis, in reality the process of applying for exemptions requires referrals from a welfare agency and familiarity with this policy. As TPV holders are ineligible for most settlement services, those who would be eligible for exemptions under usual circumstances are unlikely to be aware of this and/or to be able to find an agency that is able to advocate on their behalf.

It would seem therefore, that the inevitable consequence of the legislation in its current form is that a large number of already highly vulnerable refugees will lose their sole means of support. This in turn will lead to:

- further traumatising for the TPV holders and exacerbation of conditions such as post-traumatic stress disorder;
- further alienation for the TPV holders from the Australian community;
- the creation of complex settlement problems which will require intensive assistance at the point when the TPV holders are finally allowed to get access to specialised assistance;
- an increased burden on the (largely) unfunded community and church agencies currently endeavouring to assist TPV holders.

Further, it would be highly regrettable if the high number of TPV holders being breached as a result of this policy were ever to be used by a Minister or other politician to suggest that the refugees are of bad character and are undesirable people to have in this country.

## 7. Recommendations

The Refugee Council is deeply opposed to the legislation in its current form. Either the legislation should not be introduced or, if it is, it should include compensatory provisions.

RCOA would support the legislation if it were modified to include:

- the 13 week exemption from activity testing so that TPV holders can have a period after their release from detention during which they can focus on finding accommodation and satisfying other basic needs before being subject to activity testing;
- access Adult Migrant English Programs (AMEP) or related English programs. Without English it is unlikely that this group will be able to seek work effectively or to understand the mutual obligation conditions, especially as they are also ineligible for settlement services; and
- eligibility for the Intensive Assistance and Personal Support Program to ensure that they have the skills to seek and hold employment.