

Policy Statement

People seeking asylum in Australia who are found to be refugees, or found to be owed Complementary Protection, should be issued with a Permanent Protection visa.

Temporary Protection visas (TPV) and Safe Haven Enterprise visas (SHEV) should be abolished in recognition of their ineffectiveness, the harm caused to people owed Protection in Australia and the harm caused to the Australian community.

All people seeking asylum in Australia should be treated equally regardless of their mode of arrival. The treatment of people arriving by boat is discriminatory and does not comply with obligations under the *Refugee Convention 1951*.

People owed Protection in Australia should be given the opportunity to seek reunion with their family members in acknowledgment of the fundamental importance of the family unit to the wellbeing of all people and to the healthy functioning of the Australian community.

The Current Situation

In December 2014, the Abbott government amended Australia's migration processes to ensure that people who arrived by boat without a valid visa would no longer be eligible for a Permanent Protection visa. These people would only be eligible for a 3 year TPV or a 5 year SHEV. This change to asylum seeking processes affects approximately 24,500 people who arrived by boat between August 2012 and December 2013. It also affects a further 6000 people who arrived by boat before this period and did not have their applications for Protection finally determined.

People who arrive by plane with a valid visa and are immigration cleared are still eligible to apply for a Permanent Protection visa.

Most people who arrived by boat have had to wait with uncertainty for at least three years before being allowed to lodge their application for Protection.

Some people have been here for as many as seven years and still do not have an outcome. Accordingly, many people will have waited with uncertainty for a period that is longer than the visa to which they are entitled.

TPVs and SHEVs do not allow for family reunion and limit the ability of people to travel outside of Australia to meet their family members in third countries.

Refugees have consistently identified lack of family reunion as a primary source of distress in Australia. The Refugee Council of Australia (RCOA) has conducted extensive consultations with refugee communities and documents the severe social, psychological and financial impacts of separation from family. RCOA states that, 'the physical security offered by Australia is offset by the ongoing mental anguish of family separation.'¹

Previously, people arriving to Australia by boat were specifically disadvantaged by government policy which severely limited their options to seek family reunion. In particular, people arriving by boat were barred from accessing the Special Humanitarian Program which was traditionally the key process for family reunion for refugees. Further, the government changed its policy so that applications from people who arrived by boat were given the lowest priority. In the context of low quotas for family reunion visas, these applications in practice had no prospect of success.

¹ Refugee Council of Australia, Reuniting Refugee Families, June 2016, <http://www.refugeecouncil.org.au/wp-content/uploads/2016/06/PB1606-Family-reunion.pdf>

Currently, there is no opportunity to apply for family reunion.

The Australian community, in accordance with international law, holds the sanctity of the family unit as central to the healthy functioning of people in our community. Refugee communities should not be separated from their families.

A person who is granted a TPV or SHEV will be required to undergo another assessment of their need for Protection at the end of the visa period.

TPVs do not provide any pathway to permanent residency. SHEVs allow only limited scope to obtain permanent residency in Australia.

The refugee experience is an inherently uncertain one. People seeking asylum often experience trauma in their countries of origin and flee to seek safety often without any certainty that they will survive that journey or whether they will be afforded Protection in a new country.

The requirement that TPV and SHEV holders undergo a reassessment of their Protection needs at the end of each visa period, and indefinitely into the future, compounds the trauma and uncertainty already faced by our refugee communities. This requirement is cruel and unnecessary. It forces people to relive their experiences of trauma with each new assessment, preventing them from healing psychologically, especially in the context of a lack of family support.

Reassessment of Protection claims also builds uncertainty as people are unable to make long term plans. They are unable to rebuild their lives as they live with the constant fear that they may be removed from Australia. This causes a significant deterioration in mental health as people are unable to access long term employment and housing and are prevented from contributing to the Australian community and economy to their fullest ability.

Lessons Learned

There is no evidence to suggest that TPVs have a deterrent effect. TPVs have been previously recognised as causing considerable 'human suffering'².

TPVs were previously introduced to Australia by the Howard Government. The introduction of TPVs at that time resulted in an increase of women and children attempting to reach Australia by boat as TPVs prohibited family reunion³. A devastating outcome of this policy occurred on 19 October 2001, when the vessel SIEV X capsized en route to Australia drowning 353 people, including 288 women and children. The Rudd Government subsequently abolished the TPV system in recognition of its ineffectiveness.

The TPV system has been tried and tested. It does not work.

Recommendations

- TPVs and SHEVs be abolished and the right to apply for a Permanent Protection visa be reinstated as a single statutory Refugee Status Determination process with access to full and independent merits review.
- All people who have been granted a TPV or a SHEV have those visas converted into a Permanent Protection visa.
- All people owed Protection in Australia be given the right to apply for reunification with members of their family unit.
- Quotas for family reunion are increased significantly and people arriving by boat are not discriminated against by policy which deprioritises their applications

² The Senate Legal and Constitutional Affairs Committee's 2006 Inquiry into the Administration and Operation of the Migration Act 1958, as cited by the Kaldor Centre, <http://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>

³ Sue Hoffman, Temporary Protection Visas and SIEV X, 6 February 2006, <http://sievx.com/articles/challenging/2006/20060206SueHoffman.html>

Key Facts

- In August 2012 the Gillard government put a freeze on the refugee application process for all people who arrived by sea.
- This left approximately 24,500 people seeking asylum, including 4395 children, in the community (about 11,000 in Victoria) waiting in limbo to make their claim, many for more than three years.
- These are people who arrived by sea between August 2012 and July 2013, when the Rudd Government barred anyone coming by sea from ever entering Australia.
- Additionally, there are another 6000 people who had already commenced their Protection process who had their applications for a Permanent Protection visa frozen and subsequently converted to an application for a TPV or SHEV. These people have been waiting for an outcome for over five years.
- In December 2014 the Abbott government passed legislation that restricted the definition of a refugee and introduced an unfair refugee determination process called 'Fast Track'. This legislation was opposed by the opposition and only made it through the Senate by one vote.
- Fast Track:
 - denies the right for meaningful review if an application is initially rejected.
 - Only grants people three or five-year temporary protection visas.
 - Does not allow for family reunion or for people to secure a stable future.
 - Restricts the ability of people to travel outside of Australia to a third country to see family.
 - Requires that Protection claims be reassessed at the end of the visa period.
- Temporary protection visas only apply to people who arrive without a visa - people who come with a visa are still granted permanent protection if their applications are accepted.
- Temporary protection impedes the capacity for people to integrate and settle into our society. Temporary visas limit people's education and employment opportunities, remove the vast majority of pathways to citizenship, restrict people's freedom to travel to see their families, and don't allow people to bring any family members here.
- It has been well-documented that temporary visas have harmful psychological effects, as a result of factors including a lack of certainty about the future, fear of being sent back to harm, lack of family reunion and inability to properly build a new life:

"A study by mental health experts in 2006 found that refugees on TPVs experienced higher levels of anxiety, depression and post-traumatic stress disorder than refugees on permanent PVs, even though both groups of refugees had experienced similar levels of past trauma and persecution in their home countries."⁴
- 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.⁵ TPVs also had the effect of separating children from their parents and family for long, and potentially indefinite, periods of time.⁶

4 Andrew and Renata Centre for International Refugee Law, Temporary Protection Visas and Safe Haven Enterprise Visas, <http://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>

5 Human Rights and Equal Opportunity Commission, A Last Resort? National Enquiry into Children in Immigration Detention, 2004, pp. 815-820

6 Human Rights and Equal Opportunity Commission, A Last Resort? National Enquiry into Children in Immigration Detention, 2004, pp. 817-820

-
- People who have sought protection in our communities have historically been among our country's most successful social and economic contributors.
 - People have been living in Australia for years and have formed relationships with Australian citizens and have Australian citizen children. Temporary protection forces these families to live with the prospect of future separation.
 - The requirement to have claims for Protection reassessed is inhumane as it requires people to relive their trauma as they are re-questioned about their experiences. This affects their ability to heal psychologically.
 - The requirement to have claims for Protection reassessed is inefficient, costly and unnecessary.
 - Temporary protection is not compatible with international law.
 - Our Government can choose to reinstate permanent protection visas for everyone who it grants asylum, so people can get on with rebuilding their lives and participate fully in our community.