

## TEMPORARY PROTECTION VISA ('TPV') Q and A

### What is being proposed?

In response to the recent 'riots' at Villawood Detention Centre,<sup>1</sup> Immigration Minister Chris Bowen announced a set of tough new measures to punish and deter asylum seekers in detention from engaging in unlawful behaviour. This will mean that genuine refugees who are found to be involved in criminal action of any sort whilst in detention (including property damage) will be denied the right to a permanent protection visa and instead placed on a TPV.<sup>2</sup>

### Haven't we had Temporary Protection Visas before?

TPVs were three year temporary visas introduced in 1999 by the Howard Government. Under this system all asylum seekers who arrived in Australia by boat, and were found to be genuine refugees by Australian Immigration, were granted temporary visas. If a refugee wanted to remain in Australia for more than three years, they were required to reapply for asylum before their TPV ended and prove for a second time that they were still a refugee. This policy was punitive; it applied solely to asylum seekers who arrived by boat, in hope to deter this method of entry.

### Why did the Labor government end TPVs?

The Labor government abolished TPVs in 2008 upon coming to power because they acknowledged their damaging effects. At the time, the Immigration Department said that:

The government is committed to providing fair and certain outcomes for refugees and abolishing TPVs is consistent with the government's commitment to treating asylum seekers fairly and with dignity.<sup>3</sup>

### What's wrong with TPVs?

During their existence under the Coalition (1998-2008), TPVs created a second class of refugees who, in contrast to permanent visa holders, faced ongoing limbo and uncertainty about their ability to remain in Australia, as well as deliberate exclusion from basic welfare and integration services, such as:

- No right to apply for family reunion with spouses and children who remained overseas in high risk situations;
- Barred from most forms of Centrelink support;
- No right to funded English classes, interpreting or translation services;
- No access to emergency accommodation and limited access to state housing.<sup>4</sup>

Australia was the only country to introduce TPVs for genuine refugees as a form of penalty<sup>5</sup> and this has damaged Australia's international reputation.

### While they may have been harsh, didn't they work?

Contrary to popular belief, 'tough' immigration policies in the past have not succeeded as an effective deterrent:

- In 1999 less than 1000 'unauthorised arrivals' applied for asylum, the year TPVs were introduced.
- In 2001, when the policy was in full force, the arrivals rose to more than 4000.<sup>6</sup>
- Under this policy, denying the right to refugees on TPVs to apply for family reunion pushed the wives and children of asylum seekers onto boats in an attempt to be reunited.
- In 2001 353 people drowned in the tragic SIEVX disaster while travelling by boat to Australia. Most of the 288 women and children aboard the SIEVX were family members of TPV holders already in Australia.<sup>7</sup>

<sup>1</sup> ASRC, Myths about the Villawood Detention Centre 'riots', <http://www.asrc.org.au/media/documents/myths-about-villawood-detention-centre-riots.pdf>, April 2011.

<sup>2</sup> <http://www.abc.net.au/news/stories/2011/04/26/3200564.htm>, accessed April 2011.

<sup>3</sup> (our emphasis) [http://www.immi.gov.au/refugee/tpv\\_thv/abolition/overview.htm](http://www.immi.gov.au/refugee/tpv_thv/abolition/overview.htm), accessed April 2011.

<sup>4</sup> Dr Don McMaster, 'Temporary Protection Visas: The bastard child of the One Nation Party,' [http://www.adelaide.edu.au/apsa/docs\\_papers/Aust%20Pol/McMaster.pdf](http://www.adelaide.edu.au/apsa/docs_papers/Aust%20Pol/McMaster.pdf), Australasian Political Studies Association Conference, 29 September – 1 October 2004.

<sup>5</sup> Human Rights Watch, *Human Rights Watch Commentary on Australia's Temporary Protection Visa for Refugees*, <http://www.hrw.org/background/refugees/australia051303.htm>, accessed April 2011.

<sup>6</sup> Karin Fathimath Afeef, 'The Politics of Extraterritorial Processing: Off shore Asylum Policies in Europe and the Pacific,' *Refugee Studies Centre*, Working PaperNo. 36, October 2006, p. 12.

<sup>7</sup> <http://sievx.com/articles/disaster/200111xxEITelegraph.html>

## But isn't the new TPV system different?

While Bowen's proposal does not apply to all boat arrivals, it still implies that only some refugees are deserving of permanent protection. By making a positive refugee status determination, our government has agreed that the applicant has in fact fled their home country due to a well founded fear of persecution, and it is unsafe to return them. To then grant some refugees a permanent visa and others a temporary one remains arbitrary and inhumane.

## Aren't TPVs a fair and proportionate response to the violent outbursts in detention?

While violence is unacceptable and should not be condoned the ongoing effects of TPVs on refugees are harsh:

- Refugees who remained in Australia on TPVs in the past have been found to develop long term problems including an inability to plan for the future, barriers to securing ongoing employment, a high degree of social isolation, and an inability to integrate.<sup>8</sup> Forced into prolonged disadvantage, they cause higher ongoing costs to the community.
- If TPVs are reintroduced, refugees will once again face the ongoing fear and uncertainty of being sent back to the danger from which they fled.

## Shouldn't asylum seekers who engage in criminal behavior be punished?

Asylum seekers arrive happy and hopeful about starting a better life for themselves and their families. They come with the impression that Australia, as a democratic nation, will process their applications in a fair and timely manner.

- Mental health professionals confirm the deteriorating effects of prolonged and indefinite detention<sup>9</sup>.
- Asylum seekers who act in frustration and anguish should not be judged in the same light as convicted criminals.
- Despite recent media focus on property damage caused by asylum seekers, the vast majority of violence in detention has been self-directed. There were 182 incidents of self-harm by detainees between July 1 last year and February 4 this year.<sup>10</sup> There have been six deaths in eight months in detention - five by suicide.<sup>11</sup>

## Shouldn't we have the right of denying criminals the right to live here?

Yes, but an appropriate mechanism already exists. Currently, all applicants MUST pass a 'character test' and background security checks before they are granted Protection Visas. The Immigration Minister currently has broad discretion to refuse or cancel visas if an applicant has:

- A substantial criminal record including a sentence of imprisonment of 12 months or more.
- Represents a danger to the Australia community.
- Is associated with criminals or organised crime.
- Has past or present conduct which indicates bad character.

These factors are currently weighed and balanced against the risk to the Australian community and the risk to the asylum seeker should they be returned to the country they have fled.<sup>12</sup>

However, the new changes propose to amend the *Migration Act 1958* and remove ministerial discretion to enforce a blanket approach when it comes to violence in detention.

## Aren't TPVs a workable and sustainable policy response?

Most refugees have fled countries involving protracted situations of danger that last 10 years or more. Despite their intended 'temporary' nature and detrimental ongoing effect, over 90% of refugees initially granted TPVs under the Howard government were eventually granted Permanent Protection because it was still not safe to go home.<sup>13</sup>

If re-introduced, Bowen's TPV program will perpetuate the fiction that it is safe to return genuine refugees to their country of origin.

<sup>8</sup> McMaster, op cit.

<sup>9</sup> For a survey of these studies see Dr Don McMaster's report, above.

<sup>10</sup> Debbie Guest and Paige Taylor, 'No surveillance for Australia's fatal shore,' *The Australian*, <http://www.theaustralian.com.au/news/nation/no-surveillance-for-our-fatal-shore/story-e6frg6nf-1226031000450>, 31 March 2011.

<sup>11</sup> Pamela Curr, 'They survived rape and torture ... will they survive Australian detention?', *ABC Drum*, <http://www.abc.net.au/unleashed/45750.html>, 30 March 2011.

<sup>12</sup> Section 501 of the *Migration Act 1958* (Cwth), Ministerial Direction 41, or see Fact Sheet 79 – The Character Requirement - <http://www.immi.gov.au/media/fact-sheets/79character.htm>, accessed April 2011.

<sup>13</sup> Minister of Immigration and Citizenship, 'Liberals bereft of immigration policy,' <http://www.minister.immi.gov.au/media/media-releases/2009/ce09096.htm>, Press Release: 13 October 2009.