

24 October 2013

By email

Dear Senator,

The Migration Amendment (Temporary Protection Visas) Regulation 2013

RACS is a community legal centre that provides free legal advice and assistance to people seeking refugee status in Australia. It is a specialised refugee legal centre and has been assisting refugees on a not-for-profit basis since 1988.

We write in relation to the *Migration Amendment (Temporary Protection Visas) Regulation 2013* which was tabled on 17 October 2013 and came into effect 18 October 2013.

We urge you to consider a motion to disallow this instrument in whole.

The deleterious effects of Temporary Protection Visas have been extensively well documented. A Senate inquiry in 2006 said they had little deterrent value and incurred huge costs in terms of human suffering.

Temporary Protection Visa holders are not allowed to bring their family members to Australia, and must have their status reassessed every few years. On the law as it currently stands under these recently tabled Regulations, there is no possible permanent visa a person recognised by Australia as a genuine refugee can ever apply for.

During the previous experience of Temporary Protection Visas, Australia saw many more women and children getting on boats to join their husbands or fathers who had already reached Australia because of the bar on family reunion. Many died in the process.

Temporary Protection Visas keep genuine refugees in limbo. By definition, refugees cannot go home. And yet their short-term status precludes them from building a new life here. They live in a constant state of anxiety, fearful of being removed once their visa expires. It is unsettling and disempowering in the extreme.

It is this very limbo like state that prevents those people Australia has recognised as genuine refugees from embarking upon settlement into Australian life and culture, and in making a genuine contribution towards Australian society. In our experience with the previous Temporary Protection Visas, although work rights existed, the reluctance by employers to hire people without permanent visas meant increased reliance upon the public purse through Centrelink benefits.

In other countries, temporary protection mechanisms are only used as a short-term emergency mechanism in mass influx situations that overwhelm the normal asylum system.

We note that there is the issue of the retrospective nature of the application of these regulations which will apply to 30,000 asylum seekers already in Australia. It is a basic element of the rule of law that you shouldn't have the rug pulled out from underneath you. Further, many of our Centre's clients have been waiting in a holding pattern for lengthy periods of time, some over a year, some over three years to have their claims processed. There are a large number of 2010 non-statutory arrivals who have been living in community detention for years, have had a successful judicial review and now find themselves back waiting for decisions by the Department. All protection visa applicants currently in a holding pattern have no certainty about their ultimate fate and these Regulations provide no certainty about the process Temporary Protection Visa holders will go through in the future to be granted a permanent visa.

To treat those subject to the temporary protection visa provisions in this way represents not merely tough policy, but extraordinary cruel policy. There is no logical basis for such cruelty as a deterrence measure for people, when according to Australia's current policy, Australia will not be accepting off-shore applications for protection and will be referring these applications to PNG. Introducing Temporary Protection Visas can have no deterrent effect on the people it affects who are already in Australia.

In fact rather than deterring people from getting on boats, the introduction of Temporary Protection Visas is likely to encourage more families to get on boats, and will likely mean more deaths at sea.

Temporary Protection Visas involve not one assessment of a person's claims for protection by the Department of Immigration, but several. We note that this necessitates huge administrative costs for the Department of Immigration and for the Australian tax payer.

Australia's previous experience with Temporary Protection Visas demonstrated that few people's claims were not found to be also found to continue to represent a real chance of serious harm for a convention reason at the expiration of their temporary visas. The policy of putting clients whose situation will clearly not change in any real way during the next three or five years operates very unfairly, particularly towards stateless clients who have no prospect of return, for example Rohingya and Palestinian clients. In respect of

the specific unfairness of the newly regulated Temporary Protection Visa regime, we refer to a number of case studies attached to this letter.

Once again, on behalf of our clients, we urge you to consider a motion to disallow the *Migration Amendment (Temporary Protection Visas) Regulation 2013*. Such a motion would need to happen within 15 sitting days after tabling.

To discuss this matter further, please contact me on 9114 1600.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

A handwritten signature in blue ink, consisting of a stylized initial 'T' followed by a long, wavy horizontal line.

Tanya Jackson-Vaughan, Executive Director and

A handwritten signature in black ink, appearing to read 'K. Wrigley' in a cursive script.

Katie Wrigley, Principal Solicitor, RACS.

Attachment: Case studies

A Rohingya man from Myanmar came to Australia in 2012. He has been found to be a refugee and is undergoing checks with external agencies. Most of the other Rohingyans on his boat have been granted permanent protection visas, but for administrative reasons, it took longer for his interview to be scheduled by the Department of Immigration. He will now remain stateless under these new laws with no prospect of returning to Myanmar, which does not recognise him as a citizen and no permanency in Australia. His wife and young children are still living in Myanmar and are suffering. Under the new laws, he will never be able to see his family again.

A Palestinian family came to Australia in 2012 from Iraq. They have been recognised as refugees but are undergoing checks with external agencies. Under the new laws, they will remain stateless as they have no Iraqi citizenship and now no certainty in Australia. Other members of their family who were with them on the journey to Australia have already been granted permanent protection visas simply due to the fact that they were processed quicker by the Department of Immigration.

A Sri Lankan family came to Australia in 2011. They were civilians trapped in the civil conflict in Northern Sri Lanka in 2009 and lost their close family members who were young children. Most of the family have been granted permanent protection visas. However, one of the family members, who has been recognised as a refugee, is still undergoing checks by external agencies. Unlike his other family members, he will only be eligible for a Temporary Protection Visa with no certainty about his future in Australia.

A Hazara man from Afghanistan arrived in Australia in early 2012 and was recognised as a refugee by the Refugee Review Tribunal, but has been waiting for checks with external agencies to be finished since early 2013. His family and children are living as refugees in an extremely dangerous area in Northern Pakistan. Now that he will only receive a TPV, he has no certainty as to whether he will be sent back to Afghanistan in 3 years or less or if he will ever see his family again.

We have clients who are young single women from Sri Lanka who arrived in Australia in 2011 alone with no family. They had suffered greatly in Sri Lanka in the civil conflict in 2009 and were subjected to sexual violence by the military. They have been recognised as refugees, but are still awaiting security checks. They will no longer have any certainty as to their future in Australia which will compound the trauma they have already experienced.