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RCOA Response to Announced TPV Changes

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On 24th August the Government outlined the new legal provisions it will introduce for Temporary Protection Visa (TPV) and Temporary Humanitarian Visa (THV) holders. The new provisions relate to three key areas:

- the creation of a **Return Pending Visa** (subclass 695) which will provide 18 months stay in Australia to persons who hold, or held, a TPV/THV and whose application for further protection is finally determined as refused;
- making available a **Reintegration Package** to current and former TPV/THV holders who wish to return to their country of origin;
- lifting the bar that previously precluded TPV/THV holders from applying for non-protection "mainstream" **Migration Visas** and also making some minor alterations to eligibility criteria for some migration visas.

Detailed information about the new measures can be found on the Department of Immigration's website at www.immi.gov.au.

The Refugee Council considers that these provisions, first flagged in mid-July, confirm many of the concerns it articulated at that time. Most significantly, the changes fail to address the core problems of the Temporary Protection Visa regime to which the Council remains fundamentally opposed. The key issue of converting temporary protection to permanent protection in accordance with accepted international principles of refugee protection remains unaddressed.

In addition, these changes do nothing to redress the core problems of the TPV, such as:

- the denial of access to the majority of federally funded settlement services;
- the ongoing anxiety, depression and uncertainty for refugees who are unable to begin the process of healing from past trauma; and
- the ability of recognised refugees to be reunited with family members through the processes accessible by other refugees.

The Refugee Council reiterates its call on the Australian Government to repeal the Temporary Protection and Temporary Humanitarian Visa regime.

This being said, the Council acknowledges that the changes that will come into effect on 27th August contain a number of features that may benefit some refugees. That does not mean that the announced changes are all good, or as good as they could have been. The following table sets out the Council's assessment of the changes:

	POSITIVE ELEMENTS	NEGATIVE ELEMENTS
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RCOA represents some 180 organisations and individuals working with and for refugees in Australia and around the world.

<p>OVERALL PACKAGE</p>	<p>The package provides potential benefits for some refugees which did not previously exist.</p>	<p>The package fails to address the fundamental problems of the TPV regime.</p> <p>The provisions create an artificial and erroneous distinction between genuine refugees who have been able to secure employment and those who have not, thus creating further pain and division within already vulnerable communities.</p> <p>The provisions add another layer of complexity to an already overly cumbersome and administratively expensive system.</p>
<p>RETURN PENDING VISA</p>	<p>Refugees who fail in their attempt to have their protection extended will not be redetained if they do not leave within 28 days of a negative final decision or when appeal options have been exhausted.</p> <p>Failed FPV applicants will have 18 months in order to assess their future (see below).</p> <p>Those on RPVs will retain access to Centrelink, Medicare and work rights (better for some than if they were granted some form of bridging visa).</p>	<p>The RPV simply delays the “crunch point” rather than resolving the problem. Further, it extends the agony caused by years of living in limbo.</p> <p>The RPV does not acknowledge the ongoing situation in Afghanistan, Iraq and Iran. Current information does not indicate a fundamental, durable and stable change in any of these countries that would justify a decision that refugee status had ceased.</p> <p>The existence of the RPV provisions has the potential to act as an inducement to decision makers to refuse borderline cases.</p>
<p>REINTEGRATION PACKAGE</p>	<p>Those who choose to return will have assistance in order to do so.</p>	<p>As with the above, the reintegration package does not acknowledge the ongoing and significant dangers within the countries from which most TPV/THV holders have come.</p> <p>No indication is given that the Government will take any responsibility for ensuring that those considering return will be provided with accurate and up to date information about the conditions in their region of origin so that they can make an informed decision about return.</p> <p>The offer of a repatriation package, especially when options are limited, has the potential to be seen as duress.</p> <p><i>[See RCOA’s Position Paper on the Reintegration Package for Afghan Refugees, April 2003, for an expanded discussion on this issue].</i></p>

<p>ACCESS TO MIGRATION VISAS</p>	<p>The new provisions open up some visa options previously closed to TPV/THV holders.</p> <p>There is merits review of a refusal to grant a migration visa.</p> <p>The definition of “regional Australia” is very broad and includes a number of capital cities and major centres.</p> <p>The criteria for Regional Sponsored Migration Visas have been expanded to make eligibility easier.</p> <p>The fact that a person once held a debt to the Commonwealth will not prevent grant of a migration visa and the debt for detention costs will not be re-imposed.</p> <p>There is provision for the waiver of health requirements.</p>	<p>Despite the long list of visas for which they can apply, there are very few for which TPV/THV holders will meet eligibility requirements.</p> <p>The alterations in the eligibility criteria for the Regional Visas are very limited in scope.</p> <p>No clear provision is made for those who have been successfully employed in major urban centres or who have established small businesses.</p> <p>The Close Ties visa is not included in the long list of visas. This is an important omission as it could have benefited young unaccompanied entrants who have achieved majority since arriving in Australia.</p> <p>Other significant omissions from the list of visas for which it will be possible to apply are Skilled and Carer visas.</p> <p>Further, no specific provisions have been made for unaccompanied minors, arguably the most vulnerable people within the target group.</p> <p>There are significant costs – amounting in some instances to many thousands of dollars - associated with applying for some migration visas. These costs might be prohibitive.</p> <p>In addition to application costs, an Assurance of Support might be sought. This will mean finding someone who is prepared to lodge a sum that could be as much as \$10,000 for the primary applicant and up to \$4,000 for each dependent.</p> <p>People granted a permanent migration visa will be denied Centrelink assistance for 2 years and will not be able to benefit from many specialised settlement services available to refugees.</p> <p>The grant of a migration visa will cease any consideration by the Minister under s417 of whether there are non-Convention protection needs. People who might otherwise be granted humanitarian visas – and all the services associated with these – will be denied this support. These</p>
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		<p>provisions do not remove the need for some form of Complementary Protection provisions to be introduced.</p> <p>Holders of migration visas will not be able to apply for reunion with spouse and dependent children under the split family provisions of the humanitarian program. This will mean that they will have to pay significant application and associated costs (\$1,545 per person) and entrants will not be entitled to receive Centrelink or most of the specialised assistance provided to humanitarian entrants, even though most will come from refugee-like situations.</p> <p>Those who arrived as minors and wish to sponsor their parents will also face potentially prohibitive charges (from \$2,355 to \$27,720).</p> <p>If a TPV/THV holder is granted one of the temporary visas, it will simply extend the period of limbo in which he/she has been living for many years.</p> <p>Some of the temporary visas listed have no access to work rights and Centrelink benefits and no family reunion rights.</p> <p>Those granted student visas might be required to pay overseas student fees and will be required to show that they can support themselves for the duration of the visa.</p>
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As is clear from the above, the changes are complex and there are advantages and disadvantages of each of the elements. DIMIA must take the responsibility for ensuring that detailed information about the changes is communicated to TPV/THV holders in their own language and in a way they can understand.

This is, however, not enough. The changes could result in refugees making decisions that might have serious deleterious consequences. For example but not limited to, someone who applies for and obtains one of the temporary visas before the expiry of the TPV (thus no decision is made on continued protection need) could face forced return to a situation in which he/she faces persecution at the expiry of the temporary visa. This person would not necessarily be able to lodge a new refugee status application as to do so requires the Minister to invoke her non-discretionary powers and to assess whether the circumstances of the case have changed sufficiently to warrant a re-examination. If the conditions that made the person a refugee in the first instance have not changed, it is probable that the Minister's discretionary powers under s48B do not apply. This is but one of the possible defects. The only way that there can be a guarantee that Australia's *non-refoulement* obligations are observed and that due respect is paid to people who have been victims of persecution is to ensure that individual advice is available. DIMIA thus must also take the responsibility for ensuring that current and former TPV/THV holders have access to government-funded, competent advice so that they can make informed decisions.

Returning to the package as a whole, from the Refugee Council's perspective, one of the great ironies and most specific defects of the new provisions is that those that are least likely to benefit from them are the most vulnerable and traumatised, such as those who:

- are without skills;
- are unable to work; or
- have been unable to utilise and develop their skills because they have been denied access to the support services that they need while on their temporary visas.

The provisions fail to address the real and genuine protection needs of people found to be refugees by harmfully redirecting attention away from their real predicament and the rights and entitlements to which they and their immediate families ought to be accorded. This is a direct consequence of flawed policy that continues to shift the focus from protection towards the economic and social domain.