

Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013

FRLI: F2013L02104

Portfolio: Immigration and Border Protection

Tabled: House of Representatives and Senate, 11 February 2014

PJCHR comments: Second Report of the 44th Parliament, tabled 11 February 2014

Response dated: 28 February 2014

Information sought by the committee

3.154 This regulation was introduced to reinstate the outcome that was sought to be achieved by the Migration Amendment (Temporary Protection Visas) Regulation 2013, which had been disallowed: that is, to prevent unauthorised arrivals from accessing the permanent protection visa regime under the *Migration Act 1958*. According to the statement of compatibility, all unauthorised arrivals, even after they had been found to be refugees, would continue to remain on bridging visas.

3.155 The committee noted that the explanations provided in the statement of compatibility were deficient and sought further information to determine whether the regulation was compatible with human rights. In particular, the committee sought clarification on the following issues:

- Whether the bridging visa scheme that was intended to apply to persons who had been found to be owed protection obligations was consistent with a range of rights.
- How these amendments interacted with the changes that were introduced to the bridging visa scheme by various other instruments,¹ specifically:
 - whether unauthorised arrivals who are owed protection obligations but who remain on bridging visas would be required to sign a code of behaviour, and if so if they would be subject to the same consequences for breaching the code, including potentially being sent to an regional processing country.
 - whether their personal information would be shared with the federal and state police authorities.

1 See, Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 (F2013L02102); Code of Behaviour for Public Interest Criterion 4022 - IMMI 13/155 (F2013L02105); Migration Amendment (Subclass 050 and Subclass 051 Visas) Regulation 2013 (F2013L01218); and Migration Amendment (Disclosure of Information) Regulation 2013 (F2013L02101).

- whether their visas may be cancelled on the same grounds that currently apply to other bridging visa holders who are awaiting resolution of their immigration status.
- The type of refugee determination processes that would apply to unauthorised arrivals, in particular whether they would have access to merits review at the Refugee Review Tribunal.

3.156 The Minister's response was provided as part of an overall response to the concerns raised by the committee in relation to a range of migration legislation. The relevant extract from the Minister's response is attached.

Committee's response

3.157 The committee thanks the Minister for his response.² However, the response has not provided the information sought by the committee.

3.158 The Minister's response states:

At the time the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 was introduced it was the intention that IMAs found to engage Australia's protection obligations would remain on [bridging visas]. However a subsequent policy decision has resulted in IMAs who are refused a visa due to the Regulation and are people in respect of whom Australia has protection obligations, are being offered Temporary Humanitarian Concern (THC) visas. For further information regarding THC visas, please refer to the attached fact sheet. Where applicants refuse to accept the offer of a THC visa, their current visa status will remain. For the majority of applicants this will entail remaining on a [bridging visa]. To date, 59 IMAs have been granted THC visas.

Other concerns of the Committee have been noted.

3.159 The committee notes the factsheet on Temporary Humanitarian Concern (THC) visas attached to the Minister's response. The committee considers that the THC visa system is likely to limit a range of rights guaranteed by the UN human rights treaties and that the general information provided in the factsheet do not amount to an adequate justification as required by human rights law.

3.160 The committee further notes that THC visas have only been granted to 59 individuals to date and that those who refuse a THC visa will remain on a bridging visa. The questions raised by the committee regarding the application of the bridging visa scheme to people who have been found to be owed protection obligations therefore remain. The Minister's response also has not provided any

2 Letter from the Hon Scott Morrison MP, Minister for Immigration and Border Protection, to Senator Dean Smith, Chair PJCHR, 28 February 2014, p 36.

clarification with regard to the refugee determination processes that would apply to unauthorised arrivals.

3.161 On the basis of the material placed before it, the committee is unable to conclude that this regulation is compatible with human rights.

3.162 The committee intends to write to the Minister for Immigration and Border Protection to again ask for the information sought by the committee. The committee also seeks clarification whether the THC visa scheme is compatible with human rights.

Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 [F2013L02104]

At the time the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 was introduced it was the intention that IMAs found to engage Australia's protection obligations would remain on BVEs. However a subsequent policy decision has resulted in IMAs who are refused a visa due to the Regulation and are people in respect of whom Australia has protection obligations, are being offered Temporary Humanitarian Concern (THC) visas. For further information regarding THC visas, please refer to the attached fact sheet. Where applicants refuse to accept the offer of a THC visa, their current visa status will remain. For the majority of applicants this will entail remaining on a BVE. To date, 59 IMAs have been granted THC visas.

Other concerns of the Committee have been noted.



Temporary humanitarian concern visa

Information for people who arrive illegally by boat or plane and seek Australia's protection

The Australian Government is committed to only granting temporary visas to people who arrive illegally by boat or plane and need Australia's protection.

Illegal arrivals who have lodged a protection visa application will have their application refused because the law has changed and they cannot be granted a permanent protection visa. Those who are found to engage Australia's protection obligations and satisfy all other requirements will be offered access to a temporary humanitarian concern visa.

What is a temporary humanitarian concern visa?

A temporary humanitarian concern visa can only be granted where the minister decides a non-citizen has humanitarian concerns that should permit them to remain in Australia for a period of time.

How can I apply for a temporary humanitarian concern visa?

You cannot apply for a temporary humanitarian concern visa. You must be invited to accept grant of this visa by the minister.

If the minister decides to grant this visa to you, you will first be invited to accept a temporary humanitarian stay visa which will enable the immigration department to grant you a temporary humanitarian concern visa.

How long is a temporary humanitarian concern visa valid for?

The temporary humanitarian concern visa can be valid for up to three years. Your visa may be for a shorter amount of time as your circumstances are assessed on a case-by-case basis. Check your visa grant letter.

What happens when my visa expires?

Your claims will need to be reassessed before your visa expires to determine whether you still need Australia's protection.

If you are found to still need Australia's protection you will be granted another temporary visa. As you arrived illegally you cannot apply for a permanent visa. If you are found to no longer be in need of Australia's protection, you are expected to return home.

What conditions do I need to follow?

If you are granted a temporary humanitarian concern visa, you **must** follow these conditions. You:

- must not become involved in any disruptive activity, or violence, that may be a threat to the welfare of the Australian community or a group in the Australian community
- must tell the immigration department if you move and change address two days **before** moving.

Can I work on a temporary humanitarian concern visa?

Yes, you will have permission to work.

Can I get any support on a temporary humanitarian concern visa?

You will have access to Australia's healthcare system (Medicare) and social security benefits (Centrelink), job matching and short-term counselling for torture or trauma.

Will I get English lessons?

Adults are able to complete any departmental funded English as a Second Language (ESL) programmes that they were participating in at the time of being granted a temporary humanitarian concern visa.

Can my children attend school?

In Australia, school-aged children – usually between five and 17 years old – must go to school.

Any education fees and payment arrangements should be discussed with the school at the time of enrolling.

Can I study?

Yes. You can study as you do not have any study restrictions on your visa. You will need to check with your course provider regarding enrolment fees.

Can I bring my family from overseas to Australia on a temporary humanitarian concern visa?

No. If you hold a temporary humanitarian concern visa, you cannot bring family members through the Australian Humanitarian or Family Migration Programmes. If your family needs to seek protection they should apply through the United Nations refugee agency (UNHCR).

Can I go overseas?

Yes, but if you leave Australia, your visa will cease and you will not be permitted to re-enter Australia unless you have another valid visa.

Can I still apply for a permanent protection visa?

No. The government has stopped granting permanent protection visas to anyone who arrived illegally by boat or plane.

I arrived after 19 July 2013. Can I be granted this visa instead of being transferred to a offshore processing country?

No. Everyone arriving illegally by boat after 19 July 2013 will be transferred to a offshore processing country.

What are the Australian values I need to understand to live in the community?

Australian society values equal opportunity for everyone, regardless of their gender, race, religion or ethnic background. Australian law does not tolerate people who use words to abuse or threaten others, or who make inappropriate sexual comments. Any unacceptable and uninvited physical contact can be reported to the police.

It is important for you to learn about the laws in Australia, so that you understand your rights and duties and what actions may be against the law. It does not matter if you did not know the law, were intoxicated or made a mistake. You are responsible for your own actions and need to abide by Australian values and laws at all times.

What if I am an unaccompanied minor?

The immigration department has special arrangements in place for all unaccompanied minors who are granted a temporary humanitarian concern visa. Depending on your circumstances, the immigration department may provide you with support with accommodation, assistance to attend school and other assistance with day to day living. Please talk to your case manager about your circumstances.

Can I go home?

Yes. If you chose to return home permanently, you may be eligible for return support assistance through the International Organization for Migration. For more information phone **1300 116 986** or visit

www.iomaustralia.org