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## **Migration Amendment (Temporary Protection Visas) Regulation 2013 [F2013L01811]**

*Portfolio: Immigration and Border Protection*

*Authorising legislation: Migration Act 1958*

*Last day to disallow: The instrument was disallowed in full on 2 December 2013*

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

*Portfolio: Immigration and Border Protection*

*Authorising legislation: Migration Act 1958*

*Last day to disallow: The instrument was disallowed in full on 27 March 2014*

### **Purpose**

2.90 The Migration Amendment (Temporary Protection Visas) Regulation 2013 reintroduced Temporary Protection Visas (TPVs) as the only protection visa available to persons who entered Australia without a valid visa either by boat or by plane. This includes unauthorised arrivals already in Australia who had an existing application for a permanent protection visa in process when the new arrangement commenced on 18 October 2013. Key features of the TPV arrangements include the following:

- a TPV lasts for a maximum of three years unless a shorter period is prescribed by the Minister. A person may re-apply for and be granted another three-year TPV if they continue to meet the criteria for engaging Australia's protection obligations.
- a TPV holder is not eligible to apply for a permanent protection visa, which allows a person to live and work in Australia as a permanent resident, unless the Minister is satisfied that it is in the 'national interest' to grant one.
- a TPV-holder has the right to work and to selected support services. Pending arrangements with state and territory governments, children will have access to public education.
- a TPV automatically lapses if the person travels outside Australia for any reason, including visiting family.
- a TPV holder has no access to family reunion. TPV holders are not allowed to sponsor family members through either the humanitarian program or the family stream of the migration program.

2.91 The Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 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, it is expected that all unauthorised arrivals would continue to remain on bridging visas, even after they had been found to be refugees.<sup>1</sup>

## **Background**

2.92 The committee first reported on the Migration Amendment (Temporary Protection Visas) Regulation 2013 in its *First Report of the 44th Parliament* and the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 in its *Second Report of the 44th Parliament*. Both regulations were subsequently reported on in the committee's *Fourth Report of the 44th Parliament*.

2.93 The Migration Amendment (Temporary Protection Visas) Regulation 2013 came into force on 18 October 2013. The regulation ceased to have effect when it was disallowed in full by the Senate on 2 December 2013. The committee understands that TPVs were issued to 22 individuals prior to the disallowance of the regulation.<sup>2</sup>

2.94 The Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 came into force on 14 December 2013. The regulation ceased to have effect when it was disallowed in full by the Senate on 27 March 2014. The committee notes that refusals of a permanent protection visa that were made while the regulation was in effect remain valid as the regulation was valid at the time of the decision.<sup>3</sup>

## **Committee view on compatibility**

### ***Multiple rights***

#### *Restriction on protection visa holders*

2.95 In its *Second Report of the 44th Parliament* the committee sought further information on a range of issues in regards to the operation of the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013. In its *Fourth Report of the 44th Parliament* the committee noted that the Minister for Immigration and Border Protection had not provided the information sought by the committee. The committee again sought clarification on the following issues:

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- 1 Explanatory statement, Attachment B, p. 2.
  - 2 See Parliamentary Joint Committee on Human Rights, *Fourth Report of the 44th Parliament*, Letter from Letter from the Hon Scott Morrison MP, Minister for Immigration and Border Protection to Senator Dean Smith, 20 January 2014, p. 8.
  - 3 Department of Immigration and Border Protection, *Illegal maritime arrivals*, <http://www.immi.gov.au/About/Pages/ima/info.aspx> [accessed 11 June 2014].

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- 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,<sup>4</sup> 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,
    - 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; and
  - 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.

2.96 The committee also noted that it considered that the Temporary Humanitarian Concern (THC) visa system was likely to limit a range of human rights guaranteed by the United Nations treaties and sought clarification on whether the THC visa scheme was compatible with human rights.

2.97 In its *Fourth Report of the 44th Parliament* the committee noted that the TPV scheme and the scheme introduced by the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 shared many of the same human rights concerns, albeit in the context of different visa types. The committee decided to reserve its final views on the compatibility of TPVs with human rights, until it received further information from the Minister with regard to the human rights compatibility of utilising the bridging visa scheme and/or the THC visa regime for unauthorised arrivals who have been found to engage Australia's protection obligations.

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4 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).

## Minister's response

The Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 was disallowed on 27 March 2014.

Regulations supporting the Temporary Humanitarian Concern Visa (THC) have been in place since July 2000 and are not within the scope of the Committee.<sup>5</sup>

## Committee response

**2.98** The committee thanks the Minister for Immigration and Border Protection for his response and has concluded its examination of these instruments.

**2.99** The committee notes that its mandate derives from the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act). Section 7 of the Act states that the committee may examine 'legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both House of the Parliament on that issue.' The committee considers that, as the regulations which support the THC visa scheme have come before either house of Parliament, they are within the scope of the committee's mandate.

**2.100** Furthermore, the committee's longstanding practice is to write to the proponent of legislation seeking further advice before determining whether legislation is compatible with human rights. If a bill or instrument relates to other legislation, the committee's usual practice is to examine that legislation to support its examination of the initial bill or instrument.

**2.101** On the basis of the information provided by the minister, the committee is unable to determine that the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 [F2013L02104] and Migration Amendment (Temporary Protection Visas) Regulation 2013 [F2013L01811] are compatible with human rights.

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5 See Appendix 2, Letter from the Hon Scott Morrison MP, Minister for Immigration and Border Protection to Senator Dean Smith, 15 April 2014, p. 8.