



# Refugee Council of Australia

6 February 2014

## **USE OF TEMPORARY HUMANITARIAN CONCERN VISAS AS AN ALTERNATIVE TO TEMPORARY PROTECTION VISAS**

The Australian Government has released information about its new alternative to Temporary Protection Visas – the use of an existing visa subclass, the Temporary Humanitarian Concern visa (subclass 786), for people who have arrived in Australia without a prior visa, sought asylum and been found to be in need of Australia's protection. Under the new arrangements, people in this situation who are being given protection will be granted a Humanitarian Stay (Temporary) visa (subclass 449) which will then enable the Government to grant a Temporary Humanitarian Concern (THC) visa.

Temporary Protection Visas (subclass 785) were reintroduced by regulation on 18 October 2013 as part of the Abbott Government's policy of denying permanent protection to refugees who entered Australia without prior permission (in most cases, by boat). On 2 December 2013, the Senate exercised its power to disallow the regulation. The Government responded by capping the number of Permanent Protection Visas available in 2012-13 to 1,650, the number of visas already granted. This meant that no further Protection Visas would be issued until July 2014. Shortly after this announcement, the Minister for Immigration authorised a regulatory change to restrict eligibility for a Permanent Protection Visa (subclass 866) only to those applicants who arrived with a prior visa. The regulation came into effect on 14 December 2013, and the Minister then lifted the cap on Permanent Protection Visas.

### **History of the Safe Haven and Temporary Humanitarian Concern visas**

The Humanitarian Stay (Temporary) visa (subclass 449, also known as a safe haven visa) was developed in 1999 to allow for entry and temporary stay in Australia in humanitarian crisis situations.<sup>1</sup> Individuals had to demonstrate that they were in grave fear for their personal safety because of circumstances that led to their displacement from their place of residence. Safe Haven visas were granted on the understanding that the visa holder would return to their home country when it was considered safe to do so.

People cannot apply for a subclass 449 visa. The Minister for Immigration invites an individual to accept the grant of a Safe Haven visa. The Minister determines the length of stay, and recipients of the visa must satisfy relevant security, character and health requirements.

The THC subclass 786 visa was introduced in July 2000 to allow Safe Haven visa holders in need of continuing medical attention to remain in Australia. THC visas are typically granted to persons who hold a Safe Haven subclass 449 visa in Australia and if the Minister for Immigration believes that there are humanitarian reasons for allowing the person further stay.<sup>2</sup> The Minister for Immigration determines the length of stay. Visa holders are prevented from applying for any other visa, including a Protection Visa, unless the Minister for Immigration agrees to lift the application bar.

In the past, THC visas have been counted against the Refugee and Humanitarian Program. In reintroducing Temporary Protection Visas in October, Minister for Immigration and Border Protection, Scott Morrison, said that temporary visas issued to boat arrivals would not be counted against the 13,750 places available annually in the Refugee and Humanitarian Program.

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<sup>1</sup> In 1999, two visa subclasses were introduced under the Temporary Safe Haven Visa Class UJ. One visa subclass (448 - Kosovar Safe Haven [Temporary]) was created exclusively for the evacuation and temporary stay of 3,911 ethnic Albanians from Kosovo and the other subclass (449 – Humanitarian Stay [Temporary]) was created to grant entry and temporary stay for people from other locations who are displaced for their place of residence with no reasonable prospect of return, or who face a strong likelihood of being displaced, and hold grave fears for their personal safety.

<sup>2</sup> The exceptions included 88 people in Indonesia from 2007-2009. See Table 1 notes for further information.

**Table 1: Temporary Humanitarian Concern and Safe Haven Visa Grants 2000-2013** <sup>3</sup>

Financial year	Temporary Humanitarian Concern (subclass 786)	Safe Haven (subclass 449)
2000-01	164	15
2001-02	6	23
2002-03	3	18
2003-04	2	6
2004-05	17	14
2005-06 <sup>4</sup>	14	54
2006-07	38	0
2007-08 <sup>5</sup>	84	0
2008-09 <sup>6</sup>	5	0
2009-10	0	0
2010-11	0	0
2011-12	0	0
2012-13	0	0

### **The current approach to issuing Temporary Humanitarian Concern visas**

Those now being offered THC visas are being told in writing that their application for a Permanent Protection Visa (866) has been denied because the application does not satisfy migration regulations. They are also being informed that no further review of this decision can be undertaken by the Department of Immigration and Border Protection but they are entitled to a review of this decision by the Refugee Review Tribunal.

In correspondence with the Refugee Council of Australia, the Department has said that people identified as engaging protection obligations will be considered for a short-term Humanitarian Stay (Temporary) visa. If they accept this visa and also meet health, character and security criteria, they will be invited to accept a THC visa. The transition time from one visa to the other will vary but could even occur on the same day. Grants of THC visas will be for up to three years, with the term varied according to an assessment of personal circumstances.

### **Rights and entitlements**

THC visa holders will have access to some government services and benefits:

- **Social security and health:** THC visa holders will be able to apply for Medicare and Centrelink benefits, including a Healthcare Card and Special Benefit.<sup>7</sup> Visa holders will also have access to short-term counselling for torture or trauma.
- **Work:** THC visa holders will have the right to work and access to job-matching services.
- **Assistance with English:** English language training for adults is limited to the programs that people were enrolled in prior to the visa grant.
- **Education:** School age children are required to attend school, however, details about school fees (e.g. whether students would be required to pay domestic or international student fees) are not clear, as the fees and payment arrangements must be discussed with individual schools, subject to varying state and territory policies. Adults have no study restrictions attached to the visa but are required to pay enrolment fees for courses.

### **Restrictions**

THC visa holders are not permitted to apply for family reunion through either the Special Humanitarian Program or the General Migration Program. If they leave Australia at any point, they will not be able to return. The Immigration Department fact sheet on the new arrangements says that THC visa holders:

- “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”.<sup>8</sup>

<sup>3</sup> Figures and information from Department of Immigration Annual Reports available at <http://www.immi.gov.au/about/reports/annual/index.htm>

<sup>4</sup> 14 people held Safe Haven visas for some years and were then granted permanent visas. 12 additional people detained on Nauru were given Safe Haven visas then subsequent 786 visas. 54 people from East Timor were given Safe Haven visas for three months in May 2006.

<sup>5</sup> In 2007–08, 83 people who had been living in International Organization for Migration (IOM) facilities in Indonesia for more than five years were granted Safe Haven visas and then subsequent THC 786 visas valid for three years.

<sup>6</sup> In 2008–09, five people who had been living in International Organization for Migration (IOM) facilities in Indonesia for more than five years were granted Safe Haven visas and then subsequent THC 786 visas valid for three years.

<sup>7</sup> A Ministerial Determination can permit an exemption for the Newly Arrived Residents' Waiting Period so that THC visa holders can access some entitlements. This exemption is consistent with the humanitarian reasons for allowing these groups to remain in Australia.

<sup>8</sup> Under the 2013 arrangements for Temporary Protection Visas, visa holders were required to notify the Department of Immigration of a change of address two weeks after moving.