

Briefing on Changes to Temporary Protection Visas and Detention announced by the Prime Minister on 17th June 2005

*Updated following the Introduction of the
Migration Amendment (Detention Arrangements) Bill 2005 (21 June 2005)
As at 27th June 2005*

Overview of the changes:

- Finalisation of TPV applications for further protection visas by DIMIA by 31 October 2005 on written applications without the need for a further interview except where reasonable prospect of refusal. (This can be seen as another pathway to Permanent Protection Visas for 90% of remaining TPV's)
- The Parliament affirms as a principle that children under 18 shall only be detained as a measure of last resort
- Release of children and their families into the community without security supervision and with reporting arrangements
- Review by Ombudsman of all cases of those in detention more than 2 years (which is all of the current asylum seeker caseload) and subsequent half-yearly reports by DIMIA to Ombudsman if detained for longer than 2 years
- Ombudsman to recommend on need to detain, release into community or grant permanent visa (Ombudsman's recommendations are not binding on Minister but assessments tabled in Parliament within 15 days)
- 3 month time limits on processing asylum claims at both DIMIA primary stage and at Refugee Review Tribunal (RRT) (to be tabled in next sitting of Parliament)

How we understand the changes from information currently available

Processing of TPV refugee applications for further protection

1. TPV refugees making a Further Protection Visa application (approx 4 000) will have these fast-tracked and finalised by 31 October. Applicants will not be re-interviewed unless a refusal of their application is likely based on an assessment of their papers. Based on current outcomes, 90% are expected to be granted Permanent Protection visas.

Security checks which have often further delayed processing will be speeded up.

2. The changes to TPV processing only affect those who have applied for a further protection visa (not all the current caseload of TPV holders which includes refugees released from Christmas Island Detention Centre on a TPV). The changes do not alter the use of TPVs for Convention refugees in any way.

*The recommendations and needs identified in the EMC's **Action Plan for TPV Refugee Support Services for Victoria** will not change – the timeline for action remains very tight. The Plan includes a strong focus on support in the post-TPV stage and the argument that this group's needs have been under-managed or un-managed and these need addressing urgently.*

Release of families with children

3. The significant gain is that the Migration Act has been amended to state that the Parliament affirms as a principle that a child shall only be detained as a matter of last resort.

It's possible that within 4-6 weeks, we may see the release of families with children, whether asylum claimants or not.

The change is exclusively for families with children – there is no acceptance yet that others (couples or individuals) do not need to be detained.

There are about 54 children in detention centres including Residential Housing Projects as at 22 June. *Information is being sought on how many family units.*

4. Community release will be into a specific place rather than detention centre or in alternative detention. This does not include Residential Housing Projects which will be reserved for families required to return to detention.

Families will be placed in communities where they will be free to attend school etc without security supervision.

Families will be required to report to immigration officials at specified times but otherwise would be free to move about in the community without being accompanied or restrained by an officer under the Act.

5. Although we understood that, in order to be released, people need a visa of some sort, generally a “bridging” visa, it appears families will be moved into communities without being provided a visa i.e. “non-visa community detention”, which has been used mainly in Adelaide and Sydney. To this effect, the Prime Minister has said publicly that families will be still be defined as being “legally in detention”.

Refugee advocates have been concerned that any Bridging visa given upon release should have conditions attached that give work rights and income support of some kind, Medicare and professional support services. The Brotherhood's own media release (19/6) goes to this point.

6. Medical and material support would be the responsibility of DIMIA. The Amendment Bill gives assurances of DIMIA's responsibilities to deliver this support. *More information will be sought on the material and medical support to be provided. It is unclear what case management and welfare support will be included and by whom. Whilst DIMIA ought be responsible for material and medical support, professional agencies must be contracted to deliver systems of care for vulnerable people.*

Oversight of implementation

7. It is significant that the changes will be implemented through a high level Inter-Departmental Committee headed by the Secretary of Prime Minister and Cabinet, Dr Peter Shergold. He formerly headed up the Office of Multicultural Affairs (OMA) in PM&C.

The IDC will mean these changes will not be in DIMIA's hands, nor the Immigration Minister's alone. Significantly, Department of Family and Community Services are included in the IDC along with Foreign Affairs, Attorney-General's and ASIO.

The IDC may meet as often as fortnightly and Petro Georgiou and his 3 colleagues will attend the meetings.

Review of detention

8. The Government has introduced a review of cases by the Ombudsman after 2 years in detention, followed by half yearly reviews if detention continues. In fact, all asylum claimants in detention have been there more that 2 years so it covers the existing case load.
9. While there is review and accountability via the Ombudsman reporting to Parliament, increased numbers of decisions remain at the discretion of the Minister, which means no transparent principle/system for decision making. The Ombudsman's recommendations to the Minister are "non-compellable" but the Minister must bring his/her recommendations before the Parliament within 15 days.

Petro Georgiou states: It is worth noting the extent of the Ombudsman's powers. He has the power to obtain information from such people and make inquiries as he thinks fit; he can bring evidence of breach of duty or misconduct to the attention of agency heads; he can obtain information and documents by subpoena or summons; he can grant a certificate that there has been an unreasonable delay in deciding whether to do an act or thing; he can administer an oath or affirmation to a person required to attend before him or her; and he can enter departmental premises and investigate there.

10. Recently, the Government accepted the need to limit detention when it introduced a Removal Pending Bridging Visa (RPBV) for the long-term detained who have no prospect of being returned (generally because of statelessness). It has since removed the unacceptable condition attached to this visa of requiring applicants to give up their right to any further legal options. However, inviting people to apply for this visa is still at the Minister's discretion.

Time limits

11. The processing of protection visa applications will have a three month time limit at the primary stage (DIMIA) and a further three month time limit at the secondary stage (RRT) (or report to Parliament). This will be introduced into the Parliament in the next sitting.

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