On 18 October 2013 the newly elected Coalition Government registered an amendment to the Migration Regulations 1994 providing for the re-introduction of Temporary Protection Visas (TPVs). Unsurprisingly, given their vocal opposition to TPVs, the Australian Greens have moved to disallow the Regulation. This FlagPost provides an historical overview of the TPV, and outlines the arrangements that will be in place should the new TPV system withstand the disallowance motion.

The TPV was first introduced by the Howard Government in October 1999. A TPV was valid for three years, after which time a person’s need for protection was reassessed. Holders of TPVs were allowed to work, and given access to medical and welfare services, but had reduced access to settlement services, no family reunion, and no travel rights. If a TPV holder left Australia their visa could be cancelled.

TPVs were widely criticised by refugee, human rights and social welfare advocates, as well as the ALP and the Australian Greens. Key criticisms concerned the lack of adequate settlement support, the refusal of family reunion rights, which meant family members remained separated for many years, and the fact that TPV holders lived in a state of limbo, in which they were uncertain of their future and unable to begin the process of rebuilding their lives, all of which had significant negative mental health impacts. As a deterrence measure the TPV was also questionable—the two years following the introduction of the TPV saw a large increase in unauthorised boat arrivals, particularly women and children who were unable to access family reunion to join men who had been granted TPVs.

Between 1999 and 2007, 11,206 TPVs were granted, but 95 per cent of TPV holders eventually gained permanent visas. The Rudd Government, in line with Labor’s long-standing opposition to TPVs, formally abolished TPVs in August 2008, and the
approximately 1,000 remaining TPV holders were transitioned onto permanent visas.

Reintroducing TPVs was a core election commitment of the Coalition in 2013, and it moved swiftly to do so following its election victory. The new system will apply to anyone who had already lodged an application for a protection visa prior to 18 October 2013, but whose application had not yet been finally determined, as well as to all applications lodged after 18 October 2013.

Under the new TPV regime, any unauthorised arrival who lodges a protection claim in Australia will only be able to make a valid application for a TPV, not a permanent protection visa. The TPV is not restricted to irregular maritime arrivals only, but also to unauthorised air arrivals—that is, anyone who arrives by air without a valid visa, or anyone who was not immigration cleared on their arrival into Australia.

A TPV will be valid for up to three years, although a shorter period may apply depending on individual circumstances. At the end of the relevant period a TPV holder may apply for another TPV if they prove they are still in need of protection.

People on TPVs will be allowed to work, although conditions may be placed on this. They will have access Medicare and limited income support. The Coalition’s election policy stated that TPV holders would be expected to satisfy a ‘mandatory mutual obligation requirement’ in exchange for income support, but no further detail has been given on this. As was the case previously, TPV holders will not be allowed to sponsor family members through either the humanitarian program or the family stream of the migration program. If a TPV holder leaves Australia for any reason (including visiting family) the TPV will be cancelled and they will not be permitted to re-enter Australia.

There will be no pathway to permanent residency for people on TPVS. TPVs will be subject to Condition 8503, which prevents the visa holder from making a valid application for any visa, other than a protection visa, while in Australia, unless the Minister intervenes to waive this condition. So for example, if a TPV holder found employment and wanted to apply for a skilled visa, or married an Australian citizen and wanted to apply for a spouse visa, the person would have to leave Australia in order to be able to make a valid visa application (and on leaving Australia their TPV would be cancelled). With visa conditions being similar to those imposed under the previous arrangement, TPV holders are likely to face the same hardships as were experienced by TPV holders ten years ago. Indeed, the negative impacts may be amplified if, as intended, TPV holders remain in a permanent state of limbo without any prospect of permanent residency.

It is not clear how many people are likely to be subject to the new TPV regime. As at May 2013 there were approximately 21,000 irregular maritime arrivals in detention or on a bridging visa, and thousands more have arrived since then. Some of these would have had their protection application finalised prior to 18 October, and most of the recent arrivals will be subject to transfer to Nauru and Papua New Guinea. However it is likely that, should the new TPV system withstand the upcoming disallowance motion in the Senate, several thousand people (should they be found to be refugees) will find themselves with temporary, rather than permanent, protection.