The Coalition has consistently argued for the reintroduction of Temporary Protection Visas (or TPVs as they are more commonly known) because it considers them to be an essential component of its border protection arsenal to deter asylum seekers from trying to enter Australia by boat. When in Opposition in early 2013, the Coalition unsuccessfully introduced legislation to try to reintroduce TPVs. When they formed Government six months later, the domestic landscape had changed significantly. Some 33,000 boat arrivals were already living in the community on Bridging Visas and following former Prime Minister Rudd’s announcement in July 2013, all future asylum seekers arriving in Australia by boat would be transferred to a third country for processing with no prospect of resettlement to Australia. Arguably, this abrupt policy shift made the basis for the Coalition’s TPV policy redundant. Nonetheless, the Coalition has remained committed to the policy.

Only a month after forming Government, the Coalition registered the Migration Amendment (Temporary Protection Visas) Regulation 2013. The primary purpose of this instrument was to reintroduce TPVs for asylum seekers who have travelled to Australia by boat or those who have otherwise arrived in Australia without a valid visa. However, on 2 December 2013, Labor and the Australian Greens united to pass a resolution in the Senate disallowing the regulation. In direct response, and on the same day as the disallowance, Minister Morrison, acting under section 85 of the Migration Act 1958, determined that the maximum number of permanent protection visas that could be granted in the financial year 2013—2014 was to be 1,650. This was the number already issued prior to the swearing in of the Abbott Government. Thus effectively, the Minister was declaring that no more permanent protection visas would be granted until the next financial year.

At the same time, Minister Morrison announced that he would also be exercising his powers under section 46A of the Migration Act to prevent people who had arrived by boat making applications for permanent protection visas. This bar would remain in effect until TPVs were reinstated. Section 46A of the Migration Act prohibits asylum seekers who have arrived by boat from applying for a visa unless the Minister thinks that it is in the public interest to permit them to do so.

On 9 December 2013, Senator Hanson–Young of the Australian Greens introduced the Migration Amendment (Visa Maximum Numbers Determinations) Bill 2013. The primary purpose of this Bill was to make instruments made under section 85 of the Migration Act subject to disallowance by Parliament. However, Labor did not support this Bill in the
When it came up for debate at the end of last year on the basis that all instruments made under section 85, including those that enabled the Government to manage the migration intake under the family and skill streams, would also become subject to disallowance.

On 14 December 2013, the Government’s Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 came into effect. The primary purpose of this instrument was to introduce a new visa criterion so that asylum seekers who have arrived in Australia by boat would effectively not be eligible for grant of a permanent protection visa. Two days after the Regulation came into effect, legal action was commenced in the High Court to challenge its validity on the basis that it was the same in substance to the previously disallowed TPV regulation. Section 48 of the Legislative Instruments Act 2003 prohibits the making of a legislative instrument that is the ‘same in substance’ as a previously disallowed instrument within six months of the disallowance. The plaintiffs argue that both instruments are the ‘same in substance’ because both deny permanent protection to boat arrivals. The plaintiffs are also questioning the Regulation’s compatibility with other sections of the Migration Act.

Only a few weeks after it imposed the cap on the number of protection visas that could be granted, the Government revoked the cap, arguing that it was no longer necessary because the Unauthorised Maritime Arrival Regulation had come into effect. However, commentators have linked the revocation to High Court challenges. In January 2014, the Immigration Department reportedly began advising agencies that it would be inviting applications for Temporary (Humanitarian Concern) Visas from asylum seekers who had arrived by boat. Commentators have likened this visa to the TPV as both achieve the same end—denial of permanent residency and the imposition of restrictions, such as family reunification.

On 5 March 2014, Senator Hanson-Young will move a motion that the Unauthorised Maritime Arrival Regulation be disallowed. It is not known whether Labor will again support the Greens but irrespective of parliamentary proceedings, at the end of this week the full bench of the High Court will begin considering the validity of the Unauthorised Maritime Arrival Regulation.