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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS22-001638

Date of Clearance: 08/08/2022

To Minister for Immigration, Citizenship and Multicultural Affairs
Subject Outcomes from roundtable discussion with community advocates on Ministerial Direction 90
Timing At your convenience

Recommendations

That you:

- 1. note the outcomes of the roundtable discussion with community advocates on Ministerial Direction 90 (**Attachment A**) and that the Department of Home Affairs (the Department) will now seek written submissions regarding the key issues raised in this forum; and
- 2. agree to the proposed work plan to consult and prepare the new Ministerial Direction reflecting the family violence related amendments so that it can commence on 8 March 2023 (**Attachment B**).

noted / please discuss

agree / not agree / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date 17 / 3 / 2022

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 19 July 2022, you held a roundtable discussion with community advocates to discuss and better understand their concerns about the unintended consequences of Ministerial Direction 90 - *Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA*, for victims of family violence. The outcomes of this discussion are at **Attachment A**.
2. We understand that you wish to use insights from your meeting with the community advocates to amend the Ministerial Direction to mitigate the unintended consequences of Direction 90 and enhance the protection of victims of family violence. The Department has invited submissions from community advocates and is engaging further to obtain case studies to better understand these impacts and others on the protection of women and children. This evidence-based approach will inform the review of the Ministerial Direction, particularly noting other ongoing work in the context of the *National Plan to Reduce Violence against Women and their Children*. The Department will also engage with the Department's Legal Group and character decision-makers to workshop possible amendments and test feasibility,

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3.

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4. The Department will communicate to the Attorney-General's Department on concerns raised by community advocates around Australian jurisdictional definitions on domestic/family violence, for instance, inconsistency in the definition of family violence in State and Commonwealth legislation. The Department will also consider community advocates recommendations around enhancing the visa settings and further support visa holders experiencing family violence.

Consultation – internal/external

5. Status Resolution and Visa Cancellations Division, Immigration Programs Division, Legal Group.

Consultation – Secretary

6. The Secretary was not consulted on the approach in the submission.

Client service implications

7. Adopting an evidence-based approach to amending the Ministerial Direction will provide better outcomes for victims of family violence.
8. Each time a new Ministerial Direction is issued, affected cases under consideration at the time would need to be re-notified of the new Ministerial Direction and given an additional opportunity to comment, having regard to the new Ministerial Direction. In the case of a new Ministerial Direction to address unintended consequences for victims of family violence, the affected caseload is likely to be limited.
 - There will be a reduction in the number of cancellation, refusal or revocation decisions finalised for the affected cohort in the first few months of the commencement of a new Ministerial Direction. Any urgent decisions for cases in the affected cohort that have to be made within the 28 days after a new Ministerial Direction comes into effect would need to be referred to you under your personal power to refuse or cancel without natural justice (section 501(3)).
 - Generally, under the *Migration Act 1958* (the Act), the Administrative Appeals Tribunal (AAT) must make a decision on the review of character decisions by the 84th day after the day on which the review applicant was notified of the character decision. If a decision is not made, the Act deems the Tribunal to have made a decision to affirm the decision under review. When the new Ministerial Direction is issued, the AAT will also need time to consider the impact of a new Ministerial Direction on its caseloads and administrative processes.
 - If the AAT is required to re-notify all review applicants of the commencement of a new Ministerial Direction, this impacts on their ability to meet legally mandated timeframes to make character-related decisions.
 - This may open the Department to litigation risk as those decisions may be challenged in court. To mitigate this risk, the Department will notify the AAT when the new Ministerial Direction is signed.
9. To implement a new Ministerial Direction, the current on-hand caseload will need to be reviewed to identify affected cases. This will extend time spent in immigration detention for affected non-citizens currently detained and awaiting decision on their cases.

OFFICIAL: Sensitive Legislative secrecy**Risks and Sensitivities**

10. A primary concern raised by community advocates regarding Ministerial Direction 90 is the absence of consultation during its development. Community advocates acknowledge that the introduction of a primary consideration regarding family violence was well intentioned, but claim there is no evidence that the current Ministerial Direction is an effective tool to combat family violence. Therefore, the Department will continue to engage with community advocates to mitigate future criticism and ensure that the amended Ministerial Direction achieves its objective in relation to family violence.

Financial/systems/legislation/deregulation/media implications

11. Amendments to character settings generally attract scrutiny from the international community, advocacy groups and human rights bodies. An article regarding your roundtable meeting appeared in The Australian newspaper on 20 July 2022. When the family violence related concerns are addressed in the future Ministerial Direction, the Department will work with your office to provide you media talking points and prepare a media release.

Attachments

Attachment A Roundtable outcomes

Attachment B Proposed work plan

Authorising Officer
<p>Cleared by:</p> <p>Tara Cavanagh First Assistant Secretary Immigration Integrity, Assurance and Policy Division</p> <p>Date: 08 August 2022 Mob: s. 22(1)(a)(ii)</p>

Contact Officer s. 22(1)(a)(ii) A/g Assistant Secretary, Compliance and Community Protection Policy Branch,
Ph: s. 22(1)(a)(ii)

Through Deputy Secretary, Immigration and Settlement Services Group

CC Minister for Home Affairs, Minister for Cyber Security
Secretary
ABF Commissioner
Deputy Secretary, Immigration and Settlement Services Group
General Counsel / Group Manager Legal
FAS, Immigration Programs
FAS, Status Resolution and Cancellation



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Virtual roundtable with community advocates on Ministerial Direction 90

19 July 2022, 10-11 am

Attendees:

The Hon Andrew Giles MO, Minister for Immigration, Citizenship and Multicultural Affairs (chair)

Tara Cavanagh, FAS, Immigration Integrity, Assurance and Policy Division (facilitator)

s. 22(1)(a)(ii), Adviser

s. 22(1)(a)(ii), A/g AS, Compliance and Community Protection Branch (note-taker)

s. 22(1)(a)(ii), Director, Character and Cancellation Branch

s.22(1)(a)(ii) A/g Director, Domestic & Family Violence Support, Family Visas Branch

s. 47F(1), Harmony Alliance

s. 47F(1), Monash University

s. 47F(1) Australia's National Research Organisation for Women's Safety (ANROWS)

s. 47F(1) Women's Legal Centre ACT

s. 47F(1), Legal Aid New South Wales

s. 47F(1) Immigration Advice and Rights Centre (IARC)

s. 47F(1), Settlement Services International (SSI)

s. 47F(1), Top End Women's Legal Service Inc. (Darwin)

s. 47F(1), Refugee and Immigration Legal Services

s. 47F(1), Women's Legal Service QLD

s. 47F(1) North Queensland Women's Legal Service (Cairns)

s.47F(1), Immigrant Women's Support Services (IWSS)

s.47F(1), Women's Legal Service South Australia

s.47F(1) Women's Safety Services

s.47F(1), Women's Safety Services

s.47F(1), Women's Safety Services

s.47F(1) Tasmanian Refugee Legal Service

s.47F(1), Tasmania Legal Aid

s.47F(1), Refugee and Immigration Legal Centre (RILC)

s.47F(1), Refugee and Immigration Legal Centre (RILC)

s.47F(1), InTouch Multicultural Centre Against Family Violence

s.47F(1), InTouch Multicultural Centre Against Family Violence

s.47F(1), Women's Legal Service Victoria

s.47F(1), Circle Green

s.47F(1), Women's Health and Family Services

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Summary of the Meeting

1. Following a traditional acknowledgment of country, the Minister welcomed the attendees and expressed his desire to understand and address the unintended consequences of Ministerial Direction 90 - *Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA*, for victims of family violence. He articulated his intent to address these concerns in consultation with the community. The Minister also welcomed wider recommendations on how the Ministerial Direction and visa policy settings could be enhanced to support victims of family violence. The Minister then called upon FAS Cavanagh to facilitate the meeting.
2. Ms Cavanagh summarised the purpose of ministerial directions in guiding decision-making without directing a particular outcome. She explained that the current direction introduced a new primary consideration relating to family violence and that decision-makers must weigh this consideration against other circumstances, including other primary considerations.
3. Concerns raised by community advocates are summarised below:

Ministerial Direction

- **Lack of consultation and evidence-based approach** - While well-intentioned, there is no evidence that the Ministerial Direction is an effective tool to combat family violence. No consultation occurred with community advocates before Ministerial Direction was formulated.
- **Insufficient guidance** - The Ministerial Direction includes complex considerations (eg forced marriage) and insufficient or no guidance on how to assess this consideration.
- **Inconsistency and overlaps with other legislation** – The definition of family violence is inconsistent across migration policy settings – this is part of the broader issue of inconsistency in the definition of family violence in state and federal legislation. Similarly, there are several overlaps between the forced marriage as part of a consideration in the Ministerial Direction and its inclusion in other legislation, for instance, the Commonwealth Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 and relevant State legislation.
- **Insufficient consideration of impact on victim and the consequent reluctance to report** - The Ministerial Direction does not place sufficient emphasis on considering the impact on the victim and the family and the views of the victim around the cancellation of the visa of the perpetrator. It also undermines the risk to the safety of the victim.
 - In a case, the Court found that there was limited ability for the Tribunals to consider impact on victims as it was a lesser consideration.
 - This has resulted in reluctance on part of the victim to report family violence out of fear of consequential cancellation, personal safety or separation of families if the perpetrator's visa is cancelled.
 - The Ministerial Direction is a public document and regardless of deterrence messaging aimed at discouraging perpetrators, it reinforces fear that the victims already experience around reporting family violence – this is a perverse outcome.
 - There are inadequate avenues for the victim to be granted a visa of their own right or to financially support themselves. This is particularly the case with temporary visa holders (for instance, women and children who are secondary visa holders in the TPV and SHEV cohort who may not have protection claims of their own or be able to articulate them) and women from culturally diverse backgrounds.
- **Misidentification of victim as perpetrator** - The Ministerial Direction has resulted in victims being misidentified as perpetrators and having their visas cancelled. Law enforcement agencies respond to the incident and even trained officials sometimes disregard the impact on the family or denial by the supposed perpetrator who lack agency (due to limited ability to communicate in English).

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- In one instance, a woman victim was identified as a perpetrator, had her visa cancelled and was detained. Community advocates had to intervene to have Family Services remove the children from the actual perpetrator and place them in State care. The mother could not claim custody of children as it was argued that as she was in detention, she did not have a strong relationship with her children.
- **Misuse of the legal system** – Perpetrators are increasingly using Apprehended Violence Order, Domestic Violence Order and Intervention Order against victims, noting that under the Ministerial Direction, these could be used as basis for visa cancellation.
- **Perpetrators increasingly challenging protection orders** - The risk of visa cancellation has resulted in perpetrators increasingly challenging protection orders and this has in turn, increased the risk to women and children victims
- **Cancellation of visas of long-term resident non-citizens and permanent separation of families** - Considerations in visa cancellation on character grounds have become complex over time and their impact has been far-reaching for non-citizens long-term resident in Australia, with removals resulting in permanent separation of families.

Visa settings

- **Amending protection visa settings** - Visa settings and support should be enhanced to protect victims of family violence, for instance, amending protection visa settings so that each family members is granted a visa on their own right (rather than depend on the claims of the primary visa applicant).
 - **A new visa for victims of family violence** should be considered to enable women to move away from the perpetrator and raise the children independently in a safe setting. There would be opportunities to consult on this recommendation and other considerations in the context of the National Action plan to Combat Family Violence.
 - **Inadequacy of Family Violence provisions** - The burden of proof on victims to provide evidence that they are a victim of family violence (so that they can be considered under the family violence provisions in the Migration Regulations and be granted a visa), has led to unintended consequences.
 - Perpetrators sometimes seek protection orders against the victim and the victim then finds themselves in a situation where they have to defend themselves against the family violence allegation and meet the threshold required of a victim in order to qualify for a visa under the family violence provisions.
 - **Need for consistency in definitions of family violence for migration purposes and evidence sought by the Department as proof that family violence occurred.**
4. The Minister acknowledged the concerns and asked participants for views on whether the family violence consideration in the Ministerial Direction should continue as a primary consideration – the view was that family violence should not remain as a primary consideration in its current form.

Next steps

- Community advocates to send to the mailbox over the next two to four weeks, concerns previously articulated around the Ministerial Direction.

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- Community advocates to provide Minister specific ideas to enhance visa settings to protect victims of family violence.

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Clearance Officer	Contact Officer
Tara Cavanagh First Assistant Secretary Immigration Integrity, Assurance and Policy 20/07/2022 Ph: s.22(1)(a)(ii)	s.22(1)(a)(ii) Compliance and Community Protection Policy Ph: s. 22(1)(a)(ii)



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Clearance Officer	Contact Officer
<p>Tara Cavanagh First Assistant Secretary Immigration Integrity, Assurance and Policy</p> <p>05/08/2022 Ph: s.22(1)(a)(ii)</p>	<p>s.22(1)(a)(ii) Compliance and Community Protection Policy</p> <p>Ph: s.22(1)(a)(ii)</p>

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