



## COVERSHEET

|                               |  |                             |                  |
|-------------------------------|--|-----------------------------|------------------|
| <b>Minister</b>               | Hon Andrew Little  | <b>Portfolio</b>            | Immigration      |
| <b>Title of Cabinet paper</b> | Expanding access to the Victims of Family Violence Work Visa | <b>Date to be published</b> | 14 November 2023 |

### List of documents that have been proactively released

| <b>Date</b>     | <b>Title</b>   | <b>Author</b>                                    |
|-----------------|--|--|
| December 2022   | Expanding access to the Victims of Family Violence Work Visa                           | Office of the Minister of Immigration            |
| 7 December 2022 | Expanding access to the Victims of Family Violence Work Visa<br>SWC-22-MIN-0238 Minute | Cabinet Office                                   |
| 3 November 2022 | Partners of temporary migrants' eligibility for support after family violence          | Ministry for Business, Innovation and Employment |

### Information redacted

**YES / NO** (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld to maintain the privacy of natural persons, the confidentiality of advice to government and New Zealand's international relations.

Office of the Minister of Immigration  
Cabinet Economic Development Committee

## **Expanding access to the Victims of Family Violence Work Visa**

### **Proposal**

- 1 This paper seeks agreement to expand access to the existing Victims of Family Violence Work Visa to partners of temporary migrants, ahead of further work on support for migrant victims of family violence.

### **Relation to government priorities**

- 2 This work supports Te Aorerekura, the Government's National Strategy to Eliminate Family Violence and Sexual Violence, by providing a pathway for partners of temporary migrants to leave situations of family violence. It also supports New Zealand's obligations under the United Nations Declaration on the Elimination of Violence against Women.

### **Executive Summary**

- 3 Victims of Family Violence (VFV) work and residence visas are available to migrant partners of New Zealand citizens or residents who are in family violence situations. Some issues with the visa requirements and accessibility have been raised with these visas over the years, which have only had minor changes since they were introduced in 2001.
- 4 Immigration settings do not cause family violence. However, it is important that they do not present unnecessary barriers to people leaving dangerous situations.
- 5 I had planned to review the family violence visas and wider immigration settings for migrant victims of family violence as part of the Family and Partnership review scheduled for 2023. However, I am now seeking agreement to expand access to the VFV Work Visa to partners of temporary migrants from February 2023 ahead of the broader review. This is to address concerns raised that the forthcoming change to partner work rights under the Immigration Rebalance would reduce the partners of work visa holders' financial independence and could increase instances of coercive control by the primary visa holder.
- 6 I still plan to proceed with a review of immigration settings for migrant victims of family violence and I am seeking agreement to explore other system supports for this group concurrently. These two workstreams could consider:
  - 6.1 immigration settings – including eligibility, visa conditions, evidence and accessibility issues with the VFV Visas, residence pathways, and impacts for perpetrators

- 6.2 wider support settings for migrant victims of family violence – including whether access to financial support should be provided for this group and to what degree, prevention and response activities for migrant/ethnic communities, and the treatment of migrant children and young people who are impacted by family violence.

## Background

- 7 The VFV Visa scheme consists of a work visa and a residence visa and are currently only available to the migrant partners of New Zealand citizens and residents.
- 8 The VFV Work Visa provides holders with either six or nine months of open work rights, provided they:
- 8.1 were in a relationship with a New Zealander which has ended due to family violence
  - 8.2 had planned to apply for residence based on that relationship and
  - 8.3 they need to work to support themselves.
- 9 The VFV Resident Visa is available to people who meet the requirements at 8.1 and 8.2 above and:
- 9.1 are unable to return to their home country because of either an inability to support themselves financially or potential abuse or social exclusion owing to stigma and
  - 9.2 meet the health and character requirements for residence.
- 10 In 2021, there were approximately 117 VFV Work Visa applications and 111 were approved. In the same year, there were 75 applications for the VFV Resident Visa and 60 were approved. Approximately 97 per cent of people applying for the VFV Work Visa are women, and the applicants are most commonly nationals of Fiji, India, Philippines, China, Tonga, Samoa and the United Kingdom.
- 11 These visas were introduced in 2001 in response to cases of New Zealanders who would enter multiple abusive relationships with vulnerable migrants and threaten the migrant's immigration status to coercively control them. These visas broke this cycle of behaviour by preventing the New Zealand partner from sponsoring future migrant partners for resident visas if a previous migrant partner had received a VFV Resident Visa.
- 12 There have been limited changes since the visas were introduced, and issues have been raised<sup>1</sup> with the visas relating to accessibility, evidentiary requirements, the visa conditions, and impacts for perpetrators of family

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<sup>1</sup> 'Recent Migrant Victims of Family Violence Project 2019: Final Report', delivered by the Ministry of Business, Innovation and Employment - available at <https://www.mbie.govt.nz/dmsdocument/12138-recent-migrant-victims-of-family-violence-project-2019-final-report>

violence. I planned to consider these issues as part of the Family and Partnership review scheduled for 2023.

- 13 I am now proposing a change ahead of this broader review. In May 2022, as part of the Immigration Rebalance the Government announced changes to work rights for partners of temporary workers. These will require partners of most temporary workers to qualify for work visas rather than be granted open work rights by virtue of partnership.
- 14 This change aims to lift migrant skill level across the labour market. During Ministerial consultation concerns were raised that this change would reduce partners' financial independence and could increase instances of coercive control. I commissioned officials to provide advice on access to family violence visas, that could be delivered shortly after the partner work visa changes take effect in December 2022.

**I am seeking agreement to expand access to the Victims of Family Violence Work Visa to partners of temporary migrants**

- 15 I propose enabling partners of temporary migrants to access the VFV Work Visa. This means temporary migrants in New Zealand would be able to leave a violent situation without fear for their immigration status, as their visa would no longer be linked to that of their abuser.
- 16 Qualifying partners of temporary migrants would be able to get a six-month visa that provides them with open work rights, allowing them to lawfully remain and work in New Zealand. A list of partner visas that would be eligible for access to the VFV Work Visa is attached as Appendix One.
- 17 I consider that we have a minimum responsibility to remove barriers to leaving a dangerous family violence situation for all people in New Zealand in the short term. Immigration settings are not the cause of family violence. However, it is important to resolve cases where migration settings can be used as tools of coercive control.
- 18 This is a shift from previous practice, when New Zealand had a more focused view of who we owed an obligation to in family violence situations involving temporary migrants. Until now, support has been limited to those who were in a partnership with a New Zealand citizen or resident, based on the stark power imbalance identified between a citizen or resident and temporary migrant in known cases of abuse. Our understanding of how family violence manifests has developed since then, and the same power imbalance is understood to exist in relationships between temporary migrants, where one person's immigration status is dependent on the other person.
- 19 There may be other factors preventing temporary migrants from leaving family violence situations that this proposed change does not address – for example, access to residence to stay in New Zealand permanently. This change will not provide access to the VFV Resident Visa as further work is needed to review who and in what circumstances New Zealand would offer this pathway. I plan to consider these broader issues as part of the next phase of this work.

- 20 This change does not include people who experience family violence that are on an independent visa status (for example, a student visa holder) as there is less risk that their immigration status could be used as a tool for coercive control.
- 21 Some partners of temporary migrants may be unable to support themselves on the VFV Work Visa – despite granting open work rights, some migrants may be unable to work (for example, owing to childcare commitments). There is no social support available to partners of temporary migrants. A discretionary Special Needs Grant is available to the migrant partners of New Zealanders who receive the VFV Work Visa who meet certain criteria, but to expand access to the Grant requires explicit changes under the Social Development portfolio. If the decision is made to expand access to the Grant to partners of temporary migrants who receive a VFV Work Visa, this will increase costs to the Crown.

**I plan to progress further work on immigration settings for migrant victims of family violence and I seek agreement to explore other system support available for these victims**

- 22 I recognise that this change to access to the VFV Work Visa alone will not resolve all challenges migrants who experience family violence face. But immigration settings alone cannot resolve the many and varied issues relating to family violence – that is a role for planned action under Te Aorerekura. Issues and concerns with the visas were recently raised in the Education and Workforce Committee inquiry into migrant exploitation, and the Protecting Migrant Victims of Family Violence Member’s Bill, sponsored by Jan Logie MP.
- 23 I propose prioritising a review of immigration settings for migrant victims of family violence in 2023, to be led by the Ministry of Business, Innovation and Employment (MBIE) and reporting to me. Issues this review will consider include:
- 23.1 what obligation New Zealand owes to temporary migrants in family violence situations over the medium or longer-term
  - 23.2 whether the access and eligibility criteria, evidence requirements, and visa conditions for VFV visas remain fit for purpose (for example, the requirement that a person cannot return to their home country to obtain the VFV Resident Visa, whether any other groups should also be granted access to the visa(s), the avenues for providing evidence to prove family violence has occurred, and the six-month work visa duration)
  - 23.3 whether pathways to residence should be offered for migrant victims of family violence and if so, what criteria are appropriate to balance any immigration system risks.
  - 23.4 whether there should be immigration-related repercussions for alleged abusers (there are currently no repercussions on issue of a VFV Work

Visa, but New Zealand residents or citizens lose the ability to sponsor future partners if a former partner is granted a VFV Residence Visa. They may not be aware of the loss of this privilege when they enter into a relationship with the future partner).

- 23.5 how to balance any repercussions with an individual's right to natural justice. This is an existing issue, and the Ombudsman has raised concerns that under the existing settings alleged abusers lose the ability to sponsor future partners without the ability to challenge the claims made against them.
- 24 I am also seeking agreement to prioritise cross-portfolio work on support for migrant victims of family violence, which could consider:
- 24.1 whether access to Crown-funded support (for example, emergency benefits and grants, legal aid or subsidised childcare) should be provided for this group, and, if so, to what degree<sup>2</sup>
- 24.2 prevention and response activities for migrant and ethnic communities
- 24.3 the treatment of migrant children and young people who experience family violence.
- 25 Te Puna Aonui, the Joint Venture for the Prevention of Family Violence and Sexual Violence, already coordinates cross agency work and priorities in this space. I expect that MBIE will work in close partnership with Te Puna Aonui to progress this work.
- 26 Both workstreams still need to be thoroughly scoped. I also ask Cabinet to direct officials from relevant agencies to fully scope the cross-portfolio work and report back to relevant Ministers in early 2023. I propose the following Ministers (in addition to myself) are reported to on the scope of this work: the Ministers for Social Development and Employment, Justice, Women, Children, Pacific Peoples, and Diversity, Inclusion and Ethnic Communities, as well as for Eliminating Family and Sexual Violence. I expect to work particularly closely with the Minister for Eliminating Family and Sexual Violence as this work progresses.
- 27 My expectation is that policy work would then proceed at pace, with Cabinet decisions on proposed changes for both workstreams to be sought from mid-2023.

## Implementation

- 28 Changes to immigration systems to make partners of temporary migrants eligible for the VFV Work Visa can be made in February 2023.
- 29 I note that partners of foreign military personnel and diplomats are also able to access the VFV Work Visa as a result of this change. There will be some

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<sup>2</sup> The Ministry of Social Development note that a decision to provide financial support for temporary migrants would be a significant departure from the current approach and will require reprioritisation of their current work programme to enable.

complexities to navigate should there be applicants from these groups - MBIE officials will work closely with the Ministry of Foreign Affairs and Trade and the Ministry of Defence on how these changes will be implemented for these groups.

- 30 Immigration policy officials from MBIE will lead the development of the immigration settings workstream and the scoping report for the wider support work. Lead agencies for other work areas will be identified in the scoping report to be delivered to Ministers in early 2023.

### Financial Implications

- 31 Expanding access to the VFV Work Visa will incur added processing costs for Immigration New Zealand which would not be recovered from fees, as the fees for the VFV Visas are waived. I do not propose changing this, as the people accessing the visa are often in a vulnerable position, where meeting fees may be difficult and create a new or further barrier to access.
- 32 Officials estimate that expanding access to the VFV Work Visa would mean processing approximately 249 more visas per year (based on comparable uptake to partners of New Zealanders, at 2019 numbers of total migrant partner visas granted). This will incur costs of \$0.124m per annum for Immigration New Zealand. I am seeking agreement to meet this funding shortfall from the Between Budget Contingency. This is the approach taken to meeting costs for other fee-waived visas, such as the Migrant Exploitation Protection Visa and Afghanistan Resettlement Visa, which are met through Crown funding.

### Legislative Implications

- 33 There are no direct legislative implications of these proposals. Some changes will be required to tertiary legislation (immigration Instructions), which I will authorise under section 22 of the Immigration Act 2009.

### Impact Analysis

#### Regulatory Impact Statement

- 34 This paper does not require a Regulatory Impact Statement as it has no direct legislative implications.

#### Population Implications

- 35 Expanding access to the VFV Work Visa to partners of temporary migrants will have positive outcomes for several groups, and no groups have been identified who will be disadvantaged:

| Population group                   | How the proposal may affect this group  |
|------------------------------------|---|
| Women (specifically migrant women) | Users of the VFV visas currently are overwhelmingly women (97%), and recent research <sup>3</sup> found that most gender-based violence are rooted in unequal power dynamics. This change is intended to shift the power balance and enable more migrant women in family violence situations to |

|  |   |
|--|---|
|  | gain independent visa status and possibly leave the relationship, if they choose.   |
| Children   | Partners who access the VFV Work Visa will be able to attach any dependent children’s visas to the new visa, rather than the child/ren’s visa being attached to the visa of the perpetrator of violence (assuming a temporary migrant family). This could mean more children leave situations of family violence with the VFV Work Visa holder. |
| Migrant communities (including ethnic communities) | Enabling the migrant partners of temporary migrants to leave family violence situations will support greater health and wellbeing among migrant and ethnic communities.   |

## Human Rights

- 36 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 37 The following agencies were consulted in developing these proposals: Ministry of Defence, Ministry for Ethnic Communities, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Social Development, Ministry for Women, Oranga Tamariki, Treasury, and Te Puna Aonui.
- 38 The proposal to expand access to the VFV Work Visa was also discussed with representatives of the following civil society groups: Community Law Centres o Aotearoa, New Zealand Law Society, Auckland District Law Society, the Immigration Reference Group, and the Ethnic Providers Network coordinated by Te Puna Aonui, which includes Shakti Community Council, Shama, and the Fatimah Foundation.
- 39 All Government agencies consulted supported expanding access to the VFV Work Visa, and all stakeholders acknowledged there were known issues that were going unaddressed by this change. While it was understood that the timeline for this work meant only targeted proposals would be progressed in the short term, some external stakeholders considered the steps being taken “disappointing”. There is a risk that they publicly state the changes are insufficient.
- 40 The Minister for the Prevention of Family Violence and Sexual Violence was consulted on this paper and takes the view that for consistency with our understanding of violence as outlined in Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence – partners of temporary migrants would be best protected by being granted open work rights by virtue of partnership. The Minister for the Prevention of Family Violence and Sexual Violence also takes the view that the extension of the VFV visa to people who hold a partner-based visa based on their relation to another temporary migrant is an insufficient response to the changes made through the Immigration Rebalance.

<sup>3</sup> Tan, S.E., Kuscminder, K. *Migrant experiences of sexual and gender-based violence: a critical interpretative synthesis*. Global Health 18, 68 (2022)



## Communications

- 41 I intend to announce these changes once decisions are taken. I also intend to announce the continuation of this work with a full review of the VFV settings, subject to Cabinet's agreement, with a clear timeline and plans to engage civil society groups.

## Proactive Release

- 42 This paper will be proactively released subject to redactions as appropriate under the Official Information Act 1982 after announcements are made.

## Recommendations

The Minister of Immigration recommends that the Committee:

- 1 note that the Victims of Family Violence Visas are currently only available to partners of New Zealand citizens and residents
- 2 agree to extend access to the Victims of Family Violence Work Visa to people who hold a partner-based visa based on their relationship to another temporary migrant (as identified in Appendix One)
- 3 note that qualifying partners of temporary migrants who are in family violence situations would receive a six-month open work visa, but will not give access to social support or to the Victims of Family Violence Resident Visa (as it does for partners of New Zealanders) without further work being progressed as outlined in recommendation 5
- 4 agree to delegate authority to the Minister of Immigration to finalise Victims of Family Violence Work Visa implementation details, as well as to make decisions on minor technical matters, in alignment with our decisions
- 5 agree to progress further work considering changes to:
  - 5.1 immigration settings, including eligibility, evidence and accessibility issues with the Victims of Family Violence Visas, residence pathways, and impacts for perpetrators, and
  - 5.2 wider support settings for migrant victims of family violence, including whether access to financial support should be provided for this group and to what degree, prevention and response activities for migrant/ethnic communities, and the treatment of migrant children and young people who are impacted by family violence
- 6 agree to delegate further decisions about scope of the future work programme for wider support settings outlined in recommendation 5.2 to the Ministers of Immigration, along with the Ministers for Social Development and Employment, Children, Justice, Women, Pacific Peoples, Diversity, Inclusion and Ethnic Communities, and Eliminating Family and Sexual Violence

**IN CONFIDENCE**

- 7 direct agencies, led by the Ministry of Business, Innovation and Employment, to develop options and advice on the scope of work on wider support settings for migrant victims of family violence, to be provided to the Ministers identified in recommendation 5 in early 2023
- 8 note that the change outlined in recommendation 2 is estimated to incur additional costs of \$0.124m per annum for Immigration New Zealand
- 9 approve the following changes to appropriations to give effect to the policy decisions in recommendation 8 above, with a corresponding impact on the operating balance and net debt:

|   | \$m – increase/(decrease) |         |         |         |                             |
|---|---------------------------|---------|---------|---------|-----------------------------|
|   | 2022/23                   | 2023/24 | 2024/25 | 2025/26 | 2026/27<br>and out<br>years |
| <b>Vote Labour Market</b>                               |                           |         |         |         |                             |
| <b>Minister of Immigration</b>                          |                           |         |         |         |                             |
| <b>Multi-Category Expenses and Capital Expenditure:</b> |                           |         |         |         |                             |
| Immigration Services MCA                                |                           |         |         |         |                             |
| <b>Departmental Output Expenses:</b>                    |                           |         |         |         |                             |
| Assessment and Processing<br>(funded by revenue Crown)  | 0.124                     | 0.124   | 0.124   | 0.124   | 0.124                       |

- 10 agree that the proposed change to appropriations for 2022/23 above be included in the 2022/23 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply
- 11 agree that the expenses incurred under recommendation 8 above be charged against the between-Budget contingency established as part of Budget 2022

Authorised for lodgement

Hon Michael Wood

Minister of Immigration

## Appendix One: visa types that will become eligible for the VFV Work Visa

### Existing visa types to be included:

#### Work

- WF3 Special work visas for partners of work visa holders
- WF4 Special work visas for partners of student visas
- WI8 Special work visas for partners of holders of military visas
- H2 Diplomatic, Consular, and Official staff, and accompanying dependants (partners only)

#### Student

- U8.10 Partners and dependent children of diplomatic, consular or official staff (partners only)

#### Visitor

- V3.10 Partners and dependent children of student or work visa holders (partners only)
- V3.125 Partners and dependent children of military visa holders (partners only)

### Forthcoming visa types to be included:

- AEWV partner work visas where the partner has qualified for work rights in their own right