



## 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 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)

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



## BRIEFING

### Temporary migrants' eligibility for immigration support after family violence

<b>Date:</b>	3 November 2022	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0914

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister of Immigration</b>	<p><b>Agree</b> to the proposed option</p> <p><b>Indicate</b> your preferred approach for a future review</p> <p><b>Agree</b> to forward this briefing to the listed Ministers</p>	7 November 2022
Hon Phil Twyford <b>Associate Minister of Immigration</b>	For information	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Andrew Craig	Manager, Immigration (Skills and Residence) Policy	Privacy of natural persons	
Emily Kay	Principal Policy Advisor		✓
Rachel Carruthers	Senior Policy Advisor		

The following departments/agencies have been consulted
Ministry for Ethnic Communities, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Social Development, Ministry for Women, Oranga Tamariki, Treasury, and Te Puna Aonui. The Ministry of Defence and Ministry of Foreign Affairs and Trade were informed.

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

## Comments



## BRIEFING

### Temporary migrants' eligibility for immigration support after family violence

<b>Date:</b>	3 November 2022	<b>Priority:</b>	High
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#### Purpose

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To provide you with:

- advice on expanding eligibility for the Victims of Family Violence visas to temporary migrants, who are currently excluded from accessing the visas, in advance of changes to partner work rights that will take effect in December 2022, and
- early scoping for a broader review of immigration settings and supports for situations of family violence, as part of the Family and Partnership review in 2023.

#### Executive summary

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You requested part of the work planned for the 2023 Partnership and Family review on the Victims of Family Violence (VFV) Visas' settings be brought forward and sought options to widen access to the visas to temporary migrants in the short term. While immigration settings do not cause family violence, concerns were raised during consultation on the Immigration Rebalance changes to partner work rights that the reduced financial independence that may result from the changes may increase instances of coercive control, prompting this accelerated work.

Broader changes to the VFV Visas have been recommended in the recent Migrant Exploitation Review conducted by the Education and Workforce Select Committee, and in a 2019 review of the visas conducted by Immigration New Zealand. Jan Logie MP has also recently submitted a Member's Bill that proposes changes that include widening access of the visas to partners of temporary migrants.

##### *Expanding eligibility*

This paper seeks agreement to change eligibility criteria for the VFV Visas, to allow people who are on partner visas that are linked to temporary migrants to access the VFV Work Visa. This will allow partners of temporary migrants who fulfil criteria showing family violence has occurred to:

- obtain a six-month visa in their own right, allowing them to stay legally in New Zealand and
- allow them to work over that time.

It will not:

- allow them to remain in New Zealand permanently (though they may access residence through other categories like the Skilled Migrant Category if they are eligible) or
- give access to financial or other Crown funded social supports (which migrant partners of New Zealanders can and will continue to have access to).

This change enables partners of temporary migrants in family violence situations to remain lawful and reduces the opportunity for their visa status to be a tool of coercive control by the abuser. However, there are concerns from many stakeholders about the duration of the work visa, the lack

of considerations for tamariki and rangatahi, the evidence requirements for proving family violence has occurred to obtain the visa, and the lack of financial supports or a residence pathway.

The change can be made in February 2023 and requires funding to be sought as the application fee is waived and expanding eligibility is expected to incur costs of approximately \$0.124m per annum for Immigration New Zealand.

Stakeholders have cautioned that solely making this change to allow partners of temporary migrants to access the work visa may not provide a meaningful pathway for people to escape violent situations without further changes, and that uptake is likely to be low in the meantime. Civil society stakeholders in particular noted their disappointment at how limited this change is, given the wider range of known issues.

### *Progressing further work*

In light of these views and the outstanding issues to be addressed, we recommend progressing further work on the immigration response to family violence as soon as possible. As discussed, progressing a full review was not possible ahead of December, but it can be progressed as a first priority for the 2023 Family and Partnership review if you wish.

You have choices to make about whether this should focus solely on the immigration system's role in responding to family violence, or whether it should include matters beyond the immigration portfolio which you and your Ministerial colleagues wish to progress work on, including the ability of temporary migrants to access financial support or legal aid in these situations. We recommend the latter, given the joined-up Government approach to preventing and responding to family violence being progressed by Te Puna Aonui and through Te Aorerekura (the National Strategy to Eliminate Family Violence and Sexual Violence), and the limited ability for the immigration system alone to address family violence for migrant communities, including issues such as social and financial support. Should you wish to progress joint work, you will need to seek the agreement of your Cabinet colleagues.

The VFV Visas were established in 2001 and only minor changes have been made since. The immigration issues to be considered in either option for the review include those raised by stakeholders on the VFV Work Visa (noted above), whether to extend access to the VFV Residence Visa, and a review of natural justice concerns related to the removal of sponsorship rights for people whose ex-partner accesses residence through the VFV Visa, among others.

With your agreement, we will prepare a paper for Cabinet approval to progress the changes to eligibility for the VFV work visa and for officials to progress a cross-portfolio approach to responding to instances of family violence for migrant communities. This can progress to Cabinet Economic Development Committee on 7 December, and to Cabinet on 12 December.

## **Recommended action**

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The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that partners of temporary migrants are not currently able to access a Victims of Family Violence Visa and have few options to disconnect their migration status in cases where family violence has occurred, and that their dependent visa status can be used as a form of coercive control by an abuser

*Noted*

### *Expanding eligibility*

- b **Agree** to extend access to the Victims of Family Violence Work Visa to onshore people who hold a partner-based visa such as a 'Partner of a Temporary Worker Work Visa' (as identified in Annex One)

*Agree/Disagree*

c **Note** this six-month work visa provides open work rights, but will not give access to social supports or the Victims of Family Violence Residence Visa for partners of temporary migrants (as it does for partners of New Zealanders) without further work being progressed in the Social Development and Employment portfolio

*Noted*

d **Note** that fees for the work visa are waived and officials recommend continuing this arrangement for partners of temporary migrants as in recommendation b, which is expected to increase the costs to the Crown by approximately \$0.124m per annum

*Noted*

e **Agree** to seek agreement to draw down costs of \$0.124m per annum to waive fees for the increased number of people accessing this visa from the Between Budget Contingency Fund

*Agree / Disagree*

f **Note** that there is a risk that broadening access to the Victims of Family Violence Work Visa, in the absence of work to address other issues, could see limited uptake under the new settings (as some barriers to access remain)

*Noted*

g **Note** that the option set out in recommendation b can be implemented in February 2023 following Cabinet decisions and allowing time for instructions changes, form updates, and increasing staff resourcing and training

*Noted*

#### *Further work*

h **Note** that there are a wide range of issues relating to the Victims of Family Violence Visas and the immigration settings impacting migrant victims of family violence, and that officials recommend further work is progressed to address them

*Noted*

i **Indicate** your preferred approach to seek Cabinet approval for progressing a wider review of the immigration settings for migrant victims of family violence, either:

a. an immigration portfolio focus that deals with only immigration levers

*Agree / Disagree*

or

b. a cross-portfolio approach which aligns immigration settings with other settings such as financial supports (recommended)

*Agree / Disagree*

j **Note** that should you prefer to:

a. progress work with an immigration portfolio focus only – this can be planned and scoped as part of the upcoming Partnership and Family review beginning in 2023 and officials will provide further advice on how this can progress alongside other review topics

or

b. take a cross-portfolio approach – following Cabinet approval, MBIE officials will work with other agencies to plan and scope the work. We would similarly aim to progress the immigration workstream in early 2023 but recognise that some other components may be delayed by priorities in other portfolios

*Noted*

k **Agree** that further changes to the Victims of Family Violence Visas will be considered as the first aspect of the Family and Partnership review, noting that work on other areas   
 will not progress until May 2023 at the earliest

*Agree / Disagree*

l **Agree** that officials draft a Cabinet paper presenting recommendation b and your preferred plans as indicated in recommendation i for a wider review

*Agree / Disagree*

m **Agree** to forward this briefing to the Ministers for Social Development, Diversity, Inclusion and Ethnic Communities, Justice, Women, Children, Pacific Peoples, and Prevention of Family and Sexual Violence, noting that we expect a draft Cabinet paper will be provided to them on 15 November for their feedback

*Agree / Disagree*

Privacy of natural persons  


Andrew Craig  
**Manager, Immigration (Skills and Residence) Policy**  
Labour, Science and Enterprise, MBIE

Hon Michael Wood  
**Minister of Immigration**

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3 / 11 / 2022

## Context

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*New Zealand has two Victims of Family Violence Visas, available only to partners of New Zealand citizens and residents*

1. The Victims of Family Violence (VFV) Visa scheme encompasses a work visa and a residence visa. Onshore people can receive a temporary work visa which provides open work rights for six months (up to nine months if the applicant is also applying for residence) provided:
  - a. they are, or were, in a relationship with a New Zealand citizen or resident (on either a partnership visa or on another visa type and they can prove the relationship)
  - b. they had planned to apply for residence on the basis of this relationship
  - c. the relationship has now ended because of family violence
  - d. they need to work to support themselves.<sup>1</sup>
2. The same people can be granted the VFV Residence Visa only if they also:
  - a. cannot return to their home country because they would have no way of supporting themselves financially or would be abused or excluded from the community due to social stigma
  - b. meet the health and character requirements for residence.
3. All associated immigration charges (fees and levies) are waived for both visas, and a Special Needs Grant is available to the migrant partners of New Zealanders who receive the work visa. Second or subsequent VFV Work Visas are issued either because the person has applied for the VFV Residence Visa, or as an exception to instructions if warranted by special circumstances (for example ongoing custody matters involving New Zealand citizen children/potential pathway for residence).
4. For both visas, applicants need to provide evidence of their relationship with the perpetrator and that there has been family violence by providing certain evidence as outlined in instructions.<sup>2</sup> For the residence visa, applicants also need to prove that, owing to financial incapacity or social stigma, they are unable to return to their home country. This means not everyone who secures the work visa will be eligible for the VFV Residence Visa, as the VFV Work Visa is more accessible and the residence visa has a higher bar for eligibility.
5. 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 Residence 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.
6. Australia, the United Kingdom, and the United States also have specific arrangements available for victims of family violence, but only where victims are the partner of a resident or citizen. However, these countries only offer a residence visa, do not require that applicants are unable to return home, and could be seen as more accommodating of the broader definition of family violence. In the United States, migrants beyond only partners of residents or citizens can also obtain lawful migration status in certain circumstances at the discretion of law enforcement where they agree to testify against an abuser. **International relations**

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<sup>1</sup> As in Immigration New Zealand Operations Manual – WI7.1

<sup>2</sup> Previously submitted evidence is accepted and it is sufficient proof if the applicant is applying from a partnership-based visas (i.e., the relationship will not be reassessed where the applicant is on a partnership visa).

*There are longstanding issues with immigration settings for victims of family violence*

7. The visas were established in 2001 and there have been limited changes since. Some improvements were made following a policy review in 2008 and a further policy and operational review conducted by Immigration New Zealand (INZ) in 2019.<sup>3</sup> The 2019 review identified issues with the visas for people that are granted them, as well as multiple immigration policy and operational issues acting as barriers to access for recent migrant victims to this visa. Operational changes were made following this review, but significant policy issues identified with the VFV Visa scheme remain unaddressed.
8. Some of the identified issues include:
  - a. Whether criteria, evidence requirements, and visa conditions remain fit for purpose. Examples of these include the requirement to show the person cannot return to their home country in order to obtain the VFV Residence Visa, the avenues for providing evidence to prove family violence has occurred, and the six-month work visa duration.
  - b. How to resolve situations where a child is resident or a citizen, but their migrant parent may not obtain residence through the VFV Visa.
  - c. Whether pathways to residence should be offered for migrant victims of family violence and if so, how to ensure this is not a perverse incentive for dishonest access.
  - d. Whether there should be immigration-related repercussions for abusers. These are currently very limited, as abusers are either New Zealand citizens or residents. The status quo may not be appropriate for abusers who are also temporary migrants.
  - e. 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.
  - f. What sort of social support should be available if any for migrant victims of family violence.
9. Many of these points have been revisited recently through the Education and Workforce Committee inquiry into migrant exploitation recommendations. The Committee recommended that the Government:
  - a. closely monitor instances of family violence in migrant families and consider whether immigration settings should be changed to prevent violence
  - b. prioritise work to make sure that migrant partners and families are suitably supported by the immigration system after situations of family violence
  - c. consider the eligibility criteria for the VFV Visa to enable more migrants to access it.
10. Green Party members of the Education and Workforce Committee sought more expansive recommendations, and these are reflected in the recently announced Protecting Migrant Victims of Family Violence Member's Bill, sponsored by Jan Logie MP. This Bill proposes cross-portfolio actions including making the VFV Visas available to partners of temporary migrants, amending the existing VFV Visas to increase their accessibility, and providing

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<sup>3</sup> Recent Migrant Victims of Family Violence Project 2019: Final Report, available at <https://www.mbie.govt.nz/dmsdocument/12138-recent-migrant-victims-of-family-violence-project-2019-final-report>

increased support for migrant victims of family violence (for example, access to legal aid, the Emergency Benefit and other temporary supports).

### *Recent changes to partner work rights have prompted a request to expand access to the visas for migrant victims of family violence*

11. In May 2022, the Government announced changes to work rights for partners of temporary workers, which will see the automatic grant of open work rights cease and require these partners to qualify for work visas independent of their relationship. These changes are intended to support Rebalance objectives for a higher skill level overall among temporary migrants and are scheduled to take effect in December 2022. These changes have been well signalled to ensure that families and partners can make informed choices about their employment and financial prospects in light of the immigration settings before coming to New Zealand.
12. In developing this policy, concerns were raised that this may increase partners' vulnerability to family violence. The specific concern is that this change removes the ability for partners to exercise financial autonomy, unless the partner can get an Accredited Employer Work Visa for a job paying above median wage (noting that part-time employment is permitted for partners). Financial dependency is an existing issue within many relationships, but it could become more of an issue with the Rebalance changes.
13. You requested advice on expanding access to the existing VFV Visa scheme to those affected by the changes to partner work rights, that can be implemented either before or shortly after these changes take place.
14. We have progressed advice which has been consulted with other government agencies, as well as representatives from Community Law Centres o Aotearoa, New Zealand Law Society, Auckland District Law Society – most of whom also represent the Immigration Reference Group, as well as the Ethnic Providers Network coordinated by Te Puna Aonui, which includes Shakti Community Council, Shama, and the Fatimah Foundation, among others.

## **Options to expand access to the VFV visas**

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### *The visas were originally intended to correct a stark power imbalance between New Zealanders and their migrant partners*

15. The VFV Visas were established in 2001 after the then-Minister of Immigration, Hon Lianne Dalziel, identified a number of cases where New Zealand men were repeatedly entering into abusive relationships with vulnerable foreign women. This involved coercing them once in New Zealand through threats about their immigration status, and repudiating them, sometimes once they became pregnant, resulting in their deportation.
16. Minister Dalziel considered that these instances represented the exercise of unacceptable imbalance of power and sought to put a systematic response in place, rather than dealing with these incidents individually, if required, through the exercise of Ministerial discretion. The visas were made and have remained available to partners of New Zealanders only, based on the view that a relationship between a citizen or resident and a migrant represents a particularly stark power imbalance, and that New Zealand has a particular responsibility to respond when cases of violence occur in this circumstance given the involvement of a New Zealander.

### *A similar power imbalance in temporary migrant relationships and may be considered within New Zealand's responsibility to address*

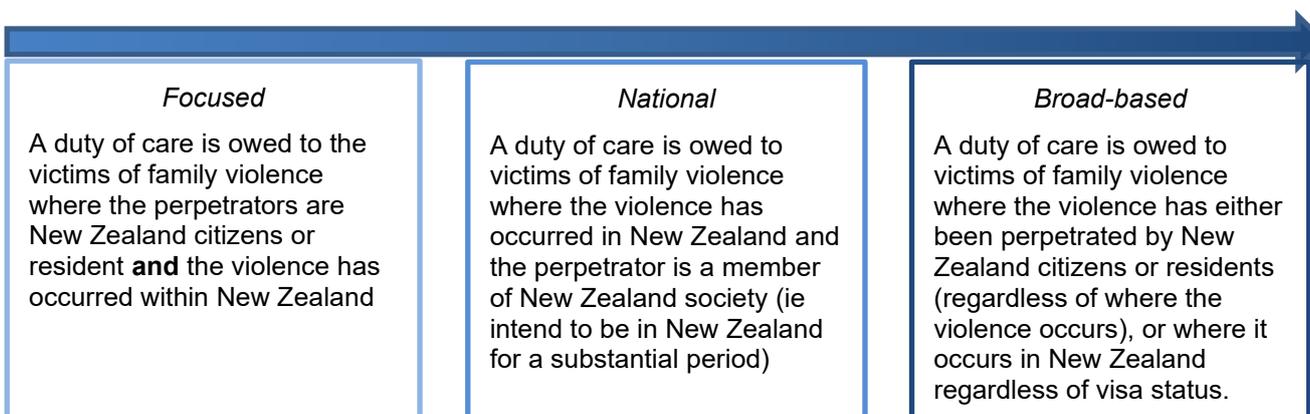
17. Since its inception, changes to the visas have been minor (for example, updating definitions to align with modern definitions of domestic or family violence, updating evidentiary requirements or adjusting requirements like removing requirement to prove the person

cannot return home to access the VFV Work Visa). While the modern definition of family violence now used for the visa category recognises the wider range of relationships where violence can occur, the visas have remained fundamentally partner visas, most suitable for resolving violence between partners. However, they do allow dependent children to be granted visas based on their parent's VFV Visa, which can support responses to situations of violence against children in some cases.

18. The main concern (from an immigration perspective) in family violence situations involving migrants is the use of a person's immigration status, when it is dependent on another person, to coercively control them. Similar to the scenario between a New Zealander and a temporary migrant where the migrant relies on the New Zealander to obtain residence, linked visa status places the principal applicant (i.e. the person to whom the visas are linked) in a position of power over the other person. This can be used to harm the other person if they choose (e.g. threatening to sever the link and by extension the dependent person's immigration status). This direct link exists for partnership and dependent child visas, and these visa holders need to get a new visa independently to leave family violence situations.
19. This is a similar power imbalance to that of a New Zealander in a partnership with a migrant. For partners of New Zealanders, the VFV Visa offers the necessary independent visa status. It was not initially made available to partners of temporary migrants, or dependents, as this power imbalance has not been recognised previously as being within New Zealand's responsibility to address.

*New Zealand's obligations to migrant victims of family violence*

20. While there is a similar power imbalance in a relationship between a New Zealander and a migrant as there is a relationship between a temporary migrant and a linked visa holder, the obligations on New Zealand to resolve the issue is less clear in the second scenario, particularly when it comes to providing a residence path, as it concerns two citizens of other countries who are in New Zealand temporarily.
21. There are two questions to be considered when determining New Zealand's obligation to migrant victims of family violence: who do we owe a duty of care to, and what does this duty of care entail? When recognising a duty of care, what that entails will differ depending on how strong the duty is for different groups.
22. **Who do we owe a duty of care to?** We suggest there is a spectrum of increasingly large migrant groups that New Zealand could owe a duty of care to in a family violence situation, with the strength of obligation owed reducing as you progress across the spectrum (reflected in the diagram below). Our position on this spectrum may shift as societal views change, our understanding of family violence develops, and as we consider different types of care (i.e. we would be able to offer more targeted forms of support to a greater number of people):



23. When the VFV Visas were created, New Zealand had a 'focused' approach to who a duty of care was owed to, informed by the understanding that the system created an imbalance

between New Zealanders and migrants and identified instances of issues occurring. Our understanding of how family violence manifests has since developed, and instances where the similar but possibly less stark power imbalance between migrants where there is a linked visa are reported to be perpetuating coercive control issues of family violence. We suggest this issue warrants shifting to a 'national' approach, at least in terms of the short-term response to support people to leave dangerous situations (it is less clear that New Zealand has a longer-term duty of care to the same cohort).

24. We have provided advice about increasing access to the VFV Visas, in line with a 'national' approach and to better support migrants to de-link their visa status from that of their abuser while they consider their next steps. This is in line with the Government's commitment to eliminate family and sexual violence, as set out in Te Aorerekura (the National Strategy to Eliminate Family Violence and Sexual Violence).
25. On the second question, what does New Zealand's duty of care entail, we suggest this is different for different groups over the short, medium, and long term. We consider that New Zealand has a widespread duty of care to provide a pathway for temporary migrants to get out of dangerous family situations in the short-term, but further analysis is needed about what a medium or longer-term duty of care should look like – it is likely this would be a more targeted provision of deeper support. This should be further considered as part of a wider review, noting too that we do not provide ongoing immigration pathways in situations where partnerships break down for other reasons.

## **For the Victims of Family Violence Work Visa**

### *Recommended approach*

26. We recommend extending access to the work visa to onshore people who hold a partner-based visa for a relationship with a migrant on any temporary visa, to ensure people who experience family violence can secure an independent visa status which cannot be used as a tool for coercive control.
27. This will allow partners of temporary migrants who fulfil criteria showing family violence has occurred to:
  - obtain a six-month visa in their own right, allowing them to stay legally in New Zealand
  - allow them to work over that time.
28. It will not:
  - allow them to remain in New Zealand permanently (though they may access residence through other categories like the Skilled Migrant Category if they are eligible)
  - give access to financial or other Crown funded social supports (which migrant partners of New Zealanders can and will continue to have access to)
  - cause any repercussions for the principal applicant who sponsored the partner-based visa.
29. Benefits: this option would make the visa available to partners of all temporary migrants who are on visas issued to support a partner-based relationship, and most directly addresses the identified problem. These people are those whose immigration status is most clearly dependent on the status of principal applicant and may be unable to leave an abusive situation for fear of immigration repercussions (i.e. victims to immigration-related violence).
30. A list of proposed partner visas that would be eligible for access to the VFV Work Visa is attached as Annex One. This list indicatively includes visas held by partners of diplomatic or military staff, which is still be consulted on with the Ministry of Foreign Affairs and Trade, and

the Ministry of Defence – we will act on the basis of advice received to inform a Cabinet paper.

31. All agencies consulted supported this approach, with the Ministry of Justice noting it best addressed the identified problem, although many did want to see this early work go further – it will not address all circumstances where a temporary migrant may wish to access a VFV Visa (for example, holders of work, visitor or student visas in their own capacity who are in an abusive relationship with another temporary migrant).
32. While this change will not address all known eligibility issues, it provides a pathway for temporary migrants to get out of dangerous family situations in the short-term and reserves the space to consider any changes as regards longer-term obligations after further work. This is an expansion of the existing family violence immigration policy, but it employs the same rationale as the original decision – it seeks to correct an imbalance of power between an individual and a vulnerable migrant.
33. Risks: this is a targeted and low-risk approach for immigration system integrity. The biggest risk is that temporary migrants will continue to stay in abusive situations despite these changes. This is a narrowly focused change and does not provide longer-term certainty for migrants, which may motivate people to remain in an abusive relationship (i.e. to get residence). It is also possible that, even if a partner did choose to leave the relationship, they would not be able to support themselves – even though the visa provides open work rights, we have received anecdotal accounts from stakeholders that employers are unwilling to hire people for such a short period of time.
34. All of the stakeholders consulted wanted to see this work go further, particularly family violence providers for ethnic communities who considered the steps being taken “disappointing”. While all understood that the time pressures we were working under meant that a wider scope was not possible, there is a real risk that they publicly state the changes are insufficient. To mitigate this, we strongly recommend that when you announce these changes you announce the continuation of this work, with a clear timeline and plans to engage civil society groups, although outcomes of the review are not predetermined (particularly regarding access to residence pathways).
35. There will be cost repercussions for any expansion in terms of resources to process visas (as the fee and associated levies are waived for this visa category), as set out later in this paper. These issues are mitigated somewhat, as we expect uptake of the changed settings will be limited – while it provides a safety net for people who need to leave a dangerous situation, but by in the absence of further work, it offers no added benefits in terms of support and potential residence status. This is a view shared by representatives of the Community Law Centres o Aotearoa (CLCA) and the Immigration Reference Group, who were consulted in developing this advice.
36. There is currently a Special Needs Grant available to the migrant partners of New Zealanders who receive this visa. Making the Grant available to partners of temporary migrants who also receive this visa would require additional policy changes within the Social Development portfolio and would increase Crown costs. If you wish to pursue this, that is a matter for discussion with the Minister of Social Development and Employment – engagement with Ministry of Social Development officials suggests that there is currently no capacity to undertake further policy work on income support settings in this area, and the Minister’s agreement would be required to progress any further work, including to any trade-offs required to resource it. Without deliberate extension of the Grant, there will be no financial support available for the partners of temporary migrants, however partners of New Zealanders will continue to be able to access it.
37. There are currently no repercussions for New Zealand residents and citizens (who may be the alleged perpetrators of abuse) if their partner secures a VFV Work Visa. We are proposing no change to this, meaning that the sponsoring temporary migrant with a partner

who may be eligible for the VFV Work Visa will also not have any repercussions at this time. However, this will mean that a sponsoring work visa holder (for example) could later go on to obtain a new visa, apply for residence, or sponsor a new partner without the grant of a VFV Work Visa to their partner being considered as part of their character assessment. This could pose risks to the safety of future sponsored partners, and reputational risk to INZ. Stakeholders noted that they were aware of cases where this problem occurs. However, introducing repercussions without comprehensive analysis and consultation is likely to mean existing privacy and natural justice issues are exacerbated. We recommend the issue is revisited in future work.

*We also considered, but do not recommend, broadening access to all partners of temporary migrants...*

38. We considered an option that goes further by expanding access to all partners of a migrant on a temporary visa, but do not recommend this approach without further work on what the duty of care should be owed to such a broad group.
39. This would include people on visas held in their own capacity (e.g. student or general visitor visa holders), and while the power imbalance as a result of immigration settings is not the same as they are not on a linked visa, their immigration status may mean they are still dependent on their abuser. For example, a visitor visa or student visa holder is entitled to remain in New Zealand in their own right, but they may be financially dependent on their partner given they have no or few work rights. The VFV Work Visa, which grants open work rights, may enable the abused partner to leave the relationship and support themselves.
40. This effectively mirrors the eligibility criteria for partners of a New Zealander who can apply regardless of visa type if they can prove the genuine relationship, and better reflects our understanding of family violence and coercive behaviours. However, there remains a question of whether allowing someone to remain in New Zealand for a reason other than that on the visa they held is an appropriate response.
41. The risks we have identified for the recommended approach also apply to this proposal and there may be little actual additional use of this pathway – the vast majority (95+ per cent) of applicants for this visa previously have been those on partnership-based visas, despite people on other visa types who are in a relationship with a New Zealander also being eligible.

*...or young people aged 16-24 years*

42. We also considered enabling young people aged 16-24 years old to apply for this visa, to escape situations of family violence. Currently, tamariki and rangatahi can be granted visas (e.g. a dependent child student visa) based on the relationship with the VFV Visa holder rather than with the abuser, but they cannot apply for a VFV Visa themselves. This change would mean some of this group could apply independent of either parent, which better recognises that family violence is not just between partners.
43. However, the VFV Work Visa as it stands is not fit for purpose to support young people or children. It only provides work rights and does not allow for study, which children and young people have a right to under the United Nations Convention on the Rights of the Child. Officials from Oranga Tamariki agree that there appears to be a gap in family violence support for migrant children and children of New Zealanders who have not yet obtained residence or citizenship who are in Oranga Tamariki's care, and that further work is needed.
44. We recommend that, rather than expanding eligibility for the visa to rangatahi now, the broader review include a specific focus on whether and how children can be treated as primary applicants for this visa category (including what changes may be needed to the visa itself). Oranga Tamariki already provide support to migrant children in family violence situations and there are steps in place to get these children independent visa status if absolutely necessary. There are significant issues to be worked through on state

responsibility and parental rights for migrant children in family violence situations to support any permanent changes – it may be that continuing to address these situations on a case-by-caser basis rather than developing a systemic response is the most appropriate approach.

45. Te Puna Aonui, Oranga Tamariki, the Ministry for Ethnic Communities and the Ministry for Pacific Peoples all noted the gap in accessibility for tamariki and rangatahi, and, while they understand the need for caution, are eager that this be a priority under the wider review. We agree that this is an important area but the need for careful consideration may place this on a longer time-track than other work on the VFV visas – given prioritisation is likely, we recommend partner-based changes take precedence.
46. Representatives from the CLCA and the Immigration Reference Group support as broad an action as possible, while stressing that this is a very complex issue that requires an in-depth review to address all the known issues. While respecting that we do not want to create additional issues, they are very concerned at the lack of provision for children and teenage girls in particular, noting many cases where potential teenage applicants are facing a forced marriage in their home country.

### **For the Victims of Family Violence Residence Visa**

47. We are not recommending any changes to the VFV Residence Visa at this time, as we think more robust consideration is needed of what duty of care New Zealand owes to temporary migrants in family violence situations who are citizens of other countries over the longer-term.
48. We considered making this visa available to partners of people on a work to residence or highly paid residence pathway (i.e. those with a clear residence path based on the principal applicant's occupation). This would go some way to address the widely known issue that partners will often stay in abusive situations to ensure they get residence, where that residence is dependent on the principal applicant.
49. However, by extending eligibility to the residence visa to partners of any type of temporary visa holder, there is a risk that the partner gains residence, but the principal applicant does not, which is similar to the present issue that a New Zealander is able to remain here, but their migrant partner may not. If there are children of the relationship, this could lead to a split family situation – a risk that already exists but would be exacerbated as the group of potential applicants grows. There are possible mitigations, but these cannot be worked through quickly as there are a lot of associated issues such as how to consider offshore custody practices and rulings. Fraudulent claims are also a bigger concern for the VFV Residence Visa, given the offer is for residence as compared to temporary work rights.
50. We recommend changes to the VFV Residence Visa are instead considered in the wider review, which will enable a holistic approach to identifying and solving issues. We will continue to explore whether a strong expectation of permanent residence is relevant and other factors like family connections.
51. It should be noted that subsequent VFV Work Visas are currently granted to partners of New Zealanders awaiting the outcome of VFV Residence Visa applications, to avoid creating a false expectation of a longer-term pathway to remain in New Zealand, or to allow custody or court processes to be finalised. Given we are not proposing partners of migrants are eligible to apply for the VFV Residence Visa at this time there will be no provision to allow them to apply for a subsequent work visa on that basis. It is also less likely that their circumstances would warrant the grant of a visa by exception, as this group is unlikely to have onshore custody matters to resolve, or similar rationale that would justify for the need for a further stay. Ahead of any further decisions on whether a residence pathway should be available, and consideration of the work visa duration, we consider that this is appropriate. People who can obtain visas including other residence pathways subsequent to the VFV Work Visa will

still be able to remain in New Zealand on those visas – though this may be the case for only few.

## **Other feedback received during consultation**

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52. Feedback from CLCA and Oranga Tamariki indicated that there is a problem with the evidence the applicant provides of family violence, particularly, the organisations that are competent to make a statutory declaration that family violence has occurred. The immigration instructions list two organisations (the National Collective of Independent Women's Refuges and Shakti Community Council) competent to make statutory declarations, which can act as a barrier for applicants who may already be seeking support from different family violence service providers.
53. In light of this feedback, we considered amending the immigration instructions to define an appropriate family violence service provider, rather than give an exhaustive list, which is similar to the approach taken by the Ministry of Housing and Urban Development in the regulations on withdrawing from a tenancy following family violence. We do not recommend making this change ahead of the wider review of the VFV Visas, as the definition needs to be clear for immigration officers to operationalise, it has the potential to magnify known issues around non-judicial evidence and the associated natural justice concerns, and we need more time to undertake thorough consultation to ensure the definition is fit for purpose.

## **Financial impacts of recommended option**

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54. There are costs associated with the proposal for expanding eligibility to partner visa holders of migrants as the fees for the VFV Visas are currently waived. Given that people accessing the visa are often in a vulnerable position, where meeting fees may be difficult and create a barrier to access, we recommend the same arrangement is extended to the new group.
55. We estimate that expanding eligibility of the work visa to partners of temporary migrants will mean processing an additional 249 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. The costs of waiving fees for other visas, such as the Migrant Exploitation Protection Visa and Afghanistan Resettlement Visa have previously been met through Crown funding. Therefore, we recommend that you seek the agreement of the Minister of Finance to obtain funding to waive fees for the new group able to access the VFV Work Visa through the Between Budget Contingency in order to progress the change as soon as possible. Alternatively, funding will need to be sought through Budget 2023.
56. Given that a relationship assessment has already been completed for partner visa holders, the \$0.124m cost is based upon the unit cost of processing a humanitarian category work visa, which does not involve a partnership assessment. Any variation on the recommended proposal would require reworking the costs.

## **Scoping future work**

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*The VFV Visa scheme needs updating, to reflect a modern understanding of family violence*

57. As noted, the VFV Visa scheme was established more than 20 years ago with only minor changes, and our understanding of and approaches for responding to family violence have moved on since the inception of these visa categories. VFV Visas were originally intended to address violence between partners in certain cases and were designed and structured with this purpose in mind. This means the visas as they stand may not suitably address the full and varied circumstances of family violence as we understand them today.
58. The recommended change in this briefing, to allow partners of temporary migrants' access to the VFV Work Visa, provides a counterweight (i.e. an alternate visa pathway) to settings that

could perpetuate onshore instances of family violence involving temporary migrants (i.e. linked visas). We think there is merit in a further review of settings that covers:

- a. settings related to the VFV work visa itself such as visa duration, evidentiary requirements, and financial support availability
- b. access to residency paths – looking at both criteria for remaining in NZ (i.e. risk at home) and any accommodations for well-settled partners of temporary migrants
- c. impacts for alleged perpetrators of violence.

59. The upcoming Family and Partnership review is an opportunity to progress a review of the way immigration system responds to and prevents family violence, and the structure and function of the VFV Visas. Such a broad based, ‘first principles’ policy review would ensure the overall immigration system response is aligned to wider government action to prevent and respond to family violence – an approach that is supported by other agencies and stakeholders. We recommend that the review is conducted as soon as possible, as the first tranche of the Family and Partnership review. As well as addressing other issues identified with the VFV Visas, this approach ensures the recommended change in this briefing is effective over the longer term in reducing instances of coercive control.

#### *Scope of future work*

60. In undertaking a first principles review, you can choose to progress in a manner that focuses solely on the immigration system, or you could seek your colleagues’ agreement to progress wider work together.

61. We are seeking your views on this scope of the broader review. **Should we:**

- **focus on aligning the immigration system to wider Government efforts to eliminate family violence?** This is essentially a ‘fixing known issues’ approach which focuses on limiting the extent to which immigration status can be used to coercively control in a family relationship.
  - Within this context we may further differentiate the two different purposes for each visa Confidential advice to Government  
The choices put to you regarding eligibility align with this approach.
- **or find ways to better use the immigration system and other levers to support migrant communities to eliminate family violence?**
  - This could include expanding supports for migrant victims of family violence, including across other portfolios Confidential advice to Government

62. We recommend the latter – that you and your colleagues progress a joint work programme to support migrant communities to prevent and respond to family violence. This approach recognises that the immigration system alone is not sufficient or suitable to prevent and respond to family violence and aligns with the cross-Government approach taken through the formation of Te Puna Aonui and Te Aorerekura.

#### *Joint work*

63. There are several important issues relating to the immigration response to family violence that are only able to be addressed with the agreement of your colleagues, and that lend themselves to this kind of joint work programme. This includes determining whether:

- a. partners of temporary migrants on a VFV work visa should have access to any financial assistance
  - b. Confidential advice to Government
  - c. children or young people should have bespoke immigration supports in instances of family violence
  - d. migrant and ethnic communities are sufficiently served by prevention, intervention, and specialist responses to family violence.
64. Progressing work on these topics will require the agreement of the Ministers of Social Development and Employment, Justice, Children, and Prevention of Family and Sexual Violence to prioritise and resource this in their work programmes. With their agreement you could jointly progress some or all of these issues. Immigration would remain one stream of the work required and encompass the aforementioned first principles review of the immigration system role (an early view of the work that could be included is in Table One).
65. Other agencies consulted were generally supportive of a joined-up approach of this nature, which is aimed at having an aligned and comprehensive prevention and response for migrant communities experiencing family and sexual violence. However, it should be noted that this work is not fully scoped and agencies like the Ministry of Social Development have raised that currently there is no capacity to undertake further policy work on income support settings in this area – other agencies are likely to have similar issues to resolve. This will need to be addressed if Ministers wish to progress the work on the intended timeframe.

**Table One: how identified issues can be considered under each scope**

Issue	Considered under....	
	Immigration portfolio only	Cross-portfolio approach
Broader visa access issues <ul style="list-style-type: none"> <li>- Financially or otherwise dependent partners on their own visas</li> <li>- General Visitor Visa holders</li> </ul>	✓ Access to the visa is an immigration policy matter ....	✓ ...but can better incentivise uptake with cross-agency alignment in terms of support
Children as principal applicants	x Cannot be progressed without Oranga Tamariki support	✓
Standards to be met for the work visa <ul style="list-style-type: none"> <li>- Residence intentions</li> <li>- Relationship ended due to family violence</li> <li>- Living together</li> </ul>	✓ Visa eligibility criteria are set by immigration policy	✓ Visa eligibility criteria are set by immigration policy
Standard to be met for the residence visa <ul style="list-style-type: none"> <li>- Currently only partners of New Zealanders who will face stigma and financial hardship</li> <li>- Evidence of family violence</li> </ul>	✓	✓
Visa conditions <ul style="list-style-type: none"> <li>- Work rights</li> <li>- Duration</li> </ul>	✓ Visa conditions are set by immigration policy	✓ Visa conditions are set by immigration policy
Repercussions for perpetrators <ul style="list-style-type: none"> <li>- Is the status quo sufficient?</li> <li>- Temporary migrant character assessments</li> <li>- Natural justice issues</li> </ul>	✓ Generally limited to impacts on future visa status	✓✓ More options for perpetrator repercussions and support
Social supports available	x No options	✓✓

		Wider options to support migrant victims of family violence, if desirable
Links to other Government priorities	✓ Can be consultative	✓✓ Aligns with cross-govt approach of Te AorereKura

63. With your approval, we would draft a Cabinet paper that seeks your colleagues' support to scope and progress such work in the first half of 2023 (i.e. as the first tranche of the Family and Partnership review), with a view to making changes to immigration settings specifically within six-eight months.<sup>4</sup> This timeframe will mean that this further work on family violence occurs ahead of any other topics that may be in scope of the Family and Partnership review, Confidential advice to Government [redacted] This approach, while comprehensive, will be a longer undertaking than focussing solely on the immigration system without addressing these other matters, and may have multiple stages of decisions for different workstreams.
64. A range of Ministers will have interests and ownership of different aspects of this work, including 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. We recommend you maintain governance of the immigration changes, consulting them with relevant Ministers. Agreement will be needed from the Minister for Social Development and Employment on the timing of any financial support work. We will work with other agencies to propose work and any governance arrangements for other parts of the work – e.g. any further work on arrangements for children, prevention, or financial supports.

#### *Immigration focussed work*

65. Alternatively, focusing solely on the role of the immigration system would progress similarly to the manner that proposals in this briefing were developed. MBIE would work collaboratively with other agencies that have interests and expertise in this area to ensure the immigration system response to family violence is fit for purpose. This can encompass policy settings, the wider operational context and outreach performed by INZ. However, this work would not include financial assistance, social supports or extensive changes for children and prevention initiatives better led by agencies other than immigration. Policy advice would then be provided to you to take to Cabinet if you choose. We have not fully scoped this work, but an early estimate is that it could take four-six months from commencement to reach Cabinet decisions. Should you prefer this approach, we will provide you with further detail about the scope, and we will reflect this approach in the Cabinet paper, acknowledging the known elements in other portfolios that will not be addressed.

## **Next steps**

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66. Once we receive your feedback on the proposals in this paper, we will provide you with a draft Cabinet paper presenting your preferred options for increasing access to the VFV Visa scheme and progressing further work. We will provide this to you on Friday 11 November (timing allowing for agency consultation), for consultation with your Ministerial colleagues from 15-29 November (subject to any requested changes). This timing allows you to progress the paper to the Economic Development Committee on 7 December, and to Cabinet on 12 December 2022.

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<sup>4</sup> Noting that this review has not yet been scoped and could include other workstreams that require a longer timeframe.

67. The Cabinet paper will seek agreement to the proposed change to make partners of temporary migrants eligible for the VFV work visa, as well as to progress further work on family violence in your preferred manner. If this is a joint work programme, we will include specific requests for portfolio Ministers to commit to the work and for agencies to report to Joint Ministers on scope and timeframes.
68. If Cabinet agrees to make partners of temporary migrants eligible for the VFV work visa this can be implemented in February 2023. This timing allows for changes to immigration instructions, form updates, and upskilling staff in the changes, while also accounting for the Christmas period shutdown. INZ will start ramping up the staffing resource dedicated to processing these visas during this period, to meet anticipated increase in demand.

## **Annexes**

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Annex One: proposed visa types that will become eligible for the VFV Work Visa

## **Annex One: proposed visa types that will become eligible for the VFX Work Visa**

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### **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

#### Visitor

- V3.10 Partners and dependent children of student or work 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 (to be implemented from 5 December 2022)

### **Other visa types that may be included (awaiting further advice from MFAT and Defence):**

#### Work

- WI8 Special work visas for partners of holders of military visas
- H2 Diplomatic, Consular, and Official staff, and accompanying dependants

#### Student

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

#### Visitor

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