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## TERMS OF REFERENCE

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<b>DATE</b>	16 May 2023
<b>TO</b>	Michael Heron, KC
<b>FROM</b>	Carolyn Tremain, Secretary MBIE
<b>PREPARED BY</b>	Alison McDonald, Deputy Secretary (Immigration) Richard Owen, GM Verification and Compliance Fraser Richards, Special Counsel (Immigration)
<b>SUBJECT</b>	<b>Terms of Reference – External Review of processes and procedures - out of hours immigration compliance activity</b>

### PURPOSE

1. The purpose of this document is to set out the Terms of Reference for an independent external review of processes and procedures around out of hours immigration compliance activity, and to identify and recommend potential changes to the process where required. This may include recommendations for legislative change.
2. The review should consider the adequacy of the current immigration settings (including legislative settings), standard operating procedures (SOPs), and any other internal guidance for out of hours immigration compliance activity to serve deportation liability notices or execute deportation orders and how they may need to change to have regard to:
  - a. the cultural appropriateness of the proposed activity, with specific consideration given to:
    - i. the Government’s “dawn raids” apology of 1 August 2021;
    - ii. the Government’s clearly stated position on the practice; and
    - iii. the Minister of Immigration’s letter of 2 May 2023 to the Secretary for MBIE about the Government, and in particular Immigration New Zealand, having “a responsibility to uphold the principles of “Dawn Raids apology, ensure any actions reflect our ongoing commitment to right the wrongs of the past, and avoid reinflicting the trauma that many still live with today”; and
  - b. to ensure any decision to undertake such activity:
    - i. Is reasonable, proportionate, and justifiable in the circumstances; and
    - ii. takes into account relevant considerations including, but not limited to:
      1. the possible impact and harm on other individuals (including any children) that may be present;



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2. the health and safety of compliance officers;
  3. whether there are reasonable alternatives to out of hours activity;
- c. is approved at an appropriate managerial level.

### **OBJECTIVES**

3. The objectives of this review are to:
- a. Review the current immigration settings, SOPs, and guidance for out of hours immigration compliance activity to serve deportation liability notices or execute deportation orders; and
  - b. Provide recommendations as to whether potential changes are required to ensure that such decision-making:
    - i. is reasonable, proportionate, and justifiable in the circumstances; and
    - ii. is carried out in the interests of public safety; and
    - iii. takes into account relevant considerations including, but not limited to:
      1. the cultural appropriateness of the proposed activity with specific consideration given to:
        - a. the Government's "Dawn Raids" apology of 1 August 2021;
        - b. the Government's clearly stated position on the practice; and
        - c. the Minister of Immigration's letter of 2 May 2023 to the Secretary for MBIE about the Government, and in particular INZ, having a responsibility to uphold the principles of the "Dawn Raids" apology;
      2. the possible impact and harm on other individuals (including any children) that may be present;
      3. the health and safety of compliance officers;
      4. whether there are reasonable alternatives to out of hours activity; and
    - iv. is approved at an appropriate managerial level.

### **SCOPE**

4. The review will examine processes and procedures for out of hours compliance activities to serve deportation liability notices or execute deportation orders. Excluded from scope are compliance activities conducted within normal business hours, and compliance activities not associated with deportation.

### **APPROACH**

5. The following approach will be taken in conducting this review:
- a. The Reviewer will review existing immigration settings, SOPs, and guidance for out of hours immigration compliance activity; and
  - b. The Reviewer will review any decision documents for out of hours immigration compliance activity undertaken since 1 August 2021 to provide context for any



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- recommendations for change that could be made to existing immigration settings, SOPs, and guidance for out of hours immigration compliance activity; and
- c. The Reviewer will interview MBIE staff (names and contact details to be provided); as necessary, to gather information and expertise to assist the review; and
  - d. The Reviewer will interview and seek comment from members of the Immigration Reference Group (names and contact details to be provided); and
  - e. The Reviewer will seek support from the Ministry for Pacific Peoples and the Ministry for Ethnic Communities (names and contact details to be provided) to meet with representatives from the Pasifika community and representatives of the Migrant community.

6. The principles of natural justice are to be observed through the review.

#### **MBIE ROLES AND RESPONSIBILITIES**

7. The sponsor of the review will be the Secretary for MBIE.
8. MBIE will provide a senior person to provide secretariat support with the day-to-day work of the review.

#### **DELIVERABLES**

9. An interim report will be provided to the Secretary for MBIE for comment by 9 June 2023. The final report will be prepared containing the results of the review, summarising the findings, and providing recommendations for any improvement opportunities to the Secretary for MBIE by 30 June 2023.

#### **PUBLICATION**

10. It is expected that the final report will be publicly released when it has been finalised.