

From: Maria DIAS
To: s. 22(1)(a)(ii) s. 47F(1)
Subject: FW: Meeting with A/g CoS to Min Giles on MDs [SEC=OFFICIAL:Sensitive]
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From: Tara CAVANAGH <s. 22(1)(a)(ii)@homeaffairs.gov.au>
Sent: Tuesday, 5 July 2022 10:54 AM
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All- a summary of the discussion that Justine and I had with Minister Giles' advisors last Friday.

First step off the back of this is for Maria's branch to get a submission and draft MD on MD 90 changes up this week/early next week.

-Min Giles wants to streamline, but not to the extend envisaged within the submission. ie, have separate priority MDs for each programs to maintain flexibility
-MD 63- (fmr IMAs with charges) Min Giles agrees with recommendation to revoke- currently having unintended consequences and JJ confirmed she has already asked her Division to prepare any affected cases for possible MI.
-Separately, on women in detention- advisor asked JJ to provide advice on any women in detention adversely affected by DFV provisions.

s. 47C(1)

Stage 1 change- needs to be country agnostic s. 47C(1)

-make the change through making length of time spent in A/a and the impact on any children of the visa holder primary considerations (ie, content currently at 9.4.1 should become primary consideration.)

s. 47C(1)

-time spent as a younger person before offending will have greater weight than time spent following arriva as an adult

s. 47C(1)

-Min understands these changes will only impact revocation decisions, mandatory cancellation will still occur.

(JJ) s. 47C(1)

MD98 - s. 47C(1)

MD 96-97- s. 47C(1)

MD89 (global talent) - consolidate with above. Sectors to be updated on an annual basis, aligned to overall sectors of priority for migration

MD84 (Protection visas) - s. 47C(1)

MD 80 and 83 (family visa processing)- s. 47C(1)

MD 76 (FWO)- leave for now

MD 69 (student GTE) - s. 47C(1)

MD 61 and 63 (student visa compliance) - combine

s. 47C(1)

MD 47- (health assessments) - revoke given no longer needed as an MD/now in legislation

MD 9 s. 47C(1)

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Meeting Brief

Attendees: Justine Jones, First Assistant Secretary, Status Resolution and Visa Cancellation Division; s. 47F(1), Chief of Staff, Minister for Immigration, Citizenship and Multicultural Affairs.

Meeting Date: 31 August 2022 Meeting Time: 12pm – 1pm

Prioritisation of Mandatory Cancellation Action

Key issues

s. 47E(d)

Background

Mandatory Cancellation under 501(3A) currently accounts for the majority of visa cancellation activity undertaken pursuant to section 501 of the Migration Act. s. 47E(d)

s. 47C(1) the Department has been conducting analysis of historical mandatory cancellation outcomes to determine common characteristics of cases that resulted in a revocation decision of a mandatory cancellation.

Preliminary Analysis

s. 33(a)(iii)

f these cases had been revoked. Preliminary analysis of this caseload has identified

- s. 33(a)(iii) of those involved lower level offending (which excludes offending involving organised crime, serious violence, serious sexual assault etc), and
- a close correlation between the length of residence in Australia and revocation outcome, with s. 33(a) of the revocations being for non-citizens who had been resident in Australia for over 10 years.

S. 47E(d)

s. 47E(d)

s. 47E(d)

s. 33(a)(iii)

s. 47E(d)

s. 47E(d)

Ministerial Direction 99

In preparation for the amended Ministerial Direction (the Direction) to come into effect later this year, the Department has conducted a desktop exercise to estimate the impact the revised Direction would have on character decision making. To conduct this exercise, [s. 47F(1)] were adverse decisions and [s. 47] were favourable) cases that had been decided against the current Ministerial Direction 90 were chosen. These cases were selected to provide a cross section of cancellation scenarios with varying characteristics, all of which include individuals who have been in Australia for a reasonable period of time to effectively show how the new primary consideration is balanced against current primary and other considerations.

The outcomes of the exercise were as follows:

- of the [s. 47] adverse decisions, [s. 47F(1)] (or 25%) saw the decision changed from 'not revoked' to 'revoked'
- the [s. 47F(1)] changed decisions [s. 47F(1)] had relatively low sentence length ([s. 47F(1)] s. 47F(1)), had lived in Australia since they were children and did not involve family violence
- the [s. 47F(1)] favourable decisions remained unchanged, but it was noted that they became a relatively more straightforward revoke/not cancel decision

It was noted that the change in the Direction did not have a substantive effect on decision making in cases that had serious offending or family violence, or where, despite the person having resided in Australia for a considerable period of time, they did not have significant ties or have a record of contribution to the Australian community.

The characteristics of those changed decisions [s. 47C(1)]

While only a small sample size, a 25% change in decision making is significant when considering the totality of the caseload. Although, given that cases were chosen for this exercise based on having lived in Australia for a considerable period of time, it would not be expected that the (25%) change would be maintained across the entire caseload.

Attachments

A. s. 47E(d)

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