



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-002185

Date of Clearance: 26/10/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Facilitation of grant funding for specialist legal assistance for Protection visa applicants

Timing For consideration by 2 November 2023 (as agreed with s. 22(1)(a)(ii)) in order to meet timeframes for consideration at the Federal Executive Council meeting scheduled for 14 December 2023.

Recommendations

That you:

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

seeking agreement to amend the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) to establish legislative authority for Government spending on a grant for specialist legal assistance for primary processing assistance and community outreach for permanent Protection visa applicants;

signed / not signed

2. s. 22(1)(a)(ii)

informing them of proposed funding arrangements for specialist legal providers in their state/territory; and

signed / not signed

3. note that subject to the outcome of engagement with states and territories, the Department of Home Affairs will engage with relevant specialist legal providers ahead funds being provided.

noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date 31/10/2023

Minister's Comments

Key Issues

1. On 19 October, you (jointly with the Minister for Home Affairs, the Hon Clare O'Neil MP, and the Attorney-General, the Hon Mark Dreyfus KC MP) announced a \$160 million package to restore integrity to Australia's permanent Protection (subclass 866) visa (Protection visa) system. This included over \$48 million to boost essential legal assistance services to support applicants through the application process. Of this, \$12.3 million has been allocated to the Department of Home Affairs' (the Department) portfolio to provide specialist legal assistance at the primary processing stage and for community outreach. s. 34(3)
2. For distribution of the \$12.3 million, a closed non-competitive selection process will be used to allow eligible specialist legal providers to apply for grants up to a pre-determined maximum per annum amount, for a period of two years, beginning early 2024.
3. Subject to further consultation, it is proposed the legal providers be in line with those currently funded to deliver assistance to Afghan applicants and Resolution of Status visa applicants, as outlined in the table below. This is to ensure that specialised legal assistance continues to be provided by those who have built trust with Government and the community, and have demonstrated expertise in providing specialised support to the asylum caseload.

Table 1: Indicative list of service providers

State/Territory	Organisation name
Victoria	Refugee Legal
NSW	Refugee Advice and Casework Service
ACT	Legal Aid ACT
QLD	Refugee and Immigration Legal Service
WA	Circle Green
SA	Legal Services Commission South Australia
TAS	Tasmanian Refugee Legal Service
NT	To be determined (given limited client numbers)

4. The Department proposes you write to relevant state and territory Multicultural Ministers to advise them of intention to provide grant funds to the list of service providers above. s. 22(1)(a)

Authority for distribution of funds

5. Existing item 417.009 of Schedule 1AA of the FF(SP) Regulations provides for funding to be provided to "selected migration agents to help all onshore asylum seekers in immigration detention and disadvantaged Protection and other visa applicants in the community with professionally-qualified application assistance, including interpreters and being accompanied at visa interview, and for more frequent or larger general information sessions and brief face-to-face or telephone advice".
 - a. The *Migration Amendment (Regulation of Migration Agents) Act 2020* removed legal practitioners from the scheme governing Registered Migration Agents, and legal practitioners who hold a valid practising certificate no longer register through the Office of Migration Agents Registration Authority to provide immigration assistance. This means that item 417.009 cannot be relied upon for the purpose of funding specialist legal assistance providers.
6. s. 22(1)(a)(ii), requesting agreement to insert a new item in Part 4 of Schedule 1AB to the FF(SP) Regulations to establish legislative authority for Government spending on a grant for specialist legal assistance for primary processing assistance and community outreach s. 22(1)(a)(ii).
 - a. s. 22(1)(a)(ii) the proposed item will allow funding to be provided to specialist legal providers, s. 34(3).
It has also been drafted to enable funding to be provided to Registered Migration Agents, and non-Protection visa applicants, to ensure there is sufficient spending authority for future Immigration Advice and Application Assistance Scheme funding arrangements.
7. This Schedule 1AB amendment is proposed for consideration by the Governor-General at the Federal Executive Council meeting scheduled for 14 December 2023.
 - a. Any delays to the consideration of the amendments to the FF(SP) Regulations or grant could delay the intended outcomes of the whole of Government Protection visa reform measures. The next proposed Federal Executive Council meeting will be in 2024.
8. While the Department has worked with Department of Finance on this regulation change, the Department is working closely with the Department of Social Services to progress the grants round as soon as possible in parallel to manage this risk. Grant funding is expected to be available in early 2024, pending finalising arrangements with the Grants Hub.
9. In order to manage the risk of any delay in delivering grant funding, the Department will engage early with relevant legal providers to inform them of the proposed grant to provide legal assistance for prospective Protection visa applicants and associated community outreach. This engagement will occur following consultation with relevant state and territories, to ensure specialist providers are sufficiently prepared to provide these services upon receipt of funding.

Consultation – internal/external

10. Internal – Chief Finance Officer, Group Manager Legal, Immigration Planning and Policy Framework Branch.

OFFICIAL: Sensitive

11. External – Department of Finance, Australian Government Solicitor (AGS). The Department is also working with the Attorney-General's Department on the approach to distributing the legal assistance funding, noting funding has also been provided for the review stages.

Consultation – Acting Secretary / Acting Deputy Secretary / ABF Commissioner

12. The A/g Secretary was not consulted on this submission.
13. The A/g Deputy Secretary Immigration was not consulted on the approach in the submission.
14. The ABF Commissioner was not consulted on the approach in the submission.

Client service implications

15. Funding specialist legal providers to assist Protection visa applicants and prospective Protection visa applicants will ensure clients have a better understanding of the visa they are applying for, the implications of applying. It will also help ensure applications are more "decision ready" which assists the Department to progress applications more effectively and efficiently leading to faster outcomes for clients.

Risks and Sensitivities

s. 34(3), s. 42(1)

s. 42(1)

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20. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

Financial/systems/legal/deregulation/media implications

21. This proposal is aligned to the portfolio's Manage Migration and Travel Strategic Priority.
22. s. 34(3)
23. The Minister for Finance is responsible for the FF(SP) Regulations and s. 22(1)(a)(ii) requests her agreement to amend the FF(SP) Regulations. The amendment and associated Explanatory Statement will be drafted by the Department of Finance in consultation with the Department of Home Affairs.

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

Authorising Officer
Cleared by:
Andrew Kiley Acting First Assistant Secretary Refugee, Humanitarian and Settlement Division
Date: 26 October 2023 Mob s. 22(1)(a)(ii)

Contact Officer Lavinia Mitchell, A/g Assistant Secretary, Humanitarian and Child Wellbeing Policy and Capability Branch, Ph: s. 22(1)(a)(ii).

Through Chief Finance Officer
Group Manager Legal

CC Minister for Home Affairs and Minister for Cyber Security
A/g Secretary
A/g Deputy Secretary Immigration
GM Immigration Policy
AS Financial Operations
AS Migration and Citizenship Law
AS Humanitarian Program Operations
AS Settlement Program Operations
SD Immigration Outreach and Engagement