

SECTION 133C(3) OF THE *MIGRATION ACT 1958***PART A: PERSONAL AND VISA DETAILS**1. Personal particulars of visa holder

Family Name: DJOKOVIC

Given Names: Novak

Date and Place of Birth: [REDACTED]

Citizenship: Serbia

Marital Status: Married

Sex: Male

Client ID: [REDACTED]

2. Visa details

Date of visa grant: 18 November 2021

Visa class/subclass: Class GG subclass 408 Temporary Activity

Visa expiry date: 5 April 2022

Previous visa cancellations: Nil

File Number:

**PART B: CONSIDERATION OF STATUTORY CRITERIA UNDER SECTION 133C(3)**1. Subsection 133C(3) of the *Migration Act 1958* ('the Act') provides:*The Minister may cancel a visa held by a person if:*

- (a) the Minister is satisfied that a ground for cancelling the visa under section 116 exists; and*
- (b) the Minister is satisfied that it would be in the public interest to cancel the visa.*

## 2. Section 116(1) of the Act provides:

*Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is satisfied that:*

...

*(e) the presence of its holder in Australia is or may be, or would or might be, a risk to:*

- (i) the health, safety or good order of the Australian community or a segment of the Australian community ...*

## 3. By operation of s 133C(4), the rules of natural justice do not apply to a decision under subsection 133C(3) of the Act. I understand that, while an obligation to accord procedural fairness is not imposed, that does not preclude me from seeking information from the visa holder in relation to a decision under this power. If I make a decision under subsection 133C(3), the person concerned must be notified of the decision in writing, including particulars of the relevant information, and be invited to make representations about revocation of the decision (section 133F). Under subsection 133F(4) of the Act, I may revoke the decision if the person makes representations in accordance with the invitation and the person satisfies me that the ground for cancelling the visa referred to in subsection 133C(3) does not exist.

## 4. I am aware that a delegate made a decision on 6 January 2022 under section 116 to cancel Mr DJOKOVIC's visa, and that the cancellation decision was quashed by the Federal Circuit and Family Court of Australia (FCFCA) on 10 January 2022. At the conclusion of the proceedings, the Court was informed that I would be considering whether to exercise a personal power of cancellation under section 133C(3) of the Act.

5. Following the outcome of the FCFCA proceedings, Mr DJOKOVIC's visa ceased to be cancelled, he was released from immigration detention and is now in the community.
6. Subsequently, Mr DJOKOVIC's legal representatives have provided lengthy submissions and supporting documentation concerning the possible cancellation of his visa under section 133C(3) of the Act (**Attachment A**). In those submissions, Mr DJOKOVIC takes issue with the possible use of the section 133C(3) power, rather than proceeding under a process in which Mr DJOKOVIC would have a right to be heard before a decision is made. I chose to proceed under section 133C(3), having regard to the need to consider possible cancellation of the visa quickly, in light of the particular circumstances of the case and the public interest in resolving the matter expeditiously. That public interest includes: (a) the upcoming start of the Australian Open; (b) the prospect of litigation challenging my decision and the desirability, if possible, of affording the Court time to hear arguments and make its decision; and (c) a situation where Mr DJOKOVIC is in the community while he may be a risk to health and good order. Further, Mr DJOKOVIC had had opportunities to put forward his position in documents to the Court and in further submissions provided by his legal representatives to me.
7. In case there might have been anything else Mr DJOKOVIC wanted to say but has not said, I have done my best to consider matters alive to the fact that Mr DJOKOVIC's view may not have been sought on everything.

#### **GROUND FOR CANCELLING THE VISA**

8. My power to cancel a person's visa under subsection 133C(3) of the Act is subject to two conditions. The first is that I must be satisfied that a ground for cancelling the visa under section 116 of the Act exists. The second is that I must be satisfied that it would be in the public interest to cancel the visa. Once I am satisfied of both of these conditions, I may decide to cancel the visa.

#### **Section 116(1)(e)(i)**

9. Section 116(1)(e)(i) of the Act provides that the Minister may cancel a visa if he or she is satisfied that the presence of its holder in Australia is or may be, or would or might be, a risk to the health, safety or good order of the Australian community or a segment of the Australian community.
10. By way of background, I note that:
  - Mr DJOKOVIC arrived in Australia on 5 January 2022 to compete in the 2022 Australian Open tennis tournament. He is present in Australia during a time in which the Australian community is experiencing a significant, and rising, number of COVID-19 cases and an active, vocal, minority of people in the community opposing vaccination (or compulsory vaccination) against COVID-19.
  - During an interview with an officer from the Department on 6 January 2022, Mr Djokovic stated he had not been vaccinated against COVID-19 (**Attachment B**).
  - That Mr DJOKOVIC has not been vaccinated against COVID-19 is information that was also included in Mr DJOKOVIC's Australia Travel Declaration (**Attachment C**).
  - Mr DJOKOVIC also provided copies of his COVID-19 test results, being a positive polymerase chain reaction (PCR) test (the result dated 16 December 2021), a negative PCR test (the result dated 22 December 2021) and a positive SARS-COV-2 RBD IgG test, which seems to confirm that Mr DJOKOVIC was identified as having a recent or prior infection (the result dated 23 December 2021) (**Attachments D and E**).

- Mr DJOKOVIC also provided a 'testimonial' from Associate Professor Verica Jovanovic dated 12 January 2022, which states that Mr DJOKOVIC's positive test result sampled on 16 December 2021 and subsequent negative test result sampled on 22 December 2021 are 'legitimate'. Associate Professor Jovanovic also stated that '[o]ur test system is reliable, accurate and the test results of Mr Novak Djokovic are legitimate' (**Attachment F**).

### **Risk to health**

11. Mr DJOKOVIC has provided me with a substantial volume of journal articles, medical studies and medical evidence.<sup>1</sup> He asserts that these materials demonstrate that:
  - Mr DJOKOVIC poses a negligible threat of infection to others. He contends that the risk of him infecting others is less than, or at the very least comparable to, that of any other person referred to in s 5(3)(a) of the Biosecurity (Entry Requirements – Human Coronavirus with Pandemic Potential) Determination 2021, that is, a person who has received a course of vaccination with one or more accepted COVID-19 vaccines and received the last vaccination at least 7 days before the day the international flight was scheduled to commence.
  - There is evidence that vaccination following a recent infection with COVID-19 may result in more severe and adverse side effects. Mr DJOKOVIC contends that he is at risk of suffering more severe adverse side effects from vaccination, because he has been recently infected with COVID-19.
  - Mr DJOKOVIC argues that the risk of suffering more severe adverse side effects, as a result of his recent infection with COVID-19, is itself a 'medical contraindication' against vaccination.
12. I also received advice from the Commonwealth Department of Health on 11 January 2022, which was cleared by the Chief Medical Officer of the Commonwealth (Health Advice) (**Attachment G**). On the assumptions that Mr DJOKOVIC tested positive for COVID-19 on 16 December 2021, tested negative for COVID-19 on 22 December 2021, was asymptomatic from at least 27 December 2021, and is not vaccinated against COVID-19, the Health Advice concludes that:
  - 'Mr Djokovic is unlikely to be infectious with SARS-COV-2 and as such is likely to constitute a LOW risk of transmitting SARS-CoV-2 to others. This assessment applies to all other demographic groups.'
  - Having regard to the specific additional control measures applicable to the Australian Open, 'it is assessed that the risk of a transmission event related to the Australian Open is VERY LOW.'
13. I have not sought or read the actual medical material that Mr DJOKOVIC provided to me which underpinned his contentions, because I am not medically trained. Nor am I sure if the Health Advice from the Commonwealth Department of Health and the Chief Medical Officer was given aware of the various medical material relied on by Mr DJOKOVIC. If there is a difference between the Health Advice in referring to a 'low' risk and a 'very low' risk and Mr DJOKOVIC's contention that he poses a 'negligible' risk, I will therefore proceed on the assumption in his favour that he poses a 'negligible' risk.
14. I have also not sought or read the extensive factual materials which Mr DJOKOVIC has provided on whether recent infection with COVID-19 is a medical contraindication against vaccination because I am willing to assume, in the time available, that Mr DJOKOVIC has a medical reason for not being vaccinated.

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<sup>1</sup> These materials were attached to emails sent on behalf of Mr DJOKOVIC on 10 January 2022 at around 6:36pm; an email sent on 11 January 2022 at around 11:06am; an email sent on 11 January 2022 at around 12:44pm; an email attaching a letter sent on 11 January 2022 at around 12:57pm; an email attaching a letter sent at 9:24am on 12 January 2022; an email sent at 10:51am on 12 January 2022; and an email sent on 13 January 2022 at around 11:12am.

15. I will also assume that Mr DJOKOVIC entered Australia consistently with ATAGI documents. I am aware that there was a dispute about this in the FCFCA in relation to the delegate's decision. For present purposes, I will assume that Mr DJOKOVIC's position is correct rather than seeking to get to the bottom of this here. I weigh this against cancellation both at the public interest stage and the discretion stage. That I am assuming he currently has a medical reason not to be vaccinated does not ultimately affect my reasoning on health and good order as explained below.
16. Further, I have had regard to the fact that he received a letter from Tennis Australia, which was signed by Dr Carolyn Broderick and reviewed by an Independent Expert Medical Review Panel comprised of [REDACTED] (**Attachment E**). I have taken into account that upon receipt of this letter, Mr DJOKOVIC considered that he had a valid medical exemption to come to Australia, and that he would thereafter be entitled to remain in Australia (**Attachment A**). I give this factor some weight in the exercise of my discretion against cancellation.
17. Although I make the assumptions above and accept that Mr DJOKOVIC poses a negligible individual risk of transmitting COVID-19 to other persons, I nonetheless consider that his presence may be a risk to the health of the Australian community.
18. In this respect, I have given consideration to the fact that Mr DJOKOVIC is a high profile unvaccinated individual, who has indicated publicly that he is opposed to becoming vaccinated against COVID-19 (which for convenience I refer to as 'anti-vaccination'). Mr DJOKOVIC has previously stated that he 'wouldn't want to be forced by someone to take a vaccine' to travel or compete in tournaments (**Attachment H**).
19. I have not sought the views of Mr DJOKOVIC on his present attitude to vaccinations. Even acknowledging this, the material before me makes it clear that he has publicly expressed anti-vaccination sentiment. Further, just as important is how those in Australia may perceive his views on vaccinations, rather than his presently held opinion should it be different from what has been publicly identified.
20. I am informed by the Commonwealth Department of Health (cleared by the Chief Medical Officer) (**Attachment I**) that:
  - Immunisation is one of the most successful public health interventions of the past 200 years. The Australian Government has supported immunisation and has strongly encouraged vaccination in the context of SARS-CoV-2. Vaccination was the fifth element of Australia's COVID-19 Vaccine and Treatment Strategy released in August 2020. The Strategy supports early access to, and delivery of, safe and effective COVID-19 vaccines and treatments. It was developed to provide Australians with safe and effective vaccines under a targeted and responsive national COVID-19 vaccination policy and immunisation program based on up-to-date health advice.
  - COVID-19 vaccinations provided significant protection against infection, transmission and severe disease against earlier variants. This protection was viewed as extremely important managing transmission and also in protecting individuals, the community, health system capacity and the economy. The Omicron variant has impacted vaccine efficacy and current vaccines now provide less protection against infection and transmission but do continue to provide significant protection against severe disease. This protection is essential to protect individuals from severe disease and also from resultant morbidity and potential mortality. In the context of widespread community transmission and large case numbers vaccination remains essential in preventing health system overload related to presentations of people with severe COVID-19 disease.
21. The Australian Technical Advisory Group on Immunisation (ATAGI) has also stated on 24 December 2021 that '[s]trong evidence has accumulated over the past two weeks to indicate that booster doses of COVID-19 vaccines are likely to increase protection against infection with the Omicron variant. Although some early data suggest that the risk of hospitalisation due to disease caused by the Omicron variant is

lower than that with the Delta variant, this difference would not be enough to offset the impact of high case numbers on the health system.' (**Attachment J**).

22. Because of this, I consider that Mr DJOKOVIC's presence in Australia may pose a health risk to the Australian community, in that his presence in Australia may foster anti-vaccination sentiment leading to (a) other unvaccinated persons refusing to become vaccinated, (b) other unvaccinated persons being reinforced in their existing view not to become vaccinated, and/or (c) a reduction in the uptake of booster vaccines. Specifically this may lead to one or more of the following:
- i. An increase in anti-vaccination sentiment being generated in the Australian community, leading to others refusing to become vaccinated or refusing to receive a booster vaccine; and/or
  - ii. A reinforcing of the views of a minority in the Australian community who remain unvaccinated against COVID-19 and who are at risk of contracting COVID-19 (as to which, there are media reports that some groups opposed to vaccination have supported Mr DJOKOVIC's presence in Australia, by reference to his unvaccinated status) (**Attachments K and L**); and/or
  - iii. An increased number of people deciding to not receive a booster vaccine; and/or
  - iv. Unvaccinated persons becoming very unwell and/or transmitting it to others; and/or
  - v. Increased pressure placed on the Australian health system, a significant contributing factor being the number of unvaccinated persons contracting COVID-19 and requiring medical attention or assistance (**Attachment M**).
23. I have also given consideration to the fact that there is evidence to suggest that Mr DJOKOVIC has, in the past, shown an apparent disregard for the need to isolate following the receipt of a positive COVID-19 test result (**Attachment N**). On 18 December 2021, Mr DJOKOVIC knowingly attended an interview and photoshoot with L'Equipe. He states that he ensured that he socially distanced and wore a mask, but did not wear a mask while his photograph was being taken. Mr DJOKOVIC has publicly acknowledged that it was an 'error of judgment' to attend this interview, and that he should have rescheduled this commitment, given that he had received a positive test result beforehand on 17 December 2021 (**Attachment O**).
24. Given Mr DJOKOVIC's high profile status and position as a role model in the sporting and broader community, his ongoing presence in Australia may foster similar disregard for the precautionary requirements following receipt of a positive COVID-19 test in Australia. In particular, his behaviour may encourage or influence others to emulate his prior conduct and fail to comply with appropriate public health measures following a positive COVID-19 test result, which itself could lead to the transmission of the disease and serious risk to their health and others. I consider this to be an additional factor contributing to the possible risk to the health of the Australian community.
25. Accordingly, I am satisfied that the presence of Mr DJOKOVIC in Australia may be a risk to the health of the Australian community. I am so satisfied because his presence in Australia may be counterproductive to efforts at vaccination by others in Australia, which may be a risk to the Health of the Australian community.
26. It is also reported that in June 2020, Mr DJOKOVIC organised the Adria Tour, a charity tennis exhibition series in Serbia and Croatia. Media reports suggest that the event lacked social distancing protocols and resulted in a cluster of COVID-19 cases, including the infection of Mr DJOKOVIC and his wife (**Attachment P**). While these media reports are concerning, I have ultimately not given weight to this incident, because it is not clear that any of the alleged failures to comply with social distancing protocols and other public health precautions were endorsed or encouraged by Mr DJOKOVIC personally.

### **Risk to good order**

27. Separately and quite independently from the health risks referred to above and summarised in paragraph 22, I also consider that Mr DJOKOVIC's presence in Australia may be a risk to the good order of the Australian community.
28. In *Tien v Minister for Immigration and Multicultural Affairs* (1998) 89 FCR 80 at 93-94 (*Tien*), Goldberg J described the expression 'good order', as used in section 116(1)(e), in these terms:  
  
*... an element of a risk that the person's presence in Australia might be disruptive to the proper administration or observance of the law in Australia or might create difficulties or public disruption in relation to the values, balance and equilibrium of Australian society. It involves something in the nature of unsettling public actions or activities. ...*
29. Further, in *Newall v Minister for Immigration and Multicultural Affairs* [1999] FCA 1624 at [30], Branson J went on to explain that:  
  
*satisfaction might be based on the risk of an adverse reaction by certain members of the Australian society to his presence in this country ..., rather than on concern about the likely or possible conduct of the applicant in Australia.*
30. On 18 March 2020, the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease 'human coronavirus with pandemic potential' (section 475 of the *Biosecurity Act 2015, Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*). The human biosecurity emergency period is currently in force until 17 February 2022 (unless extended).
31. COVID-19 has entered Australia and represents a severe and immediate threat to human health in Australia as it has the ability to cause high levels of morbidity and mortality and to disrupt the Australian community socially and economically.
32. With rising case numbers and increased pressure on the health system, it is important that the general community act consistently with requirements, recommendations and advice by the Commonwealth, State and Territory governments in responding to the COVID-19 pandemic. I consider that the orderly management of the pandemic by the Commonwealth, State and Territory governments is a component of the good order of the community, particularly bearing in mind the adverse community-wide consequences of a failure to appropriately manage the consequences of the pandemic. In broad terms, Commonwealth, State and Territory governments' approaches to managing the pandemic have involved a number of aspects, including vaccination, testing, compliance with social distancing and other various public health and safety measures.
33. Consequently, I consider that behaviour by influential persons and role models, which demonstrates a failure to comply with, or a disregard of, public health measures has the potential to undermine the efficacy and consistency of the Australian Government's, and State and Territory Government's, management of the evolving COVID-19 pandemic. As noted above, Mr DJOKOVIC is such a person of influence and status. Having regard to the matters set out above regarding Mr DJOKOVIC's conduct after receiving a positive COVID-19 result, his publicly stated views, as well as his unvaccinated status, I consider that his ongoing presence in Australia may pose a risk to the good order of the Australian community. In particular, his presence in Australia may encourage other persons to disregard or act inconsistently with public health advice and policies in Australia, including but not limited to, becoming vaccinated against COVID-19 or receiving a booster vaccine.
34. In addition, I consider that Mr DJOKOVIC's ongoing presence in Australia may lead to an increase in anti-vaccination sentiment generated in the Australian community, potentially leading to an increase in civil unrest of the kind previously experienced in Australia with rallies and protests which may themselves be a source of community transmission. I consider that those rallies and protests involve 'something in the nature of unsettling public actions or activities', as described by Goldberg J in *Tien*.

35. I also consider that there may be a risk of an adverse reaction by some members of the Australian community to Mr DJOKOVIC's presence in Australia on the basis of their concerns about his unvaccinated status and his apparent disregard for the need to isolate following the receipt of a positive COVID-19 test result.
36. These opposing reactions may themselves be a source of discord and create public disruption. Mr DJOKOVIC has attracted a high level of press coverage and public interest at a critical juncture in the government's management of a rapidly evolving public health emergency.
37. Accordingly, I am satisfied that the presence of Mr DJOKOVIC in Australia may be a risk to the good order of the Australian community.

## **PUBLIC INTEREST**

38. I have considered whether it would be in the public interest to cancel Mr DJOKOVIC's visa in accordance with subsection 133C(3)(b) of the Act.
39. In considering the public interest, I have considered that unvaccinated persons create a greater health risk of contracting COVID-19 and spreading COVID-19 to others than vaccinated persons, either of which will further burden the Australian health system. Despite my acceptance above that Mr DJOKOVIC's recent infection with COVID-19 means that he is at a negligible risk of infection and therefore presents a negligible risk to those around him, I am concerned that his presence in Australia, given his well-known stance on vaccination, creates a risk of strengthening the anti-vaccination sentiment of a minority of the Australian community.
40. I note that the costs associated with treatment for those affected by COVID-19 are substantial. COVID-19 cases are having a significant impact on the health system in all states and territories, with significantly reduced medical resources in intensive care units and bed availability (**Attachment M**).
41. Mr DJOKOVIC has previously indicated publicly that he is opposed to becoming vaccinated against COVID-19 (**Attachment H**). He has also acknowledged that he knowingly failed to isolate following the receipt of a positive COVID-19 test result (**Attachment O**).
42. In light of Mr DJOKOVIC's stance on vaccination and acknowledged failure to follow precautionary measures following receipt of a positive COVID-19 test result, I consider that cancelling his visa would be consistent with the Australian Government's strong stance on the benefits of vaccination and appropriate measures directed to managing the COVID-19 pandemic.
43. Further, the health and good order points discussed above are each separately relevant to whether it is in the public interest to cancel Mr DJOKOVIC's visa. The health and good order of the Australian community are matters of public interest.
44. In a letter dated 11 January 2022, Mr DJOKOVIC raises the following arguments as to why he considers it would not be in the public interest to cancel his visa (**Attachment A**):
  - He poses 'no risk to public health and safety'.
  - He has made no attempt to contravene any Australian laws.
  - 'He is a person of good standing, and a diplomat of the nation of Serbia. In addition to being the best tennis player in the world, he is known for his philanthropic efforts, including his generous donations towards coronavirus relief, as well as towards Australian bushfire relief.'
  - There is support in Australia and abroad for Mr DJOKOVIC to remain in Australia and play in the Australian Open in 2022.
  - Cancelling Mr DJOKOVIC's visa would be likely to adversely affect Australia's global reputation and call into question its border security principles and policies.

- Cancelling Mr DJOKOVIC's visa would prejudice Australia's economic interests, and jeopardise the viability of Australia continuing to host the Australian Open.
  - Cancelling Mr DJOKOVIC's visa would create the appearance of politically motivated decision-making.
45. I have considered the points raised by Mr DJOKOVIC. Without intending to be exhaustive, I make the following comments on the specific points raised above:
- The issue of whether he poses a risk to public health and safety has been addressed above.
  - I acknowledge that he has personally made no attempt to contravene any Australian law, that he is a person of good standing and is known for his philanthropic efforts.
  - I acknowledge also that there is some support in Australia and abroad for Mr DJOKOVIC to remain in Australia to compete in the Australian Open.
  - I acknowledge also that there are diplomatic considerations, which I address below.
  - I do not accept, however, that cancelling Mr DJOKOVIC's visa would create the appearance of politically motivated decision-making or that it would call into question Australia's border security principles and policies.
  - I also do not accept that cancelling Mr DJOKOVIC's would prejudice Australia's economic interests, and jeopardise the viability of Australia continuing to host the Australian Open.
46. I also acknowledge that Mr DJOKOVIC is now in the community, and that some unrest has already occurred, such that it is too late to avoid it. This weighs in my mind against the public interest in cancellation.
47. In addition, as mentioned above, I weighed the issue about whether Mr DJOKOVIC entered Australia consistently with the ATAGI documents as a factor against cancellation.
48. On balance, I consider that the points against cancellation mentioned above, including those raised by Mr DJOKOVIC, are outweighed by the other public interest factors mentioned in paragraphs 39 to 43 above. Notwithstanding the issues raised by Mr DJOKOVIC and the substantial impact that a cancellation decision would have on him as an individual, which is discussed in Part C below, I have given significant weight to the matters of public health and good order discussed above, which are each separately relevant to whether it is in the public interest to cancel his visa. These matters go to the very preservation of life and health of many members of the general community and further are crucial to maintaining the health system in Australia, which is facing increasing strain in the current circumstances of the pandemic.

## **PART C: OTHER CONSIDERATIONS**

49. Recognising the power to cancel a visa under subsection 133C(3) of the Act is discretionary, I have taken into account Mr DJOKOVIC's circumstances in determining whether there are other factors that would support a decision not to cancel Mr DJOKOVIC's visa.

### ***Purpose of the visa holder's travel to and stay in Australia:***

50. Mr DJOKOVIC was granted a Class GG subclass 408 Temporary Activity visa on 18 November 2021 for the purpose of travelling to Australia to participate in the Australian Open which commences on 17 January 2022. I have taken into account the fact Mr DJOKOVIC's visa was granted for a specific purpose to enable him to take part in a time-limited elite tennis tournament.
51. I find there is no information to indicate this purpose of travel has changed and give this consideration some weight against cancelling the visa.



***The extent of their compliance with visa conditions:***

52. Mr DJOKOVIC's Class GG subclass 408 Temporary Activity visa was granted subject to condition 8107 (work limitation); condition 8303 (activity limitation).
53. I note Mr DJOKOVIC has an extensive compliant travel history, with no evidence of non-compliance with previous visa conditions.
54. I give this consideration some weight against cancelling the visa.

***Australian Travel Declaration:***

55. I am aware that the Australia Travel Declaration for Mr DJOKOVIC has a false answer to question two. [REDACTED] has provided a statutory declaration saying that it was her fault and that she did not check the answer with Mr DJOKOVIC. I will assume that to be true. Mr DJOKOVIC said in his affidavit in the FCFA that he authorised his agent to submit his Australia Travel Declaration to the Australian Government Department of Home Affairs. While I will assume that Mr DJOKOVIC has not breached any laws in circumstances where his agent says that she is to blame, I am still concerned because Australia Travel Declarations are important documents, and the information in them should not be false. Mr DJOKOVIC's Australia Travel Declaration had a false answer. Mr DJOKOVIC should have been more careful. The circumstances of the false answer on the Australia Travel Declaration do not weigh against cancellation. Those circumstances are at most neutral, although I am minded to give it some small weight in favour of cancellation. I do so recognising that the Australian Travel Declaration is separate from the visa application process. My decision would be the same though even if I did not take the false answer on the Australia Travel Declaration into account.

***The degree of hardship that may be caused to the visa holder and any family members:***

56. I consider that the cancellation of Mr DJOKOVIC's visa is likely to cause him and his family significant inconvenience and emotional hardship and distress, and is likely to result in significant reputational, financial and professional implications for him, including his inability to compete at the Australian Open.
57. Given the likely hardship caused to Mr DJOKOVIC by a visa cancellation, I give this consideration some weight against cancelling the visa.

***The visa holder's past and present behaviour towards the Department:***

58. There is no record of any adverse behaviour by Mr DJOKOVIC towards the Department nor is there any information to indicate that he has not previously complied with his obligations. Indeed, Mr DJOKOVIC has been cooperative in his dealings with the Department. I give this consideration some weight against cancelling the visa.
59. In addition, as mentioned in paragraphs 15 and 16 above, I weighed the issue about whether Mr DJOKOVIC entered Australia consistently with the ATAGI documents, as well as the fact that he considered that he had a valid medical exemption to come to Australia, and that he would thereafter be entitled to remain in Australia, as a factor against cancellation.

***Any consequential cancellations that may result:***

60. There are no consequential cancellations that may result should Mr DJOKOVIC's visa be cancelled. Consequently, I am unable to give any weight towards or against cancelling Mr DJOKOVIC's visa when considering this factor.

***Legal consequences of a decision to cancel the visa:***

61. I have considered the legal consequences of a decision to cancel Mr DJOKOVIC's Class GG subclass 408 Temporary Activity visa is that he may become an unlawful non-citizen and liable for detention pending removal from Australia.
62. The cancellation of Mr DJOKOVIC's visa would also enliven section 48 of the Act, significantly limiting the types of visas Mr DJOKOVIC could apply for while he is in Australia.

63. In addition, for a period of three years from the date of the cancellation of his visa, Mr DJOKOVIC would not be able to be granted any class of visa that is subject to Public Interest Criterion 4013 except in certain circumstances including, but not limited to, compelling circumstances that affect the interests of Australia. The exclusion period will be considered as part of any new visa application and can be waived in certain circumstances, noting each case is assessed on its own merits.
64. I have considered that Mr DJOKOVIC regularly travels to Australia to compete in tennis tournaments and would need to declare this visa cancellation as part of a visa application process which may affect his ability to be granted a visa to enter Australia in the future.
65. I consider the above consequences are significant. Consequently, I give this consideration some weight against cancelling the visa.

***Australia's international obligations and diplomatic considerations:***

66. I am not aware of any international obligations that would or may be breached as a result of cancelling Mr DJOKOVIC's visa. Mr DJOKOVIC is a national of Serbia, and has previously resided in Serbia, and he has not expressed any concerns or issues with the Department that would give rise to any international obligations to which Australia is a signatory. Consequently, I regard this consideration to be neutral.
67. I am aware that the Serbian government has expressed its strong support for Mr DJOKOVIC to remain in Australia and that it may react negatively to the cancellation of his visa. According to media reports, Serbia's Prime Minister says her government is willing to 'guarantee' that Mr DJOKOVIC will respect local regulations if he is allowed to stay and compete in the Australian Open (**Attachment Q**).
68. I give these diplomatic considerations some weight against cancelling the visa.

***Conclusion on factors relevant to exercise of discretion***

69. I accept that there are some factors in favour of a decision not to cancel Mr DJOKOVIC's visa. However, I consider that these factors are outweighed by either the public health or the good order considerations, considered separately and independently from each other, as discussed above, together with the public interest considerations discussed above.
70. Even if the factors discussed above which I have identified as 'other considerations' are properly understood to form part of the public interest, my conclusion that it is in the public interest to cancel Mr DJOKOVIC's visa would remain the same. I would still consider it in the public interest to do so.

**PART D: DECISION**

71. After considering all the matters discussed above, I am satisfied that the reasons for cancelling Mr DJOKOVIC's visa outweigh the reasons not to cancel the visa. I have therefore decided to cancel Mr DJOKOVIC's Class GG subclass 408 Temporary Activity visa under subsection 133C(3) of the Act.



THE HON ALEX HAWKE MP  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Dated: 14 / 1 / 2022