

Immigration Bill

Government Bill

Explanatory note

General policy statement

Objectives of immigration law reform

The primary objective of reforming the immigration legislation is to establish a stronger, more flexible, and enduring legislative foundation for New Zealand's immigration system. This is so governments can—

- facilitate the entry and stay of the people New Zealand wants and needs; and
- manage immigration risks in a fair and balanced way.

Significant global changes have taken place since the Immigration Act 1987 (the **1987 Act**) was enacted. There are greater flows of people around the world and greater global competition for skills, talent, and labour, especially given ageing population demographics and skill shortages in many Organisation for Economic Co-operation and Development (**OECD**) countries. There are heightened risks and pressures on the border. New Zealand needs to recognise these changes, and to adapt the immigration system to ensure the best outcomes for this country.

This reform modernises and simplifies the immigration system. It will give New Zealand a more robust and accountable system. It will also ensure compliance with New Zealand's immigration-related international obligations in a more transparent way.

The Immigration Act review is part of a broader Immigration Change Programme focusing on skills, security, and settlement. In addition to law reform, the Immigration Change Programme includes repositioning the policy framework, and transforming

immigration service delivery. Taken together, the change programme furthers the Government's goals of economic transformation, national identity, security, and opportunities for families, young and old.

Purpose of the Bill

The purpose of this Immigration Bill is to manage immigration, through balancing the rights of the individual and the national interest as determined by the Crown.

In managing immigration in the national interest, the Bill seeks to support—

- the New Zealand workforce, through facilitating access to skills and labour and thereby contributing to output, productivity, and economic transformation:
- the security of New Zealand:
- the settlement of migrants, refugees, and protected persons:
- New Zealand's immigration-related international obligations:
- the integrity of the immigration system:
- New Zealand families and national identity.

The ways immigration can serve New Zealand's interests may change over time, and it is important that the legislation continues to provide flexibility that allows for a responsive immigration system. Like the 1987 Act, the Bill is largely framework legislation, enabling the detail of immigration policy to be contained in regulations or immigration instructions.

In addition to core enabling provisions, the Bill is prescriptive where clear minimum standards are required, particularly in the areas of international protection, deportation, appeals, compliance and enforcement, and monitoring and detention.

Summary of key provisions

Key changes include a new visa system, the ability to use classified information in a wider range of decision making with special safeguards, a more comprehensive international protection system, a single independent appeals tribunal, a more transparent deportation system, flexible compliance and enforcement powers, a more balanced detention and monitoring system, and more appropriate incentives for third parties to comply with their obligations.

Core provisions and decision making

The Bill contains core provisions that support and protect the rights of New Zealand citizens to enter and remain in New Zealand. It will require all non-citizens to hold a visa to stay in New Zealand. It updates the provisions that exclude certain persons from coming to New Zealand to ensure they are relevant and consistent with current international standards. The Bill maintains the obligation for persons unlawfully in New Zealand to leave.

The role of the Minister of Immigration in individual decision making is retained, but the Bill provides for greater responsiveness and efficiency by enabling the Minister to delegate positive discretion in residence decisions. It will also enable automated decision making to allow New Zealand's immigration system to compete against others world-wide through the effective use of technology.

The Bill allows classified information to be used, with appropriate safeguards, in immigration and refugee and protection decision making. Such decisions can be appealed if an appeal is ordinarily available, but the Bill will enable the information to remain protected.

Natural justice safeguards in classified information appeals include requiring broad reasons to be given for a decision using classified information, and a non-classified summary of the information to be disclosed where possible. Appeals can be heard by a panel of up to 3 District Court Judges on the Immigration and Protection Tribunal (the **Tribunal**), and special advocates will be able to represent the individual's interests in a confidential but informed way. These provisions draw on current international standards and experience to allow New Zealand to make decisions based on all available information, while maintaining appropriate levels of fairness.

Visas

The Bill establishes a visa system that provides for greater simplicity and flexibility in managing non-citizens' travel to and stay in New Zealand.

Permission to travel to, and stay in, New Zealand is now called a "visa". This single term "visa" replaces the current terms visa, permit, and exemption. A distinct decision on entry permission will be made regarding every non-citizen. When entry permission is granted at the border, the "stay" conditions of a visa holder's visa will be activated. Where the requirement to hold a visa for travel to

New Zealand is waived, non-citizens will be granted a visa with “stay” conditions at the border. All non-citizens will require a visa to stay in New Zealand, ensuring that all non-citizens who come to New Zealand are accurately recorded and managed within the immigration system.

The entry permission decision mirrors the current function performed by the grant of a permit at the border. The entry permission decision-making process will vary according to a person’s immigration status. Permanent residents will be guaranteed entry, and there will be a greater degree of control over temporary or limited visa holders.

The facilitative effect of the current exemptions will continue in the immigration system without any actual increase in the current levels of immigration assessment. The Bill, however, gives greater flexibility for the government of the day to amend the level of assessment required without requiring legislative change.

The Bill establishes permanent resident, resident, temporary, interim, limited, and transit visas.

Biometric information

The Bill enables the future collection and use of certain specified biometric information for identity verification purposes. Biometric information includes fingerprints and iris scans, as well as photographs. This will enable New Zealand to use new technology to help improve the integrity of the immigration system. Like the ability to enable automated decision making, the biometric provisions will allow New Zealand’s immigration system to compete against others world-wide through the effective use of technology.

The Bill enables the limited collection of biometric information from people presenting at the border as New Zealand citizens to ensure they are who they claim to be. The biometric information will not be retained unless the information does not confirm that the person is, in fact, a New Zealand citizen.

Arrivals and departures

The Bill establishes immigration control areas for immigration processing and maintains advanced passenger processing provisions.

It clearly sets out obligations on persons arriving in New Zealand and obligations on carriers.

Refugee and international protection determination

The Bill creates a new integrated international refugee and protection determination procedure. This codifies in domestic legislation New Zealand's existing immigration-related obligations under the Refugee Convention, the Convention Against Torture, and the International Covenant on Civil and Political Rights.

The new refugee and protection system ensures that all claims for international protection are assessed together to provide for a more efficient and fair determination of who is entitled to protection under these obligations. It strengthens New Zealand's already highly regarded refugee determination system and reflects best practice standards internationally.

Deportation

The Bill creates a streamlined deportation process that is more efficient, but maintains high standards of fairness. It will be more efficient because liability for deportation will largely be fact-generated rather than dependent on individual Ministerial decisions.

The deportation process brings together numerous provisions in the 1987 Act regarding removal, revocation, and deportation into a transparent framework that clearly sets out a non-citizen's rights and obligations.

In summary, deportation liability is triggered by staying in New Zealand unlawfully, breaching visa conditions, staying in New Zealand on a visa obtained through fraud or misrepresentation, specified levels of criminal offending, and through risk or threat to security. Unlike the 1987 Act, staying in New Zealand on a visa obtained in a false identity, and new information relating to character applicable but not disclosed when the visa was granted, are explicitly provided for as grounds for deportation liability. The Bill clearly sets out how liability is communicated. It allows for liability to be cancelled or suspended at the discretion of the Minister of Immigration or, on appeal, by the Tribunal.

This system provides for more efficient deportation processes. In many cases, the Bill allows a person to remain lawfully in New Zealand (and to continue to work or study) if they appeal against their liability for deportation.

Appeals

The Bill establishes a robust independent appeals system, based on a new Tribunal that replaces the 4 existing appeals bodies.

The Bill maintains the existing rights to appeal. Unlike the current system, the Bill allows for the Tribunal to consider all grounds for appeal together in a single decision. This will improve efficiency, accuracy, and fairness for the individual.

The new appeals system will create greater efficiencies in the overall immigration system, while maintaining New Zealand's high standards of fairness.

Compliance and enforcement

Ensuring integrity in the immigration system requires a balance between facilitating the travel, entry, and stay of non-citizens who meet the goals of the Government's immigration policy and comply with their obligations, and being able to manage those non-citizens who do not.

The Bill establishes flexible compliance and enforcement powers to enable the Department of Labour to access the people, places, and information required to ensure the integrity of the immigration system.

The Bill enables a more relevant set of organisations to be required to provide access to address information. It establishes a set of entry and inspection powers that enable general compliance enforcement, as well as enforcement of employers' and education providers' immigration obligations.

The Bill maintains entry and search powers at the border to enable the location of persons committing an immigration offence or who are unlawfully in New Zealand. It maintains powers to enter and search for the purposes of executing deportation notices and orders.

Unlike some aspects of the 1987 Act, powers of entry, inspection, and search may be designated to appropriately trained immigration officials in addition to the police and customs officers acting in an immigration capacity. The new powers for immigration officers are to be activated by Order in Council once the Government is assured that appropriate systems for training and use are in place.

In addition to current information-sharing provisions, the Bill allows information to be shared with publicly funded service providers who

require immigration status information to establish eligibility for those services, and with employers to establish entitlement to work.

Detention and monitoring

The Bill establishes more flexible and responsive detention and monitoring provisions. It brings together all provisions that deal with arrest and detention into a single part.

The Bill creates a tiered system that includes a greater ability to use reporting conditions. It also gives greater discretion to the courts in issuing warrants of commitment.

Additional safeguards, including legal aid for detainees and tiered restrictions on detention after 6 and 12 months are introduced.

The Bill includes a limited power for designated officers to detain a person for up to 4 hours, which is to be activated by Order in Council after appropriate training and systems for use are in place. It extends the maximum period of detention without a warrant of commitment to 96 hours, to help reduce the overall time taken for turnarounds at the border.

Third parties

Employers, education providers, and carriers are vital to the success of New Zealand's immigration system. Such third-party engagement comes with obligations to support the integrity of the immigration system.

In general, the current obligations on third parties will not change. The Bill is intended to create greater incentives for third parties to comply with their obligations in the immigration system, to both improve compliance and keep New Zealand in line with international standards.

The Bill removes sighting an IR330 tax code declaration as a reasonable excuse for employing a person not entitled to work in New Zealand. It requires employers to take reasonable precautions and due diligence to determine whether a person is entitled to work. It allows for information-sharing to reduce compliance costs for employers.

The Bill provides for a more appropriate range of penalties for education providers that enrol non-citizens not entitled to study. It also establishes infringement offences (also known as instant fines) for carriers who fail to meet their immigration obligations.

Clause by clause analysis

Clause 1 is the Title clause of the Bill.

Clause 2(1) provides for the Bill generally to come into force on a date appointed by the Governor-General by Order in Council.

Clause 2(2) allows for the same or a later commencement date to be appointed for certain specified clauses. These clauses relate to—

- the collection of biometric information; and
- certain powers of entry, search, and detention by immigration officers that immigration officers do not have under the 1987 Act (*clauses 245, 250 to 254 and 274*).

In relation to the powers of search and entry under *clauses 245 and 250 to 253*, which were possessed only by customs officers and members of the police under the 1987 Act, it should be noted that *clauses 443 and 444* give customs officers and members of the police the ability to exercise those powers on and from the general commencement date set for the Bill under *clause 2(1)*.

Part 1 Preliminary provisions

Clause 3 sets out the general purpose of the Bill as being to manage immigration through balancing the rights of the individual and the national interest as determined by the Crown.

Clause 4 is the interpretation clause. Worthy of note are the definitions of—

- **biometric information**, which includes photographs, fingerprints, and iris scans;
- **determination officer**, which, with the expanded functions of *Part 5* to cover protected persons as well as refugees, takes over from the definition of refugee status officer;
- **entry permission**, which has the meaning and effect described in *clause 95* and, in combination with a visa, allows a person to both enter and remain in New Zealand for a particular period;
- **immigration instructions**, which may be residence instructions or temporary entry instructions, and are successors to Government residence policy and immigration policy under the 1987 Act;
- **proceedings involving classified information**, which refers to an appeal or review or other matter involving classified

information, or consideration of an application under *Part 9* (detention and monitoring) where classified information is used in order to determine the application:

- **protected person**, who is a person recognised under *Part 5* as a person in need of protection because of risk of torture, or cruel, inhuman or degrading treatment or punishment;
- **residence class visa**, which now includes 2 types of visas: resident visas subject to conditions, and permanent resident visas;
- **special advocate**, who is a person recognised for the purpose of representing the interests of an appellant or other affected person in proceedings involving classified information;
- **temporary entry class visa**, which includes any temporary visa, limited visa, or interim visa, but does not include a transit visa;
- **Tribunal**, which means the new Immigration and Protection Tribunal set up under *clause 193* to act as a single tribunal replacing the Residence Review Board, the Refugee Status Appeals Authority, the Removal Review Authority, and the Deportation Review Tribunal;
- **visa**, which has the meaning and effect described in *clause 37*, and now replaces the former terms “visa”, “permit”, and “exemption”. A visa (other than a transit visa) now both gives—
 - permission to travel to New Zealand and apply for entry permission; and
 - if granted entry permission, permission to stay in New Zealand in accordance with the conditions of the visa (if any).

Clause 5 defines the term **classified information**.

Clause 6 provides that the **Bill** binds the Crown.

Part 2

Core provisions and decision making

Part 2 sets out certain provisions that form the basis of immigration law, and also sets out basic matters relating to the making of decisions under the **Bill**.

Eligibility to be in or enter New Zealand

Clause 7 states the right of every New Zealand citizen to enter and be in New Zealand at any time.

No New Zealand citizen needs, or may hold, a visa.

New Zealand citizens will, however, have to comply with any relevant border requirement.

Clause 8 sets out the basic requirements for non-New Zealand citizens. They may travel to New Zealand only if they hold a visa, and the travel is consistent with any conditions of the visa, or if they are subject to a visa waiver.

They may enter and be in New Zealand only if—

- they are granted entry permission; and
- they hold a visa granted under the Act.

A person in New Zealand in contravention of these requirements is unlawfully in New Zealand.

Generally, the fact that a person holds a visa granted before the person seeks to enter New Zealand does not itself give the person a right to be granted entry permission.

The fact that an application for a visa has been made by or for any person who is in New Zealand does not—

- render the person's presence in New Zealand lawful; or
- give the person a right to remain in New Zealand while the application is considered; or
- give the person a right to apply for or be granted any other visa pending determination of the application; or
- inhibit deportation procedures under the Bill.

Excluded persons

Clauses 9 to 11 essentially repeat section 7 of the 1987 Act, but with some broader exclusion criteria.

Clause 9 provides that no visa or entry permission may be granted, and no visa waiver applies, to any person who—

- has been convicted of certain offences during a stated period; or
- is subject to a prohibition on entry under *clause 167* (which prohibits entry to New Zealand for a specified period after deportation); or

- has at any time been deported or removed from New Zealand under any enactment (subject to certain exceptions, such as where the period of prohibition on entry has expired); or
- is excluded from New Zealand under any enactment; or
- has at any time been removed, excluded, or deported from another country.

Clause 10 makes similar provision for the case where—

- the Minister has reason to believe that the person is likely to commit an offence in New Zealand that is punishable by imprisonment, or is, or is likely to be, a threat or risk to security, public order, or the public interest; or
- is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

Clause 11 provides exceptions to non-eligibility for visa or entry permission—

- by virtue of a special direction; or
- for the purposes of the Mutual Assistance in Criminal Matters Act 1992.

An exception is also provided for—

- the granting of entry permission to a permanent resident, or a resident who is entitled to entry permission, under *clause 96(1) or (2)*; and
- the granting of a visa and entry permission to diplomats and consular representatives.

Persons unlawfully in New Zealand

Clause 12 states the obligation of persons unlawfully in New Zealand to leave New Zealand.

Clause 13 sets out the duty of the chief executive to communicate to persons seeking visas—

- the obligation to leave New Zealand created by *clause 12*; and
- that a person who fails to meet that obligation may face deportation.

Clause 14 states that there is no right for a person unlawfully in New Zealand to apply for a visa.

Overview of decision-making powers

Clauses 15 to 18 set out the key decision-making powers of, respectively,—

- the Minister (*clause 15*);
- the chief executive of the Department (*clause 16*);
- immigration officers (*clause 17*);
- determination officers (*clause 18*).

Clause 19 states that *clauses 15 to 18* provide an overview only, and do not limit the generality of powers that may be exercised under the Bill or any other Act.

Immigration instructions

Clauses 20 to 21 provide for the formulating and certification of immigration instructions, which may be either residence instructions or temporary entry instructions. These are the new terms for Government residence policy and Government immigration policy under the 1987 Act.

Clause 22 provides for the publication of immigration instructions.

Clause 23 essentially repeats section 13BB of the 1987 Act, and provides for the Minister to formulate and certify as immigration instructions rules or criteria for the lapsing of applications.

Clause 24 provides, in similar terms to section 13BA of the 1987 Act,—

- that the order and manner of processing any application for a visa or entry permission is a matter for the discretion of an immigration officer; and
- for the chief executive to give general instructions as to the order and manner of processing applications.

Reasons for decisions

Clause 25 requires the giving of reasons where the Minister or an immigration officer refuses to grant a visa, or a visa of a particular type, to a person who applies for a visa in New Zealand (including at an immigration control area).

No right to apply for or have certain matters considered

Clause 26 essentially repeats a number of provisions in the 1987 Act that apply when exceptions to usual provisions are requested, and provides that where the Bill states that a matter is in the absolute discretion of the decision-maker, it means that—

- the matter or decision may not be applied for; and

- if a person purports to apply for the relevant matter or decision, there is no obligation to consider the purported application; and
- there is no obligation to give reasons for any decision relating to the purported application, whether under the Bill or under the Official Information Act 1982.

Automated decision making and biometric information

Clause 27 provides for automated decision making in relation to visas, entry permission, and invitations to apply for a visa.

Clause 28 also provides for the use of automated decision making in relation to advance passenger processing.

Clause 29 provides for the use of biometric information to—

- establish a record of a person's identity; or
- verify a person's identity; or
- assist in decision making under the Bill.

Use of classified information in decision making

Clause 30 provides that classified information may be used in decision making under the Bill if the Minister determines that the classified information relates to matters of security, criminal conduct, or matters that may have a significant impact on New Zealand's international reputation.

The Minister may use the classified information to make a decision himself or herself, or may direct that it be provided to the Tribunal for the purposes of making certain decisions under *Part 5* in relation to refugee or protected person status.

Clause 31 allows the Minister to request a briefing from the chief executive of the agency that supplied the classified information.

The content of the briefing is determined by that chief executive.

The content of the briefing must be kept confidential, and evidence of its content is not admissible in a court or the Tribunal except as provided in the Bill.

Clause 32 stresses that classified information provided for the purpose of making a decision or determining proceedings under the Bill, must be kept confidential, must not be disclosed, and cannot be compelled to be disclosed, except as specifically provided in the Bill.

When providing classified information, the chief executive of the relevant agency is under a duty to disclose favourable as well as unfavourable classified information.

Clause 33 allows the chief executive of the relevant agency to withdraw all or any part of any classified information, or to add to it or update it. Withdrawn information may not be used in making a decision under the Bill.

Clause 34 provides for a summary of the allegations arising from any classified information to be agreed between the relevant decision-maker and the chief executive of the agency supplying the information (except to the extent that it would involve disclosure that would be likely to prejudice the interests referred to in the definition of **classified information**). The agreed summary is then forwarded to the person subject to the proposed decision for comment.

A summary must be updated if any classified information is withdrawn or added to that already supplied.

Clause 35 provides that, where a prejudicial decision is made using classified information, being a decision in relation to an application for a residence class visa, an onshore application for a temporary entry class visa, or a person's liability for deportation, the person who is the subject of the decision must be informed of—

- the fact that classified information was used in making the decision; and
- the reasons for the decision (except where this would involve disclosure that would be likely to prejudice the interests referred to in the definition of **classified information**); and
- any appeal rights available; and
- the right to be represented by a special advocate in any appeal.

Clause 36 provides that, except as specifically provided in *clauses 34 and 35*, there is no need to provide potentially prejudicial information arising from classified information to a person, or to give reasons for a decision made using classified information.

Subclause (2) provides that nothing in *clauses 34 and 35* requires the making available of any classified information or summary of allegations, or the giving of reasons for decisions,—

- where the decision concerned is in the absolute discretion of the decision-maker in terms of *clause 26*;
- in relation to expressions of interest or invitations to apply for a visa;

- in relation to applications for transit visas, or applications for temporary entry class visas made offshore or in an immigration control area;
- in relation to applications for entry permission.

Part 3 Visas

Subpart 1—Visas generally

Clause 37 sets out the nature of visas. A visa is an entry made in the records of the Department indicating (except in the case of a transit visa) that—

- the holder of the visa has permission to travel to New Zealand and apply for entry permission, and there is no reason to believe that the holder will be refused entry permission if the travel is consistent with the travel-related conditions of the visa; and
- if granted entry permission the holder of the visa has permission to stay in New Zealand, provided he or she abides by the conditions of the visa (if any).

A visa may give permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys. A transit visa gives its holder permission to travel to and transit New Zealand through an immigration control area or on the craft (or in custody) for no longer than the transit period prescribed in regulations.

Clause 38 provides that visas other than permanent resident visas are subject to such conditions as may be specified in immigration instructions in relation to the relevant class or type of visa, being the immigration instructions—

- current at the time the application was made for the visa, in the case of resident visas and temporary entry class visas subject to restricted temporary entry instruction; or
- current at the time of the grant of the visa, in any other case.

Clauses 39 and 40 allow the Minister and immigration officers to impose further conditions on individual visas, or to vary or cancel conditions that would otherwise apply under immigration instructions.

Only the Minister may impose, vary, or cancel conditions where a visa is granted as an exception to immigration instructions. Conditions can be imposed, varied, or cancelled by agreement with the

visa holder or by notification under *clause 43*, and under *clause 42* take effect on the date specified in the notice.

No conditions can be imposed on a permanent resident visa holder.

Clause 41 allows a resident visa holder to apply for a variation of conditions to allow travel at a later date.

Clause 44 sets out the requirement for visa holders to abide by the conditions of their visas.

Clause 45 provides that the Minister or an immigration officer may impose a requirement that a bond be paid as a precondition to the grant of a visa.

Clause 46 provides that a visa applicant may be required to have a sponsor, who would supply a written undertaking as to all or any of the employment, accommodation, and maintenance of the applicant, or the costs of repatriation or deportation of the applicant if required.

General rules relating to visas

Clause 47 deals with applications for visas.

Clause 48 makes it the responsibility of the applicant to ensure that all information, evidence, and submissions the applicant wishes to have considered are provided when the application is made. An applicant must also notify any material change of circumstances after the application is made.

Clause 49 allows an application by a minor to be declined where the Minister or immigration officer is not satisfied that any parent or guardian of the minor consents to the making of the application.

Clause 50 makes provision for the collection of biometric information from applicants.

Clause 51 provides that the grant of a visa is a matter of discretion (except in the case of an emergency return to New Zealand, or where the Tribunal orders the grant of a visa). *Subclause (3)* lists further related matters that are for the discretion of the Minister or immigration officer, including decisions as to which type of visa to grant and what conditions to impose on the visa, and any decision to cancel a temporary entry class visa, or a resident visa before its holder's first arrival in New Zealand, when the holder of the visa is outside New Zealand.

Clause 52 allows the Minister, in his or her absolute discretion, to grant a visa of any type to a person who is in New Zealand unlawfully.

Clause 53 deals with the form of visas. Visas may, but need not, be evidenced by an endorsement in a passport or certificate of identity.

Clause 54 sets out certain circumstances in which a visa will be treated as cancelled, including on the deportation of or refusal of entry permission to its holder, the holder's failure to comply with certain border requirements, or the grant of a further visa (or New Zealand citizenship) to its holder.

Clause 55 provides that the Minister or an immigration officer may—

- cancel a temporary entry class visa at any time when its holder is outside New Zealand;
- cancel a resident visa at any time before its holder first arrives in New Zealand as the holder of that visa;
- cancel a transit visa at any time.

An immigration officer may also cancel a visa believed on reasonable grounds to have been granted as a result of administrative error, at any time before the person leaves the immigration control area or office of the Department where the visa was granted, or before advice of the grant of the visa has been sent in appropriate cases.

Clause 56 makes provision for the case where the grant of a visa as a result of administrative error is discovered too late for cancellation of the visa under *clause 55*.

In such a case the visa holder may be offered a temporary entry class visa (as an alternative to becoming liable for deportation under *Part 6*).

Clause 57 provides for waivers of the requirement to hold a visa to travel to New Zealand in certain classes of case, either by regulations or by a special direction having effect for not more than 3 months.

Subpart 2—Classes of visa

Clause 58 sets out the different classes of visa as—

- residence class visas, consisting of permanent resident visas and resident visas;
- temporary entry class visas, consisting of temporary visas, limited visas, and interim visas;
- transit visas.

Residence class visas

Clause 59 sets out who may apply for a residence class visa. Immigration instructions may provide that persons of a certain class or category may apply for a residence class visa only in response to an invitation to apply for such a visa.

No limited visa holder, interim visa holder, or person liable for deportation may apply for a residence class visa.

Clause 60 provides that any decision on an application for a residence class visa must be made in terms of the residence instructions applicable at the time the application for the visa was made.

The Minister does however retain the absolute discretion to determine to grant a visa as an exception to residence instructions.

Clause 61 sets out the nature of permanent resident visas, which entitle their holders to travel to New Zealand at any time, to be granted entry permission, to stay in New Zealand indefinitely, and to work and study in New Zealand.

Clause 62 sets out the nature of resident visas.

The main differences from permanent resident visas are that—

- a resident visa may be subject to conditions;
- the holding of a resident visa does not entitle the holder to be granted entry permission on his or her first arrival in New Zealand, or on any later arrival that is not consistent with the travel-related conditions of the visa.

Clause 63 makes special provision for persons renouncing or deprived of New Zealand citizenship. Such persons are deemed to hold a resident visa subject to conditions specified in residence instructions for the purposes of the clause.

Temporary entry class visas

Clause 64 provides for the making of decisions on applications for temporary entry class visas. Immigration officers may grant such visas as an exception to immigration instructions, except in the case of visas of a type subject to restricted temporary entry instructions (although here the Minister also retains the absolute discretion to grant a visa as an exception to instructions).

Clause 65 sets out the nature of temporary entry class visas. Work or study in New Zealand is permitted only if the conditions of the visa allow.

Clause 66 provides for an extension of the currency of a visa where an epidemic management notice is issued under the Epidemic Preparedness Act 2006.

Clause 67 states that temporary visas may be of a variety of different types and names as specified in immigration instructions.

Clause 68 sets out the persons who may apply for a temporary visa. As with residence class visas, immigration instructions may prohibit classes or categories of persons from applying for a temporary visa otherwise than pursuant to an invitation to apply.

No limited visa holder or interim visa holder may apply for a temporary visa.

Clause 69 provides for the grant of interim visas for the purpose of maintaining the lawful status in New Zealand, while the application is being considered, of a temporary visa holder who has applied for a further visa.

Clause 70 sets out who may apply for a limited visa. Limited visas are for persons who wish to come to New Zealand for an express purpose.

Clause 71 allows the Minister or an immigration officer to grant a limited visa, rather than the visa applied for, to a person who has applied for a temporary visa, where there is a risk in a particular case that the person might remain in New Zealand beyond the expiry of a temporary visa.

Clause 72 provides for the grant of a limited visa for the purposes of the Mutual Assistance in Criminal Matters Act 1992, to enable a person to return to New Zealand to face any charge or serve any sentence imposed on the person in New Zealand.

Clause 73 provides that a limited visa may be granted for such period as is appropriate to achieve the express purpose for which the visa is granted. That period may not exceed the period specified in respect of that category of visa in immigration instructions.

Where the express purpose is achieved or abandoned before the visa is due to expire, an immigration officer may specify an earlier date for its expiry.

Clause 74 sets out limitations on the holders of limited visas. They may not apply for a visa of a different type, or request a special direction, while in New Zealand, and have no rights of appeal under *Part 7* of the Bill.

Every limited visa must be granted subject to conditions relating to its purpose.

Transit visas

Clauses 75 to 79 deal with transit visas. Persons intending to travel to New Zealand and be in New Zealand only as a transit passenger must apply for and obtain a transit visa before travelling to New Zealand, unless classified by regulations or a special direction of the Minister as a person of a type who is subject to a transit visa waiver. Transit visa holders may not, during the prescribed transit period, apply for entry permission or a visa of any other type.

A transit visa may be cancelled at any time.

Invitation to apply for a visa

Clause 80 provides for expressions of interest in obtaining an invitation to apply for a visa in the case of persons of a class or category that may apply for a visa of a particular class or type only if invited to do so.

Clause 81 provides, as with applications for visas, that it is the responsibility of a person expressing an interest in obtaining an invitation to apply for a visa to supply all relevant information, evidence, and submissions when expressing the interest, and notify any material change in circumstances that might affect the decision to issue an invitation to apply for, or to grant, a visa.

Clause 82 describes an invitation to apply for a visa as a statement that the person to whom the invitation is made is authorised to make an application for a visa of a particular class or type.

The statement of the invitation is sufficient authority for applying for the visa, although an invitation may be revoked at any time.

Clause 83 provides that the issue of an invitation to apply for a visa is a matter for the discretion of the Minister or, subject to any special direction, an immigration officer.

No appeal or review proceedings may be brought in respect of any refusal or failure to issue an invitation to apply for a visa.

Part 4

Arrivals and departures

Immigration control areas

Clause 84 provides for the chief executive to designate immigration control areas (which are places where immigration processing of people arriving in New Zealand will occur).

Clause 85 provides that the operator of any airport or seaport where an immigration control area is located must provide and maintain such facilities as the chief executive determines are reasonably necessary and suitable for carrying out immigration functions in relation to arrivals in and departures from New Zealand.

Apart from any operating area used for the processing of persons arriving in or leaving New Zealand, the operator of the airport or seaport may levy a reasonable charge on the Department for the provision of any facilities.

Advance passenger processing

Clauses 86 and 87 provide for advance passenger processing in similar terms to sections 125AA and 125AB of the 1987 Act, except that much of the detail of the information required to be supplied by carriers and persons in charge of craft will now be located in regulations.

Clause 88 provides that a person proposing to board a craft for the purposes of travelling to New Zealand must allow the collection of biometric information (unless the person has a New Zealand passport or other evidence of being a New Zealand citizen).

Obligations in relation to craft coming to New Zealand

Clause 89 sets out the obligations of carriers and persons in charge of craft coming to New Zealand in relation to persons on the craft and the provision of information.

Clause 90 obliges certain carriers and persons in charge of craft to provide, or request, access to prescribed information.

Obligations on persons arriving in New Zealand

Clauses 91 to 94 set out the normal border obligations of persons arriving in New Zealand, and the responsibilities of persons travelling by air within New Zealand. These obligations include—

- presenting to an immigration officer;

- applying for a visa (if required) and entry permission;
- in the case of New Zealand citizens, complying with requirements aimed at confirming citizenship.

Entry permission

Clause 95 deals with the nature of entry permission.

A person granted entry permission may enter New Zealand only if the person already holds a visa or is granted a visa at the same time entry permission is granted.

If a person is refused entry permission,—

- any visa the person holds is cancelled; and
- the person is subject to the border turnaround provisions in *clauses 105 to 108*.

Clause 96 sets out the various decisions that may be made when entry permission is sought.

A permanent resident visa holder must be granted entry permission.

A resident visa holder must be granted entry permission if it is the holder's second or subsequent entry to New Zealand as the holder of that visa, and the holder's travel to New Zealand was consistent with any travel-related conditions of the visa.

In any other case entry permission may be refused, or may be granted on the basis of any visa already held, on the basis of a visa already held but subject to different conditions, or on the basis of a visa of a different type.

Clause 97 requires an applicant for entry permission to specify a New Zealand address.

Clause 98 provides that an applicant for entry permission must allow the collection of biometric information, or risk refusal of entry permission.

Clause 99 provides that any decision in relation to an applicant for entry permission who is a resident must be made in terms of the residence instructions applicable at the time the application for the resident visa was made (subject to the Minister's absolute discretion to grant entry permission as an exception to residence instructions).

Clause 100 allows a decision in relation to an applicant for entry permission who holds a temporary entry class visa to be made as an exception to temporary entry instructions, unless the visa is of a type

subject to restricted temporary entry instructions (subject to the Minister's overriding discretion).

Clause 101 provides that, except as otherwise provided in *clauses 96 to 100*, the refusal or grant of entry permission, and any related visa, is a matter of discretion.

Clause 102 obliges an applicant for entry permission to ensure that all relevant information is provided, including any material change in circumstances that has occurred between the grant of a visa and the application for entry permission.

Clause 103 allows for a revocation of entry permission, and any related visa, where the entry permission was granted as a result of administrative error and the person has not yet left the immigration control area where the error was made.

Turnaround provisions

Clause 104 provides for the arrest and presentation to an immigration officer of persons who have failed (or there is good cause to suspect have failed) to present themselves in the appropriate manner to apply for entry permission.

A person arriving in New Zealand at a place elsewhere than at an immigration control area who does not comply with the requirements prescribed under *clause 91* will have his or her visa cancelled and be subject to the turnaround provisions of *clauses 105 to 108*.

Clause 105 provides for the arrest, detention, and turnaround of stowaways, persons failing to apply for entry permission and visa, persons refused entry permission or a visa, persons whose visas are cancelled, or persons failing to remain in an immigration control area when so instructed by an immigration officer.

A person to whom the clause applies is deemed to be in New Zealand unlawfully, but has no rights of appeal under *section 185*.

Clause 106 sets out the circumstances in which *clause 105* ceases to apply to a person.

Clause 107 provides that a person to whom *clause 105* applies may be treated in the same way as a person subject to a deportation order.

Clause 108 provides that, where a person to whom *clause 105* applies is remanded in custody or imprisoned for criminal offending, the person remains subject to *clause 105* while in custody or imprisonment.

Obligations in relation to departure from New Zealand

Clause 109 sets out the obligations of carriers and persons in charge of craft leaving New Zealand, including the obligations—

- to allow any person being deported or subject to the turn-around provisions to board the craft for passage from New Zealand;
- to provide passage, or bear the cost of passage, of any person on board the craft, or any other craft owned by the carrier, when it arrived in New Zealand, where the person did not hold a visa (if required) or was refused entry permission, or was a crew member unlawfully in New Zealand.

Clause 110 sets out the obligation of persons leaving New Zealand to present to an immigration officer, comply with any direction of an immigration officer, and provide information and complete documents as prescribed.

Clause 111 makes special provision for the case where a person is forced to return to New Zealand by reason of any emergency affecting the craft, or any other emergency or circumstances beyond the person's control.

Clause 112 provides protection from criminal or civil proceedings for a carrier or person in charge of a craft who in good faith imposes reasonable measures, including restraint or reasonable force, in accordance with their responsibilities under *clause 89 or 109*.

Part 5

Refugee and protection status determinations

Clause 113 sets out the purpose of the Part as providing a statutory basis for the system by which New Zealand—

- ensures it meets its obligations under the Refugee Convention; and
- codifies certain obligations under the Convention Against Torture and the Covenant on Civil and Political Rights.

This Bill for the first time contains a statutory basis for recognising persons in need of protection (**protected persons**) in terms of the latter 2 international instruments: Part 6A of the 1987 Act deals only with refugee determinations for the purpose of New Zealand meeting its obligations under the Refugee Convention.

Clause 114 defines certain terms for the purposes of *Part 5*. These are generally the same as definitions under Part 6A of the 1987 Act,

but are expanded to include appropriate references to protected persons. Claims for recognition as a refugee or protected person are now dealt with by **determination officers** (rather than by refugee status officers as under the 1987 Act).

Clause 115 provides that refugee or protected person status is to be determined under *Part 5*.

Clause 116 provides an exception to *clause 115* in the case of persons recognised as refugees outside New Zealand and brought to New Zealand under a government-mandated programme.

Clause 117 sets out the context for decision making in relation to recognition as a refugee as being New Zealand's obligations under the Refugee Convention, whereas in relation to recognition as a protected person it is the provisions of the Bill.

Clause 118 provides that every claim under *Part 5* must be determined by a determination officer unless the claim involves classified information (in which case it must be determined by the Tribunal).

Clause 119 sets out the ground for recognition as a refugee.

Clause 120 sets out the ground for recognition as a protected person under the Convention Against Torture.

Clause 121 sets out the ground for recognition as a protected person under the Covenant on Civil and Political Rights.

Under *clause 122*, it is an additional requirement for recognition as a protected person that—

- the person is unable or, because of the risk of torture, arbitrary deprivation of life, or cruel treatment, unwilling to avail himself or herself of the protection of his or her country (or countries) of nationality or former habitual residence; and
- torture, arbitrary deprivation of life, or cruel treatment would be faced by the person in every part of his or her country of nationality or former habitual residence, and is not faced generally by other persons in or from that country (or those countries).

Clause 123 provides that a determination officer may not consider a claim for recognition as a refugee or protected person by a New Zealand citizen, or by a resident or permanent resident of New Zealand (unless the person has been served with a deportation liability notice).

Clause 124 sets out how a claim is made.

Clause 125 sets out the matters that may be taken into account in determining whether to accept a claim for consideration, particularly having regard to recognition granted in other countries.

Clause 126 sets out the procedure for determining claims. It is the responsibility of the claimant to establish that he or she meets the grounds for recognition as a refugee or protected person, and must ensure that all information, evidence, and submissions that the claimant wishes to have considered, or would wish to have considered in support of any other potential claim, are provided to the determination officer.

Clause 127 sets out the matters that are to be determined by a determination officer who is considering a claim.

In particular, the determination officer must consider not only whether the claimant meets the grounds for the particular claim for recognition put forward, but also whether the claimant meets the criteria for any other ground for recognition as a refugee or protected person.

The determination officer must also determine, in relation to recognition as a protected person, whether there are serious reasons for considering that the claimant has committed certain crimes relevant under the appropriate international instruments, or been guilty of acts contrary to the purposes and principles of the United Nations.

Clause 128 provides that a determination officer must grant recognition as a refugee or protected person if satisfied that the appropriate ground or grounds for recognition have been met, and must notify the claimant of any decision on the claim, the reasons for the decision, and (if appropriate) the claimant's right of appeal to the Tribunal.

Clause 129 provides that it is for the Minister to make a decision about a protected person's immigration status where a determination officer has determined under *clause 127* that there are serious reasons for considering that a person has committed a crime or been guilty of an act described in that clause.

Clause 130 limits the ability to consider any subsequent claim by the same person to the case where the determination officer is satisfied that there has been a material change in circumstances since a prior claim, and that this change was not brought about by the claimant for the purpose of creating grounds for recognition of the relevant status. Determination officers may refuse to consider manifestly unfounded, abusive, or repeated claims.

Clause 131 provides that a claim will be treated as withdrawn if the claimant leaves New Zealand.

Clause 132 provides for the cessation of recognition of a person as a refugee or protected person in appropriate cases (such as a change in circumstances in the person's country of nationality or habitual residence).

Clause 133 provides for the cancellation of recognition as a refugee or protected person in cases where that recognition was or may have been brought about by fraud, forgery, false or misleading representation, or concealment of relevant information. Cancellation of recognition is a matter for a determination officer unless classified information is involved in making the decision, in which case the matter is to be determined by the Tribunal.

Clause 134 requires a decision to cease a person's recognition as a refugee or protected person to be made by the Tribunal, where recognition was previously granted by the Tribunal (or by the Refugee Status Appeals Authority under the 1987 Act).

Clause 135 provides that it is for a determination officer to determine whether *clause 153* prohibits the deportation of a refugee who is liable for deportation under *clause 150* on the grounds of conviction of a criminal offence.

Clause 136 sets out procedures to be followed in cases of cessation or cancellation of recognition, or in determining whether a refugee can be deported.

Clause 137 provides that where classified information is involved in determining a claim, or in determining whether or not to cancel recognition as a refugee or protected person, the matter is to be determined at first instance by the Tribunal, rather than by a determination officer.

In such a case no further appeal to the Tribunal will lie, but the Tribunal's decision may be appealed to the High Court.

Clause 138 sets out various powers of determination officers in relation to the supply of information and documents, the conducting of interviews, and related matters.

Clause 139 limits the ability of a claimant, or an unsuccessful claimant holding a temporary entry class visa, to apply for a further visa of any kind, other than a further temporary entry class visa for such period only as may be required to maintain the claimant's lawful status in New Zealand while the claim is determined.

Clause 140 requires confidentiality to be maintained as to the identity of any claimant, refugee, or protected person, and as to the particulars of his or her case, both during and subsequent to the determination of the claim or other matter. Publication of information disclosed in contravention of this requirement is also prohibited.

An exception is made where the claimant or person concerned has expressly waived his or her right to confidentiality under the clause.

Clause 141 allows for the disclosure to determination officers of information by government agencies.

Part 6 Deportation

Clause 142 sets out the purpose of *Part 6* as supporting the integrity of the immigration system and security of New Zealand by providing for the deportation of persons from New Zealand. The Part—

- prescribes when a person will be liable for deportation;
- prescribes how that liability must be communicated;
- sets out the consequences of that liability;
- provides for the deportation to occur.

Clauses 143 to 152 set out the different circumstances under which liability for deportation will arise.

The single concept of deportation under the Bill merges the 3 separate 1987 Act procedures for—

- revocation of permits (such as for breach of conditions or fraud); and
- removal of persons unlawfully in New Zealand (which generally followed on from the revocation or expiry of a permit); and
- deportation of a person for cause (generally on the grounds of criminal offending, threat to national security, or suspicion of involvement in terrorism).

A person's liability for deportation may now exist independently of whether or not the person holds a valid visa to be in New Zealand, and there is no need to specifically revoke the visa before a person can be deported.

The grounds for liability for deportation are now:

- *being unlawfully in New Zealand (clause 143)*

A person unlawfully in New Zealand is liable for deportation. The person may appeal to the Tribunal against that liability on

humanitarian grounds within 42 days after first becoming unlawfully in New Zealand.

- *visa granted in error (clause 144)*

A person is liable for deportation if the Minister determines that the visa was granted as a result of administrative error (if the visa has not already been cancelled under *clause 55*).

The holder of a temporary visa has 14 days from the date of service of a deportation liability notice to give good reason why the deportation should not proceed.

A temporary visa holder, interim visa holder, or a residence class visa holder also has 28 days from the date of service of the notice to appeal against the liability for deportation to the Tribunal. The appeal is on humanitarian grounds only in the case of a person holding a temporary visa or interim visa, and both on humanitarian grounds and the facts in the case of a residence class visa holder.

- *visa held under false identity (clause 145)*

A person is liable for deportation if either (a) a conviction for an offence establishes that the person holds a visa under a false identity or (b) the Minister determines that the visa is held under a false identity.

In the former case there is no appeal on the facts, but the person may appeal to the Tribunal on humanitarian grounds on the same basis as a person unlawfully in New Zealand (that is, within 42 days of first becoming unlawfully in New Zealand). Under *clause 143(4)*, the person is treated as being unlawfully in New Zealand for so long as he or she holds a visa under a false identity.

In the latter case,—

- if the visa was a temporary or interim visa, the person has 14 days from the date of service of a deportation liability notice to give the Department good reason why the deportation should not proceed;
 - in the case of a residence class visa, the person may appeal to the Tribunal on the facts within 28 days after receiving the deportation liability notice.
- *deportation liability of temporary entry class visa for cause (clause 146)*

A temporary entry class visa holder is liable for deportation if the Minister determines that there is sufficient reason to

deport him or her. Sufficient reason includes, but is not limited to—

- breach of conditions of the visa:
- criminal offending:
- other matters relating to character:
- concealment of relevant information in the visa application:
- a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

A temporary visa holder or interim visa holder (but not a limited visa holder) has 14 days from the date of service of the deportation liability notice to give good reason why the deportation should not proceed, and may also appeal to the Tribunal on humanitarian grounds within 28 days after service of the notice.

- *residence class visa or citizenship obtained by fraud, etc clause 147)*

A residence class visa holder is liable for deportation if—

- the person is convicted of an offence that establishes that the person's residence class visa or entry permission was procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or
- the Minister determines that the visa was so obtained.

The person has 28 days after service of the deportation liability notice to appeal to the Tribunal on humanitarian grounds, and also on the facts in the case where the Minister (rather than a relevant conviction of an offence) has determined the matter.

Clause 147(2) also covers the case where a person is deprived of citizenship under the Citizenship Act 1977 on the basis of fraud or similar grounds.

- *breach of visa conditions by resident visa holder (clause 148)*

A resident visa holder is liable for deportation if the Minister determines that the conditions of the visa have not been met or that the visa holder has materially breached those conditions.

The person has 28 days from the date of service of the deportation liability notice to appeal to the Tribunal both on the facts and on humanitarian grounds.

- *new information as to character of residence class visa holder (clause 149)*

A residence class visa holder is liable for deportation if, within 5 years after the date the person first held a residence class visa,—

- new information becomes available as to the character of the visa holder, being information that was relevant at the time the visa was granted; and
- the Minister determines that, had that information been known at the time, the person would not have been eligible for the grant of the visa.

The person has 28 days from the date of service of the deportation liability notice to appeal to the Tribunal both on the facts and on humanitarian grounds.

- *criminal conviction of residence class visa holder (clause 150)*

A residence class visa holder is liable for deportation from New Zealand if convicted of an offence of a certain level of seriousness within a certain period of time after coming to New Zealand.

The different levels of offence and the different periods of time giving rise to deportation are as follows:

- offences for which a court may impose imprisonment for 3 months or more, if committed at any time when the person was unlawfully in New Zealand or held a temporary entry class visa, or within 2 years after the person first held a residence class visa:
- offences for which a court may impose imprisonment for 2 years or more, if committed within 5 years after the person first held a residence class visa:
- offences for which the person is sentenced to imprisonment for 5 years or more (or for an indeterminate period capable of running for 5 years or more), if committed within 10 years after the person first held a residence class visa.

The person has 28 days after the date of service of a deportation liability notice to appeal to the Tribunal on humanitarian grounds.

- *refugee or protection status obtained by fraud, etc (clause 151)*

A person previously recognised as a refugee or protected person is liable for deportation if a determination officer or the Tribunal cancelled that recognition under *clause 134*.

If the recognition was cancelled by a determination officer, the person has 28 days from the date of service of the deportation liability notice to appeal to the Tribunal both on humanitarian grounds and also (unless convicted of an offence that establishes that the person obtained recognition by fraud, forgery, false or misleading representation, or concealment of relevant information) on the facts.

- *person threatening security (clause 152)*

A person is liable for deportation if the Governor-General by Order in Council orders his or her deportation on the basis of a certificate by the Minister that the person constitutes a threat or risk to security. No appeal lies under the Bill against an order under this clause.

Clause 153 prohibits the deportation (or turnaround under *clause 105*) of persons recognised as refugees or protected persons, or claimants for such recognition, except in the case where Article 32.1 or 33.2 of the Refugee Convention allows the deportation.

Clause 154 prohibits the deportation of diplomats and consular representatives, other than in cases recognised under the Diplomatic Privileges and Immunities Act 1968.

Clause 155 limits the period of deportation liability of residence class visa holders to a period of 10 years following the arising of the liability for deportation.

Clause 156 sets out the situation when a person who is outside New Zealand becomes liable for deportation. Such a person may nevertheless travel to New Zealand within the period within which an appeal may be lodged, or pending the determination of the appeal, if the conditions of the person's visa allow travel to New Zealand.

Clause 157 sets out the effects of being liable for deportation as preventing a person from applying for a visa, or for a visa of a different class or type, and as suspending the processing of any

application by the person for a grant of citizenship or the grant of a residence class visa.

Clauses 158 and 159 deal with the service and content of deportation liability notices. Deportation liability notices must contain information such as—

- the grounds for liability for deportation;
- the right to give good reason why deportation should not proceed (if relevant);
- information about appeal rights;
- prohibition on entry following deportation.

Clause 160 allows the Minister to cancel a person's liability for deportation, and also to suspend that liability for up to 5 years subject to conditions.

Where the person fails to comply with the conditions, the Minister may by written notice reactivate the liability for deportation.

Clause 161 requires the Minister to have regard to any written submissions made by a victim of an offence giving rise to a liability for deportation, when determining whether to cancel or suspend that liability.

Clause 162 sets out the effect of a suspension of deportation liability on a person's ability to apply for a visa or citizenship. Where the Minister determines that the person has met the conditions of the suspension, the liability for deportation must be cancelled.

Clause 163 provides for the adjournment of appeals, and related matters, where a person's liability for deportation is suspended.

Deportation

Clause 164 specifies when a deportation order may be served on a person, having regard to appeal periods, the determination of appeals, and any suspension of deportation liability.

Clause 165 provides for the actual service and content of deportation orders.

Clause 166 describes how a deportation order may be executed.

A deportation order may not be executed while the person is undergoing imprisonment in a prison.

Clause 167 provides that a person deported from New Zealand may not return to New Zealand or be granted a visa during the relevant period of prohibition on entry to New Zealand.

The period of prohibition on entry from the time the person left New Zealand is—

- 2 years, where the person deported was in New Zealand unlawfully for a period not exceeding 1 year in aggregate;
- 5 years, where—
 - the person was in New Zealand unlawfully for a period not exceeding 1 year in aggregate, but had been in New Zealand unlawfully on a previous occasion; or
 - the person was in New Zealand unlawfully for a period exceeding 1 year in aggregate; or
 - the person was deported under *clause 146* (deportation liability of temporary entry class visa for cause); or
 - the person was deported under *clause 148* (breach of conditions of resident visa):
- permanently, in all other cases.

A prohibition on entry continues for so long as the person fails to pay any debt due to the Crown in respect of the costs of the deportation.

The prohibition on entry also reactivates where the person attempts to re-enter New Zealand during the prohibition period.

Clause 168 provides that the Minister, by special direction, or the Tribunal, on an appeal, may in any particular case reduce the period of the prohibition on entry to New Zealand.

Part 7

Reviews and appeals

Clause 169 sets out the purpose of the Part as being to provide a comprehensive system for appeal and review in respect of decision making under the Bill, including by providing for—

- reconsideration of certain temporary visa applications;
- appeals in respect of decisions on residence class visas;
- appeals in respect of decisions concerning recognition as a refugee or protected person;
- appeals against liability for deportation.

The Part also establishes the Immigration and Protection Tribunal as a specialist tribunal to determine appeals brought under the Bill, and makes provision for appeals from decisions of the Tribunal and judicial review of decisions made under the Bill.

Limited right of reconsideration concerning temporary visa

Clause 170 provides for a limited reconsideration of a decision to decline to grant a further temporary visa where—

- the further visa was applied for by the holder of a current temporary visa who is in New Zealand; and
- the application for reconsideration is made within 14 days after the date of notification of the decision to decline to grant the further visa.

There is no right to a reconsideration if the decision to decline the further visa was made by the Minister.

In any other case, the reconsideration must be by an immigration officer of equal grade or senior to the one who made the decision to decline, or by the Minister.

Appeals in relation to residence class visas

Clause 171 sets out the situations where there is a right to appeal to the Tribunal against a decision concerning a residence class visa as follows:

- an applicant for a residence class visa may appeal against a decision of an immigration officer (but not the Minister) to decline to grant the visa;
- a person outside New Zealand who has been granted a resident visa may appeal against a decision to cancel the visa under *clause 55*;
- a person who has been granted a resident visa may appeal against a decision to refuse the person entry permission.

No appeal however lies against—

- a refusal to grant a visa or entry permission to an excluded person (a person to whom *clause 9 or 10* applies); or
- any refusal or failure to issue an invitation to apply for a visa; or
- any refusal or failure to grant a visa to a person who has been invited to apply for a visa on the ground that false or misleading information was submitted, or relevant information or any material change in circumstances was withheld; or
- any lapse of an application for a visa, or of an expression of interest in obtaining an invitation to apply; or
- any revocation of an invitation to apply for a visa.

The grounds for an appeal under the clause are that—

- the relevant decision was not correct in terms of the residence instructions applicable at the relevant time; or
- the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

An appeal under the clause must be brought within 42 days after notification of the decision appealed against.

Clause 172 sets out the ways in which the Tribunal may determine an appeal under *clause 171*. Where it determines to reverse a decision to refuse a visa, it must consider whether or not conditions should be imposed on a resident visa granted to the appellant, and what those conditions should be.

Clause 173 sets out the information that may be considered in residence appeals.

Clause 174 sets out how effect is to be given to a decision upholding an appeal or to recommendations of the Tribunal.

Appeals against decisions relating to refugee or protection status

Clause 175 provides that every appeal relating to recognition, or continued recognition, as a refugee or protected person in New Zealand must be determined under this Part of the Bill, and that in carrying out its functions the Tribunal must act in a manner that is consistent with New Zealand's obligations under the Refugee Convention (in the case of refugee status appeals) and the Bill.

Clause 176 provides rights of appeal against—

- any decision by a determination officer to decline a claim to be recognised as a refugee or protected person under any 1 or more of *clauses 119, 120, and 121*;
- any decision by a determination officer to decline a subsequent claim for recognition;
- a decision under *clause 132* to cease recognition as a refugee or protected person.

No appeal may be brought against a refusal to consider a subsequent claim on the basis that it is manifestly unfounded or clearly abusive or repeats a previous claim, except in the limited circumstances stated in *subclause (6)* where the previous claim occurred under the 1987 Act.

An appeal under the clause must be brought within 5 days after notification of the relevant decision if the person is detained under *Part 9*, and within 10 days in any other case.

Clause 177 requires the Tribunal to determine an appeal under *clause 176* de novo, and sets out the steps it must take.

Clause 178 relates to appeals against a refusal to consider a subsequent claim, and additionally requires the Tribunal to consider whether or not there has been a material change in circumstances since the previous claim was determined, and whether or not such a change was brought about by the appellant for the purpose of creating grounds for recognition under *clause 119, 120, or 121*.

Appeal on facts against liability for deportation

Clause 179 describes an appeal on the facts as an appeal in which the Tribunal considers whether it is satisfied, to the relevant standard, whether the factual circumstances that gave rise to deportation liability did or did not exist.

Clause 180 lists the persons who may appeal to the Tribunal on the facts. These are basically all residents, permanent residents, and persons recognised as refugees or protected persons, with the exceptions that no appeal lies on the facts where—

- an element of the liability for deportation is a conviction for an offence that establishes either the relevant criminal offending or a finding of fraud or other misleading or concealment element;
- liability for deportation arises from deprivation or renunciation of citizenship;
- liability for deportation arises from an Order in Council made under *clause 152*.

Clause 181 lists the various grounds for determining an appeal against deportation liability on the facts.

Clause 182 requires a person wishing to appeal against deportation liability both on the facts and on humanitarian grounds to lodge both appeals together within the relevant time limits.

Where practicable, the Tribunal must consider both appeals together.

Clauses 183 and 184 make special provision for appeals against liability for deportation in cases concerning refugee or protected person status.

Appeal against liability for deportation on humanitarian grounds

Clause 185 lists the persons who may appeal on humanitarian grounds against liability for deportation. This is all persons liable for deportation other than persons subject to an Order in Council under *clause 152* as a threat to security.

Clause 186 sets out the grounds for determining a humanitarian appeal, which are the same as the grounds for an appeal under Part 2 of the 1987 Act.

Clause 187 gives victims the right to make a submission on a humanitarian appeal in the case of a person liable for deportation on the ground of conviction of a criminal offence.

Orders on determination of appeal

Under *clause 188*, the Tribunal may order an immigration officer to take such steps as it considers necessary, when allowing an appeal against liability for deportation.

Clause 189 allows the Tribunal to order the grant of a residence class or temporary entry class visa, subject to any conditions specified by the visa.

Clause 190 sets out the effect of a successful appeal on a person in custody or subject to residence, reporting, or other conditions.

Clause 191 allows the Tribunal to make an order suspending a resident's or permanent resident's liability for deportation, where it allows an appeal on humanitarian grounds.

Clause 192 gives the Tribunal the discretion to reduce the period of any prohibition on entry that would otherwise apply under *clause 167*, notwithstanding that it may have declined an appeal against deportation liability.

Immigration and Protection Tribunal

Clauses 193 to 200 establish the Immigration and Protection Tribunal, and provide for its membership and procedures.

The chair of the Tribunal is to be a District Court Judge, appointed by the Governor-General on the advice of the Attorney-General given after consultation with the Minister of Justice and the Minister responsible for the Bill.

Other members, who must be lawyers of at least 5 years' standing, are appointed on the recommendation of the 2 Ministers.

A representative of the United Nations High Commissioner for Refugees may serve as an *ex officio* member in cases involving refugees, while a further District Court Judge or Judges may be seconded to the Tribunal under *clause 214* to exercise the jurisdiction of the Tribunal in relation to appeals involving classified information.

Procedure for appeals

Clause 201 describes how an appeal is lodged.

Clauses 202 to 207 relate to the information, evidence, and submissions that may be presented or considered in an appeal.

The Tribunal may require the chief executive of the Department to supply information, and must disclose to an appellant, and give him or her an opportunity to rebut or comment on, any prejudicial information (subject to *clause 231* in the case of classified information).

Under *clause 207* the Tribunal may require an appellant to allow the collection of biometric information.

Clause 208 provides that the Tribunal must provide an oral hearing in the case of—

- an appeal against deportation liability by a resident or permanent resident; and
- any appeal by a person currently or previously recognised as a refugee or protected person, or a claimant for such recognition, except in certain specified cases.

The Tribunal also has a discretion to provide an oral hearing in any other appeal against liability for deportation.

Clause 209 provides that, except as provided in *clause 208*, the Tribunal must determine an appeal on the papers.

Clause 210 provides for the timing of appeals in the case of a person serving a sentence of imprisonment, having regard to the person's parole eligibility date or release date.

Clause 211 applies the provisions of *Schedule 2* to the proceedings of the Tribunal.

Clauses 212 and 213 provide for the withdrawal of appeals and the deemed withdrawal of certain appeals where the appellant leaves New Zealand.

Special procedure where classified information involved

Clause 214 provides that where an appeal involves classified information, the Tribunal must consist of 1 or more members who are nominated District Court Judges.

Nominated Judges are the Chief District Court Judge and up to 2 other Judges nominated for this purpose.

Clause 215 requires the chief executive of the agency supplying the classified information to make a presentation on it at a preliminary hearing, for the purpose of enabling the Tribunal and any special advocate representing the appellant to understand the classified information and question the chief executive about it.

Clause 216 requires the chief executive of the relevant agency to provide to the Tribunal for approval a summary of the allegations arising from the classified information that may be provided to the appellant, and the special advocate (if any), for comment.

The Tribunal may approve or modify the summary, having regard to the views of the relevant agency.

Clause 217 sets out the matters to be considered by the Tribunal in any appeal involving classified information, including matters relating to its relevance and its credibility.

Clause 218 provides that no appeal may be made to the High Court from an appeal before the Tribunal involving classified information unless the Tribunal has issued final determinations on all matters subject to the appeal.

Appeal from Tribunal and judicial review

Clause 219 provides for an appeal by leave to the High Court on a point of law, where any party to an appeal or other matter before the Tribunal is dissatisfied with any determination of the Tribunal.

Clause 220 allows the Tribunal to state a case for the High Court on any point of law.

Clause 221 provides for appeals to the Court of Appeal, by leave, on points of law.

Clause 222 provides that any review proceedings in respect of a statutory power of decision arising out of or under the Bill must be commenced within 28 days after the date of the decision, unless the High Court decides that further time should be allowed by reason of special circumstances.

Where practicable, appeals and review proceedings in respect of the same decision should be both lodged together and heard together.

Clause 223 limits the ability to bring review proceedings in respect of any decision that may be subject to an appeal under *Part 7* of the Bill.

General provisions relating to proceedings involving classified information

Clause 224 provides that, where proceedings involving classified information are to be heard by the High Court, the proceedings must be heard by 1 or more nominated Judges, who may be the Chief High Court Judge or another Judge or Judges nominated by the Chief High Court Judge specifically for the purpose.

Clause 225 requires the nominated Judge to determine whether any classified information raised by a party in an appeal or review proceedings is relevant to the proceedings. If it is, the special provisions that protect the information during the proceedings will apply. If it is not, the confidentiality of the information must still be maintained.

Clause 226 makes similar provision where proceedings involving classified information are on appeal to the Court of Appeal or Supreme Court.

Clause 227 requires an appeal to the Court of Appeal or Supreme Court involving classified information to be lodged within 10 days of the appellant being notified of the decision being appealed against.

Clause 228 requires the Tribunal and any court hearing proceedings involving classified information to give priority to setting down the proceedings, and to treat them with urgency where they relate to a person whose deportation has been ordered under *clause 152* or who is being detained under *Part 9* of the Bill.

Clause 229 provides that the agency that supplied the classified information is entitled to be a party to the proceedings.

Clause 230 allows the relevant agency to withdraw all or any part of the classified information, or add to or update any classified information, at any stage before the proceedings are determined. Where classified information is withdrawn, the Tribunal or the court must disregard the classified information.

Clause 231 requires the Tribunal and the courts to keep confidential, and not release or disclose, any information they have received as classified information in an appeal or review proceedings, even if they consider that the information does not meet the criteria for being treated as classified information, unless the chief executive of the agency supplying it consents to its release.

Provision is made for closed hearings when classified information is being heard, and for the making of orders ensuring confidentiality.

Clause 232 makes provision for general practices and procedures that may be necessary in relation to proceedings involving classified information to be agreed between the chair of the Tribunal and the Attorney-General (in the case of Tribunal proceedings) or the Chief Justice and the Attorney-General (in the case of other proceedings).

Clause 233 states that no Judge or member of the Tribunal is disqualified from hearing any appeal or review proceedings involving classified information by reason of having received a briefing on security matters from any agency.

Clause 234 provides that no appeal or review proceedings may be brought in respect of the use of classified information under the Bill except as provided in the Bill.

Special advocates

Clause 235 sets out the role of a special advocate as being to represent the interests of an appellant in any proceedings involving classified information in relation to the classified information. It is not the role of a special advocate to lodge or commence any proceedings.

A special advocate must be provided with access to classified information, but must keep the information confidential and not disclose it.

The chief executive of the Department must meet the actual and reasonable costs of a special advocate.

Clause 236 provides for the recognition of security-cleared lawyers as special advocates by an agency designated for the purpose by the Prime Minister.

The designated agency must specifically maintain a list of special advocates to represent persons in proceedings under *Part 9* of the Bill, to cover the situation where classified information may be used in determining an application for a warrant of commitment or other

matter under that Part, but the person has not yet appointed a special advocate to represent him or her in any appeal or review proceedings.

Clause 237 deals with the appointment of special advocates in individual cases, once the need becomes apparent. The designated agency must provide the names of at least 3 possible special advocates to the person who is the subject of the relevant decision within 3 days after the person is notified of the decision.

Clause 238 provides for communication between a special advocate and an appellant. The special advocate has unlimited communication with the appellant, or the appellant's representative, until given access to the classified information.

Once that happens, the special advocate can communicate with the appellant or the appellant's representative only by written communication through the Tribunal or court (as appropriate). The Tribunal or court must either forward the communication to the appellant, with or without amendment, or decline to do so and notify the special advocate accordingly.

The appellant may communicate with the special advocate only in writing, either directly or through his or her representative.

Clause 239 protects special advocates from professional liability under the Lawyers and Conveyancers Act 2006, or otherwise, to the extent that the special advocate is acting in accordance with the requirements of the Bill.

Part 8 Compliance and enforcement

Clause 240 sets out the purpose of the Part as being to confer on immigration officers and other persons—

- the power to obtain information in order to allow the Department to detect immigration fraud or misrepresentation and to identify persons failing to comply with immigration-related obligations;
- the power to locate persons who are or may be liable for deportation;
- the authority to share information with other persons and agencies, to enable those persons or agencies to effectively administer legislation or to check eligibility for publicly funded services.

Clause 241 allows immigration officers and determination officers to prepare a certificate that requires the persons and bodies listed in *clause 242* to provide access to information about a person's address or whereabouts, where the officer has good cause to suspect that a particular person is liable for deportation, or that particular premises are occupied by a person who may be liable for deportation. The list of persons and bodies required to provide the information include various government agencies, education providers (but not in relation to students enrolled in compulsory education), postal and courier service providers, telecommunications, internet, and subscription television service providers, local and regional government bodies, finance, banking, and insurance service providers, utility providers, real estate agents, and employers or former employers of a particular person whose location is being sought.

Clauses 243 to 245 set out powers of entry and inspection in relation to the records of accommodation providers, employers, and education providers.

Clauses 246 and 247 set out the powers of an immigration officer to request or require from a person information, evidence of identity, and the production or (in some cases) surrender of documents where an offence is suspected or where the person is suspected of being liable for deportation.

Where it is established that a person is liable for deportation or for turnaround at the border, *clause 248* provides for the surrender of documents, travel tickets, or cash or security in lieu of travel tickets to be used towards effecting the person's deportation or departure from New Zealand. These must be returned to the person where not used for the person's deportation or departure.

Clauses 249 to 252 set out powers of entry and search at the border, including the power to enter and search craft within the contiguous zone or territorial sea of New Zealand.

The powers in *clauses 250 to 252* are new for immigration officers, and under *clause 2(2)* those clauses may be brought into force later than the rest of the Bill. It should be noted however that the powers in those clauses may continue to be exercised by members of the police and customs officers by virtue of *clauses 443 and 444*.

Clause 253 allows entry to buildings or premises for the purpose of serving a deportation liability notice or executing a deportation order, while *clause 254* allows an immigration officer to take any

biometric information necessary to meet the entry or transit requirements of any country to or through which a person being deported or subject to turnaround at the border is to travel.

Clause 255 gives a general power to require a person to allow collection of biometric information where there is good cause to suspect that the person is liable for deportation, is not complying with the conditions of his or her visa (including undertaking prohibited work or study), or has obtained a visa under a fraudulent identity.

Clauses 256 to 258 provide for the obtaining of a compulsion order from a District Court Judge where a person has refused to allow the collection of biometric information when so required under *clause 255*.

Clause 259 provides that an immigration officer may be assisted by another employee of the Department or by a customs officer in performing his or her functions under *Part 8*.

Clause 260 provides that all members of the police have the powers of immigration officers under *clauses 243 to 259*.

Clauses 261 to 270 provide for the exchange of information between the Department and specified government agencies and other persons and bodies for various purposes.

Clause 261 allows the exchange of information for corrections purposes, to allow the relevant department to identify the immigration status of a person sentenced to imprisonment or a community-based sentence and allow the Minister or an immigration officer to exercise the power to deport such a person.

Clause 262 allows for fines enforcement purposes the exchange of information between the Department and the department responsible for fines enforcement, while *clause 263* restricts the liability of the Crown to third parties for any loss or damage caused in relation to any fines enforcement action.

Clause 264 also allows the chief executive to pass on information concerning specified fines defaulters to commercial carriers.

Clauses 265 and 266 allow the exchange of information in relation to social security matters for the purpose of—

- verifying the entitlement or eligibility of any person for a benefit, and the amount of the benefit; or

- enabling the Department to recover from a sponsor the costs of any benefit paid to a person that are recoverable under any undertaking of the sponsor made under *clause 46*.

Clause 267 allows the Department to disclose information to a provider of any publicly funded service to enable the service provider to determine a person's eligibility to access the publicly funded service, and any liability of the person to pay for the service.

Clause 268 allows the Department to disclose to a requesting employer whether or not a person is entitled to undertake work in the employer's service and (if so) the duration of the entitlement to work and any conditions imposed on that entitlement.

Clauses 269 and 270 provide for the disclosure of immigration information to overseas agencies, persons, and bodies whose functions include the processing of international passengers, border security, or the prevention, detection, investigation, prosecution, or punishment of immigration or other offences.

Part 9 Detention and monitoring

Clause 271 sets out the purpose of **Part 9** as being to establish a tiered detention and monitoring scheme for 2 essential purposes—

- managing persons who are required to leave New Zealand; and
- ensuring the safety and security of New Zealand where a person liable for deportation may represent a threat or risk to security.

Clause 272 lists the people who are liable to arrest and detention, as being—

- persons who are refused entry permission;
- persons who are liable for deportation;
- persons who are subject to a deportation order, or to the border turnaround provisions in *clauses 105 to 107*;
- persons suspected to be liable for deportation who refuse upon request to provide satisfactory evidence of their identity;
- persons who are, on reasonable grounds, suspected to constitute a threat or risk to security.

Clause 273 lists what may follow from a person's liability to arrest and detention under *Part 9* as being—

- up to 4 hours limited detention by an immigration officer under *clause 274*;
- up to 96 hours detention, without warrant, in the custody of the police under *clause 275*;
- where the person and an immigration officer agree, the person may be subject to residence and reporting and other requirements under *clause 277*, instead of arrested and detained;
- detention beyond the initial 96 hours under a warrant of commitment issued under *clause 279 or 280*;
- release on conditions by a District Court Judge under *clause 282*, where the Judge is not satisfied that detention under a warrant of commitment is justified.

Clause 274 gives immigration officers the limited power to detain a person for up to 4 hours. The detention must not occur for any longer than is required for a member of the police to arrest and detain the person under *clause 275*, or for the person to be delivered into custody.

This clause gives a new power to immigration officers, and provision is made in *clause 2(2)* for it to come into force on a later date than the rest of the Bill.

Clause 275 allows members of the police to arrest a person without warrant and detain the person for up to 96 hours (compared with varying periods of up to 72 hours under the 1987 Act).

Clause 276 specifically provides for the case where a person is arrested and detained under *clause 275* on the suspicion that they constitute a threat or risk to security. The matter must be referred to the Minister to allow the Minister to determine whether to certify the person as a security risk under *clause 152*.

Clause 277 provides an alternative to arrest and detention, where an immigration officer and the person concerned agree that the person will be subject to residence and other agreed requirements.

Clauses 278 to 281 deal with applications for, and the issue by District Court Judges of, warrants of commitment authorising a person's detention for up to 28 days.

Clauses 282 and 283 provide for the case where a District Court Judge is not satisfied that detention under a warrant of commitment is justified, and instead orders the release of the person on conditions. Special conditions may apply under *clause 283* where a threat or risk to security is involved, such as that the person not have access to or use of specified communication devices or facilities, or that the

person refrain from associating with named individuals or organisations.

Clause 284 provides for the release of a person liable to arrest and detention as a threat or risk to security, where the Minister decides not to certify the person as a risk, or fails to do so within 14 days of the initial arrest of the person.

Clause 285 provides that, where the effect of the issue of a further warrant of commitment would be to detain a person under consecutive warrants for a continuous period of more than 6 months following the initial arrest or other relevant event, the Judge may issue the further warrant only when satisfied that a direct or indirect reason for the need for ongoing detention is due to some action or inaction of the person after his or her arrest or detention. The clause does not apply to a person whose deportation has been ordered under *section 152* as a threat or risk to security.

Clause 286 makes further provision for the case where continuous detention under consecutive warrants would exceed 1 year. In such a case the Judge hearing the application for the further warrant of commitment may order that the detained person cease the action that hinders his or her departure from New Zealand, or undertake some action that will facilitate departure. Failure to comply with such an order could result in the person being found in contempt of Court, and subject to further imprisonment until the contempt ends.

Clause 287 provides for reviews or variations of a warrant of commitment or a person's release on conditions, in certain circumstances.

Clauses 288 and 289 provide for the transfer of proceedings to the High Court, where classified information is involved in an application for or review of a warrant of commitment.

Clause 290 sets out the duties of detaining officers.

Clause 291 gives immigration officers certain limited powers to use reasonable force or undertake a search of the person, where a person has been detained by an immigration officer under *clause 274*.

Clause 292 provides that arresting or detaining officers may seek assistance.

Clauses 293 to 297 provide for the form of custody under the Bill, which varies depending on whether the detained person is under 18 years of age, or older.

Clause 298 deals with the delivery of a person out of custody or imprisonment for the purposes of deportation.

Clause 299 provides for the situation where a craft ceases to be available to take a person subject to a deportation order from New Zealand, or for other reasons the person cannot be deported within the expected time.

Clauses 300 to 304 make special provision modifying the provisions of *Part 9* in any case where an epidemic management notice is in effect under the Epidemic Preparedness Act 2006.

Part 10

Offences, penalties, and proceedings

Clauses 305 to 317 set out various offences under the Act. In the main, these offences are similar to those in the 1987 Act. Worthy of note, however, in relation to offences by employers (*clause 313*), is the removal of the sighting of an appropriate tax code declaration as a defence to a charge of allowing a person to undertake work that they are not entitled to undertake. Instead, an employer is required to take reasonable precautions and exercise due diligence to ascertain whether or not a person was entitled to undertake the relevant work.

Clauses 318 to 321 set out the penalties for offences. These range from 7 years, imprisonment and a fine not exceeding \$100,000, down to a fine not exceeding \$5,000.

Clauses 322 to 328 provide for a new series of infringement offences by carriers and persons in charge of craft. An infringement offence is one against *clause 312(1) or 312(2)(a)*, or an offence specified as an infringement offence in regulations.

Clauses 329 to 331 provide for the certification of certain matters for the purposes of proceedings under the Bill, and *clauses 333 to 335* deal with other procedural matters relating to offences.

Part 11

Miscellaneous provisions

Clauses 336 and 337 deal with the immigration status of persons born in New Zealand on or after 1 January 2006, and essentially repeat the provisions of section 4A of the 1987 Act whereby a person who is not a New Zealand citizen is deemed to initially have the same immigration status as the most favourable immigration status as either of the person's parents.

Clause 338 provides for the nomination of a responsible adult (who will normally be a parent) to represent the interests of a dependent child under 18 years of age who is neither married nor in a civil union.

Clause 339 sets out the rights and roles of a responsible adult.

Clause 340 provides for the views of a minor to be considered in any relevant proceedings or process.

Clause 341 provides for the making of special directions.

Clause 342 deals with the delegation of the Minister's powers under the Bill. Powers that may not be delegated include the power of delegation itself, a power as to the use of classified information and making decisions using classified information, the power to certify immigration instructions under *clause 20*, the power to certify under *clause 152* that a person constitutes a threat or risk to security, and the power to make special directions under *clause 75* (in relation to transit visas) or *clause 57* (in relation to visa waivers).

Clause 343 provides for the approval of forms by the chief executive.

Clause 344 allows the chief executive to endorse a person's New Zealand citizenship on a foreign passport held by the person, to facilitate their recognition as a citizen at the border.

Clause 345 deals with the serving of notices.

Clause 346 provides for the designation of immigration officers, while *clause 347* separates out different classes of functions and powers that may be assigned to particular immigration officers. These classes are visa and entry decision-making functions and powers, compliance and enforcement functions and powers, and the power of detention.

Clause 348 provides for the designation of determination officers, who have functions under *Part 5* of the Bill in relation to the recognition of refugees and protected persons.

Clause 349 deals with the designation of officers generally.

Clause 350 sets out the relationship between the Bill and the Human Rights Act 1993. The clause recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.

Clauses 351 and 352 provide for the imposition of fees and other charges in respect of immigration matters.

Clauses 353 and 354 provide for the imposition and refund or forfeiture of bonds.

Clause 355 allows for exemptions from and refunds of fees or charges, either by regulations or by special direction made by the Minister.

Clause 356 provides for the recovery of the costs of deportation or repatriation.

Clause 357 continues the provision for the imposition and collection of a migrant levy, as provided for under section 149B of the former Act.

Clauses 358 to 361 contain regulation-making powers.

Part 12

Repeals, transitional provisions, and other related matters

Subpart 1—Repeals and consequential amendments

Clause 362 repeals the Immigration Act 1987.

Clause 363 provides for consequential repeals and amendments to other Acts.

Subpart 2—Transitional and savings provisions

This subpart contains mainly technical matters appropriate to ensure an orderly transition from the provisions of the former Act to the provisions of the Bill. For example, *clause 365* requires Government immigration policy published under section 13A of the former Act to be treated as immigration instructions for the purposes of the Bill, and Government residence policy certified under section 13B of the former Act to be treated as residence instructions.

Worthy of note are:

- *clause 370*, which provides that an application for a visa or permit lodged but not decided before the commencement of the Bill is to be treated as an application for the equivalent visa under the Bill, and in *subclause (2)* sets out a list of what will be regarded as equivalent visas;
- *clause 371*, which provides that a person who immediately before commencement of the Bill held a visa or permit of a type described in column 1 of *Schedule 5* is deemed to hold a visa of the corresponding type described in column 2 of that

schedule, for the duration and subject to the conditions (if any) described in that column:

- *clause 381*, which provides that claims for refugee status under the previous Act that are not yet determined at the commencement of the Bill are to be treated as claims made under the Bill (except that, under *clause 383*, a decision whether to consider a subsequent claim made before the commencement of the Bill is to be made under section 129J of the former Act):
- *clauses 388 to 390*, which provide, generally, that the former Act continues to apply in respect of revocations of temporary permits, residence permits, and returning residents' visas:
- *clauses 391 to 394*, which deal with removal orders and deportation orders made under the former Act:
- *clauses 399 to 423*, which deal predominantly with appeals, or possible appeals, to or from the various appeals bodies under the former Act. The treatment of each case depends on the nature of the particular decision that is or may be appealed against, and whether or not the relevant appeal period has expired or the appeal been lodged and (if lodged) determined before the commencement of the Bill:
- the provisions also allow, in some cases, members of the Tribunal to hear and determine appeals in the name of the appeals bodies under the former Act:
- *clause 449*, which allows the making of regulations, for transitional purposes, that may add to or modify the provisions of this subpart of the Bill.

Schedules

Schedule 1 sets out the text of the Refugee Convention.

Schedule 2 sets out various provisions relating to the Tribunal and its proceedings.

Schedules 3 and 4 set out consequential amendments to various Acts, regulations, rules, and orders.

Schedule 5 sets out the type, duration, and conditions of visas that correspond to visas and permits held under the former Act immediately before the commencement of the Bill.

Regulatory impact statement

Background

In March 2005, Cabinet directed the Department of Labour (the **Department**) to begin a fundamental review of the Immigration Act 1987 (the **1987 Act**). In April 2006, Cabinet agreed to release a discussion paper, *Immigration Act Review: Discussion paper*, on the review for public consultation.

The Immigration Act review is part of the broader Immigration Change Programme which aims to improve the immigration system to ensure that New Zealand has the skills, talent, and labour it needs, now and in the future, New Zealanders are confident of the security of our border, and that migrants and refugees settle well and integrate into communities.

This is an aggregate Regulatory Impact Statement (**RIS**) and Business Compliance Cost Statement (**BCCS**) of the overall review of the 1987 Act. Individual RIS/BCCSs on each of the chapters have been prepared and are available on the Department's website at www.dol.govt.nz.

Statement of nature and magnitude of problem and need for government action

Significant global changes have taken place since the 1987 Act was enacted. There are greater flows of people around the world resulting in greater competition for skills, talent, and labour, and heightened risks and pressures on the border. The 1987 Act is inflexible in places, lacks transparency and simplicity, and creates complex and inefficient processes, for example, limiting the use of automated decision-making for low-risk, high-value decisions such as student permit renewals. This limits the ability of the government to attract the temporary and permanent migrants that New Zealand wants and needs. In places the 1987 Act creates insufficient powers for compliance enforcement, or obligations on third parties, limiting the ability of the government to maintain the integrity of the immigration system and appropriately manage its risks.

Statement of public policy objective

The policy objectives of the Immigration Act review are to ensure that New Zealand's interests are protected and advanced, ensure compliance with international obligations, establish fair, firm, and fast decision-making processes, and modernise and simplify the

legislation. The proposals aim to create a system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute means for achieving desired objectives

Status quo

The 1987 Act provides a framework for the immigration system. It requires non-citizens to have authorisation to be in New Zealand through a system of visas for travel to New Zealand, permits for stay, and exemptions. It includes a role for the Minister in decision-making. There is no ability to use classified information in decision-making, with the exception of Part 4A of the 1987 Act which is outside the scope of this review.

The 1987 Act provides for permit revocation, removal, and deportation and for an independent appeals system with 4 different independent appeals bodies relating to different appeal rights. There are a number of core obligations on third parties in the 1987 Act, such as those for employers and education providers to only employ or enrol persons who are entitled to work or study. The existing powers for compliance, enforcement, and detention broadly work well but are limited in places.

Preferred options

Like the 1987 Act, it is proposed that the Bill be largely framework legislation, with detail generally contained in regulations or Immigration Instructions certified by the Minister. In some instances, particularly where there are potential impacts on an individual's rights, prescription in the legislation is necessary. Proposals for change include:

- Chapter 1: A purpose statement, and broadening the criteria that may exclude a person from New Zealand
- Chapter 2: A simplified visa system that combines the current visa, permit, and exemption system, and allows interim visas to be granted where a temporary entrant is applying for a further visa
- Chapter 3: Greater delegation of the Minister's decision-making powers, providing a legislative foundation for temporary and residence sponsorship, and allowing organisations to be

- sponsors, allowing the use of Expressions of Interest (**EOI**) and Invitations to Apply (**ITA**) to be applied to all applications, and automated, electronic decision-making
- Chapter 4: A single protection determination procedure that incorporates New Zealand's core immigration-related international obligations
 - Chapter 5: A streamlined deportation process that clearly establishes liability for deportation, standardising the different definitions and broadening some criteria, and enabling suspension or cancellation of that liability
 - Chapter 6: A single appeals tribunal that hears residence, protection, and deportation appeals, with only one appeal allowed (within time frames that largely mirror the status quo). Deportation appeals will have hearings unless the person is a temporary entrant, where hearings will be at the discretion of the tribunal. Judicial review will continue, but appeals on points of law will only be heard by the High Court with leave
 - Chapter 7: Classified information may be used in decision-making without disclosure to the applicant, balanced by a set of safeguards including a non-classified summary of the information, appeals to be heard by up to 3 Judges on the Tribunal, and the non-citizen having access to a special advocate.
 - Chapter 8: Employers and education providers will be required to take "reasonable steps", as stated in the Business Compliance Cost Statement, to confirm a non-citizen's entitlement to work or study. Increased penalties are provided for education providers and an instant fines system for carriers who fail to meet obligations. Work entitlement information may be shared with employers, and immigration status information may be shared with publicly funded service providers
 - Chapter 9: Powers to require address information of a person possibly liable for deportation from companies within broad industry groups, powers to immigration officials of entry and search without the presence of police, airports providing space free of charge to the Department to undertake immigration functions, the ability of the Department to certify, rather than prove, some evidence from third parties, particularly overseas parties
 - Chapter 10: Liability for deportation could result in liability for detention, and immigration detainees would be able to

access legal aid in some circumstances. Monitoring agreements could be established outside the detention regime. When detained, initial detention without a warrant of commitment (warrant) could occur for 4 days and the Courts could issue a warrant for up to 28 days for up to 6 months only unless the detainee hindered their departure. A limited power of detention for designated officers would be created along with greater provision to detain immigrants outside of police and Corrections facilities

- Chapter 11: The ability to collect, store, and use biometric information for identity verification purposes that includes photographs/facial recognition, fingerprints, and iris scans for non-citizens, and photographs/facial recognition for citizens.

Further preferred options

Additional papers were considered by Cabinet in April/May 2007. These papers contained additional proposals regarding the use of classified information, monitoring and detention, and consideration of Part 4A of the current Immigration Act 1987.

Use of classified information

The papers proposed a system to govern the use and protection of classified information during the District Court's consideration of the need for detention where a non-citizen was liable for deportation and classified information had been used. The paper also developed a prescriptive system for appeal where classified information has been used in an immigration or refugee and protection decision, providing safeguards for non-citizens including a robust appeal process, and providing safeguards for classified information.

Detention

Finally, the paper also sought to rescind the decision to apply a 6-month limit on detention in the case of non-citizens who are a risk or a threat, to enable the government to be responsive to any risk they may pose during the deportation process. The proposals seek to mirror the status quo of the 1987 Act being that, where there was an immediate risk or threat to national or international security or to the safety of any person a non-citizen could be securely detained until deported.

Repeal of Part 4A

A further paper contained a review of Part 4A of the Immigration Act 1987. The classified information system for the new legislation achieves an appropriate balance between the rights of the government to use and protect classified information where it is in the best interests of New Zealand on the one hand, and the rights of the non-citizen. The paper therefore considered whether there is a reason for Part 4A of the 1987 Act to be retained. The proposal was to repeal Part 4A along with the rest of the 1987 Act.

Statement of net benefit of the proposal, including total regulatory costs (administration, compliance and economic costs) and benefits (including non-quantifiable benefits) of proposal and other feasible options

Government

All of the proposals, particularly the visa, decision-making, deportation, protection, and appeals proposals, will benefit government by creating a system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness. They will help the Government achieve the goal of a fair, fast, and firm immigration system. The proposals relating to deportation, classified information, third parties, compliance and enforcement, detention, and biometric information will help government to better manage risk, balancing the rights of those engaged in the immigration system and of the Government.

The classified information proposals would strengthen the Government's ability to choose who may enter and stay in New Zealand and help prevent undesirable non-citizens from gaining residence or protection status in New Zealand. There is a risk that the government will face criticism for the classified information proposals, which may be mitigated by the broad range of safeguards proposed.

Non-citizens

The proposed exclusion criteria are broadened and may result in a small additional number of persons who present a clear risk being excluded from New Zealand.

The new visa system will be simpler and more easy to use for both temporary and permanent migrants, and there should be no costs to them resulting from this proposal. Increased delegation of immigration decision-making along with automated, electronic decision-

making would increase the timeliness of decisions for some applicants. Risks of incorrect or inconsistent decision-making will be managed through the systems that are put in place to administer these provisions.

The new provisions may allow for more effective use of sponsors and bonds to allow an application to be approved where it may otherwise be declined, depending on the development of Immigration Instructions certified by the Minister. Where Cabinet agrees to the use of EOIs and ITAs, applicants will benefit from the staggering of the application process. For example, an applicant could wait until they received an ITA before committing to the expense of a health exam that was required with their application.

The protection proposals will benefit persons in need of international protection by providing a system that is more transparent and easier to use. Where protection is granted, the claimant will benefit through gaining protection in New Zealand.

The deportation proposals will create a system that is more transparent and easier to understand for non-citizens, and that will be more efficient as unnecessary decision-making steps will be removed. Non-citizens may be able to remain lawfully in the country during any appeals. The system will benefit appellants by ensuring that all appeals are heard earlier, because all grounds for appeal would be heard at once, rather than separately. This would require appellants to put forward all grounds for appeal at one time, as they often do in each individual hearing. A small number of residents liable for deportation on the grounds of fraud will have to meet a higher threshold humanitarian test than currently. Some non-citizens may be restricted from appealing on points of law if the High Court does not give leave. The classified information proposals may make it more difficult for a small number of persons to appeal against an adverse immigration or protection decision.

There is a risk that removing the sighting of an IR 330 form as a reasonable excuse for employers could increase discrimination against persons who employers think may be non-citizens.

Enabling immigration status information to be shared with some publicly funded service providers may create a concern that access to these services will result in a negative immigration outcome, especially for those unlawfully in New Zealand. Information on non-citizens will not be captured for immigration purposes as a safeguard against these concerns. There may be privacy concerns for

non-citizens who think entitlement information is personal and should not be shared.

Enabling a greater range of evidence to be certified for particular matters that will be presumed to be evidence before a court or tribunal should not have a significant impact on non-citizens, who retain the right to contest all evidence brought before a court or tribunal as is currently the case.

The detention proposals do not limit a non-citizen's access to the courts, and access to legal aid will ensure they have robust representation. Non-citizens may be detained for longer periods without a warrant review unless they present new circumstances to the courts, but there will be a maximum limit on detention in most cases. Less frequent reviews will enable the courts to more robustly consider each case, and reduce the stress and physical impact of attending a warrant hearing. Proposals requiring carriers to remove non-citizens will result in decreased overall detention time. There may be benefits to non-citizens from enabling the government to explore alternatives to using police or Corrections facilities for immigration detention.

The biometrics proposals will help facilitate immigration processing for the vast majority of travellers. Privacy and/or cultural considerations would be taken into account in implementing this proposal.

Society

All the benefits to government outlined above (particularly of the deportation, protection, and appeals proposals) will also benefit New Zealand society. The proposals will benefit society by creating more flexible and responsive systems (such as the new visa system) that will encourage temporary and permanent migrants to come to New Zealand.

The third party proposals will benefit New Zealanders by minimising the problems caused by unlawful work (such as driving down wages and working conditions).

Industry

There will be compliance costs for businesses detailed in the business compliance cost statement. The proposal to allow organisations to sponsor may assist employers in filling vacancies, if they choose to take on the responsibility and potential cost of sponsoring. There

may be a loss of revenue for some airports resulting from the proposals to require airports to provide space free of charge.

Immigration lawyers and advisers

There will be compliance costs for immigration lawyers and advisers relating to the time and resources taken to understand the new Immigration Act, particularly the new appeals system.

To mitigate the costs associated with the new Act, the Department will prepare written explanatory materials and will conduct a nationwide roadshow with 20 meetings.

Statement of consultation undertaken

Stakeholder consultation

A public discussion paper was released in April 2006. Officials held public meetings in May and June 2006 to outline the proposals, which were attended by more than 650 people. The Department received 3 985 written submissions in response to that paper, of which 360 were unique. Submissions were received from a wide range of individuals and organisations, including employer organisations, law societies, refugee and migrant groups and communities, immigration consultants, carriers, government agencies, and education providers.

All submissions received through the public process have been considered in preparing the proposals for change, and a detailed summary of submissions has been publicly released. Concerns relating to specific proposals are set out in the detailed regulatory impact statement available on the Internet.

Concern was expressed over the proposal to withhold potentially prejudicial information (**PPI**) and reasons from decision from off-shore applicants due to reasons of administrative and natural justice. This concern has been addressed in the proposal to retain the status quo and provide PPI and reasons to all applicants. Similar concerns were raised by some submitters in relation to the use of classified information in decision-making, which have been addressed by increasing the safeguards being proposed to ensure that rights are not diminished.

Reservations about the proposals for deportation were mostly on the basis that different terms currently used (removal and deportation)

reflected the differing reasons for expulsion and the varying seriousness of types of case. The proposed term “expulsion” was not favoured and “deportation” generally received support on the basis that it was more transparent and understandable.

Some concern was expressed about the compliance cost for employers and carriers if changes were made to their obligations. Specific proposals have been developed to reduce the cost on employers. There will be no impact on carriers who continue to meet their obligations (which remain unchanged).

Submitters considered that immigration officers should continue to work with the police and Customs in undertaking entry and search functions. There appeared to be some misunderstanding about the difference in roles of compliance officers compared with visa and permit officers, resulting in a concern that all immigration officers would exercise these powers. This concern was also evident in submissions on the proposed limited power of detention, and has been addressed by creating provisions to limit the use of the powers to trained and experienced officers with special designation.

Government departments/agencies consultation

The following agencies were consulted: the Departments of Prime Minister and Cabinet and Internal Affairs, the Ministries of Foreign Affairs and Trade (MFAT), Health, Education, Economic Development, Transport, Justice (MoJ), and Pacific Island Affairs, the New Zealand Qualifications Authority, the Tertiary Education Commission, the New Zealand Defence Force, Police, Customs Service, and Security Intelligence Service, the Inland Revenue Department, the Office for Disability Issues, Crown Law, the Legal Services Agency and the Treasury. Te Puni Kokiri was also informed of the proposals. The chairs of the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board, and the Deportation Review Tribunal, and the Privacy Commissioner, the Office of the Ombudsmen, and the Human Rights Commission were also consulted.

Concerns relating to specific proposals are set out in the detailed Regulatory Impact Statements available on the Internet.

MFAT were concerned about the impact of the universal visa system. These concerns have been addressed through provisions that enable visa-free travel, and applications for visas to be deemed to have been made.

MFAT and MoJ were concerned that New Zealand should not breach its international obligations by excluding any persons from protection who are protected under the Convention Against Torture or the International Covenant on Civil and Political Rights. This concern has been addressed in the streamlined protection system being proposed.

Concern was expressed by a range of stakeholders about the proposal to use classified information. Many commented that robust safeguards were required and these have been built into the proposal.

MoJ was not supportive of the unlimited immigration detention provided for under the 1987 Act. The proposal is now to limit immigration detention to 6 months, unless the detainee obstructs the deportation process.

Business compliance cost statement

Employers

There may be compliance costs for some employers relating to the new requirements to take reasonable steps to check a person's entitlement to work. Guidance on what constitutes reasonable steps will be developed by the Department in consultation with business and employer stakeholders. This approach will be responsive to a range of different employment scenarios so employers will be able to use a variety of mechanisms to determine a person's entitlement, including those that they already use. For example—

- In the fruit-picking industry, a recruitment or contracting agency could include a check box about entitlement to work on registration forms and request proof of that status from a prospective employee. They could hold that proof on file.
- Where an employee presented a resume with details of continuous educational qualifications and previous employment in New Zealand, an employer could check qualifications and references, and keep a record of this on file.
- Retaining a copy of a New Zealand birth certificate, passport, or citizenship paper would generally be evidence of reasonable steps to establish a person was a citizen.

To further minimise compliance costs for business, a facilitative system to enable access to work entitlement information will be developed.

To mitigate the costs associated with the new Act, the Department will prepare written explanatory materials and will conduct a nationwide roadshow with 20 meetings.

Businesses providing information for immigration compliance purposes

There may be minor compliance costs for businesses required to provide address information for immigration compliance purposes. It is estimated that the time to look up a customer record on an electronic customer database and confirm identity would be less than 5 minutes per person. The Department currently locates approximately 2 500 people per annum, but the number of queries per annum that this number is derived from is not known. It is expected that the number of queries will not rise significantly, as the Department has limited funding to undertake compliance operations, but, given the greater ability to access information, the number of successful results would rise.

Businesses will be required to provide records related to their own and/or an employee's compliance with immigration obligations or conditions of entry and stay in New Zealand. The cost of providing this information will vary considerably depending on the ability to access and the method of storage of records. As with the other proposals to expand access to information for immigration investigations, it is not expected that the number of queries or requests will significantly rise, but the success of immigration investigations may increase.

Hon David Cunliffe

Immigration Bill

Government Bill

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Immigration

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Immigration Act **2007**.
- 2 Commencement**
- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council, subject to **subsection (2)**. 5
- (2) **Sections 29, 50, 88, 98, 138(1)(e), 207, 245, 250 to 258, and 274** come into force on a date to be appointed by the Governor-General by Order in Council which may be—
- (a) the same date as that appointed under **subsection (1)**; or 10
- (b) a later date.

Part 1
Preliminary provisions

- 3 Purpose**
- (1) The purpose of this Act is to manage immigration, through balancing the rights of the individual and the national interest as determined by the Crown. 15
- (2) In managing immigration, the Act—
- (a) contributes to the New Zealand workforce through facilitating access to skills and labour; and 20
- (b) supports the security of New Zealand; and
- (c) facilitates the settlement of migrants, refugees, and protected persons; and

- (d) supports New Zealand's immigration-related international obligations; and
- (e) ensures the integrity of the immigration system; and
- (f) enables immigration to support families.

4 Interpretation	5
(1) In this Act, unless the context otherwise requires,—	
absolute discretion has the meaning and effect described in section 26	
airport has the meaning given to it in section 2 of the Airport Authorities Act 1966	10
allow to undertake , in relation to a course of study, includes accept for enrolment in that course	
appeals body means the following bodies established or continued under the former Act:	
(a) the Residence Review Board:	15
(b) the Removal Review Authority:	
(c) the Refugee Status Appeals Authority:	
(d) the Deportation Review Tribunal	
approved system means a system, including an electronic system, approved by the chief executive for the purpose of—	20
(a) providing information to the chief executive under section 86 ; or	
(b) notifying a person to whom section 86 applies of a decision of the chief executive under section 87	
arrival hall means a place licensed under section 12 of the Customs and Excise Act 1996 for the processing of persons arriving in New Zealand	25
biometric information , in relation to a person,—	
(a) means any or all of—	
(i) a photograph of the person:	30
(ii) the person's fingerprints:	
(iii) an iris scan; and	
(b) includes a record, whether physical or electronic, of any of the above things	
border requirement means a requirement, responsibility, or obligation under any of sections 91, 92, 93, 94, and 110	35
carrier , in relation to a craft, means the owner or charterer of the craft; and, where the owner or charterer is not in New Zealand, includes the agent in New Zealand of the owner or	

charterer or, if there is no such agent in New Zealand, the person in charge

certificate of identity—

- (a) means a document (other than a passport) issued by the government of any country to any person for the purposes of facilitating that person's entry into or exit from any country, being a document that—
 - (i) purports to establish the identity but not the nationality of that person; and
 - (ii) confers on that person a right to enter the country whose Government has issued the document; and
- (b) includes—
 - (i) any emergency travel document or refugee travel document issued under the Passports Act 1992; and
 - (ii) any travel document issued by any international organisation for the time being specified by the Minister for that purpose

chief executive means—

- (a) the chief executive of the Department;
- (b) when used in relation to a relevant agency (as defined in **section 5(4)**), the chief executive of that agency (including, where appropriate, the Commissioner of Police, the Director of Security, and the Director of the Government Communications Security Bureau)

claim, and **claimant**, in relation to a claim to be recognised as a refugee or as a protected person, have the meanings given by **section 114**

classified information has the meaning given to it by **section 5**

commercial craft means a craft that travels for a commercial purpose or as part of a commercial operation

compulsory education means education that is—

- (a) provided at any primary, intermediate, composite, secondary, or special school (within the meaning of the Education Act 1989), whether State, private, or integrated; and
- (b) provided to a person at any time during the period beginning on the person's fifth birthday and ending on 1 January following the person's 19th birthday

- conditions** include conditions precedent as well as conditions subsequent
- contiguous zone** has the meaning given to it by section 8A(2) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 5
- Convention Against Torture** has the meaning given to it by **section 114**
- Covenant on Civil and Political Rights** has the meaning given to it by **section 114**
- course of study**— 10
- (a) means any course of tuition or instruction for people entitled to free enrolment and education under section 3 of the Education Act 1989, conducted by any primary, intermediate, composite, secondary, or special school, whether State, private, or integrated; and 15
- (b) includes—
- (i) any other course of tuition or instruction conducted by any school, college, institute, university, or other body or person, and leading to any educational or vocational qualification the attainment of which by any person would be likely to enhance the employment prospects of that person, either generally or in respect of any particular profession or occupation; and 20
- (ii) in relation to any particular person, any other course of tuition or instruction if the undertaking of that course is the principal reason why that person wishes to be or is in New Zealand; but 25
- (c) does not include any course or study extended from this definition by immigration instructions 30
- craft** means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person to or from New Zealand from or to any country outside New Zealand
- crew**, in relation to a craft, means every person employed or engaged in working the craft or in providing any services in or on the craft; and includes the person in charge 35
- Crown entity** has the same meaning as in section 7(1) of the Crown Entities Act 2004

- customs airport** means an aerodrome designated as a customs airport under section 9 of the Customs and Excise Act 1996
- customs officer** has the meaning given to it by section 2(1) of the Customs and Excise Act 1996 5
- Department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- departure hall** means a place licensed under section 12 of the Customs and Excise Act 1996 for the processing of persons departing from New Zealand 10
- dependent child**, in relation to any person, means a child under 18 years of age who is not married or in a civil union and who is dependent on that person, whether or not the child is a child of that person 15
- deportation liability notice** means a notice that states the matters referred to in **section 159**
- deportation order**—
- (a) means a deportation order made under **section 152** or served under **section 165**: 20
- (b) in **Part 12**, means a deportation order made under the former Act
- determination officer** means a person designated as such by the chief executive under **section 348**
- disembarkation** means the process of physically leaving a craft, whether onto land or otherwise 25
- domestic passenger** means a passenger, not being an internationally ticketed passenger, who has an entitlement to air travel for a domestic sector on either—
- (a) an aircraft that— 30
- (i) begins its journey outside New Zealand; and
- (ii) in the course of that journey, enters New Zealand and travels between at least 2 customs airports in New Zealand; or
- (b) an aircraft that— 35
- (i) begins its journey at a customs airport in New Zealand; and
- (ii) in the course of that journey, travels to at least 1 other customs airport in New Zealand before leaving New Zealand 40

- domestic sector** means a journey from one customs airport to another within New Zealand
- education provider** means a provider of a course of study, and—
- (a) in relation to any institution controlled by a board of trustees constituted under Part 9 of the Education Act 1989, means that board: 5
 - (b) in relation to any institution controlled by the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Education Act 1989, means that chief executive: 10
 - (c) in relation to any university, means the appropriate university council:
 - (d) in any other case, means the institution, body, or person which or who is entitled to the fees payable by or on behalf of the persons undertaking the course, or which or who would be so entitled if any such fees were payable 15
- employee** means a person who does work for an employer (whether under a contract of service or a contract for services) 20
- employer** means a person who employs or engages a person to do work, whether under a contract of service or a contract for services
- entry permission** has the meaning and effect described in **section 95** 25
- epidemic management notice** means a notice under section 8(1) of the Epidemic Preparedness Act 2006 stating that the application of this Act is modified in order to deal with the practical effects of the outbreak of the disease referred to in the notice 30
- exclusive economic zone of New Zealand** has the meaning given to it in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977
- excluded person** means a person to whom **section 9 or 10** applies 35
- execute**, in relation to a deportation order, has the meaning described in **section 166(1)**
- former Act** means the Immigration Act 1987

- government agency** means a government department or a Crown entity, and includes the New Zealand Police, the New Zealand Security Intelligence Service, and the Government Communications Security Bureau
- government department** means a government department named in Schedule 1 of the State Sector Act 1988 5
- grant**, in relation to any visa or entry permission, includes the situation where this Act or any regulations made under this Act deems a grant of the relevant visa or entry permission to occur 10
- holder**, in relation to a visa granted under this Act, means the person in respect of whom the visa is granted for so long as the visa is current; and **to hold** has a corresponding meaning
- immigration control area** means an area or place designated as such under **section 84** 15
- immigration instructions** means immigration instructions certified under **section 20**, and includes residence instructions and temporary entry instructions
- immigration officer** means an immigration officer designated under **section 346**, and includes the chief executive 20
- immigration status** means the basis on which a person is in New Zealand under this Act, being whether a person—
- (a) is in New Zealand lawfully and, if so, what type and class of visa the person holds, and any conditions of the visa; or 25
 - (b) is unlawfully in New Zealand (including by reason of being subject to **section 105**)
- imprisonment** means any form of detention or custody whereby a person is deprived of liberty for a continuous period, including home detention, detention or custody in a psychiatric institution or hospital, and military custody; but does not include detention or custody under this Act 30
- infringement fee**, in relation to an infringement offence, means the fee set in respect of that offence by regulations made under **section 358** 35
- infringement offence** has the meaning given to it by **section 322**

internal waters of New Zealand has the meaning given to it in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

internationally ticketed passenger means a person who has an entitlement to air travel for a domestic sector, the entitlement being included in tickets for an international journey that—

- (a) began outside New Zealand; or
- (b) began inside New Zealand and is to continue outside New Zealand

invitation to apply means an invitation to apply for a visa, as described in **section 82**

involving classified information, in relation to any appeal, review proceedings, or other matter, means the situation where—

- (a) classified information was used in making the decision appealed against or subject to review proceedings (including a decision of the Tribunal); or
- (b) in the case of an appeal to the Tribunal or a claim or matter to which **section 137** applies, classified information is first raised or proposed to be raised in the course of the appeal or in the course of determining the claim or matter

leave New Zealand means, except in the circumstances specified in **subsection (3)**, leave New Zealand for a destination in another country

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand means any land territory within the territorial limits of New Zealand; and includes—

- (a) the internal waters of New Zealand; and
- (b) the Ross Dependency (including any ice shelf); and
- (c) for the purposes of **sections 61 and 65**, the territorial sea of New Zealand; and
- (d) for the purposes of **section 250(2)(a)**, the area of sea adjacent to New Zealand and bounded by the outer limits of the contiguous zone of New Zealand

New Zealand address,—

- (a) in relation to a visa holder who is in New Zealand, means the last known of the following addresses:
- (i) the address for the time being nominated by that holder under **section 97**:
 - (ii) where applicable, that person's New Zealand address within the meaning of **paragraph (b), (c), (d), or (e)**: 5
- (b) in relation to a person who is subject to any residence condition or requirement under **section 277, 282, or 283**, means the last known of the following addresses: 10
- (i) the address at which the person has currently agreed or been required to reside under the relevant section:
 - (ii) where applicable, that person's New Zealand address within the meaning of **paragraph (c), (d), or (e)**: 15
- (c) in relation to a person who is in custody under **Part 9**, means—
- (i) the place where that person is held in custody:
 - (ii) where applicable, that person's New Zealand address within the meaning of **paragraph (d)**: 20
- (d) in relation to a person under 18 years of age who is not married or in a civil union and is named in a deportation liability notice, means—
- (i) where that person is named as a dependent child of another person named in the notice, the New Zealand address of that other person: 25
 - (ii) where a responsible adult has been determined or nominated under **section 338** (or under the former Act) to represent the interests of that person, the latest address supplied by that adult under **section 338(7)** (or under the former Act): 30
- (e) in relation to a person who is a claimant under **Part 5**, means the last known of the following addresses:
- (i) the latest address supplied by that person under **section 124(5)**: 35
 - (ii) where applicable, that person's New Zealand address within the meaning of **paragraph (b), (c), (d), or (f)**:
- (f) in relation to a person who has appealed to the Tribunal under **Part 7**, means the last known of the following addresses: 40

- (i) the address supplied to the Tribunal under **section 201(2)**;
 - (ii) where applicable, that person's New Zealand address within the meaning of **paragraph (b), (c), or (d)** 5
- New Zealand citizen** means a person who has citizenship as provided in the Citizenship Act 1977 or the Citizenship (Western Samoa) Act 1982
- onshore**, in relation to an applicant for a visa, means that the applicant is in New Zealand other than in an immigration control area 10
- operator**—
- (a) in relation to a port, means—
 - (i) the owner of the port; or
 - (ii) if the owner is not responsible for the operation or management of the port, the manager of the port or any other person who is, for the time being, responsible for the operation or management of the port: 15
 - (b) in relation to an airport,— 20
 - (i) means a local authority for the time being authorised under section 3 of the Airport Authorities Act 1966 to operate or manage the airport; and
 - (ii) includes any person or association of persons or airport company authorised under section 3(3) of the Airport Authorities Act 1966 to exercise the powers or functions of a local authority under that section 25
- passenger**, in relation to a craft, means a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier or the person in charge 30
- passport** means a document that is issued by or on behalf of the Government of any country and that is recognised by the Government of New Zealand as a passport, being a document that— 35
- (a) purports to establish the identity and nationality of the holder; and
 - (b) confers on the holder the right to enter the country the Government of which has issued the document 40

- permanent resident** means the holder of a permanent resident visa
- person in charge**, in relation to a craft, means the master, captain, pilot in command, driver, or other person for the time being responsible for the craft 5
- personal service**, in relation to any document or notice served or to be served on a person, means personal delivery of the document or notice to that person or, where the person refuses to accept the document or notice, the bringing of the document or notice to that person's attention 10
- port** means any defined area of land and water intended or designed to be used either wholly or partly for the berthing, departure, movement, and servicing of ships; and includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the port or its administration 15
- proceedings involving classified information** means—
- (a) an appeal or review proceedings involving classified information; or
 - (b) consideration by a court of an application made under **Part 9**, where classified information is used in order to determine the application; or 20
 - (c) consideration by the Tribunal of a claim or matter under **section 137**
- protected person** means a person recognised as a protected person under **section 120 or 121** 25
- refugee** means a person recognised as a refugee under **section 116 or 119**
- Refugee Convention** has the meaning given to it by **section 114** 30
- registered post** includes any postal or courier service where delivery to the address is recorded
- relevant agency**, in relation to classified information, has the meaning given to it by **section 5(4)**
- residence class visa** includes permanent resident visas and resident visas 35
- residence instructions** means immigration instructions certified under **section 20** that relate to the grant of residence class visas

- resident** means the holder of a resident visa
- responsible adult** means the adult designated or nominated under **section 338**
- restricted temporary entry instructions** means temporary entry instructions that require, in relation to the type of visa to which the instructions relate, that any decision made on an application for that type of visa, or on an application for entry permission in relation to that type of visa, must be made in terms of the temporary entry class instructions applicable at the time the application for the visa was made, and any discretion exercised must be in terms of those instructions
- review proceedings** means proceedings—
- (a) by way of an application for review under the Judicature Amendment Act 1972; or
 - (b) by way of an application for certiorari, mandamus, or prohibition; or
 - (c) by way of an application for a declaratory judgment
- scheduled international service** means a series of flights or voyages that are—
- (a) performed by a craft for the transport of passengers, cargo, or mail between New Zealand and 1 or more points in any other country or territory, if the flights or voyages are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable; and
 - (b) operated in a manner where each flight or voyage is open to use by members of the public
- security**—
- (a) means—
 - (i) the defence of New Zealand;
 - (ii) the protection of New Zealand from acts of espionage, sabotage, and subversion, whether or not they are directed from or intended to be committed within New Zealand;
 - (iii) the identification of foreign capabilities, intentions, or activities within or relating to New Zealand that impact on New Zealand's international well-being, reputation, or economic well-being;
 - (iv) the protection of New Zealand from activities within or relating to New Zealand that—

- (A) are influenced by any foreign organisation or any foreign person; and
- (B) are clandestine or deceptive, or threaten the safety of any person; and
- (C) impact adversely on New Zealand's international well-being, reputation, or economic well-being: 5
- (v) the prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act: 10
- (vi) the prevention, investigation, and detection of organised crime, including transnational organised crime:
- (b) in an international security context, also includes the safety and stability of the international community, through co-operative measures such as international conventions and other arrangements or agreements between countries 15
- special advocate** means a person recognised as a special advocate under **section 236** 20
- special direction** means a direction given by the Minister in accordance with **section 341**
- study** means undertake a course of study
- subsequent claim**, in relation to a claim for recognition as a refugee or protected person, has the meaning given to it by **section 114** 25
- temporary entry class visa** includes any temporary visa, limited visa, or interim visa, but does not include a transit visa
- temporary entry instructions** means immigration instructions certified under **section 20** that relate to the grant of temporary entry visas or transit visas, and includes restricted temporary entry instructions 30
- territorial sea of New Zealand** has the meaning given to it in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 35
- transit passenger** means the holder of a transit visa
- travelling to New Zealand** includes, but is not limited to, travelling to New Zealand from another country in transit to another destination

- Tribunal** means the Immigration and Protection Tribunal established by **section 193**
- visa** has the meaning and effect described in **section 37**, and includes any visa of a class specified in **section 58**
- visa waiver** means a waiver under **section 57** of the requirement to hold a visa permitting travel to New Zealand 5
- warrant of commitment** means a warrant of commitment issued under **section 279 or 280**
- work** means any activity undertaken for gain or reward; but does not include activity excluded from this definition by immigration instructions. 10
- (2) Every period of time prescribed by any of the provisions of this Act for the making of an application or the lodging of an appeal, not being an appeal to the High Court, must be calculated exclusive of any day, not being a Saturday or a Sunday, that is a public holiday or a departmental holiday determined by the chief executive. 15
- (3) For the purposes of this Act, a person is deemed not to leave New Zealand where that person, not being a person to whom **section 105** applies, departs for another country on any craft and, before arriving in another country,— 20
- (a) is forced to return to New Zealand by reason of any emergency affecting the craft; or
- (b) returns to New Zealand because of any other emergency or circumstances beyond that person's control. 25
- (4) For the purposes of this Act, but subject to **subsection (5)**, a person is deported from any country if that person leaves that country (whether or not at the expense of the Government of that country) while liable for deportation from that country, including where an order for that person's departure, made by the Government of that country or any authorised official of that country or any judicial authority within that country, is in force. 30
- (5) For the purposes of this Act, no person is deported from any country merely because that person is surrendered to another country in accordance with a request for the extradition of that person to that other country. 35
- (6) For the purposes of this Act, a person is deported from New Zealand if that person leaves New Zealand (whether or not at the expense of the Government of New Zealand)— 40

- (a) on or after the date on which a deportation order may be served on the person under **section 164**, or after a deportation order has in fact been served on the person; or
- (b) while a person is subject to a prohibition on entry to New Zealand under **section 167**. 5
- (7) To avoid doubt, nothing in the definition of **security** affects the definition of that term in section 2 of the New Zealand Security Intelligence Service Act 1969.
- 5 Definition of classified information**
- (1) In this Act, **classified information** means information that the chief executive of the relevant agency certifies in writing cannot be disclosed (except as provided under this Act) because, in the opinion of that chief executive,— 10
- (a) the information is information of a kind specified in **subsection (2)**; and 15
- (b) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(a)** if it—
- (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the relevant agency; or 20
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the relevant agency; or 25
- (c) has been provided to the relevant agency by the government of another country, by an agency of a government of another country, or by an international organisation, and is information that cannot be disclosed by the relevant agency because the government or agency or organisation by which the information has been provided will not consent to the disclosure. 30
- (3) Disclosure of information falls within **subsection (1)(b)** if the disclosure would be likely— 35
- (a) to prejudice the security or defence of New Zealand or the international relations of New Zealand; or
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence 40

- by the government of another country or any agency of such a government, or by any international organisation; or
- (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.
- (4) For the purposes of this section, and of any provision of this Act relating to classified information, **relevant agency** means the New Zealand government agency that holds, was the source of, or was provided with, the classified information.

6 Act binds Crown
This Act binds the Crown.

Part 2
Core provisions and decision making

Eligibility to be in or enter New Zealand

- 7 Rights of New Zealand citizens protected**
- (1) For the purposes of this Act, every New Zealand citizen has, by virtue of that citizenship, the right to enter and be in New Zealand at any time.
- (2) Nothing in this Act abrogates the right declared in **subsection (1)**, and—
- (a) no provision of this Act that is inconsistent with that right applies to a New Zealand citizen; and
- (b) no New Zealand citizen is liable under this Act to deportation from New Zealand in any circumstances.
- (3) A New Zealand citizen must however comply with any border requirement.
- (4) Without limiting the generality of **subsection (2)**, no New Zealand citizen requires, or may hold, a visa.

Compare: 1987 No 74 s 3

- 8 Requirement to hold visa to travel to and be in New Zealand**
- (1) A person who is not a New Zealand citizen may—
- (a) travel to New Zealand only if the person—

- (i) is the holder of a visa granted under this Act and the travel is consistent with the conditions of the visa; or
- (ii) is subject to a visa waiver; and
- (b) enter and be in New Zealand only if the person is the holder of a visa granted under this Act and has been granted entry permission. 5
- (2) A person who is in New Zealand in contravention of **subsection (1)(b)** is treated for the purposes of this Act as being in New Zealand unlawfully. 10
- (3) Subject to **section 96(1) and (2)**, the fact that a person holds a visa granted before the person seeks to enter New Zealand does not itself give the person a right to be granted entry permission to New Zealand.
- (4) The fact that an application for a visa has been made by or for any person who is onshore does not— 15
 - (a) render the person's presence in New Zealand lawful; or
 - (b) give the person a right to remain in New Zealand while the application is considered; or
 - (c) give the person a right to apply for or be granted any other visa pending determination of the application; or 20
 - (d) inhibit deportation procedures under this Act.

Compare: 1987 No 74 s 4

Excluded persons

- 9 Certain convicted or deported persons not eligible for visa or entry permission** 25
- (1) Subject to **section 11**, no visa or entry permission may be granted, and no visa waiver may apply, to any person—
 - (a) who, at any time (whether before or after the commencement of this Act), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more; or 30
 - (b) who, at any time within the preceding 10 years (whether before or after the commencement of this Act), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or 35 40

- (c) who is subject to a prohibition on entry to New Zealand under **section 167**; or
- (d) subject to **subsection (3)**, who at any time (whether before or after the commencement of this Act) has been removed or deported from New Zealand under any enactment; or 5
- (e) who is excluded from New Zealand under any enactment; or
- (f) who has, at any time, been removed, excluded, or deported from another country. 10
- (2) **Paragraphs (a) and (b) of subsection (1) apply—**
- (a) whether the sentence is of immediate effect or is deferred or is suspended in whole or in part;
- (b) where a person has been convicted of 2 or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the offender had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences; 15 20
- (c) where a person has been convicted of 2 or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.
- (3) **Subsection (1)(d) does not apply to a person who—** 25
- (a) has been deported from New Zealand under section 158 of the Shipping and Seamen Act 1952; or
- (b) was subject to a removal order under section 54 of the former Act, if the removal order has expired or been cancelled; or 30
- (c) was deported under this Act, if the relevant prohibition on entry under **section 167 or 192** has expired; or
- (d) has been deported from New Zealand under section 20 of the Immigration Act 1964 on the grounds of being convicted of an offence against section 14(5) or 15(5) of that Act. 35

Compare: 1987 No 74 s 7(1)(a) to (d) and (2)

- 10 Certain other persons not eligible for visa or entry permission**
- Subject to **section 11**, no visa or entry permission may be granted, and no visa waiver may apply, to any person who—
- (a) the Minister has reason to believe—
 - (i) is likely to commit an offence in New Zealand that is punishable by imprisonment; or
 - (ii) is, or is likely to be, a threat or risk to security; or
 - (iii) is, or is likely to be, a threat or risk to public order; or
 - (iv) is, or is likely to be, a threat or risk to the public interest; or
 - (b) is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.
- Compare: 1987 No 74 s 7(1)(e) to (i)
- 11 Exceptions to non-eligibility for visa or entry permission**
- (1) Despite **sections 9 and 10**, a visa and entry permission may be granted to any person—
 - (a) in accordance with a special direction; or
 - (b) in accordance with **section 72**.
 - (2) Despite **sections 9 and 10**,—
 - (a) entry permission must be granted to a person who is entitled to it under **section 96(1) or (2)**; and
 - (b) a visa and entry permission may be granted to a person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971.
 - (3) A decision to grant a visa and entry permission under **sub-section (1) or (2)(b)** is in the absolute discretion of the decision-maker, and **section 26** applies in relation to such a decision.
- Compare: 1987 No 74 s 7(3) and (4), 11(1)(a)

Persons unlawfully in New Zealand

- 12 Obligation of persons unlawfully in New Zealand to leave New Zealand**
- (1) A person who is in New Zealand unlawfully has an obligation to leave New Zealand.

- (2) The obligation created by **subsection (1)** arises whether the person came to be in New Zealand unlawfully as a result of the expiry or cancellation of a visa, the person's entry into New Zealand without a visa or without entry permission, or otherwise. 5
- (3) The obligation to leave created by **subsection (1)** arises whether or not the person is aware of the obligation, or of the implications of not meeting it, and—
- (a) that obligation, and any liability of the person to deportation or other action under this Act, is not affected by any failure or alleged failure of the chief executive to communicate the obligation and related implications under **section 13**; but 10
- (b) nothing in **paragraph (a)** prevents any action from being brought in respect of such a failure or alleged failure in proceedings that are not directed towards preventing the deportation of any person. 15

Compare: 1987 No 74 s 45

- 13 Duty of chief executive to communicate obligation to leave New Zealand** 20
- (1) The chief executive must communicate to persons who are seeking visas to come to New Zealand or visas to be in New Zealand—
- (a) the obligation to leave New Zealand created by **section 12**; and 25
- (b) that a person who fails to meet that obligation may face deportation.
- (2) Without limiting the means by which the chief executive may communicate those matters, he or she must provide the relevant information required by **subsection (1)**— 30
- (a) at offices where visas are granted, by way of notices that can be readily seen by persons to whom it is likely to be of relevance:
- (b) on application forms for visas:
- (c) in immigration control areas, by way of notices that can be readily seen by all arriving entrants: 35
- (d) on informational material provided by the Department to persons who are interested in coming to New Zealand.

- (3) The chief executive is to decide whether the information to be communicated under **subsection (2)** should be communicated in more than 1 language, and, if so, which languages should be used.
- (4) Any temporary entry class visa granted to any person after the commencement of this Act that is evidenced by an endorsement in the holder's passport or certificate of identity must contain words to the effect that the person must leave New Zealand before expiry of the visa, or face deportation.
Compare: 1987 No 74 s 46
- 14 No right for person unlawfully in New Zealand to apply for visa**
No person who is unlawfully in New Zealand may apply for a visa and, where any such person purports to apply for a visa, it is a matter for the absolute discretion of the Minister.
Compare: 1987 No 74 ss 17(2), 25(3)
- Overview of decision-making powers*
- 15 Key powers of Minister**
Under this Act, the Minister has the following powers:
- (a) the power to make immigration instructions regarding eligibility for residence class visas, temporary entry class and transit visas, and entry permission: 20
 - (b) the power to determine that classified information may be used in decision making:
 - (c) the power to make decisions on visas and entry permission based on classified information: 25
 - (d) the power to make decisions regarding deportation:
 - (e) the power to make special directions under **section 341**:
 - (f) the power of delegation set out in **section 342**.
- 16 Key powers of chief executive** 30
Under this Act, the chief executive has the following powers:
- (a) the power to give general instructions in accordance with **section 24** as to the order and manner of processing of applications for visas:
 - (b) the power to make decisions under **section 87** in respect of advance passenger processing: 35

- (c) the power to designate immigration control areas for the processing of persons arriving in or departing from New Zealand:
 - (d) the power to approve premises under **section 293** for the purposes of detention: 5
 - (e) the power under **section 346** to designate persons as immigration officers and to authorise them under **section 347** to exercise specified powers, and the power under **section 348** to designate persons as determination officers. 10
- 17 Powers of immigration officers**
- Immigration officers have the powers they are authorised by the chief executive to exercise under this Act, which may include—
- (a) the power to make decisions on visa applications and applications for entry permission: 15
 - (b) the power to carry out certain compliance activities under this Act and to detain persons for the purposes of this Act.
- 18 Powers of determination officers** 20
- Determination officers have the power to make decisions in relation to—
- (a) refugee status; and
 - (b) protection under other international conventions as provided for under this Act. 25
- 19 Nature of sections 15 to 18**
- Sections 15 to 18** provide an overview only, and do not in themselves create any powers or limit the generality of powers a person may exercise under this Act or any other Act.
- Immigration instructions* 30
- 20 Immigration instructions**
- (1) The Minister may from time to time formulate and certify immigration instructions relating to—
- (a) residence class visas, temporary entry class visas, and transit visas: 35
 - (b) entry permission:

- (c) conditions relating to residence class visas and temporary entry class visas, including, without limitation, conditions relating to—
- (i) travel to New Zealand:
 - (ii) the holder's ability to work or study in New Zealand: 5
- (d) the periods for which each type of temporary entry class visa may be granted:
- (e) names and descriptions of the types of temporary visas.
- (2) Any such instructions take effect from the date they are certified or another date specified for the purpose in the certified instructions, which may not be earlier than the date on which the Minister certifies the instructions but, subject to **sections 60(1) and 64(2)**, may apply to applications not yet determined on that date. 15
- (3) The kinds of matters that may constitute immigration instructions for the purposes of this Act are as follows:
- (a) any general or specific objectives of immigration instructions:
 - (b) any rules or criteria for determining the eligibility of a person for the grant of a visa of any kind or for entry permission, being rules or criteria relating to the circumstances of that person: 20
 - (c) any indicators, attributes, or other relevant information or matters that may or must be taken into account in assessing a person's eligibility for a visa or entry permission: 25
 - (d) any statement of, or rules or criteria or process for determining, the number or categories or ranking of persons or classes of persons whose applications for visas of any kind or entry permission may be granted at any particular time or over any particular period: 30
 - (e) any matters relevant to balancing individual eligibility for a visa or entry permission against the overall objectives or requirements of immigration instructions: 35
 - (f) any requirements relating to documentation, consultation, or other evidence or information required to assess a person's eligibility for a visa or entry permission:
 - (g) any statement of the conditions or types of conditions that may be imposed upon a person to whom a visa of any particular kind is granted, and the circumstances in 40

- which or classes of persons upon whom such conditions may be imposed:
- (h) the nature and extent of the discretion that immigration officers may exercise in making a decision on any visa.
- (4) Without limiting the generality of **subsection (3)**, any rules or criteria relating to eligibility for a visa or entry permission— 5
- (a) may include matters relating to—
- (i) health: 10
- (ii) character: 10
- (iii) the immigration status of applicants for visas (whether currently or at any time in the past): 10
- (iv) sponsorship: 10
- (v) the provision of bonds: 10
- (b) may, in respect of any 1 or more specified classes or categories of person who wish to apply for a visa,— 15
- (i) include a requirement that persons of that class or category may so apply only if invited to do so by the Minister or an immigration officer: 15
- (ii) stipulate any period for which an expression of interest will remain current: 20
- (iii) set or indicate rules, criteria, or other relevant matters of the kinds specified in **subsection (3)(a) to (f)**, that will or may apply for the purpose of determining whether or not an invitation to apply for a visa should be granted to any such person: 25
- (iv) stipulate any time frame, or any method for determining the time frame, within which the relevant application must be made following the issue of an invitation to apply for a visa.
- (5) Any conditions referred to in **subsection (3)(g)** that relate to resident visas must specify the maximum period for which they may be imposed, which maximum period may in no case exceed 5 years. 30
- Compare: 1987 No 74 s 13B
- 21 Residence instructions and temporary entry instructions** 35
- (1) The Minister must classify any immigration instructions certified under **section 20** as—
- (a) residence instructions; or
- (b) temporary entry instructions (and, if appropriate, as restricted temporary entry instructions). 40

- (2) To avoid doubt, any temporary entry instructions are not residence instructions, regardless of whether the granting of a visa or entry permission under those instructions may affect eligibility for or otherwise relate to the grant of a residence class visa. 5
- 22 Publication of immigration instructions**
- (1) The chief executive must publish immigration instructions certified under **section 20**.
- (2) The chief executive must ensure that copies of immigration instructions are available or readily obtainable for inspection, free of charge, at— 10
- (a) offices of the Department; and
 - (b) New Zealand government offices overseas that deal with immigration matters.
- (3) Nothing in **subsection (2)** requires the making available of information that could properly be withheld in accordance with the provisions of the Official Information Act 1982, were a request to be made for the information under that Act. 15
- Compare: 1987 No 74 s 13A
- 23 Rules and criteria for lapsing of applications for visas** 20
- (1) The Minister may formulate and certify in accordance with **section 20** rules or criteria for the lapsing of applications in respect of which no decision to grant a visa has been made, or is likely to be made,—
- (a) within any stipulated period or by any stipulated date; 25
 - or
 - (b) by the date on which any relevant quota or limit set under immigration instructions for any particular period is reached; or
 - (c) by any other date on which some other specified event 30 occurs or, as the case may be, has not occurred.
- (2) Rules and criteria set under this section—
- (a) may differ for different classes or categories of applications;
 - (b) may specify any stage of processing of an application 35 that must be reached within any stipulated period or by any stipulated date if the application is not to lapse.

- (3) The question whether or not an application meets any rules or criteria for lapsing set under this section is a matter for the discretion of an immigration officer, and—
- (a) no appeal lies against the decision of the officer concerned, or the lapsing of the application, whether to the Minister, the Tribunal, a court, or otherwise; and 5
 - (b) no review proceedings may be brought in any court in respect of—
 - (i) the lapsing of an application for a visa under rules or criteria set under this section; or 10
 - (ii) the lapsing of an expression of interest in obtaining an invitation to apply for a visa.
- (4) Any decision to lapse an application for a residence class visa, or for a temporary entry class visa of a type subject to restricted temporary entry instructions, must be made in accordance with the rules and criteria applicable at the time the application was made. 15
- (5) The effect of lapsing an application is that no further processing or decision in respect of that application is required.
- (6) Where any application is lapsed in accordance with rules and criteria set under this section, the chief executive must refund any application fee paid in respect of the application to the person who paid it, or a person authorised by that person to receive it. 20
- (7) Nothing in this Act or in any other law or enactment entitles a person whose application has lapsed to recover from the Minister or the Department or any immigration officer any costs associated with the application, or any costs, damages, or compensation associated with the lapsing of the application, other than the application fee refundable under **subsection (6)**. 25 30
- (8) In this section (except **subsection (6)**), **application** includes an expression of interest under **section 80** in obtaining an invitation to apply. 30

Compare: 1987 no 74 s 13BB

24 Chief executive may make arrangements for processing applications for visas 35

- (1) The order and manner of processing any application for a visa or entry permission is a matter for the discretion of an immigration officer.

- (2) The chief executive may make arrangements for the provision of assistance to the Minister or immigration officers in processing applications made under this Act.
- (3) The chief executive may, from time to time, give general instructions to immigration officers as to the order and manner of processing any application for a visa or entry permission. 5
- (4) In giving any such instructions, the chief executive may have regard to such matters as the chief executive thinks fit.
- (5) Unless otherwise expressed by the chief executive, any general instructions given under this section as to the order and manner of processing applications may apply to any or all applications regardless of the fact that— 10
- (a) the general instructions may be different from those existing at the time that the applications were made; or
- (b) the general instructions may result in applications being processed in a different order or manner than would otherwise have occurred. 15
- (6) General instructions given under this section are matters of departmental rules and practice, and do not form part of immigration instructions under **section 20**. 20
- (7) Nothing in this Act, or in any other law or enactment, requires an immigration officer to process an application for a visa in any particular order or manner, whether or not consistent with any general instructions given by the chief executive from time to time. 25
- (8) The question whether or not an application is processed in an order and manner consistent with any general instructions given by the chief executive is a matter for the discretion of an immigration officer, and—
- (a) no appeal lies against the decision of the officer concerned, whether to the Minister, the Tribunal, a court, or otherwise; and 30
- (b) no review proceedings may be brought in any court in respect of—
- (i) any general instructions as to the order and manner of processing applications as given by the chief executive from time to time; or 35
- (ii) the application of any such general instructions; or

- (iii) any failure by the Minister or an immigration officer to process, or to continue to process, an application; or
- (iv) any decision by the Minister or an immigration officer to process (including a decision to continue to process), or any decision not to process (including a decision not to continue to process), an application. 5

Compare: 1987 No 74 s 13BA

Reasons for decisions 10

25 Reasons for decisions

Except as otherwise provided in this Act, where a person who applied for a visa onshore or in an immigration control area so requests, an immigration officer (or, where the decision is the Minister's, the Minister) must give the reasons in writing for any decision to— 15

- (a) refuse to grant a visa to the applicant; or
- (b) refuse to grant to the applicant a visa of a particular type.

Compare: 1987 No 74 s 36 *No right to apply for or have certain matters considered* 20

26 No right to apply for or have certain matters considered

Where this Act provides that a decision or matter is in the absolute discretion of the decision-maker, it means that—

- (a) the matter or decision may not be applied for; and
- (b) if a person purports to apply for the relevant matter or decision, there is no obligation to consider the purported application; and 25
- (c) whether the purported application is considered or not,—
 - (i) the decision-maker is not obliged to give reasons for any decision relating to the purported application, other than the reason that this section applies; and 30
 - (ii) **section 25** of this Act and section 23 of the Official Information Act 1982 do not apply in respect of the purported application. 35

Compare: 1987 No 74 ss 7(4), 12(4), 17(2), 25(3), 34B(3), 35A(2), 58(5), 130(6)

Automated decision making and biometric information

- 27 Automated decision making in relation to visas, etc**
- (1) An automated electronic system that applies criteria predetermined in accordance with immigration instructions may be used to— 5
- (a) rank an expression of interest:
 - (b) process, grant, or refuse to grant an invitation to apply for a visa:
 - (c) process, grant, or refuse to grant an application for a visa: 10
 - (d) process, grant, or refuse to grant an application for entry permission.
- (2) Conditions imposed on visas granted by an automated electronic system may only be conditions that are specified in immigration instructions for a visa of the relevant class or type. 15
- (3) However, nothing in this section prevents an immigration officer or the Minister from imposing further conditions, or varying or cancelling conditions under **section 39 or 40**, on or in relation to a visa granted by way of an automated electronic system. 20
- (4) Where a decision to grant or refuse to grant a visa or entry permission, or to issue or refuse to issue an invitation to apply for a visa, is made by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under this Act. 25
- 28 Automated decision making in advance passenger processing**
- The chief executive may make a decision under **section 87(1)** by means of an automated electronic system that analyses the information (if any) about a person that is held by the chief executive or to which the chief executive has access using criteria predetermined by the chief executive. 30
- 29 Use of biometric information in decision making** 35
- Where biometric information is required in accordance with this Act, that information may be used to—
- (a) establish a record of a person's identity; or
 - (b) verify a person's identity; or

- (c) assist in decision making under this Act.

Use of classified information in decision making

- 30 Classified information may be used in decision making**
- (1) Classified information may be used in making decisions under this Act if the Minister determines that the classified information relates to matters of security, criminal conduct, or matters that may have a significant impact on New Zealand's international reputation. 5
- (2) Where the Minister determines, in accordance with **subsection (1)**, that classified information may be used in making a decision under this Act, the Minister may— 10
- (a) use the classified information to make a decision under **Part 3, 4, or 6**; or
- (b) where the decision concerns refugee or protection status under **Part 5**, direct the chief executive of the relevant agency to provide the information to the Tribunal so that the Tribunal may use it to make a decision— 15
- (i) in relation to a claim for recognition as a refugee or protected person; or
- (ii) whether to cancel the recognition of a person as a refugee or protected person. 20
- (3) **Sections 31 to 34** apply, as appropriate, when decisions are made using classified information.
- (4) **Sections 214 to 218 and 224 to 239** apply to proceedings involving classified information. 25
- 31 Minister may receive briefing**
- (1) Where classified information may be relevant to a decision,—
- (a) the Minister may request a briefing from the chief executive of the relevant agency; and
- (b) in the case of an oral briefing, the Minister may seek the assistance of such security-cleared assistants as he or she thinks fit; and 30
- (c) the content of the briefing is to be determined by the chief executive of the relevant agency; and
- (d) the chief executive of the relevant agency, the Minister, and any assistant to the Minister must keep confidential and must not disclose the contents of the briefing. 35

- (2) No person may be called to give evidence in any court or tribunal in relation to the content of the briefing or anything coming to his or her knowledge as a result of the briefing (including any record of an oral briefing), except as provided in **sections 215(1) and 231(1)**. 5
- (3) Except as provided in **sections 215 and 231**, no evidence is admissible in the Tribunal, any court, or before any person acting judicially, of any information that, by **subsection (1)(d)**, is required to be kept confidential and must not be disclosed.
- 32 Protection of classified information** 10
- (1) Classified information used for the purpose of making any decision or determining any proceedings under this Act must be kept confidential and must not be disclosed, except as provided in **sections 31, 215, 231, and 238**.
- (2) **Subsection (1)** applies despite any enactment or rule of law to the contrary. 15
- (3) Neither the Tribunal nor any court may require or compel the chief executive of the relevant agency, the Minister, or any other person to disclose any classified information in any proceedings under this Act (but without derogating from **sections 215(1) and 231(1)**). 20
- (4) The chief executive of the relevant agency providing any classified information for the purposes of a decision or proceedings under this Act must ensure that— 25
- (a) the information is provided in a manner that does not, by reason of the omission of any other relevant classified information, give a misleading view of the information supplied; and
- (b) any classified information that is favourable to the person subject to the decision or proceedings is also provided; and 30
- (c) any further classified information that becomes available and that is relevant to the decision or proceedings is provided.
- (5) A person who discloses confidential information in breach of **subsection (1)** may commit an offence under section 20A of the Summary Offences Act 1981. 35

- 33 Withdrawal or updating of classified information**
- (1) The chief executive of the relevant agency may at any time withdraw, update, or add to all or any part of any classified information provided for the purpose of making a decision or determining proceedings under this Act. 5
- (2) Where the chief executive of the relevant agency updates or adds to the classified information,—
- (a) provided to the Minister before the Minister makes a decision under **Part 3, 4, or 6**, the Minister must take that new or updated information into account in making the decision: 10
- (b) raised in proceedings involving classified information, the court or Tribunal must treat the new or updated information in the same way as classified information originally provided to it under **section 231(1)**. 15
- (3) Where all or any part of the classified information is withdrawn, the information withdrawn may not be used in making the decision or determining the proceedings concerned.
- (4) The chief executive of the relevant agency may at any time direct any person to return classified information to the relevant agency. 20
- (5) A person who retains classified information in contravention of a direction by the chief executive of the relevant agency may commit an offence under section 78A of the Crimes Act 1961. 25
- 34 Summary of allegations to be developed**
- (1) This section and **section 35** apply where classified information is to be used, or may be used, in the making of any decision (a **relevant decision**) in relation to—
- (a) an application for a visa, where— 30
- (i) the applicant is onshore (other than in an immigration control area) at the time of application; or
- (ii) the application is for a residence class visa; or
- (b) a person's liability for deportation.
- (2) Before a relevant decision is made under this Act using classified information that is or may be prejudicial to the person who is the subject of the proposed decision,— 35
- (a) the chief executive of the relevant agency and the Minister must agree a summary of the allegations arising from the classified information, except to the extent that 40

- a summary would itself involve disclosure that would be likely to prejudice the interests referred to in **section 5(3)**; and
- (b) the Minister must forward the summary to the person who is the subject of the proposed decision for comment, and specify a time by which any comment may be provided. 5
- (3) Nothing in **subsection (2)** requires the summary to—
- (a) list any documents or other source material containing classified information; or 10
- (b) detail the contents of any documents or other source material containing classified information; or
- (c) specify the source of any documents or other source material containing classified information.
- (4) A summary under this section must be updated in accordance with **subsection (2)(a)**, and the person affected provided with an updated summary, where— 15
- (a) any classified information that was proposed to be used in making the decision is withdrawn (unless all of the classified information is withdrawn); or 20
- (b) the chief executive of the relevant agency adds to or updates the classified information that will be used in making the decision.
- 35 Process where decision made using classified information**
- (1) Where a decision of a kind referred to in **section 34(1)** has been made using classified information, and the decision is or may be prejudicial to the person concerned, then, subject to **section 36**, the person who is the subject of the decision must be informed of— 25
- (a) the fact that classified information was used in making the decision; and 30
- (b) the reasons for the decision (except to the extent that providing reasons would involve disclosure that would be likely to prejudice the interests referred to in **section 5(3)**); and 35
- (c) the appeal rights, if any, available in respect of the decision; and
- (d) if appeal rights are available, the right to be represented by a special advocate.

- (2) The Minister must also prepare a record of the reasons for the decision, including any reasons arising from the classified information, which may not be accessed or disclosed except in accordance with **section 215(1), 231(1), or 238(2)** or to the chief executive of the relevant agency. 5
- (3) To avoid doubt, no complaint may be made to the Inspector-General of Intelligence and Security about any matter that relates to any act, omission, practice, policy, or procedure done, omitted, or maintained in connection with decisions or matters involving classified information under this Act. 10
- 36 Where classified information may be used without requirement for summary or reasons**
- (1) Except as provided in **sections 34 and 35**, where a decision is made under this Act using classified information,—
- (a) the Minister is not required to— 15
- (i) provide potentially prejudicial information based on classified information to the person concerned for comment; or
- (ii) give reasons for the decision; and
- (b) section 23 of the Official Information Act 1982 and **section 25** of this Act do not apply in respect of the decision. 20
- (2) Nothing in **section 34 or 35** requires the making available of any classified information or a summary of the allegations arising from classified information, or the giving of reasons for decisions,— 25
- (a) where **section 26** applies; or
- (b) in relation to expressions of interest or invitations to apply for a visa; or
- (c) to applicants for transit visas or applicants for temporary entry class visas who are offshore or in an immigration control area at the time of the application; or 30
- (d) in relation to applications for entry permission.

Part 3 Visas

Subpart 1—Visas generally

- 37 Meaning and effect of visa** 5
- (1) For the purposes of this Act, a **visa** is an entry made in the records (whether electronic or physical) of the Department in accordance with **section 53** indicating that—
- (a) except in the case of a transit visa,—
 - (i) the holder of the visa has permission to travel to New Zealand and apply for entry permission, and, at the time the visa is granted, there is no reason to believe that the holder will be refused entry permission if the travel is consistent with the travel-related conditions of the visa; and 10
 - (ii) if granted entry permission, the holder of the visa has permission to stay in New Zealand, provided he or she abides by the conditions of the visa (if any); 15
 - (b) in the case of a transit visa, the holder of the visa has permission to travel to New Zealand and remain in an immigration control area or on the craft or in the custody of the police for no longer than the period prescribed for the purposes of **section 77(1)**. 20
- (2) A visa may give permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys. 25
- (3) The holding of a visa does not of itself entitle the holder to be granted entry permission, except as provided in **section 96(1) and (2)**.
- (4) A person may hold only 1 visa that is current at any one time.

Conditions of visas 30

- 38 Visas may be subject to conditions**
- Every visa other than a permanent resident visa is subject to such conditions (if any) as may, in respect of the relevant class or type of visa, be,—
- (a) in the case of resident visas, specified in residence instructions relating to visas of that type, being the instructions applicable at the time the application was made for the visa: 35

- (b) in the case of temporary entry class visas other than visas subject to restricted temporary entry instructions, specified in temporary entry instructions relating to visas of that class or a type of visa within that class, being instructions applicable at any time before the grant of the visa: 5
- (c) in the case of temporary entry class visas subject to restricted temporary entry instructions, specified in temporary entry instructions applicable at the time the application for the visa was made: 10
- (d) imposed by the Minister or an immigration officer under **section 39 or 40**:
- (e) imposed by or under any other Act.
- 39 Variation of conditions of temporary entry class visas**
- (1) Subject to **subsections (4) and (5)**, the Minister or an immigration officer may, on granting a temporary entry class visa,— 15
- (a) impose conditions in addition to those specified in immigration instructions in relation to a visa of that class or type:
- (b) vary or waive conditions that would otherwise apply to a visa of that class or type: 20
- (2) Subject to **subsections (4) and (5)**, the Minister or an immigration officer may, following the grant of a temporary entry class visa,—
- (a) impose further conditions whether or not those conditions are specified in immigration instructions in relation to a visa of that class or type: 25
- (b) vary or cancel conditions that would otherwise apply to a visa of that class or type, or that were imposed under **subsection (1)**. 30
- (3) **Subsections (4) and (5)** apply where the grant of a temporary entry class visa is subject to restricted temporary entry instructions.
- (4) The Minister may, on granting a temporary entry class visa as an exception to temporary entry instructions,— 35
- (a) impose conditions in addition to those specified in temporary entry instructions in relation to a visa of that type:
- (b) vary or waive conditions that would otherwise apply to a visa of that type. 40

- (5) The Minister may, following the grant of a temporary entry class visa as an exception to temporary entry instructions,—
- (a) impose further conditions whether or not those conditions are specified in temporary entry instructions in relation to a visa of that type: 5
 - (b) vary or cancel conditions that would otherwise apply to a visa of that type, or that were imposed under **subsection (4)**.
- (6) The Minister or an immigration officer may do one of the things in **subsection (2)**, or the Minister may do one of the things in **subsection (5)**, either by agreement with the visa holder or by notification under **section 43**. 10
- 40 Variation of conditions of resident visas**
- (1) The Minister may, on granting a resident visa as an exception to residence instructions,— 15
- (a) impose conditions in addition to those specified in residence instructions in relation to a visa of that type:
 - (b) vary or waive conditions that would otherwise apply to a visa of that type.
- (2) The Minister may, following the grant of a resident visa as an exception to residence instructions,— 20
- (a) impose further conditions whether or not those conditions are specified in residence instructions in relation to a visa of that type:
 - (b) vary or cancel conditions that would otherwise apply to a visa of that type, or that were imposed under **subsection (1)**. 25
- (3) The Minister may do one of the things in **subsection (2)** either by agreement with the visa holder or by notification under **section 43**. 30
- (4) To avoid doubt, nothing in this section allows the Minister or an immigration officer to impose conditions on a permanent resident, whether at the time of granting a permanent resident visa or subsequently.
- 41 Resident visa holder may apply for variation of conditions** 35
- (1) If a resident visa holder intends to leave New Zealand temporarily, he or she may, before leaving, apply in the prescribed manner for a variation of conditions allowing the person to

- travel to New Zealand on a later occasion and be granted entry permission.
- (2) A decision whether to vary the conditions of a visa following an application under **subsection (1)** must be made by an immigration officer in accordance with residence instructions relating to visas of that type, being the instructions applicable at the time the application for a variation of conditions was made. 5
- 42 Effective date of variation of conditions**
- (1) Subject to **subsection (2)**, any imposition, variation, or cancellation of conditions under **section 39(2) or (5), or section 40(2)**, takes effect from the date specified in the notice under **section 43**. 10
- (2) No imposition or variation of conditions under **section 39(2) or (5), or section 40(2)** may have a retrospective effect.
- 43 Requirement to notify conditions of visa** 15
- (1) Where any condition is imposed, varied, or waived under **section 39(1) or 40(1)**, the Minister or immigration officer must notify the visa holder in writing by notification to the address supplied under **section 47(2)**.
- (2) Where any condition is imposed, varied, or waived under **section 39(2), (4), or (5) or 40(2)**, the Minister or immigration officer must notify the visa holder in writing by notification to the address supplied under **section 47(2)**. 20
- 44 Visa holder must abide by conditions**
- (1) The holder of a visa that is subject to conditions must abide by the conditions of the visa. 25
- (2) In the case of conditions imposed by or under any other Act, or specified in immigration instructions, the obligation to comply arises whether or not the visa holder is aware of the obligation, or of the implications of not meeting it. 30
- (3) A visa holder must comply with conditions imposed or varied by the Minister or an immigration officer under **section 39 or 40** that are notified under **section 43**.
- (4) It is presumed, in the absence of evidence to the contrary on the balance of probabilities, that a visa holder was notified of any conditions imposed or varied under **section 39 or 40**, if the notice was sent to the address supplied under **section 47(2)**. 35

- 45 Visa may be conditional on payment of bond**
- (1) Without limiting the generality of **sections 38 to 40**, the Minister or an immigration officer may impose as a precondition to the grant of a visa the requirement that a bond be paid in accordance with **section 353**. 5
- (2) Bonds may be refundable in whole or in part in accordance with **section 354**.
- (3) The fact that a bond has been forfeited in whole or in part does not affect other action taken, or that may be taken, in respect of a failure to meet conditions imposed under **section 38, 39, or 40**. 10
- Compare: 1987 No 74 ss 18A(3A), 27(1A)
- 46 Visa applicant may be required to have sponsor**
- (1) Without limiting the generality of **sections 38 to 40**, it may be a precondition to the grant of a visa that the visa applicant supply a written undertaking by any person (the **sponsor**) relating to any specified matter or matters. 15
- (2) The requirement for a sponsor may be imposed by—
- (a) immigration instructions, in any class of case; or
- (b) the Minister or an immigration officer, in any particular case. 20
- (3) Without limiting **subsection (1)**, the matters specified may, in relation to the applicant and any dependants of the applicant, relate to—
- (a) employment: 25
- (b) accommodation;
- (c) maintenance (including the cost of any publicly funded services);
- (d) costs of repatriation or deportation.
- (4) An undertaking required under **subsection (1)** may relate to the sponsor— 30
- (a) providing any matter directly; or
- (b) paying the costs of any matter where the matter is provided by another person.
- (5) A sponsor— 35
- (a) must be acceptable to the Minister or an immigration officer, and must be—
- (i) a natural person who is a New Zealand citizen, resident, or permanent resident; or

- (ii) an organisation that is registered in New Zealand as a company, incorporated society, or charitable trust; or
 - (iii) a government agency; and
- (b) must meet any other criteria required by immigration instructions in the appropriate class of case. 5
- (6) A sponsor who is a non-natural person must nominate an authorised contact for the purposes of the sponsorship.
- (7) The written undertaking that may be required under **subsection (1)** must be in a form approved by the chief executive. 10
- (8) A sponsor must comply with an undertaking made under this section.
- (9) Any failure to comply with the undertaking results—
 - (a) in a debt due to the Crown, if a cost has been incurred by the Crown as a result of the failure; 15
 - (b) in a debt due to a third party, if a cost has been incurred by the third party as a result of the failure.
- (10) It is a matter for the absolute discretion of the Minister or an immigration officer whether a person is acceptable as a sponsor, and no appeal lies against the decision of the Minister or immigration officer on any such question, whether to any court, the Tribunal, the Minister, or otherwise. 20

General rules relating to visas

- 47 Applications for visas** 25
- (1) An application for a visa must be made in the manner prescribed for the class or type of visa sought. 25
 - (2) The applicant must specify in the application a physical address, and may specify an electronic address, to which any communication relating to the application, or to any visa that may be granted pursuant to the application, may be sent, or at which any notice may be served under this Act. 30
 - (3) The applicant for or holder of a visa may at any time, by written notice to an immigration officer, substitute a different address for that specified under **subsection (2)**.
- 48 Obligation on applicant to inform of all relevant facts, including changed circumstances** 35
- (1) It is the responsibility of an applicant for a visa to ensure that all information, evidence, and submissions that the applicant

- wishes to have considered in support of the application are provided when the application is made.
- (2) The Minister or immigration officer considering the application—
- (a) is not obliged to seek any further information, evidence, or submissions; and 5
 - (b) may determine the application on the basis of the information, evidence, and submissions provided.
- (3) It is also the responsibility of an applicant for a visa to inform an immigration officer of any relevant fact, including any material change in the circumstances that occurs after the application is made, if that fact or change in circumstances—
- (a) may affect the decision on the application; or 10
 - (b) may affect a decision to grant entry permission in reliance on the visa for which the application is made. 15
- (4) Without limiting the scope of the expression **material change in circumstances in subsection (3)**, such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to this Act or immigration instructions. 20
- (5) Failure to comply with the obligation set out in **subsection (3)** amounts to **concealment of relevant information** for the purposes of **sections 146 and 147**.
- (6) It is sufficient ground for the Minister or an immigration officer to decline to grant a visa to a person if the Minister or officer is satisfied that the person,—
- (a) whether personally or through an agent, in applying for the visa submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the visa; or 25 30
 - (b) did not ensure that an immigration officer was informed of any material change in circumstances between the time of making the application and the time of a decision on the application. 35
- Compare: 1987 No 74 ss 17A, 25, 34B, 34G

49 Applications by minors

Where an application for a visa is made by or for a person under 18 years of age who is not married or in a civil union,

the Minister or an immigration officer may decline the application if the Minister or immigration officer is not satisfied that any parent or guardian of the person consents to the making of the application.

Compare: 1987 No 74 s 35(2)

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50 Biometric information may be required from visa applicant

- (1) Subject to regulations made under this Act, an applicant for a visa must allow the collection of biometric information.
- (2) If the applicant fails to allow the collection of the biometric information, the Minister or an immigration officer may refuse to grant the visa applied for.

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51 Grant of visa a matter of discretion

- (1) Subject to the provisions of this Act, on an application for a visa made in the prescribed manner the Minister or an immigration officer—
- (a) may grant or refuse to grant a visa, as he or she thinks fit; and
- (b) may grant such type of visa as he or she thinks fit regardless of the type of visa for which the application was made.
- (2) This section is subject to **section 71(1)**.
- (3) Except as provided in **sections 111 and 189**,—
- (a) no person is entitled to a visa as of right; and
- (b) the following matters are matters for the discretion of the Minister or, subject to any special direction, an immigration officer:
- (i) subject to **section 60**, a decision whether to grant a residence class visa;
- (ii) subject to **section 64**, a decision whether to grant a temporary entry class visa and, if so, for what period;
- (iii) a decision whether to grant a transit visa;
- (iv) subject to **sections 39(5) and 40(2)**, a decision whether to impose any condition on a visa (other than a condition specified in immigration instructions) at the time of grant, or to vary or waive conditions that would otherwise apply:

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- (v) subject to **sections 39 and 40**, a decision to impose further conditions on a visa or to vary or cancel any conditions after the grant of the visa:
- (vi) a decision to render a temporary entrant liable for deportation: 5
- (vii) a decision to cancel a temporary entry class visa, or a resident visa prior to its holder's first arrival in New Zealand, when the holder of the visa is outside New Zealand.
- (4) Subject to **sections 170 and 171**, no appeal lies against the decision of the Minister or immigration officer on a matter described in **subsection (3)(b)**, whether to any court or to the Tribunal or to the Minister or otherwise. 10
- (5) Subject to **subsection (6)**, nothing in **subsection (4)** limits or affects the right of any person to bring review proceedings. 15
- (6) No review proceedings may be brought in any court in respect of—
- (a) any refusal or failure to grant a visa (including the refusal or failure of the Tribunal to grant a visa) to a person outside New Zealand: 20
- (b) any decision to cancel a temporary entry class visa before the holder arrives in New Zealand and is granted entry permission:
- (c) any decision to refuse to grant or to cancel a transit visa. 25
- Compare: 1987 No 74 ss 8, 9, 9A, 10, 35
- 52 Grant of visa in special case**
- (1) The Minister may at any time, of the Minister's own volition, grant a visa of any type to a person who—
- (a) is in New Zealand unlawfully; and
- (b) is not a person in respect of whom a deportation order is in force. 30
- (2) A decision to grant a visa under **subsection (1)** is in the Minister's absolute discretion, and **section 26** applies in relation to such a decision. 35
- Compare: 1987 No 74 s 35A

53 Form of visa

- (1) A visa is granted by being entered and retained in the records (whether electronic or physical) of the Department in a manner determined by the chief executive.
- (2) The entry for the visa must specify, as appropriate,— 5
- (a) its start date (which may be the date of its grant or a future or past date);
 - (b) any conditions of the visa that relate to travel, including—
 - (i) whether or not the visa allows travel to New Zealand on a later occasion: 10
 - (ii) if the visa allows travel to New Zealand, the period during which the holder may travel to New Zealand:
 - (iii) if the visa allows travel to New Zealand, whether the visa gives permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys: 15
 - (c) in relation to the holder's stay in New Zealand, the date or event on the occurrence of which the visa will expire, or the period after which it will expire: 20
 - (d) any conditions of the visa:
 - (e) for those persons granted entry permission, the date the entry permission was granted:
 - (f) such other matters as may be required or approved by the chief executive. 25
- (3) A visa may (but need not) be evidenced by an endorsement in a passport or certificate of identity.

54 Cancellation of visas on certain occurrences

- (1) A visa is deemed to be cancelled in the following circumstances: 30
- (a) on the deportation of its holder from New Zealand;
 - (b) on the refusal of entry permission to its holder;
 - (c) if the holder arrived at an immigration control area,—
 - (i) on the holder leaving the immigration control area without presenting himself or herself to an immigration officer; or 35
 - (ii) on the holder failing to comply with the instruction of an immigration officer to remain in the area: 40

- (d) if the holder arrived at a place other than an immigration control area, on failing to present himself or herself in the manner and within the time prescribed for the purposes of **section 91**:
- (e) subject to **subsection (2)**, on the start date of a further visa granted to its holder: 5
- (f) on the grant of New Zealand citizenship to its holder:
- (g) on the registration of New Zealand citizenship by descent under section 7(2) of the Citizenship Act 1977 by its holder: 10
- (h) on the issue of an evidentiary certificate under section 21 of the Citizenship Act 1977 that confirms the holder is a New Zealand citizen.
- (2) The grant of a temporary entry class visa to a holder does not cancel a residence class visa, except as provided in **section 56(2)**. 15
- 55 Cancellation of visa by Minister or immigration officer**
- (1) The Minister or an immigration officer may, if the Minister or immigration officer determines there is sufficient reason,—
- (a) cancel a temporary entry class visa at any time when its holder is outside New Zealand: 20
- (b) cancel a resident visa at any time before its holder first arrives in New Zealand as the holder of the visa:
- (c) cancel a transit visa at any time.
- (2) An immigration officer may cancel a visa that the officer believes on reasonable grounds was granted as a result of administrative error at any time before— 25
- (a) the visa holder leaves the immigration control area or office of the Department in which the visa was granted, where the visa was granted to a visa holder present in the area or office in New Zealand; or 30
- (b) advice of the grant of the visa has been sent or given, in any other case.
- (3) Where a visa is cancelled in an immigration control area under **subsection (2)** on the grounds of administrative error, and the person is still within the immigration control area, then, unless some other visa is granted to the person or the person is a New Zealand citizen,— 35
- (a) entry permission is treated as having been revoked; and
- (b) **section 105** applies. 40

- (4) Where a visa is cancelled under **subsection (2)** and the person is in New Zealand other than in an immigration control area, the person is unlawfully in New Zealand (unless some other visa is granted to the person or the person is a New Zealand citizen). 5
- (5) A visa is granted as a result of administrative error if—
- (a) it is granted to a New Zealand citizen; or
 - (b) it is granted to an excluded person; or
 - (c) the person granting it intended to grant a visa of some type other than the one that was actually granted; or 10
 - (d) it is granted in contravention of—
 - (i) a special direction; or
 - (ii) immigration instructions; or
 - (iii) an instruction of a kind referred to in **section 341(7)**; or 15
 - (e) it is granted for a period exceeding the period specified in immigration instructions for visas of that type; or
 - (f) it is granted on the basis of the person holding a visa that was granted as a result of administrative error. 20

Compare: 1987 No 74 ss 19, 32 20

56 Grant of further visa where visa granted in error

- (1) If the Minister or an immigration officer determines that a visa was granted as a result of administrative error (as described in **section 55(5)**) but the visa was not cancelled in accordance with **section 55**, the Minister or immigration officer may, in his or her absolute discretion, instead of determining that the visa holder is liable for deportation,— 25
- (a) offer the holder a temporary entry class visa of such type, and subject to such conditions, as the Minister or immigration officer considers appropriate; and 30
 - (b) if the holder agrees, grant such a visa.
- (2) Despite **section 54(2)**, the grant of a visa under this section cancels the holder's residence class visa.
- (3) If the holder does not agree, the Minister may determine that the holder is liable for deportation in accordance with **section 144(1)**. 35

- 57 Waiver of requirement for visa permitting travel to New Zealand in certain cases**
- (1) Regulations made under **section 358** may waive the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons, subject to any conditions specified in the regulations. 5
- (2) The Minister may, by special direction,—
- (a) waive for a period not exceeding 3 months the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons, subject to any conditions specified by the Minister: 10
- (b) suspend for a period not exceeding 3 months a waiver made by regulations referred to in **subsection (1)**;
- (c) waive, in any individual case, the requirement to hold a visa permitting travel to New Zealand: 15
- (d) suspend, in any individual case, a waiver made by regulations referred to in **subsection (1)**.
- (3) Any waiver or suspension of a waiver under **subsection (1) or (2)(a) or (b)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom the waiver or suspension of waiver applies by reference to any or all of the following: 20
- (a) their nationality;
- (b) the country or place from which they are travelling (whether it be their original or an intermediate point of departure): 25
- (c) their immediate or ultimate destination after being in or transiting through New Zealand;
- (d) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued. 30
- (4) Any special direction made under **subsection (2)(a) or (b)**—
- (a) must be published in the *Gazette*, and notified in writing through diplomatic channels to any country concerned: 35
- (b) expires at the end of the period of 3 months (or such shorter period as is specified in the direction) following the day on which the direction was made, unless sooner cancelled by the Minister by a further special direction, or by regulations;
- (c) is to be treated for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of 40

the Acts and Regulations Publication Act 1989) as if it were a regulation within the meaning of that Act.

- (5) A special direction under **subsection (2)(a) or (b)** may not be effectively continued in force by the making of a further special direction to the same or similar effect. 5
- (6) A waiver under this section does not of itself entitle a person subject to the waiver to be granted entry permission.

Compare: 1987 No 74 ss 11, 12

Subpart 2—Classes of visa

58 Classes of visa 10

The following classes of visa may be granted under this Act:

- (a) residence class visas, consisting of—
- (i) permanent resident visas:
 - (ii) resident visas:
- (b) temporary entry class visas, consisting of— 15
- (i) temporary visas:
 - (ii) limited visas:
 - (iii) interim visas:
- (c) transit visas. 20

Compare: 1987 No 74 s 14

Residence class visas

59 Who may apply for residence class visas

- (1) The following persons may apply for a residence class visa:
- (a) a person who is outside New Zealand and who wishes to come to New Zealand and stay indefinitely: 25
 - (b) a person who is in New Zealand and is the holder of a temporary visa or a resident visa:
 - (c) a person who is subject to a visa waiver and is of a class prescribed by regulations who may apply for a residence class visa in an immigration control area or other prescribed place on arrival in New Zealand. 30
- (2) No person who is of a class or category that, by virtue of immigration instructions, may only apply for a resident visa or a permanent resident visa by invitation, may apply for such a visa without an invitation. 35

- (3) No person may apply for a resident visa or a permanent resident visa in response to an invitation to apply if the application is not made within any relevant time frame stipulated by immigration instructions.
- (4) To avoid doubt, no limited visa holder, interim visa holder, or person who is liable for deportation may apply for a residence class visa. 5
Compare: 1987 No 74 s 17A
- 60 Decisions on applications for residence class visas** 10
- (1) Where the Minister or an immigration officer makes any decision in relation to an application for a residence class visa, that decision must, subject to **subsection (3)**, be made in terms of the residence instructions applicable at the time the application was made and any discretion exercised must be in terms of those instructions. 15
- (2) No application for a residence class visa that is received by an immigration officer may be referred to the Minister for decision at first instance unless the Minister gives a special direction to that effect.
- (3) Nothing in this section prevents the Minister from making any decision to grant a residence class visa as an exception to residence instructions in any particular case. 20
- (4) A decision made under **subsection (3)** is in the absolute discretion of the Minister, and **section 26** applies in relation to such a decision. 25
Compare: 1987 No 74 ss 13C, 17A(2)
- 61 Currency and nature of permanent resident visa**
- The holder of a permanent resident visa is entitled—
- (a) to travel to New Zealand at any time;
- (b) to be granted entry permission: 30
- (c) to stay in New Zealand indefinitely following the grant of entry permission;
- (d) to work in New Zealand or within the exclusive economic zone of New Zealand;
- (e) to study in New Zealand. 35
- 62 Currency and nature of resident visa**
- (1) The holder of a resident visa—

- (a) is permitted to travel to New Zealand and apply for entry permission; and
- (b) if granted entry permission is, subject to conditions (if any), entitled—
 - (i) to stay in New Zealand indefinitely: 5
 - (ii) to work in New Zealand or within the exclusive economic zone of New Zealand;
 - (iii) to study in New Zealand.
- (2) It may be a condition of a resident visa that—
 - (a) the visa does not entitle its holder to travel to New Zealand on a later occasion and be granted entry permission; or 10
 - (b) the visa allows later travel to New Zealand and entry permission only for a specified period or for a specified number of trips. 15
- (3) The holding of a resident visa does not entitle the resident—
 - (a) to be granted entry permission on his or her first arrival in New Zealand; or
 - (b) to be granted entry permission on any later arrival in New Zealand following travel that is not consistent with the conditions of the visa. 20

63 Certain persons deemed to hold resident visa

- (1) A person in New Zealand who has renounced or who has been deprived of his or her New Zealand citizenship is deemed from the date of that renunciation or deprivation to hold a resident visa permitting the person to stay in New Zealand only, subject to conditions specified in residence instructions for the purposes of this section. 25
- (2) A person to whom **subsection (1)** applies may be liable for deportation under **section 147(2)**. 30

Temporary entry class visas

64 Decisions on applications for temporary entry class visa

- (1) Subject to **subsection (2)**, where the Minister or an immigration officer makes any decision in relation to an application for a temporary entry class visa, the Minister or immigration officer may, at the Minister's or officer's discretion, grant a temporary entry class visa as an exception to temporary entry class instructions in any particular case. 35

- (2) **Subsection (1)** does not apply to an application for a temporary entry class visa of a type subject to restricted temporary entry instructions.
- (3) Nothing in **subsection (2)** prevents the Minister from making a decision to grant a visa as an exception to restricted temporary entry instructions in any particular case. 5
- (4) A decision made under **subsection (3)** is in the absolute discretion of the Minister, and **section 26** applies in relation to such a decision.
- 65 Nature and currency of temporary entry class visas** 10
- (1) The holder of a temporary entry class visa—
- (a) is permitted to travel to New Zealand and apply for entry permission; and
- (b) if granted entry permission, is, subject to conditions (if any), entitled to stay in New Zealand during the currency of the visa. 15
- (2) To avoid doubt, a temporary entry class visa does not entitle the holder to be granted entry permission to New Zealand.
- (3) The holder of a temporary entry class visa may—
- (a) work in New Zealand, or within the exclusive economic zone of New Zealand, only if the conditions of the visa allow, and only consistently with those conditions: 20
- (b) study in New Zealand, only if the conditions of the visa allow, and only consistently with those conditions.
- (4) It may be a condition of a temporary entry class visa that— 25
- (a) the visa does not entitle its holder to travel to New Zealand on a later occasion; or
- (b) the visa allows later travel to New Zealand only for a specified period or for a specified number of trips.
- 66 Deemed extension of certain visas expiring during epidemic** 30
- (1) This section applies to a temporary entry class visa held by a person in New Zealand if—
- (a) it was current immediately before the commencement of an epidemic management notice; and 35
- (b) but for this section, it would expire before the day 14 days after the day on which the notice expires.

- (2) A temporary entry class visa to which this section applies must for all purposes be treated as if it continues to be a valid visa allowing stay in New Zealand until the earlier of the following events:
- (a) its cancellation: 5
 - (b) the expiration of 3 months after the day on which the epidemic management notice expires.
- (3) **Subsection (2)** does not require—
- (a) the endorsement or modification of a visa; or
 - (b) the issue of a document extending a visa; or 10
 - (c) the grant of a new visa.

Compare: 1987 No 74 s 35AC

Temporary visas

- 67 Types of temporary visas** 15
Temporary visas may have a variety of different types and names as specified in temporary entry instructions.
- 68 Who may apply for temporary visa**
- (1) The following persons may apply for a temporary visa:
- (a) a person outside New Zealand who wishes to come to New Zealand for any purpose for which a temporary visa may be granted (unless the person is subject to a visa waiver): 20
 - (b) a person arriving in New Zealand who is subject to a visa waiver:
 - (c) a person who is in New Zealand and is the holder of a current temporary visa. 25
- (2) Despite **subsection (1)**, no person who is of a class or category of person that, by virtue of immigration instructions, may only apply for a temporary visa (or a temporary visa of a particular type) by invitation, may apply for such a visa without an invitation. 30
- (3) No person may apply for a temporary visa in response to an invitation to apply if the application is not made within any relevant time frame stipulated by or under immigration instructions. 35
- (4) To avoid doubt, no limited visa holder or interim visa holder may apply for a temporary visa. If a limited visa holder or interim visa holder purports to do so, a decision as to whether

or not to consider the application is in the absolute discretion of the Minister or immigration officer, and **section 26** applies in relation to the matter.

Compare: 1987 No 74 s 25(1)

Interim visas

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69 Interim visas

- (1) The Minister or an immigration officer may, for the purpose of maintaining the lawful status in New Zealand of the applicant while the application is being considered, grant an interim visa to a person in New Zealand who— 10
- (a) holds a temporary visa; and
 - (b) has applied for a further visa (whether a residence class or a temporary entry class visa).
- (2) No person has the right to apply for an interim visa, and any decision as to whether or not to grant an interim visa is a matter for the absolute discretion of the Minister or relevant immigration officer, and **section 26** applies in relation to such a decision. 15
- (3) The holder of an interim visa may not apply for a visa of any other class or type. 20

Limited visas

70 Who may apply for limited visa

The following persons may apply for a limited visa:

- (a) a person who is outside New Zealand and who wishes to come to New Zealand for an express purpose: 25
- (b) a person arriving in New Zealand who is subject to a visa waiver and who wishes to stay in New Zealand for an express purpose:
- (c) a person in New Zealand who is— 30
 - (i) the holder of a current limited visa, if further time is required to achieve the express purpose for which that visa was granted; or
 - (ii) the holder of a temporary visa.

Compare: 1987 No 74 ss 14DA, 34B

- 71 Grant of limited visa rather than temporary visa applied for**
- (1) If a person applies in the prescribed manner for a temporary visa (rather than a limited visa), the Minister or an immigration officer may grant a limited visa rather than the temporary visa applied for if, and only if,—
- (a) the person—
 - (i) is outside New Zealand and wishes to come to New Zealand for an express purpose, and is not subject to a visa waiver; or
 - (ii) arrives in New Zealand and is subject to a visa waiver, and wishes to stay in New Zealand for an express purpose; or
 - (iii) is the holder of a temporary visa, and agrees to the grant of the limited visa rather than the temporary visa applied for; and
 - (b) the Minister or immigration officer identifies a risk in the particular case that the person will remain in New Zealand beyond the expiry of his or her visa; and
 - (c) the Minister or immigration officer considers that the grant of a limited visa rather than a temporary visa is necessary in the particular case to manage that risk.
- (2) **Subsection (1)(a)(iii) overrides section 51.**
 Compare: 1987 No 74 s 14DA(2)
- 72 Grant of limited visa in relation to criminal matters**
- (1) A limited visa may be granted to a person—
- (a) where a certificate has been issued in respect of the person under section 13 or 42(5) of the Mutual Assistance in Criminal Matters Act 1992; and
 - (b) where the limited visa is granted for the sole purpose of enabling the person—
 - (i) to be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made under section 12 of the Mutual Assistance in Criminal Matters Act 1992; or
 - (ii) to be transported through New Zealand pursuant to section 42 of that Act.
- (2) A limited visa may be granted to a person for the sole purpose of enabling the person to return to New Zealand to face any

charge in New Zealand or to serve any sentence imposed on the person in New Zealand.

Compare: 1987 No 74 s 27A

73 Currency of limited visa

- (1) The Minister or, subject to any special direction to the contrary, an immigration officer may grant a limited visa for such period as— 5
- (a) is appropriate to achieve the express purpose for which the visa is granted; and
 - (b) does not exceed the period (if any) specified in respect of limited visas of that category by temporary entry instructions. 10
- (2) If the express purpose for which a limited visa was granted is achieved before the latest date on which it will expire, or if at any time it becomes apparent that the purpose is no longer achievable or has been abandoned by the limited visa holder,— 15
- (a) an immigration officer may notify the limited visa holder of an earlier expiry date for the visa (which date may in no case be sooner than 14 days after that notice is given to the limited visa holder); and 20
 - (b) the visa then expires on that earlier expiry date.

Compare: 1987 No 74 s 34C

74 Limitations and conditions on holders of limited visas

- (1) The holder of a limited visa must leave New Zealand no later than the day that the visa expires. 25
- (2) A limited visa holder may not, whether before or after the expiry of the visa,—
- (a) apply for a visa of a different type while in New Zealand; or 30
 - (b) while in New Zealand, request a special direction, or a visa under **section 52**; or
 - (c) bring any appeal under this Act, whether to a court, the Tribunal, or otherwise.
- (3) Every limited visa is to be granted subject to conditions relating to its purpose. 35

Compare: 1987 No 74 ss 14DA(4), 34D

*Transit visas***75 Who must obtain transit visa**

- (1) A person intending to travel to and be in New Zealand only as a transit passenger must, before proceeding to New Zealand, apply for and obtain a transit visa unless the person is classified by regulations, or by a special direction of the Minister made under this section, as a person of a type who is subject to a transit visa waiver. 5
- (2) Any regulations classifying persons as persons who are subject to a transit visa waiver for the purposes of this section— 10
- (a) may, without limiting the generality of the manner in which persons may be classified, classify persons by reference to all or any of the following:
- (i) their nationality: 15
- (ii) the country or place from which they are travelling (whether it be their original or intermediate point of departure): 15
- (iii) their immediate or ultimate destination after transiting through New Zealand: 20
- (iv) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued: 20
- (b) are subject to any special direction made under this section that suspends any relevant transit visa requirement. 25
- (3) The Minister may, by special direction that has effect for a period not exceeding 3 months,—
- (a) classify persons as persons who are subject to a transit visa waiver (whether by reference to the matters referred to in **subsection (2)(a)** or otherwise): 30
- (b) suspend any transit visa waiver specified in regulations for any class or classes of person.
- (4) A special direction made under **subsection (3)**—
- (a) must be published in the *Gazette* and notified in writing through diplomatic channels to the country concerned; 35
- and
- (b) expires at the end of the period of 3 months following the day on which it was made, unless sooner cancelled by the Minister by a further special direction, or by regulations. 40

- (5) A special direction made under **subsection (3)** may not be effectively continued in force by the making of a further special direction to the same or similar effect.
Compare: 1987 No 74 s 14E(1) to (2I)
- 76 Currency of transit visa** 5
A transit visa is current for the period or until the date specified in it, and may be expressed to be effective for any number of journeys to New Zealand within that period or before that date.
Compare: 1987 No 74 s 14E(3) 10
- 77 Limitations on holders of transit visas**
- (1) Nothing in this Act requires the holder of a transit visa to apply for or hold a different type of visa if the person remains on the craft, or in an immigration control area, or in the custody of the police, throughout the whole period during which the person is in New Zealand, unless that period exceeds the period prescribed for the purposes of this section. 15
- (2) While in New Zealand during the prescribed period, the holder of a transit visa may not apply for— 20
- (a) entry permission; or
- (b) any type of visa permitting the person to stay in New Zealand other than in accordance with **subsection (1)**.
- (3) Where any such person purports to apply for another visa, it is a matter in the absolute discretion of the Minister or an immigration officer, and **section 26** applies in relation to the matter. 25
Compare: 1987 No 74 s 14E(4), (5)
- 78 Cancellation of transit visa**
- (1) An immigration officer may at any time cancel a transit visa.
- (2) Where an immigration officer cancels a transit visa after the transit passenger's arrival in New Zealand, **section 105** applies to the person. 30
- 79 Expiry of transit period**
- Where the holder of a transit visa is still in New Zealand upon the expiry of the period prescribed for the purposes of **section 77(1)**, an immigration officer may— 35
- (a) grant the person a further transit visa; or

- (b) grant the person a visa and entry permission; or
- (c) refuse to grant a visa and entry permission (in which case **section 105** applies to the person).

Invitation to apply for a visa

- 80 Expressions of interest** 5
- (1) A person who, by virtue of immigration instructions, is of a class or category of person that may apply for a visa of a particular class or type only if invited to do so by the Minister or an immigration officer may notify his or her interest in obtaining such an invitation in the prescribed manner. 10
 - (2) A person submitting an expression of interest must specify a physical address, and may specify an electronic address to which any communication relating to the expression of interest, or to any invitation to apply or visa issued or granted as a result of the expression of interest, may be sent, or at which any notice may be served under this Act. 15
 - (3) A person may at any time, by written notice to an immigration officer, substitute a different address for that specified under **subsection (2)**.
- 81 Obligation to inform of all relevant facts, including changed circumstances** 20
- (1) It is the responsibility of the person submitting an expression of interest to ensure that all information, evidence, and submissions that the person wishes to have considered in support of the expression of interest are provided when the expression of interest is submitted. 25
 - (2) The Minister or immigration officer considering the expression of interest—
 - (a) is not obliged to seek any further information, evidence, or submissions; and 30
 - (b) may determine whether or not to issue an invitation to apply for a visa on the basis of the information, evidence, and submissions provided.
 - (3) Nothing in **subsection (2)** prevents the Minister or immigration officer from taking into account any information, evidence, or submissions provided by the person at any time before the decision whether to issue the invitation is made. 35

- (4) Every person expressing an interest in obtaining an invitation to apply for a visa under **section 82** must inform an immigration officer or the Minister of any relevant fact, including any material change in circumstances that occurs after the expression of interest is notified, if that fact or change in circumstances— 5
- (a) may affect the decision to issue an invitation to apply; or
- (b) may affect a decision to grant a visa to the person.
- (5) Without limiting the scope of the expression **material change in circumstances**, such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to the applicable policy. 10
- (6) Failure to comply with the obligation set out in **subsection (4)** amounts to **concealment of relevant information** for the purposes of **sections 146 and 147**. 15

Compare: 1987 No 74 s 13D

82 Invitation to apply for visa

- (1) An invitation to apply for a visa is a statement by or on behalf of the Minister or an immigration officer, whether made electronically or in writing, that the person to whom it is made is authorised to make an application for a visa of a particular class or type. 20
- (2) No person may apply for a visa without an invitation if the person is of a class or category of person that, by virtue of immigration instructions, may apply for the visa only if invited to do so. 25
- (3) If an invitation is required by immigration instructions for the person to be able to apply for the relevant visa, the statement of the invitation is sufficient authority for the making of the application (unless the invitation is subsequently revoked). 30
- (4) Despite anything in this section or in any immigration instructions, the Minister may, by special direction, issue an invitation to apply for a visa to a person whether or not the person has expressed his or her interest in the manner required by this Act or immigration instructions. 35
- (5) An invitation to apply for a visa may at any time be revoked by the Minister or an immigration officer. A revocation takes immediate effect.

- (6) Despite **sections 60(1) and 64(2)**, a decision as to whether or not to issue an invitation to apply for a visa may be made having regard to immigration instructions applicable at the time of the decision, even if that differs from immigration instructions applicable at the time of notification of the relevant expression of interest. 5
- (7) In a case where residence or restricted temporary entry instructions change between the date of issue of an invitation to apply for a residence class visa and the date on which a person's application for the relevant visa is made in response to that invitation, the decision on that application must be made in terms of the immigration instructions applicable at the time the application for the visa was made (and not at the time the invitation was issued), and, subject to **sections 60(3) and 64(3)**, any discretion exercised must be in terms of those instructions. 10
15

Compare: 1987 No 74 s 13E

83 Issue of invitation to apply for visa a matter of discretion

- (1) No person is entitled as of right to an invitation to apply for a visa. 20
- (2) The decision whether or not to issue such an invitation, or to revoke such an invitation once issued, is a matter for the discretion of the Minister or, subject to any special direction given under this Act, the appropriate immigration officer. 25
- (3) No appeal lies against the decision of the Minister or immigration officer on any such question, whether to any court or to the Tribunal or to the Minister or otherwise.
- (4) No review proceedings may be brought in respect of any refusal or failure of the Minister or an immigration officer to issue an invitation to apply for a visa or to revoke such an invitation once issued. 30
- (5) A decision by the Minister or an immigration officer to refuse to issue an invitation to a person to apply for a residence class visa, or a decision to revoke an invitation once issued, is not to be treated as a refusal to grant an application for a residence class visa for the purposes of **section 171**. 35

Compare: 1987 No 74 s 10A

Part 4 Arrivals and departures

Immigration control areas

- 84 Chief executive to designate immigration control areas**
- (1) The chief executive may from time to time designate the following places in New Zealand as immigration control areas:
- (a) all or any part of the area of an airport:
 - (b) all or any part of the area of a seaport:
 - (c) any other place that the chief executive considers as appropriate for processing arrivals in and departures from New Zealand. 10
- (2) The chief executive must give written notice of a designation under this section to—
- (a) the operator of the airport or seaport concerned; or 15
 - (b) the person otherwise in control of the place (being an owner, occupier, lessee, or sublessee).
- (3) The chief executive must publicly notify any designation under this section.
- (4) Public notification must include, but is not limited to, making a description of the designated area or place available, free of charge, at—
- (a) offices of the Department; and
 - (b) New Zealand Government offices overseas that deal with immigration matters. 25
- 85 Provision of immigration facilities in immigration control areas**
- (1) The operator of any airport or seaport in which an immigration control area is located must provide and maintain such operating areas, accommodation, facilities, buildings, equipment, and storage as the chief executive determines are reasonably necessary and suitable for carrying out immigration functions in relation to arrivals in and departures from New Zealand. 30
- (2) Subject to **subsection (3)**, the operator of the airport or seaport may levy on the Department a reasonable charge or charges for the provision of any operating areas, accommodation, facilities, buildings, equipment, and storage under **subsection (1)**. 35

- (3) Notwithstanding anything in the Airport Authorities Act 1966, no charge may be levied on the Department in respect of any operating area used for the processing of persons arriving in or departing from New Zealand.
- (4) For the purposes of this section, **facilities** includes any facility necessary for ensuring that a person is placed on the first available craft leaving New Zealand as required under this Act. 5
- Compare: 1996 No 27 s 18(1), (2), (3)(a)
- Advance passenger processing* 10
- 86 Responsibilities of carrier and person in charge of commercial craft before it departs from another country to travel to New Zealand**
- (1) This section applies to a carrier, and a person in charge of a commercial craft, if— 15
- (a) he or she is notified by the chief executive that—
- (i) he or she is a person of a kind who must comply with the responsibilities specified in **subsection (2)** before a craft in relation to which he or she is the carrier or the person in charge departs from another country to travel to New Zealand; or 20
- (ii) the craft in relation to which he or she is the carrier or the person in charge is a craft of a kind in relation to which he or she must comply with the responsibilities specified in **subsection (2)** before the craft departs from another country to travel to New Zealand; and 25
- (b) either—
- (i) the craft is scheduled to travel to New Zealand in the course of a scheduled international service; or 30
- (ii) it is proposed that the craft travel to New Zealand from another country.
- (2) A person to whom this section applies must, before the craft departs from another country to travel to New Zealand,—
- (a) obtain from every person who intends to board the craft for the purpose of travelling to New Zealand the information prescribed by regulations for the purposes of this subsection: 35

- (b) provide to the chief executive, by means of an approved system, the information prescribed by regulations for the purposes of this subsection.
- (3) The chief executive may, in writing, exempt a person to whom this section applies from complying with some or all of his or her responsibilities under this section in all or any specified circumstances. 5
- Compare: 1987 No 74 s 125AA(1), (2), (3)
- 87 Chief executive may make decision about person boarding craft for purpose of travelling to New Zealand** 10
- (1) The chief executive may decide that a person in relation to whom information has been received under **section 86**—
- (a) may board a craft for the purpose of travelling to New Zealand; or
- (b) may not board a craft for the purpose of travelling to New Zealand; or 15
- (c) may board a craft for the purpose of travelling to New Zealand only if he or she complies with conditions specified by the chief executive.
- (2) The chief executive— 20
- (a) must notify a person to whom **section 86** applies of a decision made under **subsection (1)**; and
- (b) may do so in any form he or she thinks appropriate, including, but not limited to, by means of an approved system, which may contain code that represents the outcome of the decision; and 25
- (c) may do so in any manner he or she thinks appropriate, including, but not limited to, by means of an automated electronic notification of a decision made under **subsection (1)**. 30
- (3) The chief executive—
- (a) may make any decision under **subsection (1)** whether or not the person to whom the decision relates—
- (i) holds a visa to travel to New Zealand; or
- (ii) is subject to a visa waiver; but 35
- (b) may not make a decision under **subsection (1)(b) or (c)** if the person to whom the decision relates is—
- (i) a New Zealand citizen who holds a New Zealand passport; or
- (ii) a permanent resident; or 40

- (iii) a resident visa holder travelling consistently with the conditions of the visa, unless the person has not previously travelled to New Zealand as the holder of that visa.
- (4) A person in relation to whom a decision is made under **subsection (1)** may not— 5
- (a) appeal the decision to any court, the Tribunal, the Minister, or any other body or person; or
- (b) bring review proceedings in relation to the decision.
- (5) Despite **subsection (4)(b)**, a person in relation to whom a decision is made under **subsection (1)** may bring review proceedings, but may only do so on the grounds that he or she is a person in relation to whom that decision should not have been made because he or she is a person to whom **subsection (3)(b)** applies. 10 15
- (6) The chief executive is not obliged to give reasons for a decision made under **subsection (1)** other than that **subsection (1)** applies, and section 23 of the Official Information Act 1982 does not apply in respect of a decision made under **subsection (1)**. 20
- (7) To avoid doubt, **section 269** does not apply to the chief executive when he or she is notifying a person to whom **section 86** applies of a decision made under **subsection (1)**.
- Compare: 1987 No 74 s 125AB
- 88 Collection of biometric information from proposed arrivals** 25
- (1) Subject to regulations made under this Act, a person who is proposing to board a craft for the purposes of travelling to New Zealand must allow the collection of biometric information. 30
- (2) If the person fails to allow the collection of biometric information, the chief executive may make a decision of a type described in **section 87(1)(b) or (c)**.
- (3) Nothing in this section applies to a person who, before boarding the craft, produces a New Zealand passport or a foreign passport containing an endorsement of a type described in **section 344**. 35

Obligations in relation to craft coming to New Zealand

- 89 Obligations in relation to craft en route to or arriving in New Zealand**
- (1) The carrier and the person in charge of any craft that is en route to New Zealand or that berths, lands, or arrives in New Zealand from another country have the following responsibilities: 5
- (a) to ensure that all persons aboard the craft have the prescribed documentation for immigration purposes: 5
 - (b) on arrival of the craft at a place that is or contains an immigration control area,— 10
 - (i) to produce for inspection such prescribed documents as an immigration officer may specify; and
 - (ii) to prevent, with such reasonable force as may be necessary, the disembarkation of any person from the craft otherwise than into an immigration control area: 15
 - (c) subject to section 25 of the Customs and Excise Act 1996, where the craft arrives, or is to arrive, in New Zealand elsewhere than at a place that is or contains an immigration control area because of weather conditions or other unforeseen circumstances, to make appropriate arrangements for all persons on board the craft to report in the manner and within the time prescribed by regulations for the purposes of **section 91(1)(b)**: 20 25
 - (d) if a stowaway has been found on the craft, to report that fact to an immigration officer as soon as practicable.
- (2) In addition to any obligations under **section 90**, the carrier and the person in charge of a craft that is en route to New Zealand or that berths, lands, or arrives in New Zealand from another country have the following responsibilities: 30
- (a) in the case of a craft that is not a commercial passenger aircraft on a regularly scheduled flight, to supply on demand by an immigration officer a list giving such details as the officer may specify concerning every person (whether a member of the crew or a passenger) who has been on board the craft since its last port of call: 35
 - (b) in the case of a commercial passenger aircraft on a regularly scheduled flight, to supply such available information as may be required by an immigration 40

officer relating to any person who may have been on board the craft since its last place of call.

- (3) Once a craft that is en route to New Zealand has entered the territorial limits of New Zealand, the person in charge of the craft is, for the purpose of ensuring or facilitating compliance with this Act, responsible for preventing, with such reasonable force as may be necessary, the disembarkation of any person from the craft other than for the purpose of carrying out the person's responsibilities under **section 91**. 5
- (4) **Subsections (1) to (3)** are subject to any applicable special direction or to regulations made under **section 358**. 10

Compare: 1987 No 74 s 125(1), (2)

90 Obligations of carriers and persons in charge of craft to provide information

- (1) The purpose of this section is to facilitate— 15
- (a) the exercise or performance of powers, functions, or duties under this Act;
 - (b) the prevention, detection, investigation, prosecution, and punishment of immigration offences;
 - (c) the protection of border security. 20
- (2) If the circumstances in **subsection (3)** exist, a person to whom **section 86** applies must—
- (a) provide the chief executive with information of the prescribed kind about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft (including, but not limited to, if he or she did not board the craft as a result of a decision made by the chief executive under **section 87**); and 25
 - (b) ensure that the chief executive has access to the information described in **paragraph (a)**. 30
- (3) The circumstances are that the chief executive has made the request for the information within 14 days either side of the arrival in New Zealand of the craft on which the person to whom the information relates intended to, or did, travel to New Zealand. 35
- (4) A person to whom **subsection (2)** applies must ensure that the chief executive has access to the information—

- (a) in an approved form and manner and on the date specified by the chief executive; and
- (b) for the period from the date specified by the chief executive until 14 days after the arrival in New Zealand of the craft on which the person to whom the information relates intended to, or did, travel to New Zealand. 5
- (5) Information collected or accessed by the chief executive under **subsections (2) and (4)** may be retained by the chief executive only if any of the following circumstances apply:
- (a) the chief executive decided under **section 87(1)(b)** that the person may not board a craft for the purpose of travelling to New Zealand: 10
- (b) the person has been refused, on arrival, a visa (if required) and entry permission:
- (c) the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (for example, a record that a person was interviewed on arrival): 15
- (d) the information gives the chief executive good cause to suspect that an immigration offence is being, or may have been, committed: 20
- (e) the information gives the chief executive good cause to suspect that a risk to border security exists.
- (6) In this section, **approved form and manner** means a form and manner (for example, an electronic form and manner) approved by the chief executive for the purpose of providing him or her with access to information under **subsection (2)**. 25
- (7) To avoid doubt, information retained under **subsection (5)** may be further dealt with as permitted under the Privacy Act 1993. 30
- Compare: 1987 No 74 s 125AD

Obligations on persons arriving in New Zealand

91 Obligations on persons arriving in New Zealand

- (1) Except as provided in regulations made under this Act, or in any special direction, every person who arrives in New Zealand from another country has the following responsibilities: 35
- (a) if the person arrives at an immigration control area, to present himself or herself to an immigration officer without delay:

- (b) if the person arrives at a place other than an immigration control area, to present himself or herself in the prescribed manner within the prescribed time:
 - (c) to apply for a visa in the prescribed manner, if the person is subject to a visa waiver: 5
 - (d) to apply for entry permission in the prescribed manner (unless the person is a New Zealand citizen, or **subsection (2)** applies):
 - (e) in the case of a New Zealand citizen, to comply with any requirements prescribed for the purpose of confirming the person's status as a New Zealand citizen: 10
 - (f) to comply with any direction of an immigration officer to remain in the immigration control area or other prescribed place, or a specified part of the area or place:
 - (g) to comply with any other directions of an immigration officer while in an immigration control area. 15
- (2) Nothing in this Act requires the holder of a transit visa to apply for or be granted entry permission if the person remains on the craft, or in an immigration control area or in the custody of the police, throughout the whole period during which the person is in New Zealand, unless that period exceeds the period prescribed for the purposes of **section 77(1)**. 20
- (3) Where a person arriving in New Zealand is, by reason of age or disability, incapable of complying with the requirements of **subsection (1)**, it is the responsibility of the parent or guardian or other person for the time being having the care of that person to comply with those requirements on that person's behalf. 25
- (4) Every passport or certificate of identity produced by a person to an immigration officer under this section— 30
- (a) must, if the person is a New Zealand citizen or is granted entry permission, be returned to the person before the person leaves the immigration control area; or
 - (b) if the person is refused entry permission, may be retained by the immigration officer, but must be returned to the person on the person's departure from New Zealand. 35

Compare: 1987 No 74 s 126(1), (3)

- 92 New Zealand citizens arriving in New Zealand required to provide photograph**
- (1) Subject to regulations made under this Act, a person arriving in New Zealand who presents a passport issued by the Government of New Zealand or a foreign passport containing an endorsement of a type described in **section 344** must, in addition to complying with requirements prescribed for the purposes of **section 91(1)(e)**, allow a photograph to be taken in order to confirm the person's New Zealand citizenship. 5
- (2) A photograph taken under **subsection (1)** may be compared with information on the person's passport or information held by the department of State for the time being responsible for the administration of the Passports Act 1992. 10
- (3) A photograph taken under **subsection (1)** must not be retained by the Department if the fact of the person's New Zealand citizenship is confirmed. 15
- (4) If the photograph taken under **subsection (1)** does not confirm the fact of the person's New Zealand citizenship, the photograph may be retained for the purposes of administering this Act or further dealt with as permitted under the Privacy Act 1993. 20
- 93 Responsibilities of internationally ticketed passengers travelling by air within New Zealand**
- (1) Where an internationally ticketed passenger is using air travel for a domestic sector, this section applies to the passenger from the time at which the passenger enters the departure hall at the commencement of the domestic sector until the time at which he or she leaves the arrival hall at the end of the domestic sector. 25
- (2) Every person to whom this section applies must produce for inspection on demand by an immigration officer the person's passport or certificate of identity and the person's boarding pass or tickets, or both, to enable the officer to determine whether or not the person is entitled to be in New Zealand with or without a visa under this Act. 30 35
- (3) Every passport, certificate of identity, boarding pass, or tickets produced by a person to an immigration officer under **subsection (2)**—
- (a) must, if the person is a New Zealand citizen or holds a visa and has been granted entry permission, be 40

- inspected immediately and returned to the person as soon as the inspection is concluded; or
- (b) may, if the person does not hold a visa and has not been granted entry permission, be retained by the immigration officer, but after any such retention must be returned to the person on the person's departure from New Zealand.

Compare: 1987 No 74 s 126A

- 94 Responsibilities of domestic passengers travelling by air within New Zealand** 10
- (1) Where any domestic passenger is using air travel for a domestic sector, this section applies to the passenger from the time at which the passenger enters the departure hall at the commencement of the domestic sector until the time at which he or she leaves the arrival hall at the end of the domestic sector. 15
- (2) Every person to whom this section applies must, on demand made by an immigration officer,—
- (a) produce for inspection such of the following documents as the officer may specify:
- (i) the person's boarding pass: 20
- (ii) the person's tickets:
- (iii) if carried by the person, his or her passport or certificate of identity:
- (iv) such other document or documents as may from time to time be prescribed; or 25
- (b) if the person is unable to produce the specified document or documents, complete a form approved and issued for the purpose by the chief executive under **section 343**.
- (3) A demand under **subsection (2)** may be made of a person only for the purpose of enabling the immigration officer to establish the person's identity or the person's entitlement to air travel for a domestic sector, or both. 30
- (4) Every boarding pass, passport, certificate of identity, or other documents or tickets produced by a person to an immigration officer under **subsection (2)** must be either— 35
- (a) inspected immediately and returned to the person as soon as the inspection has concluded; or
- (b) retained by the immigration officer for as long as is necessary for the officer to determine whether or not he 40

or she wishes to exercise any power under this Act in relation to the person or the boarding pass, passport, certificate of identity, or other documents or tickets.

- (5) Nothing in this section limits the exercise by an immigration officer of any power contained in any other provision of this Act. 5

Compare: 1987 No 74 s 126B

Entry permission

- 95 Effect of entry permission or refusal of entry permission**
- (1) The effect of being granted entry permission to New Zealand is that the person granted entry permission may enter New Zealand. 10
- (2) The grant of entry permission has no effect unless the person to whom it is granted holds a visa, or is granted a visa at the same time. 15
- (3) The effect of a refusal to grant a person entry permission to New Zealand is that—
- (a) any visa the person holds is cancelled; and
 - (b) the person is subject to **section 105**.
- 96 Decision whether or not to grant entry permission, and related visas, to different categories of person** 20
- (1) A permanent resident must be granted entry permission.
- (2) A resident visa holder must be granted entry permission if—
- (a) it is the holder's second or subsequent entry to New Zealand as the holder of that visa; and 25
 - (b) the holder's travel to New Zealand was consistent with any conditions of the resident visa relating to travel.
- (3) If it is the resident visa holder's first entry to New Zealand as the holder of that visa, the Minister or an immigration officer may, in his or her discretion,— 30
- (a) grant entry permission on the basis of the resident's existing visa; or
 - (b) grant entry permission on the basis of the resident visa but impose, vary, or cancel conditions relating to stay in New Zealand on the visa; or 35
 - (c) cancel the resident visa by granting a visa of another type, and grant entry permission; or
 - (d) refuse entry permission.

- (4) In the case of a holder of a temporary entry class visa, the Minister or an immigration officer may—
- (a) grant entry permission on the basis of the existing temporary entry class visa; or
 - (b) grant entry permission on the basis of the existing temporary entry class visa but impose, vary, or cancel conditions relating to stay in New Zealand on the visa; or
 - (c) cancel the visa by granting a visa of another type, and grant entry permission; or
 - (d) refuse entry permission.
- (5) In the case of a person subject to a visa waiver, the Minister or, subject to any special direction, an immigration officer may, subject to the provisions of this Act,—
- (a) on application for a visa made in the prescribed manner, grant a visa of the class or type the officer considers appropriate and entry permission, whatever class or type of visa the person applied for; or
 - (b) refuse to grant a visa.
- 97 Applicant for entry permission to provide address**
- A person who applies for entry permission—
- (a) must specify a physical address in New Zealand, and may specify an electronic address, to which any communication may be sent, or at which any notice may be served under this Act;
 - (b) may at any time, by written notice to an immigration officer, substitute a different physical or electronic address to an address specified under **paragraph (a)**.
- 98 Applicant for entry permission to allow collection of biometric information**
- (1) Subject to any regulations made under this Act, a person who applies for entry permission must provide biometric information.
 - (2) If the person fails to provide the biometric information, the Minister or an immigration officer may refuse to grant the person entry permission.
- 99 Decisions on entry permission for residents**
- (1) Where an immigration officer makes any decision in relation to an application for entry permission by a resident, that

decision must, subject to **subsection (2)**, be made in terms of residence instructions applicable at the time the application for the resident visa was made, and any discretion exercised must be in terms of those instructions.

- (2) Nothing in this section prevents the Minister from making any decision to grant entry permission as an exception to residence instructions in any particular case. 5
- (3) A decision made under **subsection (2)** is in the absolute discretion of the Minister, and **section 26** applies in relation to such a decision. 10

100 Decisions on entry permission for certain visa holders

- (1) Subject to **subsection (2)**, where the Minister or an immigration officer makes any decision in relation to an application for entry permission in relation to a person who holds a temporary entry class visa, the Minister or immigration officer may, at the Minister's or officer's discretion, grant entry permission as an exception to temporary entry instructions in any particular case. 15
- (2) **Subsection (1)** does not apply to an application for entry permission in relation to a person who holds a temporary entry class visa of a type subject to restricted temporary entry instructions. 20
- (3) Nothing in **subsection (2)** prevents the Minister from making a decision to grant entry permission as an exception to restricted temporary entry instructions in any particular case. 25
- (4) A decision made under **subsection (3)** is in the absolute discretion of the Minister, and **section 26** applies in relation to such a decision.

101 Decisions on entry permission a matter of discretion

- (1) Except as provided in **section 96(1) and (2)**,— 30
- (a) no person is entitled as of right to be granted entry permission; and
- (b) subject to **sections 96, 99, and 100(2)**, the following matters are matters for the discretion of the Minister or, subject to any special direction, an immigration officer: 35
- (i) a decision to grant entry permission on the basis of an existing visa:

- (ii) a decision to grant entry permission on the basis of an existing visa, but to impose, vary, or cancel conditions relating to stay in New Zealand:
 - (iii) a decision to grant entry permission but cancel the existing visa by granting a visa of a different class or type: 5
 - (iv) a decision to refuse entry permission.
 - (2) Subject to **section 171**, no appeal lies against a decision on any matter described in **subsection (1)(b)**, whether to any court or to the Tribunal or to the Minister or otherwise. 10
 - (3) Nothing in **subsection (2)** limits or affects the right of any person to bring review proceedings.
- 102 Obligation to inform of all relevant facts, including changed circumstances**
- (1) It is the responsibility of an applicant for entry permission to ensure that all information, evidence, and submissions that the applicant wishes to have considered in support of the application are provided when the application is made, and the Minister or immigration officer considering the application— 15
 - (a) is not obliged to seek any further information, evidence, or submissions; and 20
 - (b) may determine the application on the basis of the information, evidence, and submissions provided.
 - (2) It is also the responsibility of an applicant for entry permission to inform an immigration officer of any relevant fact, including any material change in circumstances that has occurred between the grant of a visa and the application for entry permission, if that fact or change in circumstances may affect the decision on the application. 25
 - (3) Without limiting the scope of the expression **material change in circumstances** in **subsection (2)**, such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to immigration instructions. 30
 - (4) Failure to comply with the obligation set out in **subsection (2)** amounts to **concealment of relevant information** for the purposes of **section 146 or 147**. 35

- 103 Revocation of entry permission, and related visas, before person leaves immigration control area**
- (1) An immigration officer may, at any time before the person leaves the immigration control area where the error was made, revoke any entry permission if the immigration officer believes on reasonable grounds that the entry permission was granted as a result of administrative error. 5
- (2) A revocation under this section is made by entry on the departmental record, and takes effect immediately.
- (3) Where entry permission is revoked under this section and the person is still within the immigration control area in which the error was made and discovered,— 10
- (a) any visa held by the person is deemed to be cancelled (but without limiting an immigration officer’s ability to grant a different visa and entry permission); and 15
- (b) **section 105** applies as if the person’s application for entry permission had been refused (unless the person is a New Zealand citizen or some other visa and entry permission is granted to the person).
- (4) For the purposes of this section, entry permission is granted as a result of administrative error if it is granted— 20
- (a) to a New Zealand citizen; or
- (b) to a person who is an excluded person; or
- (c) in contravention of any special direction; or
- (d) contrary to immigration instructions; or 25
- (e) on the basis of, or in conjunction with,—
- (i) a visa that was itself granted on the basis of administrative error; or
- (ii) a visa that was granted for a period exceeding the period set out in immigration instructions for a visa of that type; or 30
- (iii) a visa of a class or type other than that intended to be granted.

Turnaround provisions

- 104 Person failing to present and apply for entry permission** 35
- A member of the police may arrest a person, and present him or her to an immigration officer, if the member of the police has good cause to suspect that—
- (a) the person arrived in New Zealand from another country elsewhere than at an immigration control area or 40

- other prescribed place, and did not comply with the requirements of, or prescribed under, **section 91**; or
- (b) the person recently arrived in New Zealand from another country elsewhere than at an immigration control area or other prescribed place and will not comply with the requirements of, or prescribed under, **section 91**; or 5
- or
- (c) the person arrived in New Zealand from another country at an immigration control area and did not comply with the requirements of, or prescribed under, **section 91**. 10

Compare: 1987 No 74 s 126(6)

105 Arrest, detention, and turnaround of persons not granted entry permission

- (1) This section applies to any person arriving in New Zealand from another country who— 15
- (a) is subject to a visa waiver and fails to apply for a visa and entry permission or is refused a visa; or
- (b) holds a visa but—
- (i) the visa is subsequently deemed to be cancelled under **section 54(1)(b), (c), or (d)**; or 20
- (ii) the visa is cancelled under **section 55(2)** (unless some other visa is granted to the person or the person is a New Zealand citizen); or
- (c) is refused entry permission; or
- (d) is a stowaway; or 25
- (e) is a person whose transit visa has been cancelled by an immigration officer.
- (2) A person to whom this section applies may have his or her departure effected in accordance with **section 107**, and is liable to arrest and detention under **Part 9**. 30
- (3) A person to whom this section applies—
- (a) is deemed for the purposes of this Act to be in New Zealand unlawfully; but
- (b) does not have any rights of appeal under **section 185** for so long as this section continues to apply to the person. 35

106 When section 105 ceases to apply

- (1) **Section 105** ceases to apply to a person upon the earliest of the following:

- (a) the expiry of 72 hours after the person (including a stowaway) first reports or presents to an immigration officer after arriving in New Zealand, unless that person is sooner arrested and detained or otherwise dealt with under **Part 9**: 5
- (b) in the case of a person whose visa is deemed to be cancelled under **section 54(1)(c)(ii)**, 72 hours after the time when the person is physically located by an immigration officer or member of the police following the person's leaving the immigration control area in contravention of the instruction of an immigration officer, unless the person is sooner arrested and detained or otherwise dealt with under **Part 9**: 10
- (c) the person being granted a visa and entry permission: 15
- (d) the expiry of a warrant of commitment issued under **section 279 or 280**. 15
- (2) This section is subject to **section 108**.
- (3) For the purposes of this section, a stowaway is deemed to arrive in New Zealand at the time when the craft on which the stowaway is travelling crosses into the territorial limits of New Zealand. 20
- Compare: 1987 No 74 s 128(1) to (5)

107 Effecting departure of persons subject to turnaround provisions

Section 166(1) applies, with the necessary modifications, to a person who is subject to **section 105**, as if the person were being deported after having been served with a deportation order. 25

108 Effect of remand in custody or imprisonment

- (1) Where a person to whom **section 105** applies is remanded in custody in relation to suspected criminal offending, or imprisoned for criminal offending, that person remains subject to **section 105**— 30
- (a) while he or she remains in custody or imprisonment; and
- (b) for a further period of 72 hours following his or her release from custody or imprisonment. 35
- (2) If a person is arrested and detained under this Act during any period referred to in **subsection (1)**, **section 105** continues to

apply to the person until the relevant occurrence described in **section 105(1)(c) or (e)**.

Obligations in relation to departure from New Zealand

- 109 Obligations of carriers and persons in charge of craft**
- (1) The carrier and the person in charge of a craft leaving New Zealand have the following responsibilities: 5
- (a) to allow the following persons to board the craft for passage from New Zealand:
- (i) any person being deported: 10
- (ii) any person subject to **section 105**: 10
- (b) in respect of such a person who is delivered to the craft by a member of the police or an immigration officer, to take all such reasonable steps (including the use of reasonable force) as may be necessary to detain that person on board the craft until it has left the territorial limits of New Zealand: 15
- (c) to report to an immigration officer immediately before the departure of the craft details of any crew member or person of a class prescribed for the purposes of this section who— 20
- (i) was on board the craft when it arrived in New Zealand; and
- (ii) is not then on board the craft.
- (2) The carrier of a craft leaving New Zealand also has the following responsibilities: 25
- (a) to provide passage from New Zealand at the cost in all respects of the carrier, or to bear the cost of passage from New Zealand by any other carrier, of any person—
- (i) who was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand and did not hold a visa permitting travel to New Zealand (if a visa was required) and was, on arrival in New Zealand, refused a visa and entry permission; or 30
- (ii) who arrived in New Zealand as a member of the crew of the craft, or of any other craft operated by the carrier, and who remained in New Zealand unlawfully after the departure of that craft: 35

- (b) in respect of a person for whom the carrier is obliged to provide passage or the cost of passage under **paragraph (a)**, to pay all costs (if any) incurred by the Crown in detaining and maintaining the person pending the person's departure from New Zealand. 5
- (3) **Subsections (1) and (2)** are subject to any applicable special direction or to regulations made under **section 358**.
- (4) **Subsection (1)(a)**—
- (a) is subject to—
- (i) the safety of the craft and of the other persons on board the craft; and 10
- (ii) in relation to a person subject to a deportation order, an offer to pay the cost of passage having been received; but
- (b) is not affected by the class or type of seat available on the craft. 15

Compare: 1987 No 74 s 125(3), (4), (5)

110 Obligations of persons leaving New Zealand

- (1) Except as provided in regulations made under this Act, or in any special direction, every person leaving New Zealand has the following responsibilities: 20
- (a) to present himself or herself to an immigration officer at an immigration control area or any other prescribed place;
- (b) to comply with any direction of an immigration officer while at such an area or place: 25
- (c) to provide such information and complete such documentation as may be prescribed.
- (2) Where a person leaving New Zealand is, by reason of age or disability, incapable of complying with the requirements of **subsection (1)**, it is the responsibility of the parent or guardian or other person for the time being having the care of that person to comply with those requirements on that person's behalf. 30

Compare: 1987 No 74 s 126(2), (3)

35

Special provision for emergencies, etc

- 111 Special provisions relating to persons returning to New Zealand in emergency or other circumstances beyond their control** 5
- Subject to **sections 9 and 10**, where the holder of a temporary entry class visa departs from New Zealand for another country on any craft, and—
- (a) before arriving in any other country is forced to return, or returns, to New Zealand by reason of any emergency affecting the craft, or because of any other emergency or circumstances beyond the person's control; and 10
 - (b) the person's visa has expired, or is due to expire, at any time between the person's departure from New Zealand and the date 14 days after the person's return to New Zealand,— 15
- an immigration officer must, on application by the person, grant entry permission and a temporary entry class visa to the person current until a date not earlier than the 14th day following that return. 20
- Compare: 1987 No 74 s 127 20

Protection for carriers and persons in charge of craft

- 112 Protection for carriers and persons in charge of craft** 25
- A person who in good faith imposes reasonable measures, including restraint or reasonable force, on another person in accordance with the responsibilities under **section 89 or 109** is not guilty of an offence and is not liable to any civil proceedings in respect of those measures. 25
- Compare: 1987 No 74 s 125(9)

Part 5**Refugee and protection status determinations** 30

- 113 Purpose of Part**
- The purpose of this Part is to provide a statutory basis for the system by which New Zealand—
- (a) ensures it meets its obligations under the United Nations Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees; and 35
 - (b) codifies certain obligations under—

- (i) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:
- (ii) the International Covenant on Civil and Political Rights.

Compare: 1987 No 74 s 129A

5

114 Interpretation

(1) In this Part, unless the context otherwise requires,—

claim means, as the case may require,—

- (a) a claim in New Zealand by a person seeking recognition as a refugee in New Zealand under the Refugee Convention: 10
- (b) a claim in New Zealand by a person seeking recognition as a protected person in New Zealand under the Convention Against Torture:
- (c) a claim in New Zealand by a person seeking recognition as a protected person in New Zealand under the Covenant on Civil and Political Rights 15

claimant means, as the case may require, a refugee status claimant or a protection status claimant

Convention Against Torture means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 20

Covenant on Civil and Political Rights means the International Covenant on Civil and Political Rights done at New York on 16 December 1976 25

protection status claimant means a person who has made a claim in New Zealand seeking recognition as a protected person in New Zealand under the Convention Against Torture or the Covenant on Civil and Political Rights and whose claim has not been finally determined under this Act 30

Refugee Convention means the United Nations Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951; and includes the Protocol Relating to the Status of Refugees done at New York on 31 January 1967

refugee status claimant means a person who has made a claim in New Zealand seeking recognition as a refugee in New Zealand under the Refugee Convention and whose claim has not been finally determined under this Act 35

subsequent claim means a claim (of whatever kind) under this Part by a person who has previously made a claim of any kind under this Part (or under Part 6A of the former Act) that has been finally determined.

- (2) For the purposes of this Part, a claim may not be treated as finally determined at any time before the expiry of the appropriate appeal period—
- (a) specified in **section 176**; or
 - (b) specified in section 129O of the former Act, in relation to a claim made under Part 6A of that Act.

Compare: 1987 No 74 s 129B

115 Refugee or protection status to be determined under this Part

- (1) Every person who seeks to be recognised as a refugee in New Zealand under the Refugee Convention must have that claim determined in accordance with this Part.
- (2) Every person who seeks to be recognised as a protected person in New Zealand must have that claim determined in accordance with this Part.
- (3) Every question as to whether a person should continue to be recognised as a refugee in New Zealand or as a protected person in New Zealand must be determined in accordance with this Part.
- (4) Nothing in **subsection (1) or (2)** affects **section 116**.

116 Recognition of refugees selected offshore

Despite anything in this Part, a person may be recognised as a refugee in New Zealand, without need for submission and determination of a claim under this Part, if, whether before or after the commencement of this Part, the person has been—

- (a) recognised as a refugee outside New Zealand; and
- (b) brought to New Zealand under a government mandated programme on the basis of that recognition.

Compare: 1987 No 74 s 129C

117 Context for decision making

- (1) In carrying out their functions under this Act in relation to recognition as a refugee, determination officers are to act in a

manner that is consistent with New Zealand's obligations under the Refugee Convention.

- (2) The text of the Refugee Convention is set out in **Schedule 1**.
- (3) In carrying out their functions under this Act in relation to recognition as a protected person, determination officers are to act in accordance with this Act. 5

Compare: 1987 No 74 s 129D

Claims for recognition as refugee or protected person

- 118 Claims to be determined by determination officers**
- (1) Every claim under this Part must be determined by a determination officer, except as provided in **subsection (2)**. 10
 - (2) If the Minister determines under **section 30** that classified information may be used in making a decision on a claim under this Part, the claim must be determined by the Tribunal under **section 137**. 15

Compare: 1987 No 74 s 129H

119 Recognition as refugee

A person may be recognised as a refugee if the person is a refugee within the meaning of the Refugee Convention.

120 Recognition as protected person under Convention Against Torture 20

- (1) A person may be recognised as a protected person under the Convention Against Torture if there are substantial grounds for believing that the person, if deported from New Zealand, would be subjected to torture and **section 122** applies. 25
- (2) For the purposes of this section, **torture** means torture within the meaning of the Convention Against Torture.

121 Recognition as protected person under Covenant on Civil and Political Rights

- (1) A person may be recognised as a protected person under the Covenant on Civil and Political Rights if there are substantial grounds for believing that the person, if deported from New Zealand, would personally be subjected to arbitrary deprivation of life or to cruel treatment and **section 122** applies. 30
- (2) For the purposes of this section and **section 122**,— 35

- (a) **cruel treatment** means cruel, inhuman, or degrading treatment or punishment:
- (b) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards: 5
- (c) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment. 10
- 122 Additional requirements for recognition as protected person**
- A person may be recognised as a protected person under **section 120 or 121** only if—
- (a) the person is unable or, because of the risk of torture, arbitrary deprivation of life, or cruel treatment, unwilling to avail himself or herself of the protection of his or her country or countries of nationality or former habitual residence; and 15
- (b) torture, arbitrary deprivation of life, or cruel treatment would be faced by the person in every part of his or her country or countries of nationality or former habitual residence, and is not faced generally by other persons in or from that country or those countries. 20
- 123 Claims not to be accepted from certain persons** 25
- (1) A determination officer may not consider a claim by a person who is—
- (a) a New Zealand citizen; or
- (b) a resident or permanent resident, unless the person has been served with a deportation liability notice. 30
- (2) This section does not affect the power of a determination officer to determine the question of such a person's continued recognition as a refugee or protected person.
- Compare: 1987 No 74 s 129K
- 124 How claim made** 35
- (1) A claim is made as soon as a person signifies his or her intention to seek recognition as a refugee or a protected person

- in New Zealand to a representative of the Department or to a member of the police.
- (2) Once a claim is made, the claimant must, on request by a representative of the Department, confirm the claim in writing in the prescribed manner. 5
- (3) A claimant must as soon as is possible endeavour to provide to a determination officer all information relevant to his or her claim, including—
- (a) a statement of the grounds for the claim to be recognised as a refugee or a protected person; and 10
- (b) a statement of any grounds for any other potential claim to be recognised as a refugee or a protected person.
- (4) A claimant must as soon as possible provide to a determination officer information about whether any other members of the claimant's immediate family who are in New Zealand are seeking recognition as refugees or protected persons, and, if so, whether any such claim is on different grounds. 15
- (5) A claimant must provide a determination officer with a current address in New Zealand to which communications relating to the claim may be sent and a current residential address, and must notify the officer in a timely manner of a change in either of those addresses. The officer may rely on the latest address to which communications may be sent for the purpose of communications under this Part. 20
- Compare: 1987 No 74 s 129G(1) (4) 25

125 Matters that may be taken into account when determining whether to accept claim for consideration

- (1) In determining whether to accept a claim for consideration, a determination officer may take the matters specified in **subsection (2)** into account. 30
- (2) The matters that a determination officer may take into account include, but are not limited to, the following:
- (a) whether—
- (i) the claimant has been recognised as a refugee or given protection in another country; and 35
- (ii) if so, whether the claimant can be received back and protected in that country without risk of being returned to a country where he or she would be at risk of treatment that would give rise

- to recognition of a type described in **section 119, 120, or 121:**
- (b) whether, in light of any relevant international arrangements or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for recognition as a refugee or for protection in another country. 5
- (3) A determination officer may decline to accept a claim if—
- (a) the claimant has been recognised as a refugee or given protection in another country and can be received back and protected in that country as described in **subsection (2)(a)(ii)**; or 10
 - (b) in light of any relevant international arrangements or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for recognition as a refugee or for protection in another country. 15
- 126 Procedure for determining claim**
- (1) It is the responsibility of the claimant to establish that he or she meets the grounds for recognition under **section 119, 120, or 121** as a refugee or protected person.
 - (2) The claimant must ensure that, before a determination officer makes a determination on the claim, all information, evidence, and submissions— 20
 - (a) that the claimant wishes to have considered in support of the claim are provided to the determination officer; and 25
 - (b) that the claimant would wish to have considered in support of any other potential claim under either of the Conventions or the Covenant are provided to the determination officer.
 - (3) For the purpose of determining a claim, a determination officer— 30
 - (a) must determine the matters set out in **section 127**; and
 - (b) for this purpose,—
 - (i) may seek information from any source; but
 - (ii) is not obliged to seek any information, evidence, or submissions further to that provided by the claimant; and 35
 - (iii) may determine the claim on the basis of the information, evidence, and submissions provided by the claimant. 40

- (4) A determination officer may determine the procedures that will be followed on a claim, subject to—
- (a) this Part; and
 - (b) any regulations made for the purposes of this Part; and
 - (c) any general instructions given by the chief executive. 5

Compare: 1987 No 74 s 129G(5)–(7)

127 Matters to be determined by determination officer

- (1) If a determination officer determines that a claim should be accepted for consideration in New Zealand, the officer must determine, in the following order,— 10
- (a) whether to recognise the person as a refugee on the ground set out in **section 119**; and
 - (b) whether to recognise the person as a protected person on the ground set out in **section 120**; and
 - (c) whether to recognise the person as a protected person on the ground set out in **section 121**. 15
- (2) If a determination officer determines that a claim should be accepted for consideration in New Zealand, the officer must also determine in relation to **subsection (1)(b) and (c)** whether there are serious reasons for considering that the claimant has— 20
- (a) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or 25
 - (b) committed a serious non-political crime outside New Zealand before entering New Zealand; or
 - (c) been guilty of acts contrary to the purposes and principles of the United Nations.
- (3) To avoid doubt, a determination officer— 30
- (a) in determining the matters specified in this section, may make findings of credibility or fact;
 - (b) must determine all the matters described in **subsection (1)**, regardless of whether the claim was made only on 1 or 2 of the 3 grounds set out in **sections 119 to 121**: 35
 - (c) may determine the matters specified in this section on the basis of the information, evidence, and submissions provided by the claimant.

128 Decision on claim

- (1) The determination officer must grant a claimant recognition as—
- (a) a refugee if satisfied that the grounds for recognition in **section 119** have been met: 5
 - (b) a protected person if satisfied that the grounds for recognition in **section 120 or 121** (or both) have been met.
- (2) The decision of the determination officer is final, unless overturned by the Tribunal on appeal under **section 176**.
- (3) The determination officer must notify the claimant, in the prescribed manner, of— 10
- (a) the officer's decision on the claim; and
 - (b) the reasons for the decision; and
 - (c) the officer's determination in relation to **section 127(2)**; and 15
 - (d) the claimant's right of appeal to the Tribunal, where a claim for recognition on any ground has been declined.
- (4) Once a decision on a claim is made and notified to a claimant, any determination officer may, in his or her absolute discretion, re-open the claim for further consideration under **sections 132 and 133**. 20

Compare: 1987 No 74 s 1291

129 Immigration status of certain protected persons

The Minister must make any decision about a protected person's immigration status where a determination officer has determined under **section 127(2)** that there are serious reasons for considering that the person has committed a crime or been guilty of any act described in **section 127(2)**. 25

130 Limitation on subsequent claims

- (1) A determination officer may not consider a subsequent claim unless the officer is satisfied that— 30
- (a) there has been a significant change in circumstances material to the claim since the previous claim was determined; and
 - (b) this change was not brought about by the claimant for the purpose of creating grounds for recognition under **section 119, 120, or 121**. 35
- (2) A determination officer may refuse to consider a subsequent claim where satisfied that the claim—

- (a) is manifestly unfounded or clearly abusive; or
 - (b) repeats a previous claim.
- (3) Where a determination officer determines that a subsequent claim should be accepted for consideration, the procedure specified in **section 126** applies to that subsequent claim. 5
- (4) In any subsequent claim, the claimant may not challenge any finding of credibility or fact made by a determination officer or the Tribunal in relation to a previous claim, and a determination officer may rely on any such finding. 10
- Compare: 1987 No 74 s 129J 10

131 Effect of claimant leaving New Zealand

If a claimant leaves New Zealand, his or her claim under this Part or appeal under **section 176** is to be treated as withdrawn.

Cessation or cancellation of recognition, and liability for deportation 15

132 Cessation of recognition as refugee or protected person

- (1) A determination officer may cease to recognise a person as a refugee or protected person, as the case may be, where—
- (a) the Refugee Convention has ceased in terms of Article 1C of the Refugee Convention to apply to a person who has previously been recognised as a refugee: 20
 - (b) there are no longer substantial grounds for believing that the person, if deported from New Zealand, would be subjected to torture (as defined in **section 120(2)**);
 - (c) there are no longer substantial grounds for believing that the person, if deported from New Zealand, would personally be subjected to arbitrary deprivation of life or cruel treatment (as defined in **section 121(2)**). 25
- (2) A determination officer may also cease to recognise a person as a refugee under **subsection (1)(a)** where— 30
- (a) the recognition as a refugee was granted under the former Act or before 1 October 1999; or
 - (b) a person was recognised as a refugee outside New Zealand and has travelled to New Zealand under a government-mandated programme on the basis of that recognition. 35

133 Cancellation of recognition as refugee or protected person

- (1) A determination officer may cancel the recognition of a person as a refugee or a protected person where—
- (a) any of the following applies:
 - (i) the determination officer has determined that the recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or 5
 - (ii) the person has been convicted of an offence where it is established that the person acquired recognition as a refugee or protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or 10
 - (iii) the determination officer has determined that the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by a determination officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; or 15 20
 - (iv) the determination officer has determined that the matters dealt with in **section 122 or 127(2)** may not have been able to be properly considered by a determination officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and 25
 - (b) the determination officer has determined that the person is not a refugee or a protected person. 30
- (2) A determination officer may also make the determinations specified in **subsection (1)** where—
- (a) the recognition as a refugee was granted under the former Act or before 1 October 1999; or
 - (b) a person was recognised as a refugee outside New Zealand and has travelled to New Zealand under a government-mandated programme on the basis of that recognition. 35
- (3) If the Minister determines under **section 30** that classified information may be used in deciding whether or not to cancel recognition as a refugee or protected person, the decision 40

whether or not to cancel recognition must be made by the Tribunal under **section 137**.

- 134 Application to Tribunal for determination that recognition as refugee or protected person should cease**
- (1) Where a person's recognition as a refugee or a protected person has been previously determined by the Tribunal (or by the Refugee Status Appeals Authority under the former Act), a determination officer may apply to the Tribunal for a determination as to whether the person's recognition as a refugee or protected person should subsequently cease. 5 10
- (2) Where a determination officer makes an application under **subsection (1)** to the Tribunal, the Tribunal must—
- (a) determine the matter de novo; and
- (b) determine whether the person's recognition as a refugee or a protected person should cease in accordance with **section 133(1)(a), (b), or (c)**, as the case may be. 15
- 135 Determination officer may determine whether refugee may be deported**
- A determination officer may determine whether **section 153** prohibits the deportation of a refugee who is liable for deportation under **section 150**. 20
- 136 Procedures to be followed in cessation or cancellation of recognition and in determining whether refugee may be deported**
- When making determinations under **section 132, 133, or 135**,— 25
- (a) a determination officer must take all reasonable steps to notify the person concerned in the prescribed manner of the matter that is being considered; and
- (b) **sections 126(1), (2) and (4), 128(3)(a), (b), and (d), 128(4), and 138** apply, with any necessary modifications, as if the matter being considered were a claim and the person concerned were a claimant. 30
- 137 Claims or other matters involving classified information**
- (1) Where the Minister determines under **section 30** that classified information may be involved in determining a claim or a 35

- cancellation of recognition under this Part, the claim or cancellation of recognition must be determined by the Tribunal, and not by a determination officer.
- (2) For the purposes of determining a claim or cancellation of recognition,—
- (a) the Tribunal may exercise its jurisdiction as if the claim or cancellation of recognition were an appeal to which any of **sections 175 to 178, 181(f), and 183** (as appropriate) apply; and
 - (b) **sections 198 to 218 and 228 to 234** apply as if the claim or other matter were an appeal, and the claimant or other relevant person were an appellant; and
 - (c) the claimant or other relevant person is entitled to appoint a special advocate for the purpose of the proceedings, and accordingly,—
 - (i) the Tribunal must notify the agency referred to in **section 236** of the likelihood that the decision on the proceedings will be made using classified information; and
 - (ii) that agency must provide the claimant or other person with the names of at least 3 possible special advocates within 3 days of that notification (being special advocates who are reasonably available for the purpose); and
 - (iii) **sections 235, 237(6), 238, and 239** then apply; and
 - (d) **section 131** applies if a claimant leaves New Zealand before his or her claim is determined.
- (3) Where the Tribunal determines a claim or cancels recognition under this section,—
- (a) no appeal lies to the Tribunal under any of **sections 176 to 178** against that determination; but
 - (b) an appeal may be brought against that determination to the High Court under **section 219** as if the determination were made by the Tribunal in appeal proceedings.

Miscellaneous matters

138 Powers of determination officers

- (1) In carrying out his or her functions under this Part in relation to persons who are claimants or whose recognition as a refugee or protected person is being investigated, a determination officer may—

- (a) require the person to supply such information, and within such times, as the officer reasonably requires:
- (b) require the person to produce such documents in the person's possession or within the person's ability to obtain as the officer requires: 5
- (c) inform the person that any other person may be required to produce or disclose relevant documents or information relating to the person, and require the other person to produce or disclose, as the case may be, any relevant documents or information relating to the person: 10
- (d) if the officer has good cause to suspect that a person other than the person has in his or her possession or control any document of the person (including any passport or travel document), in the prescribed manner request the person to produce any such document: 15
- (e) require the person to allow the collection of biometric information:
- (f) require the person to attend an interview:
- (g) subject to **section 140**, seek information from any source:
- (h) determine the claim or matter on the basis of the information, evidence, and submissions provided by the person. 20
- (2) A person who is requested to produce a document under **subsection (1)(d)** is not entitled to refuse to comply with the request by reason only that the person concerned has a lien over the document. 25
- (3) If a person is detained in custody, a determination officer may require the relevant member of the police, manager or other officer in charge of the prison or premises, or other person having custody of the person to— 30
- (a) provide the determination officer with access to the place where the person is being detained, and to the person; and
- (b) produce the person for interview.
- (4) The member of the police, manager, or other officer or person concerned must comply with any such requirement, and make appropriate facilities available for an interview. 35
- (5) Where a person who is required to attend an interview fails to attend at the appointed time and place, the determination officer may determine the claim or matter without conducting the interview. 40

- (6) A determination officer may decide the order in which claims or other matters are to be handled, and no decision on a claim or matter is to be called into question on the basis that it ought to have been handled earlier or later than any other claim or matter or category of claim or matter. 5

Compare: 1987 No 74 s 129H

139 Special provision relating to claimants granted temporary visas

- (1) This section applies to any person who—
- (a) is a claimant to whom a temporary entry class visa has been granted, whether before or after the person became a claimant; or 10
 - (b) having been a person to whom **paragraph (a)** applies, ceases to be a claimant by virtue of his or her claim being declined. 15
- (2) A person to whom this section applies may not, either before or after the expiry of the temporary entry class visa,—
- (a) apply for a further visa of any kind while in New Zealand; or
 - (b) while in New Zealand, request a special direction or make a request for the grant of a visa under **section 52**; or 20
 - (c) bring any appeal under **section 171** to the Tribunal.
- (3) Despite **subsection (2)(a)**, a claimant may apply for a further temporary entry class visa for such period as may be required to maintain the claimant's lawful status in New Zealand while the claim is determined. 25
- (4) Nothing in this section prevents a person from bringing an appeal to the Tribunal under **section 185**.
- (5) This section ceases to apply to a person if and when—
- (a) the person is recognised as a refugee or protected person; or 30
 - (b) the person leaves New Zealand; or
 - (c) the person is granted a visa.

Compare: 1987, No 74 s 129U

140 Confidentiality to be maintained 35

- (1) Subject to this section, confidentiality as to the identity of any claimant or refugee or protected person, and as to the particulars of his or her case, must at all times, both during and

- subsequent to the determination of the claim or other matter, be maintained by all persons.
- (2) No person may publish any information of a kind described in **subsection (1)**.
- (3) Compliance with **subsection (1)** may in an appropriate case require confidentiality as to the very fact or existence of a claim or case, if disclosure of its fact or existence would tend to identify the person concerned, or be likely to endanger any person. 5
- (4) **Subsection (1)** does not apply to prevent the disclosure of particulars in relation to a particular claimant or other person to the extent that the claimant or person has expressly waived his or her right to confidentiality under this section. 10
- (5) **Subsection (1)** does not apply to prevent determination officers, the Tribunal, or other persons involved in the administration of this Act from disclosure of particulars where there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure in the particular circumstances of the case, and the disclosure is— 15
- (a) to a person necessarily involved in determining the relevant claim or matters; or 20
- (b) to an officer or employee of a government agency whose functions in relation to the claimant or other person require knowledge of those particulars; or
- (c) to the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or 25
- (d) in dealings with an agency, body, or person for the purpose of determining matters under this Part; or
- (e) such that the particulars are published in a manner that is unlikely to allow identification of the person concerned, whether in a published decision of the Tribunal under **clause 20 of Schedule 2** or otherwise. 30
- (6) For the purposes of **subsection (5)(b)**, the functions referred to in that provision include, but are not limited to,— 35
- (a) assessing claims for recognition as a refugee or protected person;
- (b) investigation of fraud in relation to refugee or protection matters or other matters under this Part;
- (c) the administration or enforcement of other provisions of this Act: 40

- (d) assessing a claimant's or person's eligibility for publicly funded services including health services, legal aid, or social welfare:
- (e) the maintenance of the law, including the detection, investigation, and prosecution of offences. 5
- 141 Disclosure to determination officers of information by government agencies**
- (1) An officer or employee of any government agency may, for the purpose of assisting a determination officer or the Tribunal to determine a claim or investigate a matter involving a claimant or refugee or protected person in New Zealand, disclose information about that claimant, refugee, or person to the determination officer. 10
- (2) To avoid doubt, it is not a breach of **section 140** for a determination officer to request the assistance of a person under **subsection (1)**. 15
- (3) When requesting the assistance, the determination officer or the Tribunal must—
- (a) inform the other officer or employee of the requirements of confidentiality in **section 140**; and 20
- (b) require that officer or employee not to disclose information of the kind described in **section 140(1)** to any other agency, body, or person, except as necessary to provide the assistance requested.
- Part 6** 25
Deportation
- 142 Purpose of Part**
- The purpose of this Part is to support the integrity of the immigration system and security of New Zealand by providing for deportation from New Zealand, including— 30
- (a) prescribing when a person will be immediately liable for deportation:
- (b) prescribing how that liability must be communicated:
- (c) establishing the consequences of that liability:
- (d) providing for deportation to occur. 35

Liability for deportation

- 143 Deportation liability where unlawfully in New Zealand**
- (1) A person unlawfully in New Zealand is liable for deportation.
- (2) A person unlawfully in New Zealand may, within 42 days after first becoming unlawfully in New Zealand, appeal on humanitarian grounds against his or her liability for deportation under **section 185**. 5
- (3) The period of a person's unlawful status in New Zealand is calculated as commencing on—
- (a) the day after the date on which the person's visa expired (or was cancelled without another visa being granted); 10
or
- (b) the date the person arrived in New Zealand, if the person has never been lawfully in New Zealand since that arrival. 15
- (4) A person to whom a visa has been granted in a false identity is deemed to have been unlawfully in New Zealand since—
- (a) the date the person arrived in New Zealand, if the person has held a visa in a false identity since that date: 20
- (b) the day after the date on which a visa granted in the person's actual identity expired, if the person has held a visa in his or her actual identity after the person arrived in New Zealand.
- 144 Deportation liability where visa granted in error**
- (1) A person is liable for deportation if the Minister determines that the person's visa (whether a residence class or temporary entry class visa) was granted as a result of administrative error within the meaning of **section 55(5)**, where the visa was not cancelled in accordance with **section 55**. 25
- (2) The holder of a temporary visa has 14 days from the date of service of a deportation liability notice to give good reason why deportation should not proceed. 30
- (3) A person liable for deportation under this section may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation— 35
- (a) under **sections 180 and 185** in the case of a person holding a residence class visa:

- (b) under **section 185** in the case of a person holding a temporary visa or an interim visa.

145 Deportation liability where visa held under false identity

- (1) A person is liable for deportation if—
 - (a) the person is convicted of an offence where the identity of the person is established, and that identity is different to the identity under which the person holds a visa; or 5
 - (b) the Minister determines that the person holds a visa under a false identity.
- (2) If a person is liable for deportation under this section and the visa is a temporary visa or interim visa,— 10
 - (a) the person may appeal to the Tribunal under **section 185** within 42 days after first becoming unlawfully in New Zealand as determined under **section 143(4)**; and
 - (b) where **subsection (1)(b)** applies, the person has 14 days 15 from the date of service of a deportation liability notice to give good reason why the deportation should not proceed.
- (3) If a person is liable for deportation under this section and the visa is a residence class visa,— 20
 - (a) the person may appeal to the Tribunal under **section 185** within 42 days after first becoming unlawfully in New Zealand as determined under **section 143(4)**; and
 - (b) where **subsection (1)(b)** applies, the person may, within 25 28 days after the date of service of a deportation liability notice, appeal to the Tribunal against his or her liability for deportation under **section 180**.

146 Deportation liability of temporary entry class visa holder for cause

- (1) A temporary entry class visa holder is liable for deportation if the Minister determines that there is sufficient reason to deport the temporary entry class visa holder. 30
- (2) Subject to **subsection (3)**, the person has 14 days from the date of service of the deportation liability notice to give good reason why deportation should not proceed. 35
- (3) **Subsection (2)** does not apply where—
 - (a) the person is the holder of a limited visa; or
 - (b) the Minister determines that the person is an excluded person.

- (4) A temporary visa holder or interim visa holder who is liable for deportation under this section may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation under **section 185**. 5
- (5) For the purposes of **subsection (1)**, **sufficient reason** includes, but is in no way limited to,—
- (a) breach of conditions of the person’s visa;
 - (b) criminal offending;
 - (c) other matters relating to character: 10
 - (d) concealment of relevant information in relation to the person’s application for a visa;
 - (e) a situation where the person’s circumstances no longer meet the rules or criteria under which the visa was granted. 15
- 147 Deportation liability of residence class visa holder where visa or citizenship obtained by fraud, etc**
- (1) A residence class visa holder is liable for deportation if—
- (a) the person is convicted of an offence where it is established that— 20
 - (i) the person’s residence class visa or entry permission was procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - (ii) the person holds a residence class visa granted on the basis of a visa procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or 25
 - (b) the Minister determines that— 30
 - (i) the person’s residence class visa or entry permission was procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - (ii) the person holds a residence class visa granted on the basis of a visa procured through fraud, forgery, false or misleading representation, or concealment of relevant information. 35
- (2) A former citizen who is deemed by **section 63** to hold a resident visa is liable for deportation if—

- (a) the person was deprived of his or her citizenship under section 17 of the Citizenship Act 1977 on the grounds that the grant, or grant requirement, was procured by fraud, false representation, or wilful concealment of relevant information; and 5
- (b) that fraud, false representation, or wilful concealment of relevant information occurred in the context of procuring the immigration status that enabled the person to meet a requirement, or requirements, for the grant of New Zealand citizenship. 10
- (3) A person liable for deportation under this section may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation—
- (a) under **section 185**, where **subsection (1)(a) or (2)** applies: 15
- (b) under **sections 180 and 185**, where **subsection (1)(b)** applies.
- 148 Deportation liability of resident visa holder where visa conditions breached**
- (1) A resident visa holder is liable for deportation if the Minister determines that— 20
- (a) the conditions of the resident visa have not been met; or
- (b) the resident has materially breached the conditions of his or her visa.
- (2) A person liable for deportation under this section may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation under **sections 180 and 185**. 25
- 149 Deportation liability of residence class visa holder where new information as to character**
- (1) A residence class visa holder is liable for deportation if, within 5 years after the date the person first held a residence class visa,— 30
- (a) new information becomes available that—
- (i) relates to the character of the person; and
- (ii) was relevant at the time the visa was granted; and 35
- (b) the Minister determines that the person would not have been eligible for the grant of the visa under this Act or immigration instructions if that information had been available at the time the visa was granted.

- (2) For the purposes of **subsection (1)**, the new information may relate to whether or not the person was, or should have been, an excluded person, or to rules and criteria relating to character contained within immigration instructions.
- (3) A person liable for deportation under this section may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation under **sections 180 and 185**. 5
- (4) For the purposes of **subsection (1)**, the date that a person first held a residence class visa must be calculated in accordance with **section 150(5)**. 10

150 Deportation liability of residence class visa holder convicted of criminal offence

- (1) A residence class visa holder is liable for deportation if that person is convicted, whether in New Zealand or not,— 15
- (a) of an offence for which the court has the power to impose imprisonment for a term of 3 months or more if the offence was committed at any time—
- (i) when the person was unlawfully in New Zealand; or 20
- (ii) when the person held a temporary entry class visa; or
- (iii) within 2 years after the person first held a residence class visa; or
- (b) of an offence for which the court has power to impose imprisonment for a term of 2 years or more, if the offence was committed within 5 years after the person first held a residence class visa; or 25
- (c) of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed within 10 years after the person first held a residence class visa. 30
- (2) A person liable for deportation under this section may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation under **section 185**. 35
- (3) For the purposes of **subsection (1)(a)(iii), (b), and (c)**, the periods of 2 years, 5 years, and 10 years after a person first held a residence class visa are to be determined exclusive of any time 40

spent by the person in imprisonment following conviction for any offence.

- (4) **Subsection (1)(c)** applies—
- (a) whether the sentence is of immediate effect or is deferred or is suspended in whole or in part: 5
 - (b) where a person has been convicted of 2 or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the person had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences: 10
 - (c) where a person has been convicted of 2 or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence. 15
- (5) For the purposes of this section and **section 149(1)**, a person first holds a residence class visa—
- (a) on the date on which the person is first granted a residence class visa of any type in New Zealand; or 20
 - (b) on the first occasion on which the person arrives in New Zealand and is granted entry permission as the holder of a residence class visa; or
 - (c) if the person arrives in New Zealand and is granted entry permission as the holder of a residence class visa following a continuous period of absence from New Zealand of at least 5 years, on the date the person last arrived in New Zealand; or 25
 - (d) if the person is subject to a visa waiver and arrives in New Zealand following a continuous period of absence from New Zealand of at least 5 years, on the date the person last arrived in New Zealand and was granted a residence class visa. 30

Compare: 1987 No 74 s 91(1), (4), (6)

151 Deportation liability where refugee or protection status obtained by fraud, etc 35

- (1) A person who was previously recognised as a refugee or protected person is liable for deportation if—
- (a) a determination officer has cancelled that recognition under **section 134**; or 40

- (b) the Tribunal has cancelled that recognition under **section 137**.
- (2) A person liable for deportation under **subsection (1)(a)** may, within 28 days after the date of service of the deportation liability notice, appeal to the Tribunal against his or her liability for deportation under— 5
- (a) **section 185** if **section 133(1)(a)(ii)** applies; or
- (b) **sections 180 and 185**, in any other case.
- Compare: 1987 No 74 s 129L(1)(c)
- 152 Deportation of persons threatening security** 10
- (1) Where the Minister certifies that a person constitutes a threat or risk to security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.
- (2) The person named in the order is accordingly liable for deportation. 15
- (3) The Governor-General may, by Order in Council, revoke an order made under **subsection (1)**.
- Compare: 1987 No 74 ss 72, 73
- 153 Limitation on deportation of persons with or claiming refugee or protection status** 20
- (1) Despite anything in this Part, but subject to **subsection (2)**, no person who is recognised as a refugee or protected person in New Zealand, or who is a claimant for such recognition, may be deported under this Act. 25
- (2) Despite **subsection (1)**, a refugee may be deported if Article 32.1 or 33.2 of the Refugee Convention allows the deportation.
- (3) In carrying out their functions under this Act in relation to persons recognised as refugees or protected persons, or persons claiming such recognition, immigration officers must have regard to the provisions of **Part 5** and of the Refugee Convention. 30
- (4) For the purposes of this section, deportation includes where a person's departure is effected under **section 105**. 35
- Compare: 1987 No 76 s 129X

- 154 Limitation on deportation of diplomats, etc**
 Despite anything in this Part, no person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971 may be deported under this Act. 5
- 155 Period of deportation liability for residence class visa holders**
- (1) Residence class visa holders remain liable for deportation for a period of 10 years following the arising of the liability for deportation. 10
- (2) The period of 10 years in **subsection (1)** must be calculated exclusive of—
- (a) any time spent by the person in imprisonment following conviction for any offence: 15
- (b) any period of time when the person's liability for deportation is suspended by the Minister under **section 160** or by the Tribunal under **section 190**.
- (3) Where a person is liable for deportation under **section 143**, that deportation liability continues as long as that section applies to the person. 20
- 156 Liability for deportation when person outside New Zealand**
- (1) A person may become liable for deportation under any of **sections 144, 145, 147, 148, 149, 150 and 151** when the person is outside New Zealand and, subject to this section, this Part and **Part 7** apply as if the person were in New Zealand. 25
- (2) If this section applies to a person,—
- (a) the person may, if the person holds a visa with conditions that allow travel to New Zealand, travel to New Zealand— 30
- (i) within the period in which an appeal can be made against his or her liability for deportation; or
- (ii) pending the determination of any such appeal; 35
- and
- (b) this Part applies to the person as if the person were in New Zealand when the person became liable for deportation.

- (3) An immigration officer may make and serve a deportation order on a person who is liable for deportation and outside New Zealand, if the person—
- (a) does not appeal against the person’s liability for deportation within the period in which an appeal can be made; or 5
 - (b) having appealed, withdraws the appeal or the appeal is deemed to be withdrawn under **section 213**; or
 - (c) appeals against liability for deportation and the liability for deportation is upheld. 10

157 Effect of liability for deportation

- (1) A person liable for deportation may not—
- (a) if unlawfully in New Zealand, apply for a visa; or
 - (b) if the holder of a temporary entry class visa, apply for a further visa of a different class or type. 15
- (2) The grant of a visa of a different class or type to a person who is liable for deportation is in the absolute discretion of the Minister or an immigration officer, and **section 26** applies in relation to the grant of any such visa.
- (3) While a person is liable for deportation, the processing of any application by that person— 20
- (a) for the grant of citizenship under section 8 of the Citizenship Act 1977 or section 7(1)(b)(ii) of the Citizenship (Western Samoa) Act 1982 must be suspended;
 - (b) for the grant of a residence class visa, where the grant of the visa is dependent on the immigration status of the person, must be suspended. 25

Notification of liability for deportation

158 Deportation liability notice to be served

- A person who is liable for deportation must be served with a deportation liability notice unless— 30
- (a) the person is liable for deportation on the grounds of being unlawfully in New Zealand; or
 - (b) the person is a person named in a deportation order under **section 152**. 35

159 Contents of deportation liability notice

- (1) A deportation liability notice must be signed by the Minister or an immigration officer and state—

- (a) the provision or provisions of this Act under which liability for deportation arose:
- (b) the ground or grounds on which liability for deportation arose:
- (c) if applicable, the right to give good reason, within 14 days, as to why deportation should not proceed, and who that reason must be given to: 5
- (d) whether there is a right of appeal against liability for deportation and, if so,—
 - (i) what it is: 10
 - (ii) how to exercise the right of appeal:
 - (iii) the time limit for lodging the appeal:
- (e) the length or period of prohibition on entry to New Zealand that the person named in the notice may be subject to: 15
- (f) the consequences of attempting to return to New Zealand during the prohibition:
- (g) the requirement to repay any costs to the Crown of deportation:
- (h) if applicable, that a determination officer has determined that deportation of the person is not prohibited under **section 153**: 20
- (i) if applicable, the grounds on which liability for deportation has been reactivated under **section 160(3) or 191(3)**.
- (2) A deportation liability notice may be served either— 25
 - (a) by personal service by an immigration officer, or by another person on behalf of an immigration officer; or
 - (b) by registered post addressed to the person's New Zealand address.

Cancellation or suspension of deportation liability 30

160 Minister may cancel or suspend liability for deportation

- (1) The Minister may at any time cancel a person's liability for deportation.
- (2) The Minister may at any time suspend, for a period not exceeding 5 years, the liability for deportation of a resident or permanent resident, subject to the person complying with conditions stated by the Minister. 35
- (3) Where a person fails to comply with the conditions stated in a suspension under **subsection (2)**,—

- (a) the Minister may reactivate the liability for deportation by serving a deportation liability notice on the person that sets out the grounds of the reactivation; and
- (b) subject to **section 164(1)(e)**, the person has 28 days from the date the notice was served to leave New Zealand. 5
- (4) In the case of a person who has appealed against their liability for deportation, the Minister must notify the Tribunal if the person's liability for deportation is cancelled, suspended, or reactivated under **subsection (1), (2), or (3)(a)**.
- (5) The decision to cancel or suspend a person's liability for deportation is in the absolute discretion of the Minister, and **section 26** applies in relation to such a decision. 10
- (6) In the case of a person in imprisonment, the period referred to in **subsection (2)** commences on the date of the person's release from imprisonment. 15
- (7) The cancellation or suspension of a person's liability for deportation does not prevent the person from becoming liable for deportation on other grounds.
- 161 Right of victims to make submissions on suspension or cancellation of liability for deportation** 20
- (1) In determining whether to cancel or suspend a person's liability for deportation, the Minister must have regard to any written submissions made by a victim of an offence or offences of which the person who is liable for deportation has been convicted and from which his or her liability for deportation arises. 25
- (2) The Minister must, on a request for the purpose, make available to a lawyer or agent (if any) who is acting for a person who is liable for deportation a copy of all written submissions made by the victim. 30
- (3) The Minister, or a lawyer or agent acting for the person, must, on a request for the purpose, show the person a copy of all written submissions made by the victim. However, the person is not entitled to keep a copy of any of those submissions.
- (4) Despite **subsections (2) and (3)**, the Minister may withhold from the person and every lawyer or agent (if any) acting for the person any part of the victim's written submissions if, in the Minister's opinion, the withholding of that part is necessary to protect the physical safety or security of the victim concerned. 35

- (5) Despite **subsection (1)**, the Minister must not have regard to any part of the victim's submissions that is withheld under **subsection (4)**.
- (6) In this section, **victim** means a victim of an offence of a kind referred to in section 29 of the Victims' Rights Act 2002. 5
Compare: 1987 No 74 s 93A

162 Effect of suspension

- (1) Where a person's liability for deportation is suspended by the Minister under **section 160** or by the Tribunal under **section 191**, during the period of the suspension— 10
- (a) the person may not apply for a visa of a different type; and
- (b) subject to sections 9 and 10 of the Citizenship Act 1977 and section 7(1)(b)(i) of the Citizenship (Western Samoa) Act 1982, the person may not be granted citizenship on the basis of meeting a requirement (or requirements), for the grant of New Zealand citizenship that requires the person to hold a residence class visa. 15
- (2) Where the Minister determines that a person has met the conditions stated by the Minister under **section 160(2)** or by the Tribunal under **section 191(1)** for the period of the suspension, the Minister must cancel the person's liability for deportation. 20
- (3) Where the Minister cancels a person's liability for deportation under **subsection (2)**, the Minister must notify the person and the Tribunal of that fact. 25

163 Effect of suspension of deportation liability on appeal

- (1) This section applies where the Minister suspends a person's liability for deportation, and the person has lodged an appeal under **Part 7** against that liability.
- (2) If the person does not withdraw the appeal, the Tribunal may, on the application of the appellant, adjourn any appeal lodged by the person under **section 185**. 30
- (3) If the person's liability for deportation is cancelled under **section 160 or 162(2)**, the Tribunal may dismiss any aspects of the appeal that have not at that point been determined. 35
- (4) If the person receives a notice under **section 160(3)**, the Tribunal must then continue to determine any aspects of the person's appeal that have not yet been determined.

- (5) To avoid doubt, a suspension of liability for deportation does not affect any time limits within which appeals must be lodged under this Act.

Deportation

- 164 When deportation order may be served** 5
- (1) Subject to **subsection (2)**, a deportation order may be served on a person—
- (a) where the person has been served with a deportation liability notice that does not give the person 14 days to give good reason why deportation should not proceed, and the person has no right of appeal against liability for deportation, as soon as the person has been served with the notice: 10
- (b) where the person has been served with a deportation liability notice that allows the person 14 days from the date of service to give good reasons why deportation should not proceed, and the person has no right of appeal against deportation, on or after the earlier of,—
- (i) if the person does not provide submissions as to good reasons as to why deportation should not proceed, 15 days from the date of service; or 20
- (ii) if the person purports to give good reasons, and the person to whom such reasons are provided determines that deportation should continue, the day after being notified of that determination: 25
- (c) where the person has a right to appeal under this Act against liability for deportation, on or after—
- (i) the expiry of the period for lodging such an appeal, where the person has not lodged such an appeal: 30
- (ii) the day after the appeal is withdrawn, if the person withdraws an appeal to the Tribunal;
- (iii) the date 28 days after the Tribunal determines an appeal against deportation, where the person lodged such an appeal and the liability for deportation was upheld (but subject to **subparagraph (iv)**, where the person appeals to the High Court): 35
- (iv) where the person has lodged an appeal to the High Court under **section 219**,—

- (A) if the appeal is withdrawn, the day after the withdrawal:
- (B) if the liability for deportation is upheld, the day after the date on which the person was notified of the determination of the appeal: 5
- (d) in the case of a person in respect of whom an order is made under **section 152**, as soon as that order is made:
- (e) in the case of a person who had breached the conditions of a suspension of liability for deportation, the later of— 10
 - (i) 28 days after receiving notification from the Minister under **section 160(3)**; and
 - (ii) any applicable day determined under **paragraph (c)**.
- (2) A person may be served with a deportation order and have the order executed earlier than otherwise allowed under **subsection (1)** if the person so requests. 15

165 Service and content of deportation order

- (1) An immigration officer or member of the police may, in accordance with **section 164** serve a person liable for deportation with a deportation order. 20
- (2) A deportation order must specify—
 - (a) that the person named in the order is being deported from New Zealand; and
 - (b) the provision of this Act under which the person became liable for deportation; and 25
 - (c) the ground or grounds for deportation; and
 - (d) the length or period of any prohibition on entry to New Zealand that the person named in the order is subject to; and
 - (e) the consequences of attempting to return to New Zealand during the ban; and 30
 - (f) any costs or estimate of costs to the Crown of the deportation, and the requirement to repay those costs.

166 Executing a deportation order

- (1) Subject to **subsection (2)**, a deportation order may be executed once it has been served on the person, by— 35
 - (a) taking the person subject to the order into custody; and
 - (b) escorting the person (or arranging for the person to be escorted) to an airport or port; and

- (c) ensuring that the person is placed on board a craft and detained there until the person leaves New Zealand.
- (2) Subject to section 55 of the Parole Act 2002, no deportation order may be executed in respect of a person while the person is undergoing imprisonment in a prison. 5
- 167 Effect of prohibition on entry**
- (1) A person deported from New Zealand may not return to New Zealand or be granted a visa during the period of prohibition on entry to New Zealand.
- (2) Subject to this section, a prohibition on entry to New Zealand applies from the time the person is deported from New Zealand, or leaves New Zealand on or after the date on which a deportation order may be served on the person under **section 164**, and continues in force— 10
- (a) for 2 years after that time, where the person was in New Zealand unlawfully for a period not exceeding 1 year in aggregate: 15
- (b) for 5 years after that time, where—
- (i) the person was in New Zealand unlawfully for a period not exceeding 1 year in aggregate, and had been in New Zealand unlawfully on a previous occasion; or 20
- (ii) the person was in New Zealand unlawfully for a period exceeding 1 year in aggregate; or
- (iii) the person was liable for deportation under **section 146**; or 25
- (iv) the person was liable for deportation under **section 148**;
- (c) permanently, in all other cases.
- (3) Despite any limitation in **subsection (2)**, a prohibition on entry continues in force for so long as the person has failed to repay any debt due to the Crown in respect of the costs of his or her deportation. 30
- (4) Where a person attempts to re-enter New Zealand during the prohibition on entry, the period specified in **subsection (2)(a) or (b)** in respect of the person starts again from— 35
- (a) the date of the attempted re-entry, if the attempted re-entry was unsuccessful; or
- (b) the date that the person is once again deported from New Zealand, if the attempted re-entry was successful. 40

- (5) For the purposes of **subsection (4)**, a person attempts to re-enter New Zealand when—
- (a) the person boards or attempts to board a craft bound for New Zealand; or
 - (b) the person applies for a visa or entry permission at the border. 5
- (6) In the case where a person re-enters New Zealand during the prohibition on entry (despite that prohibition), and that person subsequently becomes subject to a further prohibition on entry, the period of prohibition on entry that applies to that person is the period of prohibition specified under **subsection (2)** for the subsequent deportation. 10
- 168 Minister or Tribunal may reduce period of prohibition on entry**
- (1) The period of prohibition on entry may be reduced from that which would otherwise apply under **section 167(2)** by— 15
- (a) the Tribunal under **section 192**, when declining an appeal against liability for deportation; or
 - (b) the Minister by special direction.
- (2) Unless the Minister otherwise determines, any reduction by the Minister under **subsection (1)** remains subject to **section 167(3), (4), and (5)**. 20
- (3) A decision of the Minister under this section is in the absolute discretion of the Minister, and **section 26** applies in relation to such a decision. 25

Part 7 Reviews and appeals

- 169 Purpose of Part**
- The purpose of this Part is to provide a comprehensive system for appeal and review in respect of decision making under this Act, including by— 30
- (a) providing for—
 - (i) reconsideration of certain temporary visa applications; and
 - (ii) appeals in respect of decisions on residence class visas; and 35
 - (iii) appeals in respect of decisions concerning recognition as a refugee or protected person; and

- (iv) appeals against liability for deportation; and
- (b) establishing the Immigration and Protection Tribunal, a specialist Tribunal to determine appeals brought under this Act; and
- (c) providing for appeals from the decisions of the Tribunal, and judicial review of decisions made under this Act. 5

Limited right of reconsideration concerning temporary visa

- 170 Reconsideration where onshore application for further temporary visa declined** 10
- (1) This section applies where—
 - (a) the holder of a temporary visa (the **applicant**) is in New Zealand and applies during the currency of that visa for a further temporary visa; and
 - (b) the application for the further temporary visa is declined. 15
 - (2) The applicant may apply in the prescribed manner for a reconsideration of the decision to decline a further visa if, and only if,—
 - (a) the application for reconsideration is made within 14 days after the date on which the applicant received notice of the decision to decline the further visa; and 20
 - (b) the applicant is still lawfully within New Zealand at the time of the application for reconsideration.
 - (3) Despite **subsection (2)**, there is no right to a reconsideration if the decision to decline the visa application was made by the Minister personally. 25
 - (4) In any other case, the decision to decline the visa application must be reconsidered by another immigration officer of equal grade or senior to the one who made the decision, or by the Minister. 30
 - (5) If the decision to decline the visa application is confirmed and no visa is granted following reconsideration under this section, an immigration officer must inform the applicant, in writing, of— 35
 - (a) the decision; and
 - (b) in the case of an applicant who still holds a visa, the date on which the person will have an obligation to leave New Zealand; and

- (c) in the case of an applicant who no longer holds a visa,—
 - (i) the fact that the person is already obliged to leave New Zealand; and
 - (ii) the fact that the person has 42 days after first becoming unlawfully in New Zealand to bring an appeal against liability for deportation under **section 185**. 5
- (6) The result of any reconsideration under this section of a decision to decline an application for a further temporary visa is final and conclusive, and no further application for reconsideration of that decision may be made. 10
- (7) The fact that an application for reconsideration has been made under this section does not of itself entitle the applicant to remain in New Zealand after the expiry of the applicant's current temporary visa, but, until the application for reconsideration has been determined or withdrawn, the person may not be deported. 15

Compare: 1987 No 74 s 31

Appeals in relation to residence class visas

- 171 Rights of appeal in relation to decisions concerning residence class visas** 20
- (1) Subject to **subsection (2)**, there is a right of appeal to the Tribunal against a decision concerning a residence class visa in the following circumstances:
 - (a) an applicant for a residence class visa may appeal against a decision of an immigration officer to decline to grant the visa (including in the circumstances described in **section 174(2)(b)**): 25
 - (b) a person outside New Zealand who has been granted a resident visa may appeal against a decision to cancel the visa under **section 55(1)(b)**: 30
 - (c) a person who has been granted a resident visa may appeal against a decision to refuse to grant the person entry permission (including in the circumstances described in **section 174(2)(b)**). 35
 - (2) No appeal lies under this section in respect of—
 - (a) a decision by the Minister not to grant a residence class visa; or
 - (b) a refusal to grant a residence class visa or entry permission to an excluded person; or 40

- (c) any refusal or failure of the Minister or an immigration officer to issue an invitation to apply for a visa; or
- (d) any refusal or failure of the Minister or an immigration officer to grant a residence class visa to a person who has been invited to apply for a visa, if a ground for the refusal or failure is that the Minister or officer determines that the person—
- (i) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for a visa, submitted false or misleading information or withheld relevant information that was potentially prejudicial to the person; or
- (ii) did not ensure that an immigration officer was informed of any material change in circumstances between the time of expressing interest and the time of the person's application for the relevant visa; or
- (e) any lapse of an application for a residence class visa or of an expression of interest in obtaining an invitation to apply for a visa; or
- (f) any revocation of an invitation to apply for a visa.
- (3) Where a person to whom **subsection (1)(b) or (c)** applies appeals under this section, this Act applies as if the decision were a decision to decline an application for a residence class visa.
- (4) The grounds for an appeal under this section are that—
- (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or
- (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.
- (5) An appeal under this section must be brought within 42 days after the date the appellant was notified of the decision appealed against.

Compare: 1987 No 74 s 18C(1) to (3)

172 Determination of appeal in relation to residence class visa

- (1) In determining an appeal under **section 171**, the Tribunal may—

- (a) confirm the decision appealed against as having been correct in terms of the residence instructions applicable at the time the application for the visa was made by the appellant; or
- (b) reverse the decision as having been incorrect in terms of the residence instructions applicable at the time the application for the visa was made by the appellant; or 5
- (c) note the correctness of the original decision in terms of the residence instructions applicable at the time the visa application was made on the basis of the information provided to the immigration officer before the time of the decision, but reverse that decision on the basis of any information properly made available to the Tribunal that reveals that the grant of the visa would have been correct in terms of the applicable residence instructions; or 10 15
- (d) note the correctness of the original decision in terms of the residence instructions applicable at the time the visa application was made on the basis of the information provided to the immigration officer before the time of the decision, but determine the appeal by cancelling the decision and referring the matter back to the chief executive for consideration under those residence instructions as if a new visa application had been made that included any additional information properly provided to the Tribunal; or 20 25
- (e) determine the appeal by cancelling the decision and referring the application back to the chief executive for correct assessment in terms of the applicable residence instructions, where the Tribunal— 30
 - (i) considers that the decision appealed against was made on the basis of an incorrect assessment in terms of the residence instructions applicable at the time the application was made; but
 - (ii) is not satisfied that the appellant would, but for that incorrect assessment, have been entitled in terms of that policy to the visa or entry permission; or 35
- (f) confirm the decision as having been correct in terms of the residence instructions applicable at the time the visa application was made, but recommend that the special circumstances of the applicant are such as to warrant 40

consideration by the Minister as an exception to those instructions.

- (2) Where the Tribunal determines to reverse a decision to refuse a visa under **subsection (1)(b) or (c)**, the Tribunal must—
- (a) consider whether or not it is appropriate that conditions should be imposed on the appellant in accordance with **section 40**, when a resident visa is granted to the appellant; and
 - (b) if it considers that the imposition of conditions is appropriate, in its decision specify any such conditions with such degree of generality or particularity as the Tribunal thinks fit; and
 - (c) notify the appellant in writing of any conditions imposed.
- (3) **Section 44(1)** requires the appellant to abide by any conditions of the visa that the Tribunal specifies under **subsection (2)(b)**.
- (4) Where the Tribunal refers an application back to the chief executive under **subsection (1)(e)**, the Tribunal may give the chief executive such directions as it thinks fit as to how a correct assessment of the application should be carried out.
- (5) The Tribunal must, as soon as practicable, notify the appellant in writing of its decision on the appeal and the reasons for that decision.
- (6) Subject to **section 219**, the decision of the Tribunal on the appeal is final, and, except where a court otherwise directs, the Tribunal has no jurisdiction to reconsider the appeal after the appellant has been notified of the decision.

Compare: 1987 No 74 s 18D

173 Further information in residence appeals

- (1) Subject to **subsections (2) to (5)**, the Tribunal, in determining an appeal under **section 171**, may not consider any information or evidence adduced by the appellant that was not provided to the immigration officer before the time at which that officer made the decision that is the subject of the appeal.
- (2) The Tribunal may consider information or evidence not provided by the appellant to the immigration officer before the time of the relevant decision if—
- (a) the Tribunal is satisfied that—

- (i) the information or evidence existed at the time the decision to refuse the visa was made, and would have been relevant to the making of that decision; and
- (ii) the appellant could not, by the exercise of reasonable diligence, have placed that information or evidence before the immigration officer at the time at which the officer made the decision on the application; and 5
- (iii) in all the circumstances it is fair to consider the information or evidence; or 10
- (b) the Tribunal considers that it is necessary for it to have the information or evidence for the purpose of considering whether or not to make a determination under **section 172(1)(f)**. 15
- (3) The Tribunal may require the chief executive to arrange for an interview to be conducted with any specified person for any specified purpose and in any specified manner, and for the report of that interview to be provided to the Tribunal, where— 20
- (a) the Tribunal considers that the decision under appeal depended, in whole or in part, upon the recorded results of an interview conducted with the appellant or with some other person connected with the application; and
- (b) those results involved the recording of an exercise of judgment on the part of the interviewing officer as opposed to the recording of facts; and 25
- (c) the Tribunal considers that further written evidence or submissions will not assist to confirm or test those results. 30
- (4) Any interview conducted under **subsection (3)** may not be conducted by any immigration officer who has previously interviewed the person.
- (5) The Tribunal may, if it considers it fair in all the circumstances to do so, determine the appeal in the manner set out in **section 172(1)(d)** where— 35
- (a) it comes to the attention of the Tribunal that any particular event has occurred after the time at which the immigration officer made the decision on the appellant's visa application; and 40

- (b) the Tribunal is satisfied that the event materially affects the applicant's eligibility under residence instructions.

Compare: 1987 No 74 s 18F(4)–(6)

- 174 Procedure where appeal successful or Tribunal makes recommendation** 5
- (1) The Minister or an immigration officer must grant a residence class visa (and if necessary grant entry permission) to the appellant where the Tribunal reverses a decision under **section 172(1)(b) or (c)**.
- (2) Nothing in **subsection (1)** requires a residence class visa or entry permission to be granted to a person— 10
- (a) until the normal requirements for providing any certificate or other material that is required before a visa or entry permission can be granted have been complied with, where the certificate or other material— 15
- (i) was not supplied to the appropriate officer before the date on which the decision appealed against was made; or
- (ii) by reason of the passing of time, is no longer current for the purposes of granting a visa or entry permission under this Act; or 20
- (b) where, since the date of the decision that is the subject of the appeal, any matter has arisen or any information has become available in respect of the person that would disqualify that person from being granted a residence class visa, or entry permission, in terms of both— 25
- (i) the residence instructions applicable at the time of the relevant visa application; and
- (ii) the residence instructions currently applicable.
- (3) Where, in reliance on **subsection (2)(a)**, a residence class visa is not immediately granted to a person who is already in New Zealand, the Minister or an immigration officer must grant a temporary visa to the person, being a visa that is current for a period of not less than 6 months. 30
- (4) Where any resident visa is granted to a person under **subsection (1)**, no conditions may be imposed on the person under **section 40** unless those conditions are specified in, or of a kind authorised by, the decision of the Tribunal under **section 172(2)(b)**. 35

- (5) Where the Tribunal makes a recommendation under **section 172(1)(f)**, the Minister—
- (a) must consider whether or not a residence class visa should be granted as an exception to residence instructions; and 5
 - (b) may, if the Minister grants a resident visa to the appellant, impose conditions on the appellant in accordance with **section 40**.
- (6) The Minister is not obliged to give reasons in relation to any decision made as a result of any consideration under **subsection (5)**, and neither **section 25** of this Act nor section 23 of the Official Information Act 1982 applies in respect of an such decision. 10
- Compare: 1987 No 74 s 18E
- Appeals against decisions relating to refugee or protection status* 15
- 175 Tribunal consideration of refugee and protection matters**
- (1) Every appeal relating to recognition as a refugee or protected person in New Zealand must be determined in accordance with this Part. 20
 - (2) Every appeal as to whether a person should continue to be recognised as a refugee or protected person in New Zealand must be determined in accordance with this Part.
 - (3) In carrying out its functions under this Act in relation to the recognition of a person— 25
 - (a) as a refugee, the Tribunal must act in a manner that is consistent with New Zealand’s obligations under the Refugee Convention:
 - (b) as a protected person, the Tribunal must act in a manner consistent with this Act. 30
- 176 Right of appeal in relation to decisions concerning refugee or protection status**
- (1) A person may appeal to the Tribunal against— 35
 - (a) a decision by a determination officer to decline the person’s claim to be recognised under any of **sections 119, 120, and 121** as a refugee or protected person (whether or not the determination officer recognised the

- person as a refugee or protected person under 1 or both of the other grounds set out in those sections):
- (b) a decision by a determination officer to decline a subsequent claim by the person to be recognised as a refugee or protected person. 5
- (2) A person who has previously been recognised as a refugee or protected person may appeal to the Tribunal against a decision by a determination officer to cease to recognise the person as a refugee or protected person under **section 132**.
- (3) No appeal may be brought under this section against a decision of a determination officer to refuse to consider a subsequent claim on the basis that it is manifestly unfounded or clearly abusive, or repeats a previous claim, unless **subsection (6)** applies. 10
- (4) An appeal under this section must be brought— 15
- (a) if the person is detained under **Part 9**, within 5 days after the date of notification of the decision to decline the claim or cease recognition:
- (b) within 10 days after the date of notification of the decision to decline the claim or cease recognition, in any other case. 20
- (5) The Tribunal may however extend the time for lodging an appeal if satisfied that special circumstances warrant an extension.
- (6) Despite **subsection (3)**, a person whose subsequent claim is declined on the basis that it is manifestly unfounded or clearly abusive or repeats a previous claim may appeal to the Tribunal against that finding if the person's most recent previous claim was declined under Part 6A of the former Act. 25
- (7) In such a case the Tribunal must, if satisfied that the subsequent claim is not manifestly unfounded or clearly abusive, or does not repeat a previous claim, then determine the appeal in accordance with **section 177**. 30

Compare: 1987 No 74 s 129C

177 Determination of appeal against refusal of recognition 35

- (1) Where an appeal is brought under **section 176(1)(a) or (2)**, the Tribunal must—
- (a) determine the matter de novo; and
- (b) determine, in the following order,—

- (i) whether to recognise the person as a refugee on the ground set out in **section 119**; and
 - (ii) whether to recognise the person as a protected person on the ground set out in **section 120**; and
 - (iii) whether to recognise the person as a protected person on the ground set out in **section 121**; and
- (c) in relation to the matters in **paragraphs (b)(ii) and (iii)**, determine whether there are serious reasons for considering that the claimant has—
 - (i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or
 - (ii) committed a serious non-political crime outside New Zealand before coming to New Zealand; or
 - (iii) been guilty of acts contrary to the purposes and principles of the United Nations.
- (2) If the Tribunal determines that there are serious grounds for considering that the claimant has committed a crime or been guilty of any act described in **subsection (1)(c)**, any decision on the person's immigration status must be made by the Minister.
- (3) The Tribunal may uphold or reverse the decision of the determination officer, but may not refer the claim back to a determination officer for reconsideration.
- (4) To avoid doubt, nothing in **subsection (1)** requires the Tribunal to seek any information, evidence, or submissions further to those provided by the appellant.

Compare: 1987 No 74 s 129P(5), (6)

- 178 Determination of appeal against refusal of subsequent claim**
- (1) Where an appeal is brought under **section 176(1)(b)**, the Tribunal must first consider—
 - (a) whether or not there has been a significant change in circumstances material to the appellant's claim since the previous claim was determined; and
 - (b) whether or not any such change was brought about by the appellant for the purpose of creating grounds for recognition under **section 119, 120, or 121**.
 - (2) If the Tribunal determines that there was no significant change in circumstances, or that the change was brought about by the

appellant for the purpose of creating grounds for recognition under **section 119, 120, or 121**, it must dismiss the appeal.

- (3) If the Tribunal determines that there was a significant change in circumstances, and does not determine that it was brought about by the appellant for the purpose of creating grounds for recognition under **section 119, 120, or 121**, it must then consider the substantive claim for recognition in accordance with **section 177**.

Appeal on facts against liability for deportation

179 Description of appeal on facts 10

An appeal on the facts is an appeal in which the Tribunal considers whether it is satisfied, to the relevant standard, whether the factual circumstances that gave rise to deportation liability did or did not exist.

180 Persons who may appeal to Tribunal on facts 15

- (1) The following persons may appeal to the Tribunal on the facts against their liability for deportation, unless otherwise provided in **subsection (2)**:
- (a) residents whose liability for deportation arises under **section 144, 145(1)(b), 147(1)(b), 148, or 149**: 20
 - (b) permanent residents whose liability for deportation arises under **section 144, 145(1)(b), 147(1)(b), or 149**:
 - (c) persons recognised as refugees or protected persons whose liability for deportation arises under **section 151**, except where **section 133(1)(a)(ii)** applies. 25
- (2) A resident or permanent resident may not appeal to the Tribunal on the facts if—
- (a) the person is liable for deportation under—
 - (i) **section 145(1)(a)**; or
 - (ii) **section 147(1)(a)**; or 30
 - (iii) **section 147(2)**; or
 - (iv) **section 150**; or
 - (b) the person is liable for deportation under **section 151**, and **section 133(1)(a)(ii)** applies; or
 - (c) the deportation of the person is ordered under **section 152**. 35

181 Grounds for determining appeal on facts

The Tribunal must allow an appeal against liability for deportation on the facts where—

- (a) in the case of an appellant liable for deportation under **section 144**, the Tribunal is satisfied, on the balance of probabilities, that the resident visa or permanent resident visa was not granted as a result of administrative error (within the meaning of **section 55(5)**): 5
- (b) in the case of an appellant liable for deportation under **section 145(1)(b)**, the Tribunal is satisfied, on the balance of probabilities, that the resident visa or permanent resident visa was not granted to the person in a false identity: 10
- (c) in the case of an appellant liable for deportation under **section 147(1)(b)**, the Tribunal is satisfied, on the balance of probabilities, that— 15
 - (i) the resident visa or permanent resident visa concerned was not procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or 20
 - (ii) the resident visa or permanent resident visa had not been granted to the person on the basis of a visa procured through fraud, forgery, false or misleading representation, or concealment of relevant information: 25
- (d) in the case of an appellant liable for deportation under **section 148**, the Tribunal is satisfied, on the balance of probabilities, that—
 - (i) the conditions attached to the resident visa were met; or 30
 - (ii) the resident did not materially breach the conditions of his or her visa:
- (e) in the case of an appellant liable for deportation under **section 149**, the Tribunal is satisfied, on the balance of probabilities, that— 35
 - (i) the new information was not material to the applicant's character as at the time the visa was granted; or
 - (ii) the person would have been eligible for the grant of the visa under this Act or immigration instructions: 40

- (f) in the case of an appellant liable for deportation under **section 151**, the Tribunal is satisfied, on the balance of probabilities, that—
- (i) the person did not acquire recognition as a refugee or protected person through fraud, forgery, false or misleading representation, or concealment of relevant information; or 5
 - (ii) the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention were able to be properly considered; or 10
 - (iii) the matters dealt with in **section 122 or 127(2)** were able to be properly considered.
- 182 Relationship between appeals on facts and humanitarian appeals**
- (1) A person who is entitled to and wishes to appeal against his or her liability for deportation both on the facts and on humanitarian grounds must lodge both appeals together within the relevant time limits. 15
 - (2) Where practicable, the Tribunal must consider both appeals together, but— 20
 - (a) must first consider the appeal on the facts; and
 - (b) may dispense with its consideration of the humanitarian appeal if the appellant's appeal on the facts is successful.
- 183 Special provisions where refugee or protection status acquired through fraud, etc** 25
- (1) Subject to **subsections (2) and (3)**, where a person who is liable for deportation under **section 151** appeals against liability for deportation, the Tribunal must, in addition to considering the appeal on the facts (if any) or on humanitarian grounds (if appropriate), determine whether the person is currently a refugee or protected person in terms of **sections 119 to 121**. 30
 - (2) Where the Tribunal has allowed an appeal on the facts under **section 181(f)**, the Tribunal need not consider— 35
 - (a) whether or not the person should continue to be recognised as a refugee or protected person; or
 - (b) any humanitarian appeal brought by the person.
 - (3) Where the Tribunal does not allow an appeal on the facts under **section 181(e)**, the Tribunal must—

- (a) determine whether to recognise the person as a refugee or a protected person in terms of **sections 119 to 121**; and
- (b) then determine any humanitarian appeal by the person if it does not recognise the person as a refugee or protected person. 5
- (4) When determining whether to recognise a person as a refugee or protected person for the purposes of this section, the Tribunal must determine the matter in accordance with **section 177**.
- 184 Special process where refugee or protected person liable for deportation under section 150** 10
- (1) This section applies where—
- (a) a refugee or protected person is liable for deportation under **section 150**; and
- (b) a determination officer has determined that the deportation of the person is not prohibited under **section 153**. 15
- (2) The Tribunal must—
- (a) first determine whether the deportation of the person is prohibited under **section 153**; and
- (b) if it determines that the deportation of the person is not prohibited under **section 153**, then determine any humanitarian appeal brought by the person. 20
- Appeal against liability for deportation on humanitarian grounds*
- 185 Who may appeal to Tribunal on humanitarian grounds** 25
- The following persons may appeal to the Tribunal on humanitarian grounds against their liability for deportation:
- (a) a person liable for deportation under **section 143** on the grounds of being unlawfully in New Zealand;
- (b) a temporary visa holder or interim visa holder liable for deportation under **section 144, 145, or 146**: 30
- (c) a resident or permanent resident liable for deportation under **section 144, 145, 147, 148, 149, or 150**:
- (d) a person liable for deportation under **section 151**.
- 186 Grounds for determining humanitarian appeal**
- (1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that— 35

- (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be deported from New Zealand; and
 - (b) it would not in all the circumstances be contrary to the public interest to allow the person to remain in New Zealand. 5
- (2) In determining whether it would be unjust or unduly harsh to deport from New Zealand an appellant who became liable for deportation under **section 150**, and whether or not it would be contrary to the public interest to allow the appellant to remain in New Zealand, the Tribunal must have regard to any submissions of a victim made in accordance with **section 187**. 10

Compare: 1987 No 74 ss 47(3), 105(1A)

187 Right of victims to make submission on appeal

- (1) In determining a humanitarian appeal by a person who became liable for deportation under **section 150**, the Tribunal must have regard to— 15
- (a) any written submissions made to it by a victim of an offence or offences of which the appellant has been convicted and from which the liability for deportation arose; and 20
 - (b) any relevant written submissions made by a victim to the Minister under **section 161**.
- (2) In addition to, or instead of, making written submissions under this section, the victim may, with the leave of the Tribunal, make oral submissions to the Tribunal at the hearing. 25
- (3) The Tribunal must make available to a lawyer or agent acting for the appellant, on a request by the appellant, a copy of all written submissions made by the victim under **section 161** or this section. 30
- (4) The Tribunal, or a lawyer or agent acting for the appellant, must, on a request for the purpose, show the appellant a copy of all written submissions made by the victim under **section 161** or this section. However, the appellant is not entitled to keep a copy of any of those submissions. 35
- (5) Despite **subsections (3) and (4)**, the Tribunal may withhold from the appellant and every lawyer or agent acting for the appellant (if any) either or both of the following if, in the Tribunal's

- opinion, that withholding is necessary to protect the physical safety or security of the victim concerned:
- (a) any part of the victim's written submissions under **section 161**, whether or not that part was withheld by the Minister under **section 161(4)**: 5
 - (b) any part of the victim's written submissions under this section.
- (6) Despite **subsection (1)**, the Tribunal must not have regard to any part of the victim's submissions that is withheld under **subsection (5)**. 10
- (7) In this section, **victim** means a victim of an offence of a kind referred to in section 29 of the Victims' Rights Act 2002.

Orders on determination of appeal

- 188 Tribunal may make orders considered necessary on allowing appeal against liability for deportation** 15
- Where the Tribunal decides that an appeal against liability for deportation should be allowed, it may order that an immigration officer take such steps as it considers necessary to give effect to its decision.
- 189 Tribunal may order grant of visa** 20
- (1) Without limiting **section 188**, in the case of a person who is unlawfully in New Zealand or is the holder of a temporary entry class visa, the Tribunal may order an immigration officer to grant the successful appellant—
- (a) a permanent resident visa, or a resident visa subject to such conditions (if any) as the Tribunal determines; or 25
 - (b) a temporary visa for a period not exceeding 12 months subject to such conditions (if any) as the Tribunal determines.
- (2) Where a temporary visa is granted following an order made under **subsection (1)(b)**, no further appeal may be brought by the holder upon the expiry of the visa or upon the holder earlier becoming liable for deportation. 30
- (3) The Tribunal may order the imposition of any condition on the grant of a resident visa that it thinks fit having regard to the reasons why the appellant was able to demonstrate exceptional circumstances of a humanitarian nature or why it was not contrary to the public interest to allow the appellant to 35

remain in New Zealand, whether or not the condition is of a kind authorised by residence instructions.

- (4) To avoid doubt, the Tribunal may order an immigration officer to grant a visa, and the officer must grant the visa, even though the person would normally be prohibited from being granted a visa under **section 9 or 10**. 5
- (5) Where the Tribunal orders the imposition of any condition on a visa,—
- (a) that condition must be notified to the visa holder in writing; and 10
- (b) **section 44(1)** requires the holder to abide by the conditions of the visa.
- (6) The chief executive must ensure that the terms of an order given under this section are complied with. 15

Compare: 1987 No 74 s 52

190 Procedure when appellant in custody or subject to release on conditions

In any case where, on an appeal under this Part, the Tribunal allows an appeal against liability for deportation, the following provisions apply: 20

- (a) if the appellant is in custody under this Act otherwise than pursuant to a warrant of commitment, the person must immediately be released from custody: 20
- (b) if the appellant is subject to residence or reporting requirements under **section 277**, the appellant ceases to be bound by those requirements, and an immigration officer must immediately notify the person and the police accordingly: 25
- (c) if the appellant has been released on conditions in accordance with **section 282**, the appellant ceases to be bound by those conditions, and the Tribunal must immediately notify the person accordingly: 30
- (d) if the appellant is in custody pursuant to a warrant of commitment issued under **section 279 or 280**, the Tribunal must order the immediate release of the appellant from custody. 35

Compare: 1987 No 74 s 107

191 Tribunal may suspend liability for deportation

- (1) On allowing any humanitarian appeal the Tribunal may, in the case of a resident or permanent resident, make an order suspending the appellant's liability for deportation for a period not exceeding 5 years, subject to such conditions (if any) as the Tribunal determines. 5
- (2) Where a person's liability for deportation has been suspended by the Tribunal, the Minister may apply to the Tribunal for a determination of whether or not the person has failed to meet any condition imposed by the Tribunal. 10
- (3) If the Tribunal determines that the person has failed to meet any condition imposed under **subsection (1)**,—
- (a) the Tribunal may reactivate the liability for deportation by serving a deportation liability notice on the person that sets out the grounds of the reactivation; and 15
- (b) the person has 28 days from the date the notice was served to leave New Zealand before he or she may be deported.
- (4) In the case of a person in imprisonment, the period referred to in **subsection (1)** commences on the date of the person's release from imprisonment. 20
- (5) **Section 162** applies where the Tribunal makes a suspension order under this section.
- (6) The suspension of a person's liability for deportation does not prevent the person from becoming liable for deportation on other grounds. 25

192 Tribunal may reduce or remove period of prohibited entry under deportation order

- (1) On declining an appeal against deportation, the Tribunal may in its absolute discretion order the reduction, or removal altogether, of the period of any prohibition on entry to New Zealand that would otherwise apply under **section 167** following the person's deportation from New Zealand. 30
- (2) A reduction or removal under **subsection (1)** remains subject to **section 167(3) and (4)**, unless the Tribunal otherwise orders. 35

Immigration and Protection Tribunal

- 193 Immigration and Protection Tribunal**
- (1) For the purposes of this Act there is a Tribunal called the Immigration and Protection Tribunal.
- (2) The functions of the Tribunal are— 5
- (a) to determine appeals against—
- (i) decisions to decline to grant residence class visas:
- (ii) decisions in relation to recognition as a refugee or protected person: 10
- (iii) liability for deportation: 10
- (b) to make decisions in relation to recognition as a refugee or protected person at first instance, where the decision involves classified information.
- 194 Nature of Tribunal**
- (1) The Tribunal is a specialist body that has the role of determining appeals brought under this Act, or other matters, by making findings of fact and making a determination on the appeal or other matter before it. 15
- (2) The proceedings of the Tribunal are of an inquisitorial rather than an adversarial nature. 20
- 195 Membership of Tribunal**
- (1) The Tribunal consists of—
- (a) a chair, being a District Court Judge:
- (b) such other members as may be appointed under **subsection (3)**, being lawyers who have held a practising certificate for at least 5 years: 25
- (c) a representative of the United Nations High Commissioner for Refugees, to serve as an *ex officio* member in relation to matters relating to refugees:
- (d) any nominated District Court Judge seconded to the Tribunal under **section 214(2)** to exercise the jurisdiction of the Tribunal in relation to proceedings involving classified information. 30
- (2) The chair of the Tribunal is appointed by the Governor-General on the advice of the Attorney-General, given after consultation with the Minister of Justice and the Minister. 35

- (3) The members of the Tribunal are appointed by the Governor-General on the recommendation of the Minister of Justice made in consultation with the Minister.
- (4) No immigration officer or determination officer, and no person who has at any time within the previous 5 years been an immigration officer or a determination officer, may be appointed as a member of the Tribunal. 5

196 Role of chair of Tribunal

- (1) The chair of the Tribunal is responsible for—
- (a) making such arrangements as are practicable to ensure that the members of the Tribunal discharge their functions— 10
- (i) in an orderly and expeditious way; and
- (ii) in a way that meets the purposes of this Act; and
- (b) directing the education, training, and professional development of members of the Tribunal; and 15
- (c) dealing with complaints made about members of the Tribunal.
- (2) Without limiting **subsection (1)**, the chair of the Tribunal may—
- (a) issue practice notes (not inconsistent with this Act or any regulations made under it) for the purposes of regulating the practice and procedure of the Tribunal and proceedings of parties; 20
- (b) develop a code of conduct for members of the Tribunal;
- (c) require particular members of the Tribunal to determine particular appeals. 25

197 Exercise of jurisdiction

- (1) For the purpose of any matter within its jurisdiction, the Tribunal consists of 1 member, except as provided in this section. 30
- (2) The chair of the Tribunal may direct that, because of the exceptional circumstances of any case, the case is to be heard and determined by more than 1 member. In any such case the chair must designate—
- (a) the members who are to hear and determine the case; and 35
- (b) the member who is to be the presiding member for the purposes of the hearing and determination.
- (3) Where a case before the Tribunal relates to a refugee,—

- (a) the ex officio member referred to in **section 195(1)(c)** may hear and be involved in the determination of the case; but
- (b) this is in addition to the other member or members of the Tribunal required under **subsection (1) or (2)**. 5

198 Procedure for determining appeals generally

- (1) The Tribunal must determine an appeal with all reasonable speed.
- (2) The chair of the Tribunal may decide the order in which appeals are to be heard. 10
- (3) No decision on an appeal is to be called into question on the basis that the appeal ought to have been heard or decided earlier or later than any other appeal or category of appeal.
- (4) The Tribunal may regulate its procedures as it sees fit, subject to this Act and any regulations made under this Act. 15
- (5) This section is subject to **section 228**.

199 Chair to ensure appeals heard expeditiously

- (1) The chair of the Tribunal must make such directions as are necessary to ensure that appeals are heard in an orderly and expeditious manner. 20
- (2) **Subsection (3)** applies where—
 - (a) more than 1 appeal is lodged by the same person, whether relating to the same matter or not; or
 - (b) appeals that are lodged by different persons—
 - (i) are associated because of the relationship of the appellants; and 25
 - (ii) relate to substantially the same matter or set of circumstances.
- (3) Where this subsection applies, the chair may, for the purposes of complying with **subsection (1)**, direct that— 30
 - (a) the appeals must be heard by the same member of the Tribunal; or
 - (b) the appeals must be heard together by the same member of the Tribunal.

200 Tribunal may dismiss frivolous or vexatious appeal 35

The Tribunal may at any time dismiss an appeal that it is satisfied is frivolous or vexatious.

*Procedure for appeals***201 How appeal lodged**

- (1) An appeal must be lodged in the prescribed manner and be accompanied by the prescribed fee (if any).
- (2) An appellant must— 5
- (a) provide the Tribunal with—
- (i) except where **subparagraph (iii)** applies, a current address in New Zealand to which communications relating to the appeal may be sent; and
- (ii) the appellant's current residential address in New Zealand (if any); and 10
- (iii) in the case of an appeal under **section 171** by a person who is offshore, an address to which communications relating to the appeal may be sent; and 15
- (b) notify the Tribunal in a timely manner of a change in any of those addresses.
- (3) The Tribunal may rely on the latest address provided for the purpose of communications relating to an appeal.

202 Proceedings on appeal 20

- (1) It is the responsibility of an appellant to establish his or her case on appeal, and the appellant must ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are provided to the Tribunal before it makes its decision on the appeal. 25
- (2) Where an appeal is lodged,—
- (a) the Tribunal must give the chief executive a copy of the notice of appeal and any information, evidence, or submissions lodged by the appellant; and
- (b) the chief executive must, within the time allowed by the Tribunal for the purpose, lodge with the Tribunal any file relevant to the matter under appeal that is held by the Department, and may also lodge such other information, evidence, or submissions in relation to the matter under appeal as the chief executive thinks fit. 30 35

Compare: 1987 No 74 ss 18F(3), 129P(1)

203 Tribunal may consider appeal on basis of information provided

In its consideration of an appeal, the Tribunal—

- (a) may seek information from any source; but
- (b) is not obliged to seek any information, evidence, or submissions further to those provided by the appellant; and
- (c) may determine the appeal on the basis of the information, evidence, and submissions provided by the appellant and the chief executive.

Compare: 1987 No 74 s 18F(2)

204 Tribunal may require chief executive to provide information

- (1) The Tribunal may require the chief executive to seek and provide information relevant to an appeal, and the chief executive must comply, to the extent practicable, with such a requirement.
- (2) Where the chief executive seeks and provides information required under **subsection (1)**, nothing in the Official Information Act 1982 applies to—
 - (a) information sought and provided by the chief executive; or
 - (b) information about the chief executive's process of seeking and providing the information.
- (3) This section is subject to **section 32(3)**.

Compare: 1987 No 74 ss 18F(3), 129P(4)

205 Tribunal must disclose prejudicial information

- (1) Except as provided in **subsection (3)**, the Tribunal must disclose to the appellant, and give the appellant an opportunity to rebut or comment on, information or material that—
 - (a) is provided to the Tribunal by a source other than the appellant; and
 - (b) is or may be prejudicial to the appellant; and
 - (c) the Tribunal intends to take into account in determining the appeal.
- (2) The Tribunal must set a reasonable time within which the appellant may rebut or comment on the information or material.

- (3) **Subsection (1)** does not require the Tribunal to disclose any information or material if—
- (a) the disclosure would be likely to endanger the safety of any person; or
 - (b) it is classified information that the Tribunal must keep confidential and must not disclose under **section 231**. 5
- (4) The Tribunal must however notify the appellant of the fact of any non-disclosure on the grounds specified in **subsection (3)**.
Compare: 1987 No 74 ss 18F(7), (8), (9), 129P(2), (4)
- 206 Findings of credibility and fact** 10
On any appeal, the Tribunal may rely on any finding of credibility or finding of fact made by the Tribunal in any previous appeal made to the Tribunal.
Compare: 1987 No 74 s 129I(9)
- 207 Tribunal may require provision of biometric information** 15
For the purposes of assisting the Tribunal to determine an appeal, the Tribunal may require the appellant to allow the collection of biometric information.
- 208 When Tribunal must or may provide oral hearing** 20
- (1) The Tribunal must provide an oral hearing in the case of an appeal against liability for deportation by a resident or permanent resident.
 - (2) The Tribunal must also provide an oral hearing in the case of an appellant currently or previously recognised as a refugee or protected person, or a claimant for such recognition, unless—
 - (a) the appellant was interviewed by a determination officer in the course of determining the relevant matter at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and 25
 - (b) the Tribunal considers that the appeal is prima facie manifestly unfounded or clearly abusive. 30
 - (3) The Tribunal may, in its absolute discretion, provide an oral hearing in any other appeal against liability for deportation.

- 209 Appeal on papers in other circumstances**
- (1) Despite **section 208**, the Tribunal may determine an appeal or other matter without an oral hearing if the appellant fails without reasonable excuse to attend a hearing notified by the Tribunal. 5
- (2) Except as otherwise provided in **section 208** (as subject to **subsection (1)** of this section), the Tribunal must determine an appeal on the papers.
- 210 Appeals against deportation liability where person serving prison sentence** 10
- (1) Where a person appealing against his or her liability for deportation is serving a sentence of imprisonment, the Tribunal must, with a view to determining the appeal before the person's release from imprisonment, consider and determine the appeal as close as practicable to the date of the person's parole eligibility date or (in the case of a person serving a short-term sentence) statutory release date. 15
- (2) In this section, **parole eligibility date**, **short-term sentence**, and **statutory release date** have the meanings given in section 4 of the Parole Act 2002. 20
- 211 Procedure**
- Schedule 2** applies in relation to the proceedings of the Tribunal.
- 212 Withdrawal of appeal**
- (1) An appeal to the Tribunal may be withdrawn by the appellant at any time. 25
- (2) If a person withdraws an appeal against liability for deportation, the person's deportation may be executed.
- (3) If a person withdraws an appeal against a refusal to grant a visa, the decision appealed against stands. 30
- (4) If a person withdraws an appeal against a refusal or cessation of recognition as a refugee or protected person, the decision appealed against stands.

213 Deemed withdrawal of certain appeals where person leaves New Zealand

A person's appeal to the Tribunal is deemed to be withdrawn when the person leaves New Zealand if the appeal is—

- (a) an appeal against liability for deportation, if the appeal is brought by a person liable for deportation under any of **sections 143 to 147, 150, and 151**; or 5
- (b) an appeal against a decision to decline recognition as a refugee or protected person.

Special procedure where classified information involved 10

214 Proceedings of Tribunal involving classified information to be heard by nominated District Court Judge or Judges

- (1) Where proceedings before the Tribunal involve classified information, the Tribunal must consist of 1 or more members (but not exceeding 3) who are nominated District Court Judges. 15
- (2) For the purposes of proceedings involving classified information, the Chief District Court Judge may nominate 1 or more District Court Judges to be seconded to the Tribunal to exercise its jurisdiction in relation to the appeal. 20
- (3) In this section and **section 195, nominated District Court Judge** means—
 - (a) the Chief District Court Judge; or
 - (b) another District Court Judge nominated by the Chief District Court Judge to hear and determine appeals involving classified information. 25
- (4) A maximum of 2 District Court Judges (other than the Chief District Court Judge) may be nominated at any one time for the purposes of **subsection (3)(b)**. 30

215 Presentation of classified information to Tribunal

- (1) The Tribunal must be given access to classified information that—
 - (a) was used to make a decision that is on appeal to the Tribunal; or 35
 - (b) is first raised in the course of an appeal to the Tribunal; or

- (c) is directed to be provided to the Tribunal under **section 30(2)(b)**.
- (2) Before holding a substantive hearing on the appeal or other matter, the Tribunal must hold a preliminary hearing in which the chief executive of the relevant agency makes a presentation on the classified information. 5
- (3) The purpose of the preliminary hearing is not to enable the Tribunal to consider or determine the matters in **section 217**, but to enable the Tribunal and the special advocate (if any) to understand the classified information and to question the chief executive of the relevant agency about the information. 10
- (4) **Section 231(4)** applies to the preliminary hearing.
- (5) The preliminary hearing may not occur before the date that is 28 days after the appellant was provided with the names of the possible special advocates under **section 137(2)(c) or 237(2)**. 15
- (6) The content of the presentation is to be determined by the chief executive of the relevant agency.

216 Tribunal to approve summary of allegations

- (1) The purpose of this section is to give an appellant an opportunity to comment, as relevant, in the course of proceedings involving classified information. 20
- (2) Where proceedings before the Tribunal involve classified information—
- (a) the chief executive of the relevant agency must develop, and provide to the Tribunal for approval, a summary of the allegations arising from the classified information, except to the extent that a summary would itself involve disclosure that would be likely to prejudice the interests referred to in **section 5(3)**; and 25
- (b) the Tribunal must— 30
- (i) approve the summary developed under **paragraph (a)**; or
- (ii) modify the summary, except to the extent that a modification would involve disclosure that would be likely to prejudice the interests referred to in **section 5(3)**, and then approve it; and 35
- (c) following approval (with or without modification) of the summary, the Tribunal must provide the summary to the appellant and special advocate (if any).

- (3) In determining whether, or how, to modify the summary, the Tribunal must have regard to the views of the relevant agency.
- (4) Nothing in this section requires the summary to—
- (a) list any documents or other source material containing classified information; or 5
 - (b) detail the contents of any documents or other source material containing classified information; or
 - (c) specify the source of any documents or other source material containing classified information.
- (5) A summary under this section must be updated in accordance with **subsection (2)**, and the appellant and special advocate (if any) provided with an updated summary, where— 10
- (a) any classified information that was proposed to be used in the course of the appeal is withdrawn (unless all the information is withdrawn); or 15
 - (b) further relevant classified information becomes available that will be used in the course of the appeal.
- (6) A special advocate may not be involved in the process of approving, amending, or updating the summary.
- 217 Matters to be considered by Tribunal** 20
- (1) Where proceedings involve classified information, the Tribunal must determine the following matters:
- (a) whether the classified information is relevant to the subject-matter of the appeal or matter to which **section 137** applies; 25
 - (b) whether the classified information is information of a kind specified in **section 5(2)**, and whether its disclosure would be disclosure of a kind specified in **section 5(3)**;
 - (c) whether the classified information is credible;
 - (d) the substantive grounds of the appeal or matter to which **section 137** applies, having regard to— 30
 - (i) all the information available to the Tribunal, including any relevant and credible classified information; and
 - (ii) the relevant criteria under which the decision appealed against was made or, in the case of a matter to which **section 137** applies, the decision of the Tribunal must be made. 35

- (2) If the Tribunal considers under **subsection (1)(a)** that any classified information is not relevant to the appeal or claim or other matter, it must disregard that information.
- (3) If the Tribunal considers under **subsection (1)(b)** that any information does not meet the criteria specified in **section 5(2) and (3)**, then the Tribunal must disregard that information unless the relevant agency agrees to the disclosure of the information to the appellant. 5
- (4) If the Tribunal considers under **subsection (1)(c)** that any classified information is not credible, it must disregard that information. 10

218 Restriction on appeal

No appeal under **section 219** may be brought in relation to any proceedings involving classified information before the Tribunal unless the Tribunal has issued final determinations on all matters subject to the proceedings. 15

Appeal from Tribunal and judicial review

219 Appeal to High Court on point of law by leave

- (1) Where any party to an appeal to or other matter before the Tribunal (being either the person who appealed or applied to the Tribunal, or the Minister, chief executive, or other respondent) is dissatisfied with any determination of the Tribunal in the appeal proceedings as being erroneous in point of law, that party may, with the leave of the High Court (or, if the High Court refuses leave, with the leave of the Court of Appeal), appeal to the High Court on that question of law. 20 25
- (2) Every appeal under this section must be brought—
- (a) within 28 days after the date on which the decision of the Tribunal to which the appeal relates was notified to the party appealing; or 30
- (b) within such further time as the High Court may allow on application made before the expiry of that 28-day period.
- (3) Where leave is given under this section to appeal against liability for deportation, the appeal acts as a stay. 35
- (4) On the appeal, the High Court must determine the question or questions of law arising in the proceedings, and may then—

- (a) confirm the decision in respect of which the appeal has been brought; or
 - (b) remit the matter to the Tribunal with the opinion of the High Court, together with any directions as to how the matter should be dealt with; or 5
 - (c) make such other orders in relation to the matter as it thinks fit.
- (5) Subject to **subsections (2) and (3)**, every appeal under this section must be dealt with in accordance with the rules of court, with any modifications necessary to reflect the provisions of this Act and any protocols developed under it. 10

Compare: 1987 No 74 s 115

220 Tribunal may state case for High Court

- (1) Subject to **subsection (2)**, the Tribunal may, on the application of any party to the proceedings before it (being either the person who appealed or applied to the Tribunal, or the Minister, chief executive, or other respondent) or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal or matter before the Tribunal. 15
- (2) Every such question must be dealt with in accordance with the rules of court, with any modifications necessary to reflect the provisions of this Act and any protocols developed under it. 20

221 Appeal to Court of Appeal on point of law by leave

- (1) Any party to an appeal under **section 219** who is dissatisfied with any determination of the High Court in the proceedings as being erroneous in point of law may, with the leave of that Court, or, if the High Court refuses leave, with the leave of the Court of Appeal, appeal to the Court of Appeal. Section 66 of the Judicature Act 1908 applies to any such appeal. 25
- (2) In determining whether to grant leave to appeal under this section, the Court to which the application for leave is made must have regard to whether the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision. 30
- (3) The Court granting leave under this section may in its discretion impose such conditions as it thinks fit, whether as to costs or otherwise. 35

- (4) Every appeal under this section must be dealt with in accordance with the rules of court, with any modifications necessary to reflect the provisions of this Act and any protocols developed under it.
- (5) The decision of the Court of Appeal on any appeal under this section is final. 5

Compare: 1987 No 74 s 116

222 Special provisions relating to judicial review

- (1) Any review proceedings in respect of a statutory power of decision arising out of or under this Act must be commenced within 28 days after the date of the decision, unless the High Court decides that, by reason of special circumstances, further time should be allowed. 10
- (2) Where a person intends to both appeal against a decision of the Tribunal under this Part and bring review proceedings in respect of that same decision,— 15
- (a) the person must lodge together both the application for appeal and the application for judicial review; and
- (b) the High Court must endeavour to hear both matters together, unless it considers it impracticable in the particular circumstances of the case to do so. 20
- (3) In this section, **statutory power of decision** has the same meaning as in section 3 of the Judicature Amendment Act 1972.
- (4) Nothing in this section limits the time for bringing review proceedings challenging the vires of any regulations made under this Act. 25

Compare: 1987 No 74 s 146A

223 Restriction on review

- (1) No review proceedings may be brought in any court in respect of any decision, where the decision, or the effect of the decision, may be subject to an appeal to the Tribunal under this Part. 30
- (2) Nothing in this section limits any other provision of this Act that affects or restricts the ability to bring review proceedings. 35

*General provisions relating to proceedings involving
classified information*

- 224 Proceedings involving classified information may be heard only by nominated Judge**
- (1) Where proceedings involving classified information are to be heard by the High Court, the proceedings must be heard by a nominated Judge or Judges. 5
- (2) In this section and **section 225, nominated Judge** means—
- (a) the Chief High Court Judge; or
- (b) another High Court Judge nominated by the Chief High Court Judge to hear and determine proceedings involving classified information. 10
- (3) A maximum of 2 High Court Judges (other than the Chief High Court Judge) may be nominated at any one time for the purposes of **subsection (2)(b)**. 15
- 225 Appeal to High Court or judicial review involving classified information**
- (1) This section applies where an appeal or review proceedings in the High Court involve classified information.
- (2) Where a party raises classified information in an appeal or review proceedings, the nominated Judge must consider the information and any submissions made in relation to it in order to determine whether it is relevant to the appeal or review proceedings. 20
- (3) Where the court determines that the classified information is relevant to the appeal or review proceedings, **sections 224, 228 to 231, 233, 237, and 238** apply. 25
- (4) Where the nominated Judge determines that the classified information is not relevant to the appeal or review proceedings, **section 231(2) to (7)** applies to the classified information raised. 30
- 226 Appeal to Court of Appeal or Supreme Court where classified information involved**
- (1) This section applies where classified information is used in a decision (whether on appeal, review, or otherwise) that is subject to appeal to— 35
- (a) the Court of Appeal, whether under **section 221** or otherwise; or

- (b) the Supreme Court.
- (2) Where a party raises classified information in an appeal or review proceedings, the court must consider the information and any submissions made in relation to it in order to determine whether it is relevant to the appeal or review proceedings. 5
- (3) Where the court determines that the classified information is relevant to the appeal or review proceedings, **sections 228 to 231, 233, 237, and 238** apply.
- (4) Where the court determines that the classified information is not relevant to the appeal or review proceedings, **section 231(2) to (7)** apply to the classified information raised. 10
- 227 Appeal period where decision involving classified information to be appealed to Court of Appeal or Supreme Court** 15
- Where any decision on any appeal or review or other proceedings involving classified information is to be appealed to the Court of Appeal or to the Supreme Court, the appeal must be lodged within 10 days of the appellant being notified of the decision being appealed against. 20
- 228 Priority or urgency to be afforded to proceedings involving classified information**
- (1) A court and the Tribunal must give priority to setting down and determining any proceedings involving classified information. 25
- (2) A court must treat with urgency proceedings involving classified information in relation to a person—
- (a) whose deportation has been ordered under **section 152**; or
- (b) who is being detained under **Part 9**.
- (3) Nothing in this section prevents a party to proceedings in the Tribunal or a court from requesting urgency in any other case. 30
- 229 Relevant agency entitled to be party to proceedings involving classified information**
- (1) Where any proceedings involving classified information are to be heard by a court or the Tribunal, the relevant agency is entitled to be a party to the proceedings. 35

- (2) The chief executive of the Department must notify the chief executive of the relevant agency about any proceedings involving classified information.

230 Withdrawal or updating of classified information

- (1) This section applies where proceedings involving classified information are being heard by a court or the Tribunal. 5
- (2) The chief executive of the relevant agency may, at any stage before the proceedings are determined,—
- (a) withdraw any or all of the classified information from the proceedings: 10
- (b) update or add to the classified information.
- (3) Where the chief executive of the relevant agency updates or adds to the classified information, the court or Tribunal must treat the new or updated information in the same way as classified information originally provided to it under **section 231(1)**. 15
- (4) If the chief executive of the relevant agency withdraws any classified information—
- (a) that classified information must be kept confidential and must not be disclosed by the court or the Tribunal; and 20
- (b) the court or Tribunal must continue to determine the proceedings—
- (i) without regard to that classified information; and
- (ii) in the case of an appeal or review proceedings, as if that information had not been available in making the decision subject to the appeal or review proceedings; and 25
- (c) the chief executive of the relevant agency may direct any person to return the classified information to the relevant agency. 30

231 Obligation and powers of courts and Tribunal to protect security in proceedings involving classified information

- (1) The chief executive of the relevant agency must provide to the courts or the Tribunal (as appropriate) classified information— 35
- (a) used in making a decision that is appealed or subject to review proceedings in accordance with this Act; or
- (b) first raised in the course of an appeal to the Tribunal, or in any proceedings under **section 137**.

- (2) The courts and the Tribunal must keep confidential and must not disclose any information provided as classified information, even if they consider that the information does not meet the criteria set out in **section 5(2) and (3)**, unless the chief executive of the relevant agency consents to its release. 5
- (3) **Subsection (2)** applies both during and after completion of proceedings involving classified information.
- (4) The courts and the Tribunal must receive or hear any information provided as classified information, and any submissions in relation to that information, in the absence of all persons other than— 10
- (a) the Judge or Judges hearing the case:
 - (b) the chief executive of the relevant agency, or that chief executive's security-cleared representative:
 - (c) the Minister, or the Minister's security-cleared representative: 15
 - (d) the special advocate (if any):
 - (e) a person appointed as amicus curiae by a court (if any):
 - (f) any person authorised by the court or Tribunal to provide administrative assistance in the proceeding and who has an appropriate security clearance. 20
- (5) In any proceedings involving classified information, a court or the Tribunal may, in order to comply with **subsection (2)**, make any 1 or more of the following orders: 25
- (a) an order forbidding publication of any report or account of the whole or any part of the evidence adduced or the submissions made in the proceedings: 25
 - (b) an order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of any witness or witnesses: 30
 - (c) subject to **subsection (4)**, an order excluding the appellant, the appellant's representative, staff of the court or the Tribunal, or any other person from the whole or any part of the court's or the Tribunal's proceedings.
- (6) An order made under **subsection (5)**— 35
- (a) may be made for a limited period or permanently; and
 - (b) if it is made for a limited period, may be renewed for a further period or periods by the court or the Tribunal; and
 - (c) if it is made permanently, may be reviewed by the court or the Tribunal at any time. 40

- (7) Nothing in this section limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest. 5

Compare: 1987 No 74 s 82(1), (3)

232 Ancillary general practices and procedures to protect classified information

- (1) Any general practices and procedures that may be necessary to implement the procedures specified in **sections 214 to 218, 224 to 239, 288, and 289** or to ensure that classified information is protected in all proceedings involving classified information must, as soon as practicable after the commencement of this section, be agreed between— 10
- (a) the chair of the Tribunal and the Attorney-General, in relation to proceedings involving classified information heard by the Tribunal; and 15
- (b) the Chief Justice and the Attorney-General, in relation to all other proceeding. 20
- (2) Without limiting the generality of **subsection (1)**, general practices and procedures may be agreed under that subsection on the following matters:
- (a) measures relating to the physical protection of the classified information during and after all proceedings involving classified information: 25
- (b) the manner in which the classified information may be provided to the Tribunal or the court:
- (c) measures to preserve the integrity of the classified information until any appeals are withdrawn or finally determined. 30

233 No disqualification by reason of security briefing

No Judge or member of the Tribunal is disqualified from hearing any proceedings involving classified information by reason of having received a briefing on security matters from any agency. 35

234 Restriction on appeal and review

- (1) No appeal or review proceedings may be brought in respect of the use of classified information for the purposes of this Act except as provided for in this Act.
- (2) To avoid doubt and without limiting **subsection (1)** or **section 223**, no appeal lies and no review proceedings may be brought in respect of—
- (a) a determination of the Minister under **section 30** that classified information may be used in making a decision under this Act: 10
 - (b) the form or content of a summary prepared and provided under **section 34** (including any updated summary):
 - (c) the form or content of information provided under **section 35**: 15
 - (d) the form or content of a presentation made by the chief executive of the relevant agency under **section 215**:
 - (e) the form or content of a summary developed, provided, and approved under **section 216** (including any updated summary), including the decision whether or not to modify, and the nature of any modifications to, the summary: 20
 - (f) a decision to withdraw, update, or add to classified information.
- (3) No review proceedings may be brought in relation to any appeal before the Tribunal to which **sections 214 to 218** apply unless the Tribunal has issued final determinations on all matters subject to the appeal. 25

Special advocates

- 235 Role of special advocates** 30
- (1) The role of a special advocate is to represent the interests of an appellant in any proceedings involving classified information in relation to the classified information, and in particular, subject to any direction of the Tribunal or a court,—
- (a) to make oral submissions at any hearing where **section 231(4)** applies and to cross-examine witnesses at any such hearing: 35
 - (b) to make written submissions to the Tribunal or court.
- (2) It is not the role of a special advocate to lodge or commence any proceedings. 40

- (3) The chief executive of the relevant agency must provide the special advocate with access to the classified information that was—
- (a) used in making a decision being appealed against; or
 - (b) first raised in the course of an appeal to the Tribunal or in a proceeding under **section 137**; or
 - (c) used or relevant in making a decision under **Part 9**.
- (4) A special advocate must keep confidential and must not disclose classified information, except as expressly provided under this Act.
- (5) The chief executive must meet the actual and reasonable costs of a special advocate on a basis agreed between the special advocate and the designated agency.
- 236 Recognition of special advocates**
- (1) A special advocate is a lawyer (as defined in section 6 of the Lawyers and Conveyancers Act 2006) who has been recognised as a special advocate by an agency designated for the purpose by the Prime Minister.
- (2) The designated agency may recognise a lawyer as a special advocate if—
- (a) the lawyer holds an appropriate security clearance given by the chief executive of the Ministry of Justice; and
 - (b) the designated agency is satisfied that the lawyer has appropriate knowledge and experience to be recognised as a special advocate.
- (3) Recognition under this section continues for 5 years, but the designated agency may recognise a lawyer as a special advocate for further 5-year periods.
- (4) The designated agency may withdraw a special advocate's recognition at any time for disability affecting performance of duties, bankruptcy, neglect of duty, misconduct proved to the satisfaction of the agency, or if the special advocate ceases to hold an appropriate security clearance.
- (5) The designated agency must, in addition to recording the persons recognised by it as special advocates, maintain a list of special advocates who may represent persons in proceedings under **Part 9**, to cover the situation where—

- (a) a person has not yet appointed a special advocate to represent him or her in any appeal or review proceedings involving classified information; and
- (b) classified information may be used in determining an application made under that Part. 5

237 Appointment of special advocate in individual case

- (1) Where it is likely that a decision under this Act (other than on appeal to the Tribunal) will be made using classified information, and that the decision may be appealed, the Minister must notify the agency referred to in **section 236** (the **designated agency**) of that fact. 10
- (2) If a person subject to a decision made using classified information appeals against that decision, the designated agency must provide the names of at least 3 possible special advocates to the person who is the subject of the decision, within 3 days after the person is notified of the decision. 15
- (3) The designated agency must not provide the name of a special advocate unless the special advocate is reasonably available, having regard to the time frames in this Part.
- (4) **Subsection (5)** applies where— 20
 - (a) classified information is first raised or proposed to be raised in the course of an appeal to the Tribunal; or
 - (b) a person appeals against a decision of the Tribunal on an appeal involving classified information; or
 - (c) a person brings review proceedings in relation to a decision made under this Act using classified information (whether the decision was made by the Minister or is a determination of the Tribunal). 25
- (5) Where this subsection applies— 30
 - (a) the chief executive or Minister (as appropriate) must notify the designated agency; and
 - (b) the designated agency must provide the names of at least 3 possible special advocates within 3 days of receiving that notification.
- (6) An appellant or other affected person must determine whether to appoint a special advocate, and which special advocate to appoint, and notify the designated agency accordingly, within 7 days of being notified of the names of possible special advocates. 35

- (7) If the appellant or other affected person does not appoint a special advocate for the purposes of the proceedings involving classified information, and a court appoints an amicus curiae, the person appointed must be a special advocate recognised under **section 236**. 5
- 238 Communication between special advocate and appellant**
- (1) When an appellant or other affected person has appointed a special advocate,—
- (a) the special advocate may communicate with the appellant, or the appellant’s representative, on an unlimited basis until the special advocate has been provided with access to the classified information; but 10
- (b) once the special advocate has been provided with access to the classified information, he or she may not communicate with any person about any matter connected with the proceedings involving classified information except in accordance with this section. 15
- (2) The chief executive of the relevant agency must provide the special advocate with access to the classified information on any date after the date that is 28 days after the date on which the appellant was provided with the names of special advocates under **section 237**. 20
- (3) A special advocate may not unreasonably refuse to be provided with access to the classified information after the date after which access may be provided under **subsection (2)**. 25
- (4) The special advocate may, without the approval of the court or Tribunal, communicate about the proceedings with—
- (a) the Judge or Judges on the court or Tribunal;
- (b) the Minister, or the Minister’s security-cleared representative; 30
- (c) the chief executive of the relevant agency, or that chief executive’s security-cleared representative;
- (d) any other person, except for the appellant or other affected person or his or her representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings. 35

- (5) A special advocate who wishes to communicate with the appellant or other affected person or that person's representative after having been given access to the classified information may submit a written communication to the Tribunal or court (as appropriate) for approval and for forwarding to the appellant or the appellant's representative. 5
- (6) The Tribunal or court must either—
- (a) forward the communication, with or without amendment, to the appellant or other affected person or that person's representative if the communication would not be likely to prejudice the interests referred to in **section 5(3)**; or 10
 - (b) decline to forward the communication, and notify the special advocate of that decision.
- (7) The Tribunal or court may consult the chief executive of the relevant agency before determining— 15
- (a) whether to forward a communication, with or without amendment, to the appellant or other affected person or that person's representative; or
 - (b) if it proposes to forward the communication, the nature of any amendments necessary; or 20
 - (c) whether to decline to forward the communication.
- (8) The Tribunal or court may—
- (a) amend a communication only if the communication would be likely to prejudice the interests referred to in **section 5(3)**, and only to the extent necessary to ensure the communication would not be likely to prejudice those interests; 25
 - (b) decline to forward a communication only if the communication would be likely to prejudice the interests referred to in **section 5(3)**, and it is not practicable to amend the communication to prevent such prejudice. 30
- (9) The appellant or other affected person may, of his or her own volition, communicate with the special advocate on any matter in accordance with **subsection (10)**. 35
- (10) The communication—
- (a) must be made in writing;
 - (b) may be made through the appellant's representative.
- (11) The special advocate must not reply to such a communication except— 40
- (a) in accordance with the manner set out in **subsection (5)**; or

- (b) in order to provide a bare acknowledgement of receipt of the communication to the appellant or other affected person or that person's representative.

239 Protection of special advocates from liability

- (1) To the extent that a special advocate is acting in accordance with the requirements of this Act, a special advocate is not guilty of—
 - (a) misconduct within the meaning of section 9 of the Lawyers and Conveyancers Act 2006; or
 - (b) unsatisfactory conduct within the meaning of section 12 of that Act.
- (2) To avoid doubt, the provisions of this Act apply despite the requirements of any practice rules made and approved under the Lawyers and Conveyancers Act 2006.
- (3) No person is personally liable for any act done or omitted to be done in good faith, in his or her capacity as a special advocate, in accordance with the requirements or provisions of this Act or of any regulations made under this Act.

Part 8

Compliance and enforcement

240 Purpose of Part

The purpose of this Part is to confer on immigration officers and other persons—

- (a) the power to obtain information in order to allow the Department to—
 - (i) detect immigration fraud or misrepresentation;
 - (ii) identify persons failing to comply with immigration-related obligations, including by breaching the conditions of their visa;
- (b) the power to locate persons who are or may be liable for deportation;
- (c) the authority for the Department to share information with other persons and agencies, to enable those persons or agencies to effectively administer and comply with legislation or to check eligibility for publicly funded services.

Power to access address information

- 241 Certificate requiring production of address information**
- (1) An immigration officer or determination officer may prepare a certificate in the prescribed form where the officer has good cause to suspect that—
- (a) a particular person may be, or may become as a result of investigations, liable for deportation; or
- (b) particular premises are being occupied or have been occupied (whether for residential purposes or otherwise) by a person who may be, or may become as a result of investigations, liable for deportation.
- (2) A certificate prepared under **subsection (1)(a)** may, where the officer believes that the person concerned may be using 1 or more aliases, include any such alias.
- (3) On being provided with a certificate prepared under **subsection (1)**, any person referred to in **section 242**, or any officer or employee of any department, agency, or body referred to in that section must produce for inspection by the officer, and provide a copy of or allow the officer to copy, any record or other information held by and reasonably available to that person, department, agency, or other body that may help to establish—
- (a) in the case of a certificate prepared under **subsection (1)(a)**, the present whereabouts of the person named in the certificate or that person's whereabouts at any time in the past; or
- (b) in the case of a certificate prepared under **subsection (1)(b)**, the name of the present occupier or any of the present occupiers of the premises or the name of the occupier or any of the occupiers of the premises at any time in the past.
- (4) **Subsection (3)** applies notwithstanding any enactment or rule of law to the contrary, and no person who provides a record or information in compliance with that subsection is liable in any civil or criminal proceedings in respect of that action.

Compare: 1987 No 74 s 64

242 Persons required to provide access to address information

The persons and bodies who may be required by certificate under **section 241** to provide access to address information are as follows:

- (a) the following government agencies:
 - (i) the New Zealand Customs Service:
 - (ii) the Ministry of Social Development:
 - (iii) the Ministry of Justice:
 - (iv) the New Zealand Police: 10
 - (v) Land Transport New Zealand:
 - (vi) the Department of Building and Housing:
 - (vii) Housing New Zealand Corporation:
 - (viii) the Department of Corrections:
 - (ix) any government agency established in substitution for, or set up to take over any relevant function of, the departments and agencies listed in **subparagraphs (i) to (viii)**: 15
- (b) education providers, in relation only to enrolled students not in compulsory education: 20
- (c) postal and courier service providers:
- (d) telecommunications service providers:
- (e) internet service providers:
- (f) subscription television service providers:
- (g) finance and banking service providers: 25
- (h) local government and regional government bodies:
- (i) insurance service providers:
- (j) providers of utilities such as electricity, gas, and water:
- (k) real estate agents:
- (l) in relation to a person whose location is being sought, the person's employer or former employer. 30

Compare: 1987 No 74 s 64 and Schedule 1

Powers of entry, inspection, etc

- ## 243 Powers of entry and inspection relating to records of accommodation providers 35
- (1) An immigration officer may exercise the powers in **subsection (2)** for the purposes of locating any person who is liable for deportation.
 - (2) Where an immigration officer believes on reasonable grounds that the information contained in any register or list kept by an 40

- accommodation provider might lead to the apprehension of any person who is liable for deportation, the officer may—
- (a) enter any part of the premises, other than a part of the premises that is a dwellinghouse, in which the officer reasonably believes the register or list is kept; and 5
 - (b) require any person appearing to have that register or list under that person's control to produce for inspection any part of the register or list that relates to any such person; and
 - (c) copy or require a person to provide a copy of any part of any register or list that is required to be produced to the officer. 10
- (3) An immigration officer may exercise the powers in **subsection (2)** at any reasonable time during which the premises are open for business, whether by day or by night and without warrant or any other authority than this section. 15
- (4) In this section, **accommodation provider** means the operator of any hotel, motel, guesthouse, motor camp, or other premises in which accommodation is offered for valuable consideration to any member of the public. 20

Compare: 1987 No 74 s 138

244 Powers of entry and inspection relating to records of employers

- (1) An immigration officer may exercise the powers in **subsection (3)** in the circumstances described in **subsection (2)** for the following purposes: 25
- (a) determining whether a person is complying with work-related conditions of the visa held by the person;
 - (b) determining whether an employer is complying with obligations under this Act; 30
 - (c) locating a person who is liable for deportation.
- (2) An immigration officer may exercise the powers in **subsection (3)** where the officer believes on reasonable grounds that—
- (a) there is kept on any business premises— 35
 - (i) any wages and time record kept by an employer in accordance with the provisions of any Act; or
 - (ii) any other document relating to the remuneration or employment conditions of an employee; and
 - (b) there may be information in that record or other document relating to a person who is— 40

- (i) not entitled under this Act to work in New Zealand or to undertake work of the relevant type or duration or for the relevant employer; or
 - (ii) otherwise not complying with obligations under this Act (including obligations as an employer); or
 - (iii) is liable for deportation. 5
- (3) An immigration officer may—
- (a) enter any part of the employer’s premises in which the officer reasonably believes a wages and time record, or any other document referred to in **subsection (2)(a)(ii)**, is kept; and 10
 - (b) require the employer or the person appearing to have the record or document to produce that record or document for inspection; and 15
 - (c) copy or require a person to provide a copy of any part of any record or document that is required to be produced to the officer.
- (4) An immigration officer may exercise the powers in **subsection (3)** at any reasonable time during which work is being carried out on the premises or the premises are open for business, whether by day or by night, without a warrant or any other authority than this section. 20

Compare: 1987 No 74 s 138

- 245 Powers of entry and inspection relating to records of education providers** 25
- (1) An immigration officer may exercise the powers in **subsection (4)** in the circumstances described in **subsection (2)** for the following purposes:
- (a) determining whether a person is complying with the study-related conditions of the visa held by the person; 30
 - (b) determining whether an education provider is complying with the provider’s obligations under this Act;
 - (c) locating a person who is liable for deportation.
- (2) Subject to **subsection (3)**, an immigration officer may exercise the powers in **subsection (4)** where the immigration officer believes on reasonable grounds that— 35
- (a) any information or record is held on an education provider’s premises; and

- (b) that information or record may relate to a person who is—
- (i) not entitled under this Act to study in New Zealand, or undertake a course of study of a particular type or duration or conducted by a particular education provider; or 5
 - (ii) otherwise not complying with obligations under this Act (including obligations as an education provider); or
 - (iii) liable for deportation. 10
- (3) The powers in **subsection (4)** may not be exercised in relation to a person undertaking compulsory education or any member of the family of such a person.
- (4) An immigration officer may—
- (a) enter any part of those premises in which the officer reasonably believes the information or record is held; and 15
 - (b) require the education provider or person appearing to have the information or record under that person's control to produce for inspection any such information or record; and 20
 - (c) copy or require a person to provide a copy of any information or record that is required to be produced to the officer.
- (5) An immigration officer may exercise the powers in **subsection (4)** at any reasonable time during which the education provider is open for business, whether by day or by night, without a warrant or any other authority other than this section. 25

Compare: 1987 No 74 s 138

Power to require production of documents, etc 30

246 Powers of immigration officer to require information and documents where offence suspected

Where an immigration officer has good cause to suspect that any person has committed an offence against this Act, the officer may, after informing the person of that suspicion and warning the person that if the person fails without reasonable excuse to comply the person may be charged with an offence against **section 307(h)**, require the person to do all or any of the following things: 35

- (a) supply the person's name and address: 40

- (b) produce for inspection documentary or other evidence of the person's identity:
- (c) produce any passport or certificate of identity relating or purporting to relate to the person, whether or not it also relates to any other person: 5
- (d) produce evidence of any visa relating or purporting to relate to the person, whether or not it relates to any other person:
- (e) surrender any passport, certificate of identity, or evidence of any visa produced under **paragraph (c) or (d)**. 10

Compare: 1987 No 74 s 136(1)

247 Power of immigration officer to require information and documents where liability for deportation suspected

- (1) If an immigration officer has good cause to suspect that a person is liable for deportation, or is a person to whom **section 105** applies, the officer may, for the purpose of establishing whether or not that is the case, and after informing the person of that suspicion, request the person— 15
 - (a) to give the person's full name (or names, where the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address: 20
 - (b) to produce to the officer—
 - (i) any passport or certificate of identity relating to the person, whether or not it also relates to any other person: 25
 - (ii) any documentary or other evidence of the person's identity:
 - (iii) any passport or certificate of identity relating to any dependent child of the person who the immigration officer also has good cause to suspect is liable for deportation, or is a person to whom **section 105** applies: 30
 - (c) to surrender to the officer any of the documents or other things produced under **paragraph (b)**:
 - (d) if the person does not currently have in his or her possession any of the documents or other things referred to in **paragraph (b)**, to give the officer details of where they can be found and who is holding them. 35
- (2) If the person refuses or fails without reasonable excuse to comply with any request under **subsection (1)**, the officer must 40

warn the person that if the refusal or failure persists the person is liable to arrest and detention under this Act.

Compare: 1987 No 74 s 138A(1), (2)

248 Powers on deportation

- (1) Where a person is liable for deportation or is a person to whom **section 105** applies,— 5
- (a) then, in addition to the powers referred to in **section 247**, an immigration officer may—
- (i) require the person to surrender any documents or other things referred to in **section 247** to the officer, or to give to the officer written authority to obtain from any other person such documents or other things held by or on behalf of the person; and 10
- (ii) require the person to produce and surrender any travel tickets or cash or security in lieu of travel tickets, held by or on behalf of the person; and 15
- (b) those documents or other things referred to in **paragraph (a)(i) and (ii)** may be used by the Crown towards effecting the person's deportation or departure.
- (2) To the extent that any documents or things surrendered or obtained under **subsection (1)** are not used for the person's deportation or departure, they must be returned to the person— 20
- (a) on the person's departure from New Zealand or on the person being granted a visa and entry permission; or 25
- (b) when the person's liability for deportation is cancelled or suspended, or otherwise ceases for any reason.

Powers at border

- 249 Immigration officer's powers to enter immigration control area** 30
- An immigration officer may, at any time of day or night, without a warrant or any authority other than this section, enter any immigration control area or any building or craft in that area for the purposes of carrying out his or her functions under this Act. 35

250 Powers at border

- (1) An immigration officer may exercise the powers in **subsections (2) and (3)** where the officer believes on reasonable grounds it is necessary for the purpose of—
- (a) detecting any offence against this Act; or 5
 - (b) apprehending any person who is liable for deportation or is, or is likely to be, a person to whom **section 105** applies; or
 - (c) processing arriving passengers, whether or not they have left the craft; or 10
 - (d) locating any stowaway; or
 - (e) deporting any person or facilitating the departure of persons to whom **section 105** applies.
- (2) An immigration officer may at any time, for a purpose described in **subsection (1)**, without a warrant or any other authority than this section, do all or any of the following things: 15
- (a) enter and search any form of craft that arrives in New Zealand;
 - (b) enter and search any land or premises in any airport or port, including any immigration control area. 20
- (3) Without limiting the power of entry and search in **subsection (2)(a) and (b)**, an immigration officer may, before the disembarkation of any person from any craft,—
- (a) interview any person; 25
 - (b) view a person's seating and identify those passengers seated with them;
 - (c) search for a person's travel and identity documents.

251 Power of entry and search of craft

- (1) An immigration officer may exercise the powers in **subsection (2)** where the officer believes, on reasonable grounds, that there is on board any craft that is within the contiguous zone or territorial sea of New Zealand, a person who, if he or she lands in New Zealand, will— 30
- (a) commit an offence against this Act; or 35
 - (b) be liable for deportation; or
 - (c) be, or be likely to be, subject to **section 105**.
- (2) An immigration officer may at any time, without a warrant or any other authority than this section, do the following things:

- (a) enter and search any craft for the purpose of determining whether there is a person to whom **subsection (1)** applies on board; and
- (b) if satisfied that there is a person to whom **subsection (1)** applies on board, exercise any power under this Act or any other Act that he or she could exercise if the craft was in New Zealand. 5
- (3) A person is not granted a visa or entry permission or does not enter New Zealand lawfully by reason only of being brought into New Zealand— 10
- (a) by an immigration officer who is exercising or has exercised powers under **subsection (2)**; or
- (b) on board a craft permitted or required to enter New Zealand by an immigration officer who is exercising or has exercised powers under **subsection (2)**. 15
- 252 Power of entry and search at border place**
- (1) An immigration officer may exercise the powers in **subsection (2)** for the purpose of—
- (a) detecting any offence against this Act; or
- (b) apprehending any person who is— 20
- (i) liable for deportation; or
- (ii) a person to whom **section 105** applies.
- (2) An immigration officer may at any time for a purpose described in **subsection (1)**, without a warrant or any other authority than this section, enter and search any border place where the officer has good cause to believe that— 25
- (a) an offence against this Act is likely to be, or is being, committed; or
- (b) a person to whom **subsection (1)(b)** applies is in the place.
- (3) In **subsection (2)**, **border place** means— 30
- (a) any part of the foreshore;
- (b) the shores or banks of a port, bay, harbour, lake, river, or other waters;
- (c) any land or premises in a port, including a containerbase, immigration control area, wharf, or transit building; 35
- (d) a pier or other structure attached to and extending from any shore or bank described in **paragraph (b)**.

*Powers relating to deportation and turnaround***253 Powers of entry and search relating to deportation**

For the purpose of serving any deportation liability notice or executing a deportation order, an immigration officer may, without further authority than this section, and by force if necessary,— 5

- (a) enter at any reasonable time by day or night any building or premises in which the officer believes on reasonable grounds that the person named in the notice or order is present; and 10
- (b) serve the notice or execute the deportation order.

Compare: 1987 No 74 s 137(1)

254 Special powers pending turnaround or deportation

Where any person is liable for deportation or is a person to whom **section 105** applies, an immigration officer has such of the following powers as are necessary to meet the entry or transit requirements of any country to which or through which the person is to travel: 15

- (a) the power to photograph and measure the person:
- (b) the power to take the person's fingerprints, palm-prints, or footprints, or an iris scan of the person. 20

Compare: 1987 No 74 s 141

255 Immigration officer may require biometric information to determine compliance with Act

(1) **Subsection (2)** applies where an immigration officer has good cause to suspect that a person— 25

- (a) is liable for deportation; or
- (b) is not complying with, or is materially breaching, the conditions of the person's visa; or
- (c) is undertaking work or a course of study where the person is not entitled to undertake that work or study under this Act; or 30
- (d) has obtained a visa under a fraudulent identity.

(2) In order to determine whether any of the matters in **subsection (1)** apply to the person, an immigration officer may require the person to allow the collection of biometric information. 35

- 256 Application for order authorising collection of biometric information**
- (1) An application may be made in accordance with this section to a District Court Judge for an order requiring a person to allow the collection of specified biometric information in any case where— 5
- (a) there is good cause to suspect that the person—
- (i) is liable for deportation; or
- (ii) is not complying with, or is materially breaching, the conditions of the person’s visa; or 10
- (iii) is undertaking work or a course of study where the person is not entitled to undertake that work or study under this Act; or
- (iv) has obtained a visa under a fraudulent identity; and 15
- (b) the person has refused to allow the collection of biometric information in response to a requirement to do so by an immigration officer under **section 255(2)**.
- (2) Every application under **subsection (1)** must be made by an immigration officer, in writing and on oath, and must set out the following particulars: 20
- (a) the facts relied on to show that there is good cause to suspect that any of the matters in **subsection (1)(a)** applies to the respondent:
- (b) the reasons why it is considered necessary to obtain a compulsion order in relation to the respondent, including the facts relied on to show that there are reasonable grounds to believe that collection of biometric information from the respondent would tend to confirm or disprove that any of the matters in **subsection (1)(a)** applies to the person. 25 30
- (3) Where an application is made under this section,—
- (a) the immigration officer must serve notice of the application on the respondent; and
- (b) both the immigration officer and the respondent are entitled to appear and to adduce evidence at the hearing of the application. 35
- (4) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law. 40

257 Judge may authorise biometric information to be collected

- (1) On the hearing of an application for a compulsion order, a District Court Judge may make an order (a **compulsion order**) requiring the respondent to allow the collection of specified biometric information if the Judge is satisfied that—
- (a) there is good cause to suspect that any of the matters in **section 256(1)(a)** applies to the respondent; and
 - (b) there are reasonable grounds to believe that collection of biometric information from the respondent would tend to confirm or disprove that any of the matters in **section 256(1)(a)** applies to the person; and
 - (c) the person has refused to allow the collection of biometric information in response to a requirement to do so by an immigration officer under **section 255(2)**; and
 - (d) in all the circumstances, it is reasonable to make the order.
- (2) In considering whether or not to make a compulsion order, the Judge must have regard to any matter the Judge considers relevant, including—
- (a) any reasons given by the respondent for opposing the making of the order sought; and
 - (b) any evidence regarding the importance, to the investigation of the relevant matter, of obtaining biometric information from the respondent.

258 Further applications for compulsion order

- (1) The fact that a compulsion order has previously been sought or made in respect of a matter, whether or not the previous application or order related to the same person, does not prohibit—
- (a) the making of an application under **section 256** for a compulsion order in respect of a matter; or
 - (b) a Judge from making a compulsion order in respect of a matter.
- (2) Notwithstanding anything in this section, where a further application for a compulsion order is made under **section 256** in respect of a matter in relation to which a previous application under **section 256** has been made, the Judge may refuse to make the order sought if he or she is satisfied that the further application is vexatious or an abuse of the process of the court.

*Powers generally***259 Immigration officer may have assistance**

For the purpose of performing his or her functions under this Part, an immigration officer may be accompanied, if he or she thinks fit, by any other employee of the Department or by a customs officer. 5

260 Police to have powers of immigration officers

Every member of the police has all the powers of an immigration officer under any of the provisions of **sections 243 to 259**.

Disclosure of immigration information to other agencies, bodies, or persons 10**261 Disclosure of immigration information etc for corrections purposes**

- (1) The purpose of this section is to facilitate the exchange of information between the Department and the department of State for the time being responsible for the administration of the Corrections Act 2004 (the **responsible department**) to— 15
- (a) enable the responsible department to identify the immigration status of any person who has been sentenced to imprisonment or who has received a community-based sentence; and 20
- (b) assist the Minister or an immigration officer to exercise any power under this Act to determine that a person is liable for deportation or to deport any person.
- (2) The chief executive and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing from time to time for the exchange of information under this section. 25
- (3) For the purposes of this section, the chief executive of the responsible department may, in accordance with any arrangements in writing made under **subsection (2)**, supply to the chief executive any identifying information about persons who have been sentenced to imprisonment or, if authorised by regulations made under the Corrections Act 2004, who have received a community-based sentence. 30 35
- (4) If identifying information is supplied under **subsection (3)** in respect of persons who have been sentenced to imprisonment or who have received a community-based sentence, the chief

- executive may compare that information with any information held by the Department that relates to that person.
- (5) If identifying information is supplied under **subsection (3)** in relation to a person who has been sentenced to imprisonment or who has received a community-based sentence and the Department has immigration information about that person, the chief executive may, for the purposes of this section and in accordance with any arrangements in writing made under **subsection (2)**, supply to the chief executive of the responsible department the following information relating to that person:
- (a) identifying information about the person;
 - (b) the person's immigration status under this Act and—
 - (i) any changes to that status;
 - (ii) any action taken under this Act in respect of that person;
 - (iii) any proposed action to be taken under this Act in relation to that person.
- (6) The chief executive may, for the purpose of this section, supply the information requested to any officer or employee or agent of the responsible department who is authorised for the purpose by the chief executive of that department.
- (7) Information supplied under **subsection (3)** may be supplied in any form that is determined by agreement between the chief executive and the chief executive of the responsible department.
- (8) In this section, **identifying information**, in relation to any person, includes the person's full name, date and place of birth, gender, any unique identifying number used by the responsible department, citizenship, and any known alias.
- Compare: 1987 No 74 s 141AC

262 Disclosure of immigration information for fines enforcement purposes

- (1) The purpose of this section is to facilitate the exchange of information between the Department and the department of State for the time being responsible for the enforcement of fines (the **responsible department**) to enable—
- (a) the responsible department to locate any person who is in serious default in the payment of any fine; and
 - (b) appropriate fines enforcement action to be taken against that person.

- (2) For the purpose of this section, an authorised officer may supply to the chief executive any identifying information about a person who is in serious default.
- (3) If identifying information is supplied under **subsection (2)** in relation to a person in serious default, the chief executive may compare that information with any information held by the Department that relates to that person. 5
- (4) If identifying information is supplied under **subsection (2)** in relation to a person in serious default and the Department has immigration information relating to that person, the chief executive may, for the purpose of this section, supply to an authorised officer any of the following information relating to that person held by the Department: 10
- (a) the person's full name:
 - (b) the person's date of birth: 15
 - (c) the person's sex:
 - (d) the person's nationality:
 - (e) the person's address:
 - (f) the person's occupation:
 - (g) the expiry date of any visa granted to the person (if applicable): 20
 - (h) the date that the person is expected to return to New Zealand (if applicable).
- (5) The chief executive and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them— 25
- (a) the frequency with which information may be supplied; and
 - (b) the form in which information may be supplied; and
 - (c) the method by which information may be supplied. 30
- (6) In this section and **section 263**, unless the context otherwise requires,—
- authorised officer** means any officer, employee, or agent of the responsible department who is authorised by the chief executive of that department to supply information to, or receive information from, the chief executive under this section 35
- fine** means—
- (a) a fine within the meaning of section 79 of the Summary Proceedings Act 1957 or an amount of reparation: 40

- (b) a fine or other sum of money to which any of sections 19 to 19E of the Crimes Act 1961 applies:
 - (c) a fine to which any of sections 43 to 46 of the Misuse of Drugs Amendment Act 1978 applies
- finer enforcement action** includes the execution of a warrant to arrest a person in respect of the non-payment of the whole or any part of any fine 5
- identifying information** means personal information that identifies an individual, which may include the individual's passport number 10
- reparation** means—
- (a) any amount that is required to be paid under a sentence of reparation; or
 - (b) any amount that is required to be paid under any order of reparation as defined in section 145D of the Sentencing Act 2002 15
- serious default**, in relation to a person, means that—
- (a) the person owes—
 - (i) an amount of \$1,000 (or any other lesser amount that may be fixed by the Governor-General by Order in Council) or more in relation to 1 or more unpaid fines (other than an amount of reparation); or
 - (ii) any amount of reparation; and
 - (b) a warrant to arrest the person has been issued in respect of the non-payment of the whole, or of any part, of any amount referred to in **paragraph (a)**; and 25
 - (c) the warrant has not been withdrawn or executed.

Compare: 1987 No 74 ss 141AD, 141AE

- 263 No Crown liability to third parties for fines enforcement action** 30
- (1) This section applies to the taking of any fines enforcement action against a person who is alleged to be in serious default (the **alleged defaulter**), or to the questioning of any alleged defaulter with a view to taking any fines enforcement action, immediately— 35
 - (a) after the arrival of the alleged defaulter in New Zealand; or
 - (b) before the departure of the alleged defaulter from New Zealand. 40

- (2) The Crown is not liable to any person (for example, an airline operator or a passenger on an airline) for any loss or damage caused as a result of, or in connection with, the actions described in **subsection (1)**, unless the person or persons taking those actions, or any employee of the Crown performing any function directly or indirectly connected with those actions, has not acted in good faith or has been grossly negligent. 5
- (3) Nothing in **subsection (2)** applies to or affects any question of the liability of the Crown to the alleged defaulter. 10
Compare: 1987 No 74 s 141AF
- 264 Chief executive may supply information concerning specified fines defaulters to commercial carriers**
- (1) This section applies if information is supplied to the chief executive under section 280F(1) of the Customs and Excise Act 1996. 15
- (2) The chief executive may supply the information to any person or persons concerned with the movement of persons out of New Zealand.
- (3) The information given under **subsection (2)**—
(a) may be given in any form and by any method that the chief executive thinks appropriate; and 20
(b) may, in whole or in part, be in the form of a code representing the information.
- (4) In this section,—
person concerned with the movement of persons out of New Zealand means an owner or an operator of a craft that carries persons from New Zealand to a point outside New Zealand, for commercial purposes, or the agent of an owner or operator of that kind 25
specified fines defaulter has the meaning given by section 280F of the Customs and Excise Act 1996. 30
Compare: 1987 No 74 s 141AG
- 265 Disclosure of immigration information in relation to social security matters**
- (1) The purpose of this section is to facilitate the disclosure of information by the Department to the department of State for the time being responsible for the administration of the Social 35

- Security Act 1964 (the **responsible department**) for the purposes of verifying—
- (a) the entitlement or eligibility of any person to or for any benefit; or
 - (b) the amount of any benefit to which any person is or was entitled or for which any person is or was eligible. 5
- (2) For the purpose of this section, the chief executive of the responsible department may from time to time, in accordance with arrangements in writing made between that chief executive and the chief executive of the Department, request the chief executive of the Department to supply, in respect of the following persons, the information specified in **subsection (3)**:
- (a) persons who the chief executive of the Department believes are in New Zealand unlawfully;
 - (b) persons who are in New Zealand lawfully, but only by virtue of being the holder of a temporary entry class visa; 10
 - (c) persons who have made a claim to be recognised, or have been recognised, as a refugee or protected person;
 - (d) persons who have lodged an appeal against the decision of a determination officer to decline a claim to be recognised as a refugee or protected person; 20
 - (e) persons whose appeal against the decision of a determination officer to decline such a claim has been determined; 25
 - (f) persons who have been deported.
- (3) The information referred to in **subsection (2)** is as follows:
- (a) the person's full name;
 - (b) any aliases known to be used by the person;
 - (c) the person's date of birth; 30
 - (d) the person's nationality;
 - (e) the person's address;
 - (f) the start date of any visa granted to the person;
 - (g) the expiry date of any visa granted to the person;
 - (h) the date of the person's deportation from New Zealand (if applicable); 35
 - (i) the decision of a determination officer in relation to the person's claim (if any) for recognition as a refugee or protected person;
 - (j) whether the person has lodged an appeal against a decision referred to in **paragraph (h)**; 40

- (k) the outcome of any appeal referred to in **paragraph (j)**.
- (4) On receipt of a request made under **subsection (2)**, the chief executive may, for the purpose of this section, supply the information requested to any officer or employee or agent of the responsible department who is authorised for the purpose by the chief executive of that department. 5
- (5) Information supplied pursuant to a request made under **subsection (2)** may be supplied in such form as is determined by agreement between the chief executive and the chief executive of the responsible department. 10
- (6) In this section and **section 266**, unless the context otherwise requires, **benefit** has the same meaning as in section 3(1) of the Social Security Act 1964, and includes—
- (a) a lump sum payable under any of sections 61DB, 61DC, and 61DD of that Act; 15
- (b) any special assistance granted out of the Crown Bank Account from money appropriated by Parliament under section 124(1)(d) or (da) of that Act.

Compare: 1987 No 74 s 141A

- 266 Disclosure of social security information for immigration purposes** 20
- (1) The purpose of this section is to facilitate the disclosure of information by the department of State for the time being responsible for the administration of the Social Security Act 1964 (the **responsible department**) to the Department for the purpose of enabling the Department to recover from a sponsor (as defined in **section 46**) the costs of any benefit paid to a person that are recoverable under an undertaking made under **section 46**. 25
- (2) For the purpose of this section, the chief executive may, from time to time, in accordance with arrangements in writing made between the chief executive and the chief executive of the responsible department, request the chief executive of the responsible department to supply, in respect of persons in relation to whom an undertaking has been made under **section 46** relating to the payment of a benefit the information specified in **subsection (3)**. 30 35
- (3) The information referred to in **subsection (2)** is as follows:
- (a) the person's full name and gender:

- (b) any aliases known to the department to be used by the person:
 - (c) the person's date of birth:
 - (d) the person's address:
 - (e) the nature of benefit provided to the person (if any): 5
 - (f) the amount of benefit provided to the person (if any):
 - (g) any unique identifying number used by the responsible department.
- (4) On receipt of a request made under **subsection (2)**, the chief executive of the responsible department may, for the purpose of this section, supply the information requested to any officer or employee or agent of the Department who is authorised for the purpose by the chief executive. 10
- (5) Information supplied pursuant to a request made under **subsection (2)** may be supplied in such form as is determined by agreement between the chief executive and the chief executive of the responsible department. 15
- 267 Disclosure of immigration information to verify eligibility for publicly funded services**
- (1) The purpose of this section is to facilitate the disclosure of information by the Department to a provider of any publicly funded service to enable the service provider to determine— 20
- (a) a person's eligibility for access to the publicly funded service; or
 - (b) where a person has been provided with the publicly funded service, the person's liability to pay for the service provided. 25
- (2) For the purpose of this section, an authorised officer may supply to the chief executive any identifying information about a person who is seeking access to, or has been provided with, a publicly funded service. 30
- (3) If identifying information is supplied under **subsection (2)**, the chief executive may disclose to an authorised officer, for the purpose of this section, any of the following information: 35
- (a) identifying information about the person:
 - (b) the person's immigration status under this Act, including the conditions (if any) that relate to the person's immigration status, and—
 - (i) any changes to that status; and

- (ii) any action taken under this Act in respect of that person:
- (c) where relevant to the matter to be determined by the service provider, the immigration status of another person associated with the person who is the subject of the determination (such as the spouse, civil union partner, de facto partner, or parent of that person), including the conditions (if any) that relate to the other person's immigration status, and—
- (i) any changes to that status; and
- (ii) any action taken under this Act in respect of that other person.
- (4) The disclosure of information under **subsection (3)** must be in accordance with an agreement between the chief executive and the service provider concerned that complies with **subsections (5) and (6)**.
- (5) For the purposes of **subsection (4)**, an agreement—
- (a) must be in writing; and
- (b) must state criteria for the disclosure of information under it; and
- (c) must state, in respect of the information to be disclosed,—
- (i) the use the service provider may make of it; and
- (ii) either—
- (A) that the service provider must not disclose it to any other agencies, bodies, or persons; or
- (B) the other agencies, bodies, or persons to which the service provider may disclose any of it, and the extent to which and conditions subject to which the service provider may do so; and
- (d) may state—
- (i) the form in which information may be disclosed;
- (ii) the method by which information may be disclosed; and
- (e) may be varied from time to time.
- (6) The chief executive—
- (a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and

- (b) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and
- (c) as soon as practicable after conducting a review required to be taken under **paragraph (b)**, must report the result to the Privacy Commissioner. 5
- (7) The Privacy Commissioner must not require the chief executive to undertake a review of an agreement under **subsection (6)(b)** within 12 months of last doing so.
- (8) Where the Department has obtained information about a person from a service provider under this section, the Department must not use that information for the purpose of taking adverse action against the individual. 10
- (9) The chief executive must ensure that each annual report of the Department includes information in relation to any agreements between the chief executive and a service provider under this section, including information about— 15
- (a) the number of agreements; and
- (b) an outline of each agreement; and
- (c) the number of cases in which the accuracy of the information disclosed by the chief executive was challenged. 20
- (10) In this section,—
- authorised officer** means any officer, employee, or agent of the service provider who is authorised by the service provider to supply information to, or receive information from, the chief executive under this section 25
- identifying information** means personal information that identifies an individual, which may include the person's full name, date and place of birth, gender, and any known alias
- publicly funded service** means a service where eligibility for access to the service or liability to pay for the service— 30
- (a) is determined by or under a statute; and
- (b) is related to a person's immigration status.
- 268 Disclosure of information to employers**
- (1) The purpose of this section is to facilitate the disclosure of information by the Department to an employer to enable the employer to verify that a person is entitled under this Act to work in the employer's service. 35

- (2) On receipt of a request from an employer, the chief executive may, for the purpose of this section, disclose the information specified in **subsection (4)** to the employer.
- (3) The chief executive must not disclose the information specified in **subsection (4)** unless satisfied that the request— 5
- (a) has been made by an employer in New Zealand; and
 - (b) is for the purpose of enabling the employer to verify that a person is entitled under this Act to work in the employer's service.
- (4) The information that may be disclosed under this section is as follows: 10
- (a) whether the person is entitled to undertake that work in New Zealand;
 - (b) if the person is entitled to undertake that work in New Zealand,— 15
 - (i) the duration of the entitlement; and
 - (ii) any conditions imposed on that entitlement.
- (5) Where the chief executive discloses information under this section to an employer, the employer must be informed that he or she must comply with the requirements of the Privacy Act 1993. 20

269 Disclosure of information overseas

- (1) The chief executive may disclose any information specified in **section 270** to an overseas agency, body, or person whose functions include— 25
- (a) the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; or
 - (b) the processing of international passengers; or
 - (c) border security.
- (2) The disclosure of information under **subsection (1)** must be— 30
- (a) in accordance with an agreement between the chief executive and the agency, body, or person concerned that complies with **subsections (3) and (4)**; or
 - (b) in accordance with **subsection (7)**.
- (3) The chief executive must not enter into an agreement for the purposes of **subsection (2)(a)** unless satisfied that it is justified to help prevent, identify, or respond to violations of New Zealand law or,— 35
- (a) in the case of an agreement with an international agency or body, to help prevent, identify, or respond to the 40

- kinds of actions that the agency or body has a function of preventing, identifying, or responding to; or
- (b) in any other case, to help prevent, identify, or respond to violations of the law of the state concerned.
- (4) For the purposes of **subsection (2)(a)**, an agreement— 5
- (a) must be in writing; and
- (b) must state criteria for the disclosure of information under it; and
- (c) must state, in respect of the information to be disclosed,— 10
- (i) the use the agency, body, or person may make of it; and
- (ii) either—
- (A) that the agency, body, or person must not disclose it to any other agency, body, or person; or 15
- (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and 20
- (d) may state—
- (i) the form in which information may be disclosed;
- (ii) the method by which information may be disclosed; and 25
- (e) may be varied from time to time.
- (5) The chief executive—
- (a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and 30
- (b) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and
- (c) as soon as practicable after conducting a review required to be undertaken under **paragraph (b)**, must report the result to the Privacy Commissioner. 35
- (6) The Privacy Commissioner must not require the chief executive to undertake a review of an agreement under **subsection (5)(b)** within 12 months of last doing so.
- (7) The chief executive may disclose information to an overseas agency, body, or person if— 40

- (a) the functions of the agency, body, or person include the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; and
 - (b) the information is disclosed subject to conditions stating—
 - (i) the use the agency, body, or person may make of it; and
 - (ii) either—
 - (A) that the agency, body, or person must not disclose it to any other agency, body, or person; or
 - (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and
 - (c) the chief executive makes and keeps a record of—
 - (i) the information that was disclosed; and
 - (ii) the agency, body, or person to which it was disclosed; and
 - (iii) the conditions subject to which it was disclosed.
- (8) The chief executive must not disclose any information under **subsection (7)** unless satisfied that it relates to a suspected violation of New Zealand law or,—
- (a) in the case of disclosure to an international agency or body, to a suspected action of a kind whose prevention or identification, or responding to which, is among the functions of the agency or body;
 - (b) in any other case, to a suspected violation of the law of the state concerned.

Compare: 1987 No 74 s 141AA

270 Information that may be disclosed under section 269

- (1) The information that may be disclosed under **section 269** is—
- (a) airline passenger and crew lists;
 - (b) craft movements (which may include passenger and crew lists);
 - (c) past travel movements of specified people;
 - (d) previous convictions of specified people;
 - (e) general history of specified people (which may include associates and networks):

- (f) modus operandi of specified people:
 - (g) known currency and other financial transactions of relevant interest, including involvement in money laundering:
 - (h) intelligence analysis assessments and reports: 5
 - (i) details of mail interceptions:
 - (j) personal identification details (which may include photographs, distinguishing features, and details of identity or travel documents):
 - (k) names and details of immigration personnel and transport personnel: 10
 - (l) details of known or suspected involvement of people in illicit activities:
 - (m) details of any visa held by a person.
- (2) **Section 269** does not prevent or limit any disclosure of information otherwise than under that section that may be required or authorised by or under law, or any treaty, agreement, or arrangement concluded by the Government of New Zealand. 15
- Compare: 1987 No 74 s 141AB

Part 9

20

Detention and monitoring

271 Purpose of Part

The purpose of this Part is to establish a tiered detention and monitoring regime in order to ensure—

- (a) the integrity of the immigration system through providing for the management of persons who are required to leave New Zealand; and 25
- (b) the safety and security of New Zealand where a person who is liable for deportation may constitute or be suspected of constituting a threat or risk to security. 30

Arrest and detention

272 Persons liable to arrest and detention

- (1) Subject to **subsection (2)**, the following persons are liable to arrest and detention under this Part:
- (a) persons who are refused entry permission: 35
 - (b) persons who are liable for deportation:
 - (c) persons who are subject to a deportation order or whose departure under **section 107** is being effected:

- (d) persons who are suspected by an immigration officer or a member of the police to be liable, or about to be liable, for deportation and who refuse upon request to provide satisfactory evidence of their identity when requested under **section 247:** 5
- (e) persons who are, on reasonable grounds, suspected by an immigration officer or a member of the police to constitute a threat or risk to security.
- (2) The following persons are not liable to arrest and detention under this Part: 10
- (a) persons who are recognised as protected persons:
- (b) persons who are recognised as refugees, other than such persons who have been served with a deportation liability notice stating that a determination officer has determined that the deportation is not prohibited under **section 153.** 15
- 273 Implications of liability to arrest and detention**
- Where a person is liable to arrest and detention under **section 272,**—
- (a) the person may be subject to the 4-hour limited detention by an immigration officer provided for in **section 274:** 20
- (b) the person may be arrested and detained without warrant for a period not exceeding 96 hours by a member of the police in accordance with **section 275:** 25
- (c) an immigration officer may agree to residence and reporting requirements with the person in accordance with **section 277:**
- (d) the person may be detained in custody under a warrant of commitment issued under **section 279 or 280:** 30
- (e) the person may be released on conditions by a District Court Judge under **section 282 or 283.**
- 274 Limited power of detention for up to 4 hours**
- A person liable to arrest and detention under this Part may be detained by an immigration officer for a purpose set out in **section 275** until the earliest of— 35
- (a) the exercise by a member of police of the power of arrest and detention under **section 275;** or
- (b) the delivery of the person into custody; or

- (c) the person no longer being liable to arrest and detention under this Part; or
- (d) the elapsing of 4 hours since the detention commenced.

Compare: 2004 No 50 s 103

- 275 Initial period of detention for up to 96 hours without warrant** 5
- (1) Where a person is liable to arrest and detention under this Part, a member of the police may arrest the person without warrant and place him or her in custody.
 - (2) The purpose of arrest and detention under this section is— 10
 - (a) in the case of a person to whom **section 105** applies, to detain the person in order to place him or her on the first available craft leaving New Zealand:
 - (b) in the case of a person who is liable for deportation, to deport the person, once a deportation order has been made, by placing him or her on the first available craft leaving New Zealand: 15
 - (c) in the case of a person who is suspected by an immigration officer or a member of the police to be liable for deportation and who refuses on request to supply satisfactory evidence of his or her identity when required under **section 247**, to detain the person pending satisfactory establishment of identity: 20
 - (d) in the case of a person who is suspected to constitute a threat or risk to security, to detain the person pending the making of a deportation order, or to deport the person following the making of the order by placing him or her on the first available craft leaving New Zealand: 25
 - (e) in the case of a person who has breached residence or reporting conditions, to detain the person pending a determination by a District Court Judge under **section 279 or 280**. 30
 - (3) A person arrested and detained under this section may be detained only as long as necessary to achieve the purpose of the arrest and detention without further authority than this section, but must not be detained for a period longer than 96 hours. 35

- (4) The period of 96 hours in **subsection (3)** is to be determined inclusive of any time during which the person was detained by an immigration officer under **section 274**.

276 Persons arrested and detained pending making of deportation order 5

- (1) This section applies in the case of a person arrested and detained under **section 275** on the suspicion of an immigration officer or a member of the police that the person constitutes a threat or risk to security.
- (2) If **subsection (1)** applies, a member of the police must refer the case to the Minister to determine whether or not to certify, under **section 152**, that the person constitutes a threat or risk to security. 10

Compare: 1987 No 74 s 75

277 Person may instead agree to residence and reporting requirements 15

- (1) Rather than causing a person who is liable for arrest and detention to be arrested under **section 275**, or making an application for a warrant of commitment under **section 278**, an immigration officer and the person liable for arrest and detention may agree that the person will do all or any of the following things: 20
- (a) reside at a specified place;
 - (b) report to a specified place at specified periods or times in a specified manner: 25
 - (c) provide a guarantor who is responsible for—
 - (i) ensuring compliance with any requirements agreed under this section; and
 - (ii) reporting any failure to meet those requirements;
 - (d) if the person is a refugee or protection status claimant, attend any required interview with a determination officer or with the Tribunal: 30
 - (e) undertake any other action for the purpose of facilitating the person's deportation or departure from New Zealand. 35
- (2) A decision as to whether or not to offer or agree residence and reporting requirements under **subsection (1)** is a matter for the absolute discretion of an immigration officer, and **section 26** applies in relation to such a decision.

- (3) An immigration officer may at any time vary any residence or reporting requirements under this section at the request or with the agreement of the person.
- (4) The agreement or variation of any residence or reporting requirements must be in writing and must— 5
- (a) specify the address of the place at which the person has agreed to reside; and
 - (b) list any other requirements agreed under **subsection (1) or (3)**; and
 - (c) include a warning that, if the person fails to reside at the specified place or breaches any other requirement, the person may be arrested and detained under **section 275**. 10
- (5) An immigration officer may at any time, in the officer's absolute discretion, decide to end any agreement made under **subsection (1)**, and **section 26** applies in relation to such a decision. 15
- (6) A person may be arrested and detained under **section 275**—
- (a) if an immigration officer determines that the person, without reasonable excuse,—
 - (i) has failed to reside at the specified place; or
 - (ii) has failed to comply with other agreed requirements; or 20
 - (b) if an immigration officer ends an agreement under **subsection (5)**; or
 - (c) in order to execute a deportation order or place the person on the first available craft leaving New Zealand. 25
- (7) An agreement under this section lapses and the person ceases to be bound by it when the person leaves New Zealand or otherwise ceases to be liable to arrest and detention under this Part. 30
- Compare: 1987 No 74 s 98

Warrants of commitment

278 Application for warrant of commitment

- (1) An immigration officer may apply to a District Court Judge for a warrant of commitment (or a further warrant of commitment, if appropriate) authorising a person's detention for up to 28 days in any case where it becomes apparent, in the case of a person detained in custody under this Part, that before the expiry of the period for which detention is authorised— 35

- (a) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or
 - (b) the person will not, or is unlikely to supply satisfactory evidence of his or her identity; or
 - (c) the Minister has not made, or is not likely to make, a decision as to whether or not to make a certification that the person constitutes a risk or threat to security. 5
- (2) Every application under this section—
- (a) must be made on oath; and
 - (b) must include a statement of the reasons why the person should be the subject of a warrant of commitment. 10
- (3) The Judge must determine the application under **section 279, 280, or 285**, as appropriate.

Compare: 1987 No 74 s 128(8)

279 Decision on application for warrant of commitment 15

- (1) On an application for a warrant of commitment, the Judge—
- (a) must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment, order that the person be released from custody immediately: 20
 - (b) in any other case, either—
 - (i) issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days; or 25
 - (ii) if the Judge is not satisfied that detention is warranted, order the person's release from custody on conditions under **section 282**.
- (2) A Judge may issue a warrant of commitment on the application of an immigration officer if satisfied, on the balance of probabilities, that the person in custody is the person named in the application and that any 1 or more of the following applies: 30
- (a) a craft is likely to be available, within the proposed period of the warrant of commitment, to take the person from New Zealand: 35
 - (b) the reasons why a craft was not available to take the person from New Zealand are continuing and are likely to continue, but not for an unreasonable period:

- (c) the other reasons the person was not able to leave New Zealand are still in existence and are likely to remain in existence, but not for an unreasonable period:
 - (d) the person has not supplied satisfactory evidence of his or her identity. 5
- (3) For the purposes of **subsection (2)**, reasons why a craft was not available to take a person from New Zealand, or other reasons a person was not able to leave New Zealand, do not continue for an unreasonable period by reason only of the fact that the person is currently a claimant who claimed refugee or protection status only after the person was— 10
- (a) served with a deportation liability notice; or
 - (b) arrested and detained for the purpose of deportation or effecting the person's departure under **section 107**.
- (4) If **subsection (2)** does not apply, the Judge may, nevertheless, make a warrant of commitment if it is, in all the circumstances, in the public interest to do so. 15
- (5) In determining whether or not to issue a warrant of commitment, or whether to order the person's release on conditions, the Judge must have regard to, amongst other things, the need to seek an outcome that maximises compliance with this Act. 20
- (6) Unless there are exceptional circumstances, the Judge must not release the person on conditions if—
- (a) the identity of the person is unknown; or
 - (b) the person's identity has not been established to the satisfaction of the Court; or 25
 - (c) a direct or indirect reason for the person being unable to leave New Zealand is, or was, some action or inaction by the person occurring after the person was—
 - (i) served with a deportation liability notice; or 30
 - (ii) arrested and detained for the purpose of deportation or effecting the person's departure under **section 107**.

Compare: 1987 No 74 s 60

280 Decision on warrant where threat or risk to security involved 35

- (1) This section applies where an immigration officer applies for a warrant of commitment to authorise the detention of a person—

- (a) who was arrested and detained under **section 275** on the suspicion of a member of police or immigration officer that the person constitutes a threat or risk to security; or
 - (b) whose deportation has been ordered under **section 152**.
- (2) The District Court Judge must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment or deportation order (as the case may be), order that the person be released from custody immediately. 5
- (3) Except where **subsection (2)** applies, the Judge must— 10
- (a) issue a warrant of commitment in the prescribed form authorising the person's detention in a place named in the warrant for a period of up to 28 days; or
 - (b) if satisfied that the release of the person would not be contrary to the public interest, order that the person be released on conditions under **section 283** pending the person's deportation from New Zealand. 15

281 Warrant of commitment

- (1) A warrant of commitment authorises the manager of the prison or the person in charge of the premises identified in the warrant to detain the person to whom the warrant relates until the earliest of the following: 20
- (a) in the case of a person to whom **section 105** applies, the person is delivered into the custody of an immigration officer or a member of the police for the purpose of placing the person on the first available craft to leave New Zealand: 25
 - (b) in the case of a person liable for deportation, the person is delivered into the custody of an immigration officer or a member of the police for the purpose of executing the deportation order: 30
 - (c) written notification is received from an immigration officer that the person has ceased to be liable to arrest and detention under this Part:
 - (d) a Judge orders the release of the person: 35
 - (e) the warrant of commitment expires.
- (2) The period for which detention is authorised by a warrant of commitment must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after 40

the date on which the person is again taken into custody under this Act.

Compare: 1987 No 74 s 128

- 282 Court may instead release person on conditions**
- (1) Where a Judge orders a person's release on conditions under **section 279(1)(b) or 285(3)**, the conditions imposed on release may be any conditions that the Judge thinks fit to impose in the circumstances, including all or any of the following:
- (a) a condition that the released person must reside at a specified place: 10
 - (b) a condition that the released person must report to an office of the Department or a police station at specified periods or times in a specified manner:
 - (c) if the person is a refugee or protection status claimant, a condition that the released person must attend any required interview with a determination officer or with the Tribunal: 15
 - (d) a condition that the released person provide a guarantor who is responsible for—
 - (i) ensuring compliance with any conditions imposed under this section; and 20
 - (ii) reporting any failure to meet those conditions:
 - (e) a condition that the person take a specified action for the purpose of facilitating the person's deportation or departure from New Zealand. 25
- (2) Where conditions are imposed on a released person under **subsection (1)**,—
- (a) the conditions must be notified in writing to the person before his or her release, and take effect on release; and
 - (b) the notice of conditions must include a warning that, if the person fails to adhere to, or breaches, any condition, the person may be arrested and detained under **section 275**. 30
- (3) Conditions imposed under this section may be varied at any time— 35
- (a) by a District Court Judge on the application of the person released or an immigration officer under **section 287**:

- (b) by consent between the released person and an immigration officer, if the order imposing the conditions so provides.
- (4) A variation of a condition under **subsection (3)**—
- (a) takes effect immediately; but 5
- (b) must be reduced to writing, and notified to the released person, as soon as practicable.
- (5) A person may be arrested and detained under **section 275**—
- (a) if an immigration officer determines that the person, without reasonable excuse,— 10
- (i) failed to adhere to any condition imposed that the person must reside at a specified place; or
- (ii) failed to adhere to any condition imposed that the person must report to a specified place at specified periods or times or in a specified manner; or 15
- (iii) has failed to adhere to any other conditions imposed under **subsection (1)**, or varied under **subsection (3)**; or
- (b) if an immigration officer makes an application under **section 287(2)** for an order that the person be detained under a warrant of commitment; or 20
- (c) to execute a deportation order or place the person on the first available craft leaving New Zealand.
- (6) Conditions imposed under this section lapse, and the person ceases to be bound by them, when the person leaves New Zealand or otherwise ceases to be liable to arrest and detention under this Part. 25

Compare: 1987 No 74 ss 79, 128AB

- 283 Special conditions where threat or risk to security involved** 30
- (1) Where a Judge determines to order the release of a person on conditions under **section 280(3)(b)**, the conditions imposed under **section 282** may involve any or all of the following:
- (a) a condition that the person not have access to or use specified communication devices or facilities (such as a telephone, the Internet, or email): 35
- (b) a condition that the person refrain from associating with any 1 or more named individuals, or individuals associated with 1 or more named organisations:

- (c) a condition that the person provide a guarantor responsible for—
 - (i) ensuring compliance with any conditions imposed; and
 - (ii) reporting any failure to meet those conditions. 5
- (2) **Section 282(2) to (6)** applies as if conditions imposed under this section were imposed under **section 282**.

- 284 Persons detained under warrant of commitment or released on conditions pending making of deportation order** 10
- (1) This section applies in the case of a person who was arrested and detained on the suspicion of a member of the police or immigration officer that the person constitutes a threat or risk to security and who—
 - (a) is being detained pursuant to a warrant of commitment issued under **section 279 or 280**; or 15
 - (b) has been released on conditions under **section 282**.
- (2) Where, in respect of any person to whom this section applies, the Minister decides not to certify that the person constitutes a risk or threat to security, or fails within 14 days of the initial arrest under **section 275** to make such a certification, the person ceases to be liable to arrest and detention under this Part. 20

Compare: 1987 No 74 s 79

- 285 Decisions on warrants of commitment where detention beyond 6 months** 25
- (1) This section applies where a person would, upon a successful application for a further warrant of commitment under **section 278**, be detained under consecutive warrants of commitment for a continuous period of more than 6 months following—
 - (a) the person's initial detention under a warrant of commitment, where the person has exhausted all appeal rights under this Act at the time of that initial detention, or had no such appeal rights; or 30
 - (b) where **paragraph (a)** does not apply, the later of—
 - (i) the conclusion of any appeal proceedings brought by the person; or 35
 - (ii) the expiry of any period for bringing such an appeal; or

- (c) the conclusion of the claim for recognition as a refugee or protected person, where the person is a claimant and the claim was made only after—
- (i) the person was served with a deportation liability notice; or 5
 - (ii) the person was arrested and detained for the purpose of deportation or for effecting the person's departure under **section 107**.
- (2) Unless the Judge considers that there are exceptional circumstances in any case to which this section applies, a further warrant of commitment authorising the detention of a person may be issued only where a Judge is satisfied that a direct or indirect reason for the need for ongoing detention is due to some action or inaction of the person after the person's arrest and detention. 10 15
- (3) If the Judge is not so satisfied, the Judge must order the person's release on conditions under **section 282**.
- (4) An application for a further warrant of commitment in a case to which this section applies must—
- (a) be supported by evidence under oath by an immigration officer; and 20
 - (b) include a statement as to why the further warrant is required.
- (5) The Judge may require the immigration officer to attend the hearing to give evidence and be subject to cross-examination. 25
- (6) The period of 6 months referred to in **subsection (1)** must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under this Act. 30
- (7) This section does not apply to a person whose deportation has been ordered under **section 152**.

Compare: 1987 No 74 s 60(6)(b)

286 Decisions on warrants of commitment when detention beyond 12 months 35

- (1) This section applies where a person would, upon a successful application for a further warrant of commitment under **section 278**, be detained under consecutive warrants of commitment for a continuous period of more than 12 months following—

- (a) the person's initial detention under a warrant of commitment, where the person has exhausted all appeal rights under this Act at the time of that initial detention, or had no such appeal rights; or
- (b) where **paragraph (a)** does not apply, the later of— 5
- (i) the conclusion of any appeal proceedings brought by the person; or
- (ii) the expiry of any period for bringing such an appeal; or
- (c) the conclusion of the claim for recognition as a refugee or protected person, where the person is a claimant and the claim was made only after the person— 10
- (i) was served a with deportation liability notice; or
- (ii) was arrested and detained for the purpose of deportation or for effecting the person's departure under **section 107**. 15
- (2) Where this section applies, a District Court Judge hearing an application for the issue of a further warrant of commitment may, in addition to considering the application for the warrant, order that the detained person— 20
- (a) cease the action that hinders his or her departure from New Zealand; or
- (b) undertake an action that will facilitate his or her departure from New Zealand.
- (3) If the Judge proposes to make an order under **subsection (2)**, the Judge must— 25
- (a) give the person named in the order a reasonable time to consider the proposed order; and
- (b) advise the person of the consequences of failure to comply with the order, being that failure to comply with the order may result in— 30
- (i) the person being found in contempt of Court; and
- (ii) imprisonment, until the contempt ends
- (4) Where a person is imprisoned for contempt, no period of that imprisonment is to be treated as a period of detention under this Act. 35
- (5) The period of 12 months referred to in **subsection (1)** must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under this Act. 40

- (6) Nothing in this section prevents a further warrant of commitment being issued in accordance with **section 285**.
- (7) This section does not apply to a person whose deportation has been ordered under **section 152**.
- 287 Review of warrant of commitment or release on conditions** 5
- (1) At any stage during the currency of a warrant of commitment an immigration officer may apply to a District Court Judge for—
- (a) a variation of the warrant of commitment; or 10
- (b) an order that the person who is detained under the warrant be released under conditions under **section 282**; or
- (c) an order that the person be released from custody.
- (2) At any stage when a person is released on conditions under **section 282** an immigration officer may apply to a District Court Judge for— 15
- (a) an order that the person who is released on conditions be detained under a warrant of commitment; or
- (b) a variation of conditions. 20
- (3) Subject to **subsection (5)**, a person detained under a warrant of commitment may apply to a District Court Judge for—
- (a) a variation of the warrant of commitment; or
- (b) an order that the person be released under conditions under **section 282**. 25
- (4) Subject to **subsection (5)**, a person released on conditions may apply to a District Court Judge seeking a variation of conditions.
- (5) An application under **subsection (3) or (4)** must be made with the leave of a District Court Judge, which may be granted only if the Judge is satisfied that new information has become available that— 30
- (a) is material to the person’s ongoing detention or release on conditions; and
- (b) was unavailable at the time the warrant of commitment or the decision to release on conditions was made. 35
- (6) An application for a review of a warrant of commitment or release on conditions must be considered in accordance with **section 279, 280, or 285**, as appropriate.

*Applications under this Part involving classified information***288 Consideration by High Court of application involving classified information**

- (1) This section and **section 289** apply where an application for a warrant of commitment, or for a review of a warrant or conditions under **section 287**, is made in relation to a person subject to a decision made or proposed to be made using classified information. 5
- (2) In such a case—
- (a) the application, or the response to an application for review made by the person subject to the decision, must be made by the chief executive and not by an immigration officer; and 10
- (b) the District Court Judge must not be provided with access to any classified information. 15
- (3) If the District Court Judge considering the application considers that it is necessary to access classified information in order to make a decision in relation to an application under **section 278 or 287**, the Judge must immediately transfer the application to the High Court for consideration by a nominated Judge (as defined in **section 224(2)**). 20
- (4) If the chief executive considers that it will be necessary for a Judge to access classified information in order to make a decision in relation to an application under **section 278 or 287**, the chief executive may make the application directly to the High Court for consideration by a nominated Judge. 25
- (5) Where this section applies, the person may continue to be detained without warrant under **section 275** or any other relevant provision of this Part until a determination is made on the application, as long as the application for a warrant of commitment is made within 96 hours of the person's arrest and detention (inclusive of any time during which the person was detained by an immigration officer under **section 274**), or before the expiry of an existing warrant of commitment. 30

289 Process for High Court to consider application 35

- (1) Where an application is transferred or made directly to the High Court under **section 288, sections 224, 228 to 231, 233, 235, and 238** apply.
- (2) In determining the application,—

- (a) **sections 279, 280, 282, 283, and 287** apply as appropriate, with the necessary modifications; and
- (b) it is not the role of the nominated Judge to determine the matters described in **section 217(1)**; and
- (c) the classified information must be treated as accurate. 5

Duties of detaining officers

290 Duties of detaining officers

- (1) It is the duty of an immigration officer when detaining any person under **section 274**—
 - (a) to inform the person at the time of the detention of the reason for the detention (unless in all the circumstances it is impracticable to do so); and 10
 - (b) to produce the officer's warrant; and
 - (c) to inform the person that he or she may contact a lawyer or, if appropriate, a responsible adult; and 15
 - (d) to inform the person of the maximum duration of the detention.
- (2) It is the duty of every member of the police when arresting and detaining any person without warrant under **section 275**—
 - (a) to inform the person at the time of the arrest, unless in all the circumstances it is impracticable to do so, of the reason for the arrest, and that the arrest does not relate to a criminal matter; and 20
 - (b) in the case of a member of the police who is not in uniform, to produce the member's badge or other evidence of being a member of the police; and 25
 - (c) to inform the person that he or she may contact a lawyer or, if appropriate, a responsible adult; and
 - (d) to inform the person of the maximum duration of the detention. 30
- (3) A member of the police or immigration officer is not guilty of an offence and is not liable to any civil proceedings in respect of the arrest or detention by that member or officer if he or she has reasonable and probable grounds for believing that the person is liable to arrest and detention under **section 274 or 275** 35
- (4) A failure to fulfil any of the duties mentioned in **subsections (1) and (2)** does not of itself deprive the member of the police or immigration officer, or any assistant, of protection from criminal responsibility. 40

Compare: 1987 No 74 s 134

40

- 291 Additional powers relating to detention by immigration officer**
- (1) Where an immigration officer is exercising the power of detention under **section 274**, the immigration officer may use such physical force as the officer has reasonable grounds for believing is reasonably necessary—
- (a) to prevent the detained person from harming any person; or
 - (b) to prevent the detained person from damaging any property; or
 - (c) to prevent the detained person from escaping or attempting to escape from detention; or
 - (d) to recapture the person, if the person is fleeing, having escaped from detention.
- (2) Where an immigration officer has detained a person under **section 274**, an immigration officer may search that person if the officer has reasonable grounds to believe that—
- (a) the person has an item hidden or in clear view on or about his or her person; and
 - (b) the item poses a threat to the safety of the officer, or any other person; and
 - (c) there is a need to act immediately in order to address that threat.
- (3) An immigration officer may, when carrying out a search under **subsection (2)**, seize any item found on or about a person that the immigration officer has reasonable cause to suspect is an item that poses a threat to the safety of the officer or any other person.
- (4) If necessary, reasonable force may be used to search a person under **subsection (2)** and seize any item under **subsection (3)**.
- (5) An immigration officer may detain and destroy any item that he or she seizes under **subsection (4)**.
- (6) An immigration officer who uses physical force or undertakes a search under this section must, within 3 working days of the use of the force or the search, give a written report of the use of the force or search the circumstances in which it was used or conducted, and the matters that gave rise to the reasonable grounds to believe required by **subsection (1) or (2)** to the chief executive.

- 292 Arresting or detaining officer may seek assistance**
- (1) Where a member of the police is arresting any person under this Act, the member of the police may call upon any person in the vicinity for assistance.
- (2) Where an immigration officer is detaining any person under **section 274**, the officer may call upon any person in the vicinity for assistance. 5
- (3) Every person so called upon is justified in assisting unless that person knows that there is no reasonable ground for the arrest. 10
Compare: 1987 No 74 s 135

Form of custody

- 293 Approval of premises for purpose of immigration detention**
- The chief executive may approve any premises for the purpose of detention under this Act. 15

- 294 Form of custody of persons detained without warrant overnight**
- Every person who is placed in custody under **section 275** and is to be detained overnight must be detained—
- (a) in the case of a person under 18 years of age, in— 20
- (i) any residence (within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989) or other premises under the control of, or approved by, the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or 25
- (ii) if the person is not married or in a civil union, any other premises agreed to by an immigration officer and the person's parent or guardian or responsible adult; or 30
- (b) in any other case, in—
- (i) any premises approved by the chief executive under **section 293**; or
- (ii) a police station. 35

Compare: 1987 No 74 s 128(6)

295 Form of custody of persons detained under warrant of commitment

Every person who is to be detained in custody under a warrant of commitment must be detained—

- (a) in the case of a person under 18 years of age, in a place approved for the purpose by the Judge before whom the person is brought, being—
 - (i) a residence (within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989) or other premises under the control of, or approved by, the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
 - (ii) if the person is not married or in a civil union, any other premises agreed to by an immigration officer and by the person's parent or guardian or responsible adult; or
 - (iii) premises approved by the chief executive under **section 293**; or
- (b) in any other case,—
 - (i) in a prison; or
 - (ii) in any other premises approved for the purpose by the Judge before whom the person is brought, being premises approved by the chief executive under **section 293**.

Compare: 1987 No 74 s 62

296 Special provisions relating to custody

- (1) Every person to whom a warrant of commitment is addressed under this Act is justified in detaining in accordance with the terms of the warrant any person who the addressee of the warrant believes on reasonable grounds to be the person named in the warrant, whether or not there is any defect in the issuing of the warrant.
- (2) Where any person (the **detainee**) is held in custody under this Act (whether pursuant to a warrant of commitment or otherwise), the person responsible for the detainee's custody must—
 - (a) inform the detainee of the detainee's right to contact a lawyer or any responsible adult nominated by or in

- respect of the detainee under **section 338** (or, where the detainee is under 18 years of age, a parent or guardian of the detainee); and
- (b) on request by the detainee, any lawyer or agent acting for the detainee, or, where appropriate, any responsible adult, parent, or guardian, take all such reasonable steps as may be practicable to enable the lawyer or agent, or the responsible adult, parent, or guardian, to visit the detainee and communicate with the detainee in private. 5
- (3) Where a person is detained under this Act in a prison, that person must be treated in accordance with the Corrections Act 2004 and any regulations made under that Act regulating the treatment of prisoners detained in prisons under this Act. 10
- (4) A person to whom a warrant of commitment is addressed may take such reasonable measures as are necessary to give effect to the warrant. 15

Compare: 1987 No 74 s 140

297 Additional provisions relating to custody in approved premises

- (1) Without limiting **section 296(4)**, where a person to whom a warrant of commitment is addressed is the person who is in charge of premises approved under **section 293**, that person and any person acting under the authority of that person may, for the purpose of giving effect to the warrant, use such physical force as the person has reasonable grounds for believing is reasonably necessary— 20
- (a) to prevent the person to whom the warrant applies (the **detainee**) from harming any person; or
- (b) to prevent the detainee from damaging any property; or
- (c) to prevent the detainee from escaping or attempting to escape from custody; or 25
- (d) to recapture the detainee, if the detainee is fleeing after having escaped from custody.
- (2) A person who uses physical force for any of the purposes referred to in **subsection (1)**— 35
- (a) may use no more physical force than is reasonably necessary in the circumstances; and
- (b) must as soon as practicable report the relevant incident to the person in charge of the premises concerned.

- (3) Where physical force is used in respect of a detainee by a person to whom **subsection (1)** applies, the person in charge of the premises concerned must—
- (a) document the force used and the circumstances surrounding the use of that force; and 5
 - (b) as soon as is reasonably practicable, deliver the detainee into the custody of a member of the police for the purpose of bringing the detainee before a District Court Judge to determine the matters specified in **subsection (4)**.
- (4) Where a detainee is delivered into the custody of a member of the police under **subsection (3)**,— 10
- (a) a member of the police must as soon as practicable bring the person before a District Court Judge to consider the terms of the warrant of commitment; and
 - (b) the Judge may either confirm the existing warrant of commitment or amend the warrant by altering the place of detention specified in it (and, if appropriate, the person to whom it is addressed). 15
- (5) The Judge may also issue a further warrant of commitment, if appropriate, where an immigration officer makes a contemporaneous application for a further warrant under **section 278**. 20
- (6) A person who is delivered into the custody of a member of the police under this section and is to be detained overnight must be detained in the manner provided by **section 295**.
- (7) For the avoidance of doubt, nothing in this section limits or affects any provision of the Crimes Act 1961, or any rule of law, that renders any circumstances— 25
- (a) a justification or excuse for the use of force; or
 - (b) a defence to a charge involving the use of force. 30
- Compare: 1987 No 74 s 140A

Delivery of person for purpose of deportation

298 Delivery of person into immigration officer or police custody for purposes of deportation

- (1) Where a person is being held in custody pursuant to a warrant of commitment issued under **Part 9**, an immigration officer or member of the police may request the manager or other person in charge of the prison or other premises in which that person is detained in custody to deliver the person into the custody of 35

an immigration officer or member of the police for the purpose of executing the person's deportation or effecting the person's departure from New Zealand.

- (2) Where a person is in prison undergoing imprisonment, an immigration officer or member of the police may, on the date that the person is due to be released from imprisonment, request that, instead of releasing the person from custody, the manager or other officer in charge deliver the person into the custody of a member of the police for arrest and detention under **section 275** or an immigration officer for detention under **section 274** for the purpose of executing the person's deportation or effecting the person's departure from New Zealand.

299 Where craft no longer available

If, for any reason, a craft ceases to be available to take a person in relation to whom a deportation order is being executed or whose departure is being effected from New Zealand or is, or is likely to be, delayed in New Zealand for more than 96 hours, or if for any other reason it is not practicable in all the circumstances for the person to leave New Zealand at the expected time,—

- (a) a person who was released from custody pursuant to a warrant of a commitment must be returned to the custody of the person to whom the warrant of commitment was addressed, and for that purpose the warrant remains in full force and effect;
- (b) a person who had been subject to residence and reporting conditions under **section 277**, or released on conditions, may be once again released on those conditions;
- (c) in any other case, an application may be made under **section 278** for a warrant of commitment authorising the further detention of the person.

Special provision where epidemic

300 During epidemic courts may deal with certain matters on basis of documents only

- (1) While an epidemic management notice is in force, any matter for which this Act requires a person to be brought before a District Court Judge may be dealt with by a District Court Judge on the basis of documents only, without the person being brought before the Judge.

- (2) **Subsection (1)** overrides every provision of this Act requiring a person to be brought before a District Court Judge for the consideration or determination of a matter.
- (3) If the notice applies to only stated parts of New Zealand, **subsection (1)** applies within those parts only. 5
Compare: 1987 No 74 s 129ZC
- 301 Modification during epidemic of requirements to bring people before court**
- (1) This subsection applies to a requirement imposed by or under this Act if it requires a person to be brought before a District Court Judge at intervals of not more than a stated duration for consideration or further consideration of a question. 10
- (2) While an epidemic management notice is in force, it is a sufficient compliance with a requirement to which **subsection (1)** applies if, at intervals of not more than 28 days, a District Court Judge considers or further considers the question concerned. 15
- (3) If the notice applies to only stated parts of New Zealand, **subsection (2)** applies within those parts only. 20
Compare: 1987 No 74 s 129ZD
- 302 During epidemic certain warrants and extensions to have effect for 28 days**
- (1) If a warrant of commitment issued under this Act was in force immediately before the commencement of an epidemic management notice, it has effect as if it had authorised the detention of the person named in it for a period of 28 days. 25
- (2) **Subsection (1)** overrides every provision of this Act to the contrary.
- (3) If the notice applies to only stated parts of New Zealand, **subsections (1) and (2)** apply within those parts only. 30
Compare: 1987 No 74 s 129ZE
- 303 Application of section 282 during epidemic**
- (1) While an epidemic management notice is in force, an immigration officer and the released person may agree to vary a condition imposed under **section 282**— 35
- (a) whether or not the order containing it provides for them to do so; and

- (b) whether or not they have the consent of a District Court Judge.
- (2) If the notice applies to only stated parts of New Zealand, **subsection (1)** applies within those parts only.
- 304 Calculation of consecutive period of detention for purposes of sections 285 and 286** 5
- (1) In calculating for purposes of **sections 285 and 286** the consecutive period for which a person has been detained under 1 or more warrants of commitment under this Part,—
- (a) no account is to be taken of any periods of detention occurring while an epidemic management notice is in force; but 10
- (b) periods of detention do not cease to be consecutive just because they include periods during which an epidemic management notice was in force. 15
- (2) If the notice applies to only stated parts of New Zealand, **subsection (1)** applies within those parts only.

Part 10

Offences, penalties, and proceedings

Offences 20

- 305 Provision of false or misleading information**
- Every person commits an offence against this Act who—
- (a) makes any statement, or provides any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of— 25
- (i) any application or request (whether by that person or by another person) for a visa or entry permission, or any expression of interest in a visa; or
- (ii) any request for variation, waiver, or cancellation of the conditions of a visa; or 30
- (iii) any appeal or application in the nature of an appeal to the Minister or the Tribunal; or
- (b) without reasonable excuse, produces or surrenders any document or supplies any information to an immigration officer or determination officer knowing that it is false or misleading in any material respect; or 35

- (c) completes any document required as part of a border requirement in a manner that the person knows to be false or misleading in any particular, or fails to comply with any of his or her other responsibilities under **section 91**. 5

Compare: 1987 No 74 ss 126(4) and 142(1)(a) and (c)

306 Aiding and abetting

- (1) Every person commits an offence against this Act who—
- (a) for a material benefit, aids, abets, incites, counsels, or procures any other person to be or to remain in New Zealand unlawfully or to breach any condition of a visa granted to the other person; or 10
- (b) whether within or outside New Zealand, and whether or not the other person in fact enters New Zealand, aids, abets, incites, counsels, or procures any other person to enter New Zealand unlawfully (by arriving in New Zealand in a manner that does not comply with **section 91** or by arriving in New Zealand without holding a visa where the other person requires a visa to travel to New Zealand),— 15
- (i) knowing that the person's entry into New Zealand is or would be unlawful; or
- (ii) being reckless as to whether the person's entry into New Zealand is or would be unlawful; or 20
- (c) whether within or outside New Zealand, aids, abets, incites, counsels, or procures any other person to complete a document in a manner that the person aiding or assisting knows to be false or misleading in any particular, being a document required for the purposes of— 25
- (i) **section 91**; or 30
- (ii) any application or request (whether by that person or by another person) for a visa or entry permission, or any expression of interest in a visa; or
- (iii) any request for variation, waiver, or cancellation of the conditions of a visa; or 35
- (iv) any appeal or application in the nature of an appeal to the Minister or the Tribunal; or
- (d) aids, abets, incites, counsels, or procures any other person to be or to remain in New Zealand unlawfully or to 40

breach any condition of a visa granted to the other person under this Act.

- (2) In **subsection (1)(a), for a material benefit** has the same meaning as in section 2(1) of the Crimes Act 1961.

Compare: 1987 No 74 S 142(1)(ea), (eb), (ec), and (f)

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307 Obstruction or failing to meet requirements

Every person commits an offence against this Act who—

- (a) without reasonable excuse, refuses or fails to produce or surrender any document, or to supply any information when required to do so by an immigration officer or determination officer in accordance with any of the provisions of this Act; or 10
- (b) after being warned in accordance with **section 246**, refuses or fails without reasonable excuse to comply with any requirement of an immigration officer under that section; or 15
- (c) fails to remain in an immigration control area when required to do so, or to follow an immigration officer's instructions while in an immigration control area; or
- (d) resists or intentionally obstructs any immigration officer or determination officer or member of the police in the exercise of the powers of that officer or member under this Act; or 20
- (e) refuses or fails to provide biometric information in accordance with an order made under **section 257**. 25

Compare: 1987 No 74 s 142(1)(b) and (g)

308 Improper dealings with documents

Every person commits an offence against this Act who—

- (a) whether within or outside New Zealand, produces or surrenders or passes off a passport, certificate of identity, evidence of a visa, invitation to apply for a visa, or certificate of citizenship, or anything purporting to be a passport, certificate of identity, evidence of a visa, invitation to apply for a visa, or certificate of citizenship,— 30
 - (i) as relating to that person when in fact, to that person's knowledge, it relates to some other person; or 35
 - (ii) knowing it to be forged or to have been obtained fraudulently; or

- (b) whether within or outside New Zealand, sells, hires, lends, gives, or otherwise disposes of a passport, certificate of identity, evidence of a visa, invitation to apply for a visa, or certificate of citizenship relating to that person (or anything purporting to be a passport, certificate of identity, evidence of a visa, invitation to apply for a visa, or certificate of citizenship relating to that person) to any other person (the **receiver**)—
- (i) without necessarily knowing which, knowing that the receiver will—
- (A) produce it or pass it off as relating to the receiver or some other person; or
- (B) sell, hire, lend, give, or otherwise dispose of it; or
- (ii) without necessarily intending either in particular, intending the receiver to—
- (A) produce it or pass it off as relating to the receiver or some other person; or
- (B) sell, hire, lend, give, or otherwise dispose of it.

Compare: 1987 No 74 s 142(1)(d) and (e)

309 Impersonation

Every person commits an offence against this Act who, not being an immigration officer or determination officer, personates or pretends to be an immigration officer or determination officer.

Compare: 1987 No 74 s 142(1)(h)

310 Publishing false or misleading information

Every person commits an offence against this Act who, for the purpose of encouraging, inducing, deterring, or preventing immigration to New Zealand of any person or class of persons, publishes, disseminates, or causes or procures the publication of any information or representation knowing that the information or representation is false or misleading.

Compare: 1987 NO 74 s 142(1)(i)

311 Alteration of forms

Every person commits an offence against this Act who, not being an immigration officer or determination officer,—

- (a) after the person to whom a form required to be completed for the purposes of this Act relates has signed it and declared its contents to be true,—
 - (i) alters information entered on it; or
 - (ii) enters further information on it; or
 - (iii) alters any material attached to it; or
 - (iv) attaches any material or further material to it; and
- (b) allows the form to leave his or her possession without writing on it and signing a statement of—
 - (i) the information or material that has been altered, entered, or attached; and
 - (ii) why and by whom the information or material has been altered, entered, or attached.

Compare: 1987 No 74 s 142(2)

- 312 Offences relating to carriers and persons in charge of craft** 15
- (1) Every carrier or person in charge of a commercial craft commits an offence who—
 - (a) fails without reasonable excuse to comply with any of his or her responsibilities under **section 86(2)**; or
 - (b) allows a person to travel to New Zealand before a decision has been made by the chief executive under **section 87(1)**; or
 - (c) having been notified under **section 87(2)** of a decision made by the chief executive under **section 87(1)(b) or (c)**, without reasonable excuse fails to ensure that the person to whom the decision relates complies with it; or
 - (d) fails without reasonable excuse to provide the chief executive with information under **section 90(2)**; or
 - (e) fails without reasonable excuse to provide the chief executive with access to information under **section 90(2)**.
 - (2) Every carrier or person in charge of a craft commits an offence who fails without reasonable excuse to comply with any of the requirements of—
 - (a) **section 89(1)(a)**; or
 - (b) **section 109(1)(a)**; or
 - (c) **sections 89(1)(b), 89(1)(c), 89(2), 109(1)(b), and 109(1)(c)**.
 - (3) Every person in charge of a craft commits an offence who fails without reasonable excuse to comply with **section 89(3)**.

- (4) Every carrier commits an offence who fails to comply with **section 109(2)**.
- (5) If proceedings in respect of an offence against **subsection (1), (2), or (3)** are taken against the person in charge of any craft, proceedings in respect of that offence must not be taken against the carrier; and if proceedings in respect of any such offence are taken against the carrier, proceedings in respect of that offence must not be taken against the person in charge of the craft. 5
- Compare: 1987 No 74 ss 125AA(4), 125AC(1), (2), 125AE(1), (2), 125(6), (7), (8) 10

313 Offences by employers

- (1) Every employer commits an offence against this Act who—
- (a) allows or continues to allow any person to work in that employer's service, knowing that the person is not entitled under this Act to do that work; or 15
 - (b) allows a person who is not entitled under this Act to work in the employer's service to do that work.
- (2) **Subsection (1)(a)** applies whether the person commenced work in the employer's service before or after the commencement of this section. 20
- (3) It is a defence to a charge under **subsection (1)(b)** that the employer—
- (a) did not know that the person was not entitled to do the work; and
 - (b) took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to do the work. 25
- (4) Except as provided in **subsection (3)**, it is not a defence to a charge under **subsection (1)(b)** that the employer did not know that the person was not entitled under this Act to do that work. 30
- (5) An information alleging an offence against this section may specify any day on which it is alleged the person was working for the employer, and need not state the day on which that work is alleged to have commenced.
- (6) An employer is deemed for the purposes of this section to know that an employee is not entitled under this Act to do any particular work if, at any time within the preceding 12 months (whether before or after the commencement of this section), 35

the employer has been informed of that fact in writing by an immigration officer.

- (7) No employer is liable for an offence against this section in respect of any period during which the employer continues to employ any person in compliance with the minimum requirements of any employment agreement (within the meaning of the Employment Relations Act 2000) relating to the giving of notice on termination of employment. 5
- Compare: 1987 No 74 s 39
- 314 Exploitation of persons not legally entitled to work** 10
- (1) Every employer commits an offence against this Act who,—
- (a) while allowing an unlawful employee to work in the employer’s service,—
- (i) is responsible for a serious failure to pay to the employee money payable under the Holidays Act 2003; or 15
- (ii) is in serious default under the Minimum Wage Act 1983 in respect of the employee; or
- (iii) is responsible for a serious contravention of the Wages Protection Act 1983 in respect of the employee; or 20
- (b) while allowing an unlawful employee to work in the employer’s service, takes an action with the intention of preventing or hindering the employee from—
- (i) leaving the employer’s service; or 25
- (ii) leaving New Zealand; or
- (iii) ascertaining or seeking his or her entitlements under the law of New Zealand; or
- (iv) disclosing to any person the circumstances of his or her work for the employer. 30
- (2) The following are examples of actions of the kinds referred to in **subsection (1)(b)**:
- (a) taking or retaining possession or control of a person’s passport, any other travel or identity document, or travel tickets: 35
- (b) preventing or hindering a person from—
- (i) having access to a telephone; or
- (ii) using a telephone; or
- (iii) using a telephone privately; or
- (iv) leaving premises; or 40

- (v) leaving premises unaccompanied:
- (c) preventing or hindering a labour inspector (within the meaning of the Employment Relations Act 2000) from entering or having access to any place or premises to which he or she is entitled to have access under any enactment. 5
- (3) **Subsection (2)** does not limit the generality of **subsection (1)(b)**.
- (4) For the purposes of **subsection (1)(a)**, the following are questions of fact:
- (a) whether a failure to pay to a person money payable under the Holidays Act 2003 is serious: 10
- (b) whether a default under the Minimum Wage Act 1983 in respect of a person is serious:
- (c) whether a contravention of the Wages Protection Act 1983 in respect of a person is serious. 15
- (5) For the purposes of **subsection (1)(a)**, the following matters may be taken into account in deciding whether a failure, default, or contravention is serious:
- (a) the amount of money involved:
- (b) whether it comprises a single instance or a series of instances: 20
- (c) if it comprises a series of instances,—
- (i) how many instances it comprises:
- (ii) the period over which they occurred:
- (d) whether or not it was intentional: 25
- (e) whether the employer concerned has complied with the record-keeping obligations imposed by the Act concerned:
- (f) any other relevant matter.
- (6) An information alleging an offence against **subsection (1)** may specify any day on which it is alleged the person was working for the employer, and need not state the day on which that work is alleged to have commenced. 30
- (7) An employer is deemed for the purposes of this section to know that an employee is not entitled under this Act to do any particular work if, at any time within the preceding 12 months (whether before or after the commencement of this Act), the employer has been informed of that fact in writing by an immigration officer. 35

- (8) In this section, **unlawful employee**, in relation to an employer, means a person whom the employer knows is not entitled under this Act to work in the employer's service.

Compare: 1987 No 74 s 39A

- 315 Offences by education providers** 5
- (1) Every education provider commits an offence against this Act who—
- (a) allows or continues to allow any other person to undertake a course of study knowing that the person is not entitled under this Act to take the course; or 10
- (b) allows any other person to undertake a course of study if the person is not entitled under this Act to undertake the course.
- (2) **Subsection (1)(a)** applies whether the person commenced the course of study before or after the commencement of this section. 15
- (3) No person commits an offence under **subsection (1)** by reason of allowing or continuing to allow a child who is not entitled to study in New Zealand to undertake compulsory education.
- (4) It is a defence to a charge under **subsection (1)(b)** that the education provider— 20
- (a) did not know that the person was not entitled to undertake the course of study; and
- (b) took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to undertake that course. 25
- (5) An information alleging an offence against this section may specify any day on which it is alleged the person was undertaking the course of study, and need not state the day on which it is alleged that the person commenced the course. 30
- (6) A person is deemed for the purposes of this section to know that another person is not entitled under this Act to study in New Zealand if, at any time within the preceding 12 months (whether before or after the commencement of this Act), the person has been informed of that fact in writing by an immigration officer. 35

Compare: 1987 No 74 s 40

316 Offences in relation to Tribunal

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to it any papers, documents, records, or things, without sufficient cause— 5
- (a) fails to attend in accordance with the summons; or
 - (b) refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer; or 10
 - (c) fails to produce any such paper, document, record, or thing.
- (2) Every person commits an offence who—
- (a) wilfully obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things under **clause 11(1)(a) of Schedule 2**; or 15
 - (b) without sufficient cause, fails to comply with any requirement of the Tribunal or any authorised person made under **clause 11(1)(b) or (c) of Schedule 2**; or 20
 - (c) without sufficient cause, acts in contravention of or fails to comply with any order made by the Tribunal under **clause 11(3) of Schedule 2** or any term or condition of the order.
- (3) No person summoned to attend before the Tribunal may be convicted of an offence against **subsection (1)** unless at the time of the service of the summons, or at some other reasonable time before the date on which the person was required to attend, there was made to the person a payment or tender of the amount determined under **clause 17 of Schedule 2**. 25 30

Compare: 1908 No 25 s 9

317 Failure to maintain confidentiality in relation to refugee or protection matters

- Every person commits an offence who, without reasonable excuse,— 35
- (a) contravenes **section 140(1)**; or
 - (b) publishes information released in contravention of **section 140(1)**.

Compare: 1987 No 74 s 129T(5)

Penalties

- 318 Penalties—general**
- (1) A person convicted of an offence against **section 305(b), 306(1)(a), 308, or 311** is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both. 5
- (2) A person convicted of an offence against **section 306(1)(b) or (c)(i)** is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both, for each person in respect of whom the offence was committed.
- (3) A person convicted of an offence against **section 305(c), 306(1)(d), 307(c) or (d), or 317** is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding \$10,000, or both. 10
- (4) A person convicted of an offence against **section 309** is liable to imprisonment for a term not exceeding 12 months, a fine not exceeding \$15,000, or both. 15
- (5) A person convicted of an offence against this Act or against any regulations made under this Act for which no penalty is provided elsewhere than in this section or in **section 319, 320, or 321** is liable to a fine not exceeding \$5,000. 20
- (6) Where any person is convicted of an offence against **section 306(1)(d)** in respect of any person who is or was in New Zealand unlawfully, the court may, instead of or in addition to any other sentence that it may impose in respect of the offence, order that the offender pay the whole or any specified portion of the costs incurred or likely to be incurred in deporting the person in relation to whom the offence was committed. 25
- (7) For the purposes of **subsection (5)**, the costs incurred or likely to be incurred in deporting a person include— 30
- (a) the costs of locating, detaining, and maintaining the person; and
- (b) internal travel costs for the person; and
- (c) external travel costs for the person.
- Compare: 1987 No 74 s 144
- 319 Penalties—carriers and persons in charge of craft** 35
- (1) Except as provided in **subsection (2)**, a person convicted of an offence against **section 312** is liable—

- (a) in the case of a carrier, to imprisonment for a term not exceeding 3 months, a fine not exceeding \$50,000, or both:
- (b) in the case of a person in charge of the craft, to imprisonment for a term not exceeding 3 months, a fine not exceeding \$25,000, or both. 5
- (2) A person convicted of an offence against **section 312(2)(b)** is liable—
- (a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000: 10
- (b) in the case of a person in charge of the craft, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000.
- Compare: 1987 No 74 ss 125AA(4), 125AC(3), 125AE(3), 125(6), (7)
- 320 Penalties—employers** 15
- (1) A person convicted of an offence against **section 313(1)(a)** is liable to a fine not exceeding \$50,000.
- (2) A person convicted of an offence against **section 313(1)(b)** is liable to a fine not exceeding \$10,000.
- (3) A person convicted of an offence against **section 314(1)** is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both. 20
- Compare: 1987 No 74 ss 39(5), 39A(8)
- 321 Penalties—education providers**
- (1) A person convicted of an offence against **section 315(1)(a)** is liable to a fine not exceeding \$50,000. 25
- (2) A person convicted of an offence against **section 315(1)(b)** is liable to a fine not exceeding \$30,000.
- Infringement offences for carriers or persons in charge of craft* 30
- 322 Infringement offences**
- In this Act, **infringement offence** means—
- (a) an offence against **section 312(1) or 312(2)(a)**:
- (b) an offence prescribed as an infringement offence for the purposes of this Act by regulations made under **section 358**. 35

- 323 Proceedings for infringement offences**
 If a person who is a carrier or a person in charge of any craft is alleged to have committed an infringement offence, that person may be either—
- (a) proceeded against under the Summary Proceedings Act 1957; or 5
 - (b) served with an infringement notice under **section 325**.
- 324 Immigration officer may require information**
 When considering whether or not to issue an infringement notice, an immigration officer may require the person concerned to provide all or any of the following information: 10
- (a) the full name of the person in charge of the craft:
 - (b) the date of birth of the person in charge of the craft:
 - (c) the full residential address and, if different, the full postal address of the person in charge of the craft: 15
 - (d) the carrier's legal name:
 - (e) the carrier's full postal address.
- 325 Infringement notices**
- (1) If an immigration officer believes on reasonable grounds that a carrier or a person in charge of a craft has committed an infringement offence, the immigration officer may issue an infringement notice to the carrier or person in charge of the craft. 20
 - (2) Every infringement notice must be in the prescribed form and must include the following particulars: 25
 - (a) sufficient detail to fairly inform the person of the time, place, and nature of the alleged infringement offence:
 - (b) the infringement fee for the infringement offence:
 - (c) an address at which the infringement fee may be paid:
 - (d) the time within which the infringement fee must be paid: 30
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
 - (f) a statement that the person has a right to request a hearing: 35
 - (g) a statement of the consequences if the person does not pay the infringement fee and does not request a hearing:
 - (h) any other prescribed matters.
 - (3) An infringement notice may be served—

- (a) by personal delivery to the carrier or person in charge of a craft who appears to have committed the infringement offence; or
 - (b) by sending it by post to last known place of residence or business of the carrier or person in charge of the craft. 5
- (4) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent by post is deemed to have been served on the carrier or person in charge of the craft on the date it was posted.
- (5) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case, the provisions of that section apply with all necessary modifications. 10
- 326 Reminder notices** 15
Regulations made under **section 358** may prescribe the form of reminder notices to be used in relation to infringement offences under this Act.
- 327 Infringement fees**
(1) Infringement fees prescribed under this Act may not exceed— 20
 - (a) in the case of a person in charge of a craft, \$2,500; and
 - (b) in the case of a carrier, \$5,000.
- (2) All infringement fees are payable to the chief executive, and the chief executive must pay all infringement fees received into the Crown Bank Account. 25
- 328 Revocation of infringement notices**
An immigration officer may, by written notice to the person to whom the notice was issued, revoke an infringement notice at any time before—
 - (a) the infringement fee is paid; or 30
 - (b) an order for payment of a fine is made by a court under section 21 of the Summary Proceedings Act 1957.

*Evidence in proceedings***329 Evidence in proceedings—certificates in relation to persons**

- (1) In any proceedings relating to any matter under this Act, whether before any court or the Tribunal, a certificate signed by an immigration officer and containing a statement in relation to any person to the effect of all or any of the matters described in **subsection (2) or (3)** is deemed to be proof of the truth of the statement, in the absence of proof to the contrary established on the balance of probabilities. 5 10
- (2) A certificate under this section may, in relation to a person, state that—
- (a) the person is not a New Zealand citizen; or
 - (b) the person holds or at any material time held, or does not hold or did not at any material time hold, a visa; or 15
 - (c) any visa granted to the person was granted for a specified period or on or until a specified date, or was granted for an express purpose, or is or was subject to specified conditions; or
 - (d) the person is or was at any material time, or is not or was not at any material time, the subject of a visa waiver; or 20
 - (e) the person, or any visa or other document relating to or held by the person, is not, or was not at any material time, the subject of a special direction given under this Act; or 25
 - (f) an invitation to apply for a visa was or was not issued to the person, or was or was not revoked (including the date of issue or revocation, where appropriate); or
 - (g) a decision whether or not to grant any visa has been made; or 30
 - (h) an immigration officer or a determination officer was or was not satisfied as to any relevant specified matter; or
 - (i) a particular stage of processing an application had or had not been reached; or 35
 - (j) an automated electronic system was or was not applying criteria predetermined in accordance with immigration instructions or predetermined by the chief executive; or
 - (k) the result of the process described in **paragraph (j)** has or has not been applied as the basis for a decision; or 40

- (l) the person has been served with a deportation liability notice, or was deported from New Zealand on a specified date, or that there is in force in respect of that person a deportation order; or
- (m) for the purpose of obtaining any visa, the person while outside New Zealand made any statement or supplied any information to an immigration officer that was false or misleading in any material respect, or produced or surrendered to an immigration officer any passport or certificate of identity or other document that was forged or obtained fraudulently; or 5 10
- (n) the person produced or surrendered to an immigration officer, while in New Zealand, any passport, certificate of identity, or other document that was forged or obtained fraudulently or that contained any evidence of a visa that was forged or so obtained, for the purpose of— 15
- (i) obtaining a visa; or
- (ii) obtaining any variation, cancellation, or waiver of the conditions of any visa; or 20
- (iii) claiming any visa waiver; or
- (iv) supporting any appeal against deportation from New Zealand; or
- (o) the person is, or is not, in New Zealand or has, or has not, left New Zealand, or was, or was not, in New Zealand or had, or had not, left New Zealand at any particular time or for or during any particular period; or 25
- (p) the person has, or has not, lodged an appeal under any stated provision of **Part 7**; or
- (q) a certain document or application was received by an immigration officer on a certain date; or 30
- (r) the person is, or is not, an excluded person; or
- (s) the person travelled to New Zealand on a certain commercial craft at a certain time; or
- (t) the person did, or did not, travel to New Zealand before a decision was made by the chief executive under **section 87(1)**; or 35
- (u) the person travelled to New Zealand contrary to a decision made by the chief executive under **section 87(1)(b) or (c)**; or 40
- (v) the person did not provide or supply access to information requested by the chief executive under **section 90**; or

- (w) the person has or has not, at any material time,—
- (i) claimed to be a refugee in New Zealand or elsewhere; or
 - (ii) been recognised as a refugee in New Zealand or elsewhere; or 5
 - (iii) claimed recognition as a protected person in New Zealand; or
 - (iv) been recognised as a protected person in New Zealand; or
 - (v) in a country other than New Zealand, claimed recognition as, or been recognised as, a person in need of protection under the Convention Against Torture or the Covenant on Civil and Political Rights; or 10
- (x) the person, while in New Zealand, produced or surrendered to an immigration officer or determination officer any passport, certificate of identity, or other document that was forged or obtained fraudulently; or 15
- (y) a matter is or is not before a determination officer under **section 132** or the Tribunal under **section 134**. 20
- (3) A certificate under this section may, in relation to a person, state that—
- (a) fingerprints matching the person's fingerprints were obtained under a particular name in a particular country; or 25
 - (b) the person has or has not been granted any particular immigration status (including any particular type of visa) or citizenship under a particular name in a particular country; or
 - (c) the person has or has not been recognised as a refugee or protected person under a particular name in a particular country; or 30
 - (d) the person has or has not been deported from a particular country under a particular name; or
 - (e) the person has or has not been issued with a passport, certificate of identity, or other document under a particular name in a particular country; or 35
 - (f) the person has or has not been convicted of, charged with, or under investigation for an offence under a particular name in a particular country; or 40

- (g) the person has or has not been awarded a particular qualification under a particular name in a particular country; or
- (h) the person was or was not employed in a particular position (by a particular employer if appropriate) under a particular name in a particular country. 5

Compare: 1987 No 74 s 143(1), (1A)

330 Evidence in proceedings—certificates as to forms, documents, etc

For the purposes of any proceedings relating to any matter under this Act, whether before any court or the Tribunal,— 10

- (a) a certificate signed by an immigration officer and containing a statement to the effect that any specified form was or was not approved and issued by the chief executive is sufficient evidence of the fact that it was or was not so approved and issued: 15
- (b) a document purporting to be a special direction given under this Act, or a record of such a direction, or a copy of such a direction or record, and certified to be such by the Minister or an immigration officer, is sufficient evidence of the fact that such a special direction was given in respect of the person named, or the visa or document described, and on the date specified, in the document or certificate: 20
- (c) a certificate signed by the Minister or an immigration officer and containing a statement to the effect that any specified document did or did not express immigration instructions applicable on any date or dates specified in the certificate is sufficient evidence of the fact that the document did or did not express immigration instructions applicable on that date or those dates: 25 30
- (d) a document purporting to be a deportation liability notice or deportation order made under **Part 6**, or a copy of such a notice or order that is certified to be such by the Minister or an immigration officer, is sufficient evidence of the fact that such a deportation liability notice or deportation order was made under this Act in respect of the person named, and on the date specified, in the notice or order: 35
- (e) a certificate signed by the chief executive stating that a particular place is or was an immigration control area is 40

sufficient evidence of the fact that that place is or was an immigration control area.

Compare: 1987 No 74 s 143(3), (4), (4A), (4B), (6)

- 331 Evidence in respect of matters occurring and documents executed outside New Zealand** 5
- (1) The court, Tribunal, or other person or body conducting or in charge of any proceedings under this Act may, if it considers it fair and equitable to do so, receive as evidence any statement, document, or information tendered in respect of a document executed outside New Zealand, whether or not it would be normally admissible in a court of law. 10
- (2) Where a certificate under **section 329** contains a statement as to any matter specified in **section 329(2)(m) or(3)**, the court, Tribunal, or other person or body conducting or in charge of the proceedings may receive as evidence any statement, document, or information tendered by or on behalf of the person named in the certificate in rebuttal of that statement, whether or not it would be otherwise admissible in a court of law. 15
- (3) Where a statement, document, or information is received as evidence under **subsection (1) or (2)**, the court, Tribunal, or other person or body conducting or in charge of the proceedings may determine the credibility or weight (if any) to be given in the proceedings to the document, statement, or information concerned. 20
- Compare: 1987 No 74 s 143(2), (7) 25
- 332 Presumption that certificates duly authorised**
- Every person signing a certificate under **section 329 or 330** must, in the absence of proof to the contrary, be presumed to be duly authorised to sign the certificate.
- Compare: 1987 No 74 s 143(5) 30

Procedural provisions relating to offences

- 333 Procedural provisions relating to offences**
- (1) An offence against **section 305(h), 306(1)(a), (b), or (c)(i), 308, 311, or 314** is punishable on indictment. 35
- (2) All other offences against this Act or any regulations made under it are punishable on summary conviction.

- (3) A prosecution for an offence against this Act or any regulations made under it cannot be commenced except on the information of an immigration officer, a member of the police, or some other person authorised for that purpose by the Minister. 5

Compare: 1987 No 74 s 145(1), (2), (3)

334 Presumption of authority

For the purposes of **section 333(3)**, or any other proceedings under this Act, it is unnecessary to prove that—

- (a) a person is an immigration officer, a member of the police, or other authorised person; or 10
 (b) an information was laid by an immigration officer, a member of the police, or other authorised person.

335 Time for laying information

- (1) Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against this Act punishable on summary conviction may be laid at any time within 2 years after the earlier of— 15

- (a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an immigration officer; or 20
 (b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to an immigration officer.

- (2) To avoid doubt, section 14 of the Summary Proceedings Act 1957 and **subsection (1)** of this section do not apply to an offence referred to in **section 333(1)**, whether the information for that offence is laid indictably or summarily. 25

Compare: 1987 No 74 s 145(4), (5)

Part 11

30

Miscellaneous provisions

336 Immigration status of persons born in New Zealand on or after 1 January 2006

- (1) This section applies to a person who— 35
 (a) is born in New Zealand on or after 1 January 2006; and
 (b) is not a New Zealand citizen.

- (2) Such a person is deemed, from the time of birth, to initially have the same immigration status as the most favourable immigration status of either of the person's parents at that time, as determined under **section 337**.
- (3) Where a person is deemed to initially have the immigration status of a parent,—
- (a) this Act applies to that person in the same way as if the person's immigration status had arisen under any relevant provision of this Act other than this section; and
 - (b) that status continues until either—
 - (i) the person leaves New Zealand; or
 - (ii) the person is accorded a different immigration status under, or by the operation of, this Act.

Compare: 1987 No 74 s 4A

337 Immigration status of persons whose status depends on immigration status of parent 15

- (1) For the purposes of **section 336**, where the immigration status of a person born in New Zealand on or after 1 January 2006 depends on the immigration status of a parent, the person's immigration status is to be determined as follows: 20
- (a) where both parents are recorded on the person's original birth record, whichever of the following is applicable:
 - (i) where both parents held any type of temporary visa, the person is deemed to hold a temporary visa of the duration of the unexpired period of the visa of the parent whose temporary visa has the longest unexpired period: 25
 - (ii) where 1 parent only held any type of temporary visa, the person is deemed to hold a temporary visa of the duration of the unexpired period of that parent's temporary visa: 30
 - (iii) where both parents held limited visas, the person is deemed to hold a limited visa of the duration of the unexpired period of the visa of the parent whose limited visa has the longest unexpired period: 35

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- (iv) where 1 parent only held a limited visa, the person is deemed to hold a limited visa of the duration of the unexpired period of that parent's limited visa:
 - (v) where both parents held interim visas, the person is deemed to hold an interim visa of the duration of the unexpired period of the visa of the parent whose interim visa has the longest unexpired period: 5
 - (vi) where 1 parent only held an interim visa, the person is deemed to hold an interim visa of the duration of the unexpired period of that parent's interim visa: 10
 - (vii) where both parents were unlawfully in New Zealand, the person is deemed to be unlawfully in New Zealand and to have unlawful status on the same basis and for the same duration as the parent whose unlawful status is of the shortest duration: 15
 - (b) where 1 parent only is recorded on the person's original birth record, whichever of the following is applicable: 20
 - (i) where the parent held a temporary visa, the person is deemed to hold a temporary visa of the duration of the unexpired period of the parent's temporary visa:
 - (ii) where the parent held a limited visa, the person is deemed to hold a limited visa of the duration of the unexpired period of the parent's limited visa: 25
 - (iii) where the parent held an interim visa, the person is deemed to hold an interim visa of the duration of the unexpired period of the parent's interim visa: 30
 - (iv) where the parent was unlawfully in New Zealand, the person is deemed to be unlawfully in New Zealand and to have unlawful status on the same basis and for the same duration as the parent's unlawful status. 35
 - (2) Where a person is deemed to hold a visa under this section, the visa expires on the person's departure from New Zealand, unless it has already expired. 40

Compare: 1987 No 74 s 4A(4)

- 338 Children to have responsible adult to represent their interests**
- (1) In any matters of the kind referred to in **subsection (2)** that relate both to a dependent child who is under 18 years of age and not married or in a civil union (in this section and **sections 339 and 340** referred to as a **minor**) and to 1 or more of that child's parents,—
- (a) the minor's interests are to be represented by any such parent; and
- (b) the parent is the responsible adult for the minor for the purposes of this section and **sections 339 and 340**.
- (2) If a minor does not have a responsible adult to represent the minor's interests by virtue of **subsection (1)**, a responsible adult must be nominated in accordance with this section to represent the minor's interests in relation to any of the following matters under this Act:
- (a) the minor's liability for deportation, and the deportation of the minor;
- (b) any claim by the minor to be recognised as a refugee or protected person;
- (c) any appeal by the minor under this Act;
- (d) any detention of the minor under this Act.
- (3) The responsible adult is to be nominated by the Tribunal, an immigration officer, a determination officer, or a Judge, as the case may require.
- (4) A person may be nominated as a responsible adult under **subsection (2)** only if—
- (a) the person is 20 years of age or more; and
- (b) except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or a resident or permanent resident; and
- (c) the person is any of the following:
- (i) a parent, guardian, or relative of the minor; or
- (ii) a person suggested by the minor; or
- (iii) any other person having responsibility for the minor or who is otherwise suitable to represent the minor's interests; or
- (iv) if no other appropriate person is available under this subsection, a person designated by the chief executive of the department for the time being

- responsible for the administration of the Children, Young Persons, and Their Families Act 1989; and
- (d) except in the case of a parent or guardian of the minor, the person agrees in writing to be nominated as a responsible adult. 5
- (5) Should the need arise, and after such consultation as is reasonable in the circumstances, a substitute responsible adult may be nominated in accordance with the requirements of this section. 10
- (6) The role of a responsible adult relates to those matters or proceedings in relation to which the nomination was made, and in any event the role finishes when the minor leaves New Zealand.
- (7) A responsible adult who is representing the interests of a minor in any matter of a kind referred to in **subsection (2)** must supply to an immigration officer or determination officer, or to the Tribunal, as the case may require, an address in New Zealand at which any communication relating to the minor may be notified to that adult. 15
20
- Compare: 1987 No 74 s 141B

339 Role and rights of responsible adult

- The following provisions apply to any dealings under this Act with a minor who has a responsible adult to represent his or her interests: 25
- (a) the responsible adult may appeal to the Tribunal under **Part 7**, or to the High Court under **section 219**, on the minor's behalf, and may make submissions to the Tribunal;
- (b) the responsible adult may appear and be heard in any District Court proceedings under this Act relating to the minor: 30
- (c) to the extent practicable given the level of maturity and understanding of the minor, the responsible adult must attempt to elicit the views of the minor and make them known on behalf of the minor, where appropriate: 35
- (d) any document required to be served on or notified to the minor is instead to be served on or notified to the

responsible adult, and such service or notification is deemed to be service on or notification to the minor.

Compare: 1987 No 74 s 141C.

340 Views of minor to be considered

In any proceedings or process of a kind referred to in **section 338(2)** in relation to a minor,— 5

- (a) an opportunity must be given, so far as practicable, for the minor to express his or her views on the matter, whether personally or through a responsible adult; and
- (b) due weight is to be given to those views having regard to the age and level of maturity and understanding of the minor. 10

Compare: 1987 No 74 s 141D

341 Special directions

- (1) The Minister may from time to time give to the chief executive or to any other immigration officer, either in writing or orally, a special direction, in relation to any matter for which such a direction is contemplated by any provision of this Act or of regulations made under this Act, in respect of— 15
 - (a) any person, visa, or document; or 20
 - (b) any 2 or more persons, visas, or documents where by reason of any specific event, occurrence, or unusual circumstances there is a common link between those persons, visas, or documents.
- (2) The Minister may from time to time give in writing a special direction— 25
 - (a) waiving the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons, in accordance with **section 57(2)(a)**;
 - (b) suspending a visa waiver made by regulations under **section 57(1)**, in accordance with **section 57(2)(b)**; 30
 - (c) classifying persons subject to a transit visa waiver, in accordance with **section 75(3)**.
- (3) A special direction comes into force on the day on which it is made, or any later date specified in the direction. 35
- (4) Where a special direction is given orally, the chief executive or immigration officer must as soon as possible make a written record of the content and date of the direction.

- (5) A special direction may be subject to such conditions as the Minister thinks fit.
- (6) A special direction may revoke or amend any previous special direction.
- (7) Nothing in this section limits or affects the powers of the Minister to give all such instructions to the chief executive as the Minister thinks fit in the ordinary course of the administration of the immigration portfolio and of this Act. 5
- (8) The decision whether or not to grant a special direction is in the absolute discretion of the Minister or appropriate immigration officer, and **section 26** applies in relation to any such question. 10

Compare: 1987 No 74 s 130

342 Delegation of powers of Minister

- (1) The Minister may from time to time, in writing, delegate to any immigration officer all or any of the powers conferred on the Minister by this Act, except— 15
- (a) this power of delegation; and
 - (b) the power to certify immigration instructions under **section 20**; and 20
 - (c) the powers referred to in **section 30(1) and (2)** (which relate to the use of classified information); and
 - (d) the power to make a special direction under **section 57(2)** in relation to a class of persons; and
 - (e) the power to make a special direction under **section 75(3)** in relation to transit visas; and 25
 - (f) the power to make a certification under **section 152(1)** that a person constitutes a threat or risk to security; and
 - (g) the power to make a decision of a kind referred to in **section 129 or 177(2)** in relation to an appeal against refusal of recognition as a refugee or protected person. 30
- (2) The immigration officer to whom a delegation may be made may be an officer referred to by name or the officer who for the time being holds a specified position.
- (3) Every delegation is revocable at will, and no delegation prevents the exercise of any power by the Minister. 35
- (4) A delegation may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case.

- (5) A delegation no longer applies to a person when the person leaves the department or service or employment in respect of which the delegation was made.
- (6) Until revoked, a delegation continues in force according to its tenor, notwithstanding the fact that the Minister by whom it was made has ceased to hold office, and continues to have effect as if made by the successor in office of that Minister. 5
- (7) The fact that any immigration officer exercises any power of the Minister, other than a power referred to in **subsection (1)**, is, in the absence of proof to the contrary, sufficient evidence that the officer has been authorised to do so by a delegation under this section. 10

Compare: 1987 No 74 s 131

343 Chief executive may approve forms

- (1) The chief executive may from time to time approve and issue all such forms as the chief executive considers necessary for the purposes of this Act, not being forms prescribed or to be prescribed by regulations made under this Act. 15
- (2) Every document purporting to be in a form approved and issued by the chief executive under and for the purposes of this Act is deemed to have been so approved and issued unless the chief executive or an immigration officer otherwise certifies. 20

344 Endorsements in foreign passports

For the purpose of facilitating a person's entry into New Zealand, the chief executive may endorse a passport (other than a New Zealand passport) held by a New Zealand citizen to indicate the fact of New Zealand citizenship. 25

345 Service of notices, etc

- (1) Where under this Act any notice or other document is to be served on or supplied to the Minister, it must be delivered to the Minister's office or to an immigration officer at an office of the Department. 30
- (2) Where under this Act any notice or other document is to be served on or supplied to an immigration officer, it must be 35

delivered personally to an immigration officer or sent by registered post to an immigration officer at an office of the Department.

- (3) Where under this Act any person is to be notified of any matter, written notice of that matter must be given, served on, or supplied to the person either by personal service or by registered post addressed to the person at the person's New Zealand address, or by service upon the person's lawyer or agent in accordance with **subsection (4)**. 5
- (4) Where a lawyer or agent represents that he or she is authorised to accept service of any notice or document on behalf of any person, it is sufficient service to deliver the notice or document to the lawyer or agent if he or she signs a memorandum stating that he or she accepts service of the notice or document on behalf of the person. 10 15
- (5) Where under this Act any notice or other document is to be given, served on, or supplied to the holder of any temporary entry class visa, or any person who is, or is believed to be, in New Zealand unlawfully, by registered post addressed to that person's New Zealand address, the notice or other document is treated as having been given, served on, or received by the person 7 days after the date on which it was posted. 20
- (6) Except in a case to which **subsection (5)** applies, where under this Act any notice or other document is to be given, served on, or supplied to any person by registered post, the notice or other document is treated as having been given, served on, or received by that person 7 days after the date on which it was posted unless the person proves that, otherwise than through fault on the person's part, the notice or other document was not so given, served, or received. 25 30

Compare: 1987 No 74 s 146

346 Immigration officers

- (1) The chief executive may from time to time designate as immigration officers— 35
- (a) such persons employed in the Department as the chief executive considers necessary for the purposes of this Act; and

- (b) such other agents of or persons in the service of the Government, or persons in the service of the Government of another country, as the chief executive determines, whether designated individually or by class or position. 5
- (2) The chief executive must specify which functions and powers the immigration officer is authorised to exercise under this Act. An officer may not exercise any functions or powers under this Act unless specifically authorised by the chief executive. 10
- (3) Every person authorised to exercise the functions and powers referred to in **subsection (7)** must be issued with a warrant of designation signed by the chief executive specifying the functions and powers the person may exercise.
- (4) A warrant is sufficient evidence of the officer's designation as an immigration officer, and the officer's authorisation to exercise the functions and powers specified in it. 15
- (5) To avoid doubt, the chief executive need not be issued with a warrant of designation, and may exercise all the powers and functions of an immigration officer under this Act. 20
- (6) A person may not at any 1 time be designated as an immigration officer and a determination officer.
- (7) Whenever an immigration officer (including any member of the police exercising the powers of an immigration officer) seeks entry to any premises, building, or craft in the course of the officer's duties under this Act, or exercises a power of detention, the officer— 25
- (a) must produce the officer's warrant of designation; and
- (b) if called upon to do so, must state the provision or provisions of this Act under which the officer is entitled to enter the premises, building, or craft or exercise a power of detention. 30
- (8) An immigration officer (including any member of the police exercising the powers of an immigration officer) must also produce the officer's warrant of designation if called upon to do so by any person of whom the officer orally makes any request or requirement or demand under this Act. 35
- (9) For the purposes of **subsections (7)(a) and (8)**, it is sufficient compliance with those subsections if, in the case of a member

of the police, the member is in uniform or produces his or her badge or other evidence of being a member of the police.

Compare: 1987 No 74 s 133

- 347 Specification of immigration officers' functions and powers** 5
- (1) An immigration officer may be authorised to exercise functions and powers of a particular class, as set out in **subsection (2)**.
- (2) Functions and powers may be classified as follows: 10
- (a) visa decision-making functions and powers, being the functions and powers set out in **Part 3:**
- (b) entry permission decision-making functions and powers, being the functions and powers set out in **Part 4:**
- (c) compliance and enforcement functions and powers, being the functions and powers set out in **Part 8:** 15
- (d) the power of detention, being the power set out in **section 274.**
- 348 Determination officers**
- (1) The chief executive may from time to time designate as determination officers such persons employed in the Department as the chief executive considers necessary for the purposes of this Act. 20
- (2) A person designated as a determination officer may exercise all the functions and powers of a determination officer.
- 349 Designation of officers, etc, by chief executive** 25
- (1) Every designation by the chief executive of a person as an immigration officer or determination officer, or for any other purpose under this Act, is revocable in writing at will.
- (2) Every authorisation of an immigration officer to exercise a power or function is revocable in writing at will. 30
- (3) Any such designation or authorisation—
- (a) continues in force according to its tenor until it is revoked, notwithstanding that the chief executive by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive: 35

- (b) is subject to such restrictions or conditions as the chief executive specifies in writing in the warrant of designation.
- (4) A warrant of designation lapses when the person leaves the Department or the service or employment in respect of which the person was designated. 5
- (5) A person whose designation has lapsed or been revoked must immediately surrender the warrant of designation to the chief executive. 10
- Compare: 1987 No 74 s 133A
- 350 Relationship between this Act and Human Rights Act 1993**
- (1) Subject to **subsection (2)**, the Human Rights Commission may perform, in relation to immigration matters, all of its functions (as described in section 5 of the Human Rights Act 1993), including— 15
- (a) making public statements in relation to any matter affecting human rights:
- (b) receiving and inviting representations from members of the public on any matter affecting human rights: 20
- (c) inquiring generally into any matter, practice, or procedure if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:
- (d) reporting to the Prime Minister on any matter affecting human rights. 25
- (2) However, despite anything in the Human Rights Act 1993,—
- (a) no complaint may be made under that Act in respect of— 30
- (i) the content or application of this Act or any regulations made under this Act; or
- (ii) the content or application of any immigration instructions made in accordance with **section 20**:
- (b) the Human Rights Commission may not, in relation to any matter referred to in **paragraph (a)**,— 35
- (i) bring any proceedings of a kind referred to in section 5(2)(i) of the Human Rights Act 1993; or
- (ii) exercise in relation to any proceedings the powers conferred by section 5(2)(j) of that Act (which relates to applications to a court or tribunal to be 40

appointed as intervener or counsel, or taking part in proceedings in any other way).

- (3) This section recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.

5

Compare: 1987 No 74 ss 149C, 149D

Fees, bonds, levies, etc

351 Fees

- (1) Without limiting the generality of the power to prescribe fees set out in **section 358**— 10
- (a) fees may be prescribed under that section in relation to any matter or service under or arising from this Act,—
- (i) whether it be any 1 or more of the acceptance for processing, the processing, or the decision on any application, request, or appeal: 15
- (ii) whether it relates to a formal process or not:
- (iii) whether or not any other fee is payable in respect of some other aspect of the same matter:
- (iv) whether it relates to a visa, special direction, waiver, or other exercise of powers under this Act: 20
- (b) the regulations may prescribe any manner in which fees may, or may not, be payable:
- (c) the regulations may provide for, or allow, any fee (or any other charge or levy) to be payable to a third person on behalf of the Department. 25
- (2) Fees may apply to an individual person or application, or to a group of persons or applications, or otherwise.
- (3) Fees may not be imposed on claimants for any matter relating to refugee status or protection status. 30
- (4) Fees may be prescribed in a way, or at a level or levels, or using 1 or more methods of calculation, that reflects the variable nature of the costs or potential costs that give rise to the need for each fee, and the range of factors that influence those costs. 35
- (5) Without limiting **subsection (4)**, the fees prescribed may—
- (a) differ depending on whether or not a special or urgent service is provided:

- (b) include more than one level of fee for the same service provided in different ways, or provided in or in respect of different places:
- (c) differ for otherwise similar services provided in different ways: 5
- (d) differ for otherwise similar services provided to different categories of person:
- (e) differ depending on the amount of service required or the components of the service required for the particular person or class of person: 10
- (f) differ depending on whether a group of people (including a family group) are requesting or obtaining the services in question:
- (g) differ depending on whether an agent is used to deliver or help deliver the service concerned. 15
- (6) Without limiting the way in which fees may be set, a fee may be set at a level or in a way that—
- (a) is determined by calculations that involve an averaging of costs or potential costs:
- (b) takes into account costs or potential costs of services that are not to be provided directly to the person who pays the fee but that are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service. 20
- (7) A fee is payable at the time prescribed in respect of a particular service, whether that time be before, during, or after completion of the relevant service. 25
- (8) In the case of services to be provided outside New Zealand or in respect of a person outside New Zealand,—
- (a) a fee may be set in New Zealand dollars or in a foreign currency; and 30
- (b) if the fee is set in New Zealand dollars, the method of determining the amount payable at any time in currency other than New Zealand dollars is to be determined from time to time by the chief executive. 35
- (9) A fee may also be required by the regulations in question to be paid in New Zealand dollars only.
- (10) All fees prescribed under this Act and received by the Department must be paid into the Crown Bank Account. 40
- Compare: 1987 No 74 s 148A

352 Other charges

- (1) Nothing in **section 351 or 353** prevents the Department from charging persons for any of the services the Department provides in relation to the administration of this Act, other than services to which a fee applies under the other provisions of this Act. 5
- (2) Without limiting **subsection (1)**, and for the avoidance of doubt, the Department may—
- (a) operate a telephone information service for which each caller pays according to their usage or on some averaged basis: 10
 - (b) charge persons for the cost of mailing or couriering information to them, or the cost of moving, at the person's request, the administration of a matter relating to the person from 1 office of the Department to another: 15
 - (c) charge for the cost of written material, unless that material is required by any Act or by regulations made under this Act to be provided free of charge:
 - (d) charge for access to any website, or for information or services provided by any website, operated by the Department: 20
 - (e) charge for access to any library or research services provided in relation to immigration, refugee, or protection matters:
 - (f) charge any person for services requested by (and provided to) that person in relation to immigration matters, other than services provided in an immigration control area: 25
 - (g) charge any person for the supply of forms to the person in quantity, where it is apparent that the forms are not for the person's own personal use. 30
- (3) All such charges received by the Department must be paid into the Crown Bank Account.
- (4) Nothing in **subsection (1) or (2)(f)** authorises the charging of any person who operates a place that is, or contains, an immigration control area for services provided in relation to immigration or refugee or protection matters. 35
- (5) Nothing in **subsection (2)(f)** affects the ability to recover costs under **section 356**. 40

Compare: 1987 No 74 s 148C

353 Imposition of bonds

- (1) This section applies in any case where a bond may be imposed under this Act.
- (2) The amount of any bond is to be at a level determined or authorised by immigration instructions. 5
- (3) Different levels of bond, or different methods of determining levels of bond, may be determined or authorised in respect of different categories of person, including categories of person determined by having regard to the different regions of the world where their countries of origin or nationality are situated and the costs of travel or repatriation to such regions or countries. 10
- (4) The Minister or an immigration officer must specify—
- (a) the conditions in respect of which the bond is paid (which must relate to or be based on requirements of the relevant immigration instructions, if appropriate, or on other requirements and obligations imposed by or under this Act, including conditions of the relevant visa); and 15
- (b) the situations in which it may be refunded or forfeited, whether in whole or in part. 20
- (5) Immigration instructions may—
- (a) require any bond or class of bond to be paid in New Zealand dollars only;
- (b) require any refund of a bond or class of bond to be made in New Zealand dollars only (whether or not the bond itself was required to be paid in New Zealand dollars). 25
- (6) A bond required in respect of any type of matter is payable at the time specified for that class of matter in immigration instructions, and may be payable either by the person concerned or by any other class of person specified in the instructions. 30
- (7) Immigration instructions may provide for exemptions from or refunds of any bond payable in any class of case.
- (8) The Minister may by special direction provide for an exemption from or refund of any bond, in whole or in part. 35

354 Refund or forfeiture of bond

- (1) Forfeiture of a bond is at the discretion of the Minister or an immigration officer, who must exercise the discretion by taking into account—

- (a) the reason the bond was imposed; and
- (b) the extent to which the conditions of the bond have been met or breached; and
- (c) any explanation given as to the breach of the bond conditions; and 5
- (d) the estimated cost to the Crown of the breach.
- (2) The person who is eligible for the refund of a bond must apply for the refund within 12 months of the bond becoming refundable, or the bond is forfeit to the Crown.
- (3) A bond paid must be held in trust by the department until refunded or forfeited. 10
- (4) No interest is payable on a bond to the person who paid it. The chief executive may apply any interest towards the costs of administering the bond system, and any surplus interest must be paid into the Crown Bank Account. 15
- (5) In the case of a bond imposed in relation to a temporary or limited visa, no refund may be made until the person in question either is no longer in New Zealand or is granted a residence class visa.
- (6) A refund of a bond must be paid either to the person who paid it or to a person authorised by that person to receive it. 20
- (7) If all or any part of a bond is forfeited, the department must pay the amount forfeited into the Crown Bank Account.
- (8) No bond may be imposed on any refugee status claimant or protection status claimant for any matter relating to refugee status or protection status, and any bond imposed upon a person before that person became such a claimant must be refunded if the person is subsequently determined under **Part 5** to be a refugee or a protected person. 25
- Compare: 1987 No 74 s 148B 30

355 Exemptions and refunds

- (1) Regulations made under this Act may provide for exemptions from or refunds of any fee or charge payable under this Act, in whole or in part, in any class of case.
- (2) The Minister may by special direction provide for an exemption from or refund of any prescribed fee or charge in whole or in part. 35
- Compare: 1987 No 74 s 149

356 Costs of deportation or repatriation

- (1) Subject to this section and to any order of a court under **section 318(5)**, all costs incurred by the Crown in deporting or repatriating any person from New Zealand may be paid from the Crown Bank Account. 5
- (2) **Subsection (3)** applies if—
- (a) a person has been or is to be deported or repatriated from New Zealand; and
 - (b) that person has in New Zealand a spouse, civil union partner, de facto partner, or dependent child; and 10
 - (c) the Minister is satisfied that the effect of the deportation or repatriation has been or will be to separate the person from the spouse, partner, or dependent child.
- (3) The Minister may provide the person or the person's spouse or partner with such assistance as the Minister thinks fit for the purpose of reuniting the spouse, partner, or dependent child with the person in the country to which the person has been or is to be deported or repatriated, and any such assistance may include the grant of a sum out of the Crown Bank Account to meet all or part of the travelling or other costs that will be incurred in any such exercise. 15
20
- (4) The following costs incurred by the Crown in deporting or repatriating a person are recoverable as a debt due to the Crown:
- (a) the actual or estimated costs incurred in deporting the person that a deportation order specifies as requiring to be repaid: 25
 - (b) the actual costs incurred in repatriating a person:
 - (c) any sum fixed by a court on application under **subsection (5)**. 30
- (5) The Minister or an immigration officer may, at any time before a person is deported or repatriated from New Zealand, apply to a court of competent jurisdiction to fix such sum as in the opinion of the court represents any reasonable costs incurred or likely to be incurred by the Crown in deporting or repatriating the person, and any sum so fixed is recoverable as a debt due to the Crown by the person. 35
- (6) For the purposes of this section, the costs incurred or likely to be incurred in deporting or repatriating a person include the following costs pending the person's deportation or repatriation from New Zealand: 40

- (a) the costs of locating, detaining, and maintaining the person; and
 - (b) travel costs for the person.
- (7) Any costs recovered under this section must be paid into the Crown Bank Account. 5
- (8) Nothing in this section or in **section 46, 109, or 318** authorises the Crown to recover any particular cost more than once.
- 357 Migrant levy**
- (1) Any regulations made under **section 358** may provide for the imposition and collection of a migrant levy on persons who are granted a visa. 10
- (2) The purpose of the levy is to fund, or contribute to the funding of,—
- (a) the provision of programmes intended to assist the successful settlement of migrants or categories of migrants; and 15
 - (b) the carrying out of research into settlement issues and the impacts of immigration.
- (3) Regulations made for the purposes of this section may—
- (a) specify the categories or classes of migrant who are liable to pay the migrant levy; 20
 - (b) prescribe the amount or method of calculation of the levy;
 - (c) prescribe different amounts or methods of calculation of the levy in respect of different categories or classes of migrant; 25
 - (d) provide for exemptions from or refunds of the levy, in whole or in part, in any class of case;
 - (e) provide for the manner of collection of the levy, including provision for the relevant amount of levy to be deposited with the chief executive pending the grant of a visa. 30
- (4) Not later than 1 October in each year, the chief executive must provide to the Minister a report setting out, in respect of the financial year ending on the preceding 30 June,— 35
- (a) the amount collected through the migrant levy; and
 - (b) how the amount of the migrant levy was applied.

- (5) The Minister must present the report to the House of Representatives within 15 sitting days after its receipt.

Compare: 1987 No 74 s 149B

Regulations

- 358 Regulations generally** 5
- The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act: 10
 - (b) prescribing other matters in respect of visas or expressions of interest, including matters provided for in **section 359**:
 - (c) prescribing requirements and procedures in respect of arrivals in and departures from New Zealand, including matters provided for in **section 360**: 15
 - (d) prescribing procedures to be followed for the purposes of **Part 5**, or such other matters as are contemplated by or necessary for giving full effect to the Refugee Convention, including matters provided for in **section 361**: 20
 - (e) prescribing procedures and other matters in respect of reconsiderations, appeals, and reviews under **Part 7**:
 - (f) prescribing fees and charges in respect of any matters under this Act, and providing for exemptions from or refunds of any fees and charges, including matters provided for in **sections 351 and 355**: 25
 - (g) prescribing matters in respect of the migrant levy referred to in **section 357**:
 - (h) prescribing infringement offences against this Act in the case of carriers or persons in charge of craft: 30
 - (i) setting the infringement fees payable in respect of infringement offences, which fees—
 - (i) may differ for different infringement offences; and 35
 - (ii) may differ for different classes of person; and
 - (iii) in the case of a person in charge of a craft, may not exceed \$2,500; and
 - (iv) in the case of a carrier, may not exceed \$5,000:

- (j) prescribing forms for the purposes of this Act, including the form of infringement notices and infringement offence reminder notices:
 - (k) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made for the purposes of this Act, and the maximum amounts of fines that may be imposed in respect of those offences (which maximum amounts may not exceed \$2,000): 5
 - (l) providing for transitional and related matters, as provided in **section 449**: 10
 - (m) providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.
- 359 Regulations relating to visa and expressions of interest**
- Without limiting the generality of **section 358**, regulations made under that section may— 15
- (a) prescribe the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act:
 - (b) prescribe conditions in respect of visas or any class or type of visa (including conditions relating to travel to New Zealand): 20
 - (c) waive the requirement to obtain a visa permitting travel to New Zealand in relation to any class of persons, and provide for any conditions of such a waiver: 25
 - (d) prescribe who may apply for a residence class visa on arrival in New Zealand at an immigration control area or other prescribed place:
 - (e) classify persons who are subject to a transit visa waiver for the purposes of **section 75**: 30
 - (f) prescribe the period for which a person may be in New Zealand as the holder of a transit visa for the purposes of **section 77(1)**:
 - (g) prescribe the manner in which an expression of interest must be made for the purposes of **section 80(1)**. 35
- 360 Regulations relating to procedures and requirements in relation to arrivals in and departures from New Zealand**
- Without limiting the generality of **section 358**, regulations made under that section may—

- (a) prescribe the information that must be obtained for the purposes of **section 86(2)(a)** from every person who intends to board a commercial craft for the purposes of travelling to New Zealand:
 - (b) prescribe the information that must be provided to the chief executive for the purposes of **section 86(2)(b)**: 5
 - (c) prescribe the documentation that persons en route to New Zealand must have for the purposes of **section 89(1)(a)**:
 - (d) prescribe the documents that may be required to be produced to an immigration officer under **section 89(1)(b)(i)**: 10
 - (e) prescribe the information that must be provided for the purposes of **section 90(2)**:
 - (f) prescribe the manner and place in which, and the time within which, a person must present himself or herself on arrival in New Zealand: 15
 - (g) prescribe the manner of application for entry permission, including the provision of any information, documents, or other details (if any) required: 20
 - (h) prescribe requirements as to the establishment of a person's identity as a New Zealand citizen for the purposes of **section 91**:
 - (i) exempt New Zealand citizens from the requirement to allow a photograph to be taken in any class of case: 25
 - (j) prescribe documents that may be demanded by an immigration officer for the purposes of **section 94**:
 - (k) prescribe classes of persons in respect of whom details must be reported for the purposes of **section 109(1)(c)**:
 - (l) prescribe the place at which a person leaving New Zealand must present himself or herself: 30
 - (m) prescribe the information and documentation required from persons leaving New Zealand.
- 361 Regulations relating to procedures under Part 5** 35
- Without limiting the generality of **section 358**, regulations made under that section may, in relation to any claim for recognition as a refugee or protected person or to any other proceeding under **Part 5**,—
- (a) specify the manner in which any claim, appeal, or other matter is to be made: 40

- (b) provide for the manner of service of notices and documents, which may differ from the requirements of **section 345**, and provide for when they will be treated as having been received:
- (c) provide for the availability and use of interpreters: 5
- (d) provide for matters relating to communications with claimants and other affected persons:
- (e) specify the information that must be supplied to claimants and other affected persons, including information concerning their rights and concerning procedures under this Part: 10
- (f) make provision for the representation of minors:
- (g) make provision for representation generally:
- (h) specify the circumstances in which interviews must be held and when they need not be held: 15
- (i) specify the periods, or minimum or maximum periods, within which or before or after which certain things must or may not be done:
- (j) specify the obligations of claimants and other affected persons as to the provision of contact details, information, and documents: 20
- (k) specify the manner in which a claim or other matter may be withdrawn:
- (l) provide for any special matters relating to the handling of claims, appeals, or other matters when the claimant or other affected person is in custody: 25
- (m) specify the procedures to be followed in relation to claims, appeals, and other matters not completed before the commencement of this section.

Part 12 30

Repeals, transitional provisions, and other related matters

Subpart 1—Repeals and consequential amendments

- 362 Immigration Act 1987 repealed** 35
The Immigration Act 1987 is repealed.
- 363 Consequential amendments and repeals**
- (1) The enactments listed in **Schedule 3** are amended in the manner indicated in that schedule.

- (2) The regulations, rules, and orders listed in **Schedule 4** are amended in the manner indicated in that schedule.
- (3) The following Acts are repealed:
- (a) Air Facilitation Act 1993 (1993 No 6):
 - (b) Air Facilitation (Domestic Passengers and Cargo) Act 1994 (1994 No 100). 5

Subpart 2—Transitional and savings provisions

General

- 364 Persons unlawfully in New Zealand** 10
A person who, on the commencement of this section, is unlawfully in New Zealand has an obligation to leave New Zealand.
- 365 Government immigration policy and Government residence policy made under former Act**
- (1) Government immigration policy published under section 13A of the former Act must be treated as immigration instructions for the purposes of this Act. 15
 - (2) Government immigration policy published under section 13A of the former Act that related to the issuing of any type of temporary visa or limited purpose visa or the granting of any type of temporary permit or limited purpose permit must be treated as temporary entry instructions, regardless of whether the issuing of the visa or the granting of the permit would affect eligibility for, or otherwise relate to, the issuing of a residence visa or the granting of a residence permit. 20 25
 - (3) Government residence policy reduced to writing and certified by the Minister under section 13B of the former Act must be treated as residence instructions for the purposes of this Act.
 - (4) Government immigration policy or Government residence policy that is to be treated as immigration instructions, temporary entry instructions, or residence instructions under this section must be read with the necessary modifications, including— 30
 - (a) treating references to visas as references to visas granted offshore: 35
 - (b) treating references to permits as references to visas granted onshore or in an immigration control area, and entry permission.

- (5) Government immigration policy and Government residence policy saved by this section may be amended or revoked by immigration instructions certified under **section 20**.
- 366 Lapsing of applications for visas and permits** 5
- (1) Policy published in accordance with section 13A(2) of the former Act relating to rules and criteria for the lapsing of applications as described in section 13BB of the former Act continue in force and may be applied to applications according to their tenor and with any necessary modifications.
- (2) Any relevant time periods must be calculated including any time before the commencement of this section. 10
- 367 General instructions given by chief executive under former Act**
- (1) General instructions given by the chief executive under section 13BA of the former Act continue in force according to their tenor and with any necessary modifications. 15
- (2) Any such general instructions may be varied or replaced by instructions made under **section 24**.
- Visas and permits*
- 368 Expressions of interest in residence** 20
- An expression of interest under section 13D of the former Act continues in force as if it were an expression of interest in obtaining an invitation to apply for an equivalent visa (as defined in **section 370(2)**).
- 369 Invitation to apply for residence** 25
- An invitation to apply for residence that was made under section 13E of the former Act continues in force as if it were an invitation to apply for an equivalent visa (as defined in **section 370(2)**) made under **section 82** of this Act.
- 370 Existing applications for visas and permits** 30
- (1) An application for a visa or permit that was lodged before the commencement of this section but that as at the commencement of this section has not been decided, must be treated as an application for the equivalent visa under this Act.
- (2) In this section, **equivalent visa** means, in the case of— 35

- (a) a residence visa, a resident visa:
- (b) a residence permit, a resident visa:
- (c) a temporary visa, a temporary visa:
- (d) a temporary permit, a temporary visa:
- (e) a work permit, a temporary visa that allows the holder to undertake work in New Zealand: 5
- (f) a student permit, a temporary visa that allows the holder to undertake study in New Zealand:
- (g) a visitor permit, a temporary visa that does not allow the holder to undertake work or study: 10
- (h) a limited purpose visa, a limited visa:
- (i) a limited purpose permit, a limited visa:
- (j) a transit visa, a transit visa:
- (k) a temporary permit to which section 27A of the former Act applies, a limited visa to which **section 72** applies: 15
- (l) a returning resident's visa, a variation of conditions relating to travel of the visa made under **section 40**.
- (3) To avoid doubt, an application for a residence visa or residence permit deemed by this section to be an application for a residence class visa must be determined in accordance with Government residence policy that was in force at the time the application for the visa or permit was made. 20
- (4) This section is subject to any special direction or to regulations or immigration instructions made under **section 449 or 450**.
- 371 Visas issued and permits granted under former Act** 25
- (1) A person who, immediately before the commencement of this section, held a visa or permit of a type described in **column 1 of Schedule 5** is deemed to hold a visa of the corresponding type described in **column 2 of Schedule 5** for the duration and subject to the conditions (if any) described in **column 2**. 30
- (2) A person who, immediately before the commencement of this section, held a visa (other than a transit visa) and a permit is deemed to hold a single visa for the duration and subject to the conditions (if any) of the visa and the permit combined.
- (3) To avoid doubt, **subsection (1)** applies to any permit deemed to be held under section 44 of the former Act that was still in force immediately before the commencement of this section. 35
- (4) The period of currency of a visa deemed to be held by this section must be calculated including any time before the commencement of this section. 40

- 372 Returning residents' visas granted to New Zealand citizens**
- (1) This section applies if a New Zealand citizen, immediately before the commencement of this section, held a returning resident's visa. 5
- (2) The returning resident's visa is deemed to be cancelled, but an immigration officer may, on the person next arriving in New Zealand, treat the endorsement as an indication that the person is entitled to enter New Zealand as a New Zealand citizen.
- 373 Exemptions under former Act** 10
- (1) A person in New Zealand who was, immediately before the commencement of this section, exempt from the requirement to hold a permit under section 11 of the former Act is deemed to hold a temporary visa current for the period for which the exemption would otherwise apply under that section, and subject to conditions that allow the purpose for which the exemption applied to be pursued. 15
- (2) A person in New Zealand who was, immediately before the commencement of this section, exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999 is deemed to hold a permanent resident visa. 20
- Arrivals and departures*
- 374 Responsibilities of carrier and person in charge of commercial craft before it departs from another country to travel to New Zealand** 25
- (1) An exemption made under section 125AA(3) of the former Act continues in force for the purposes of **section 86(3)** of this Act according to its tenor, until revoked by the chief executive.
- (2) A system approved under section 125AA(5) of the former Act must be treated as an **approved system** for the purposes of this Act. 30
- (3) Any notification to a carrier or a person in charge of a commercial craft by the chief executive under section 125AA(1) of the former Act must be treated as notification by the chief executive under **section 86(1)** of this Act for the purposes of this Act. 35

- 375 Decision by chief executive about person boarding craft for purpose of travelling to New Zealand**
- (1) For the purposes of this Act, any notification to a carrier or person in charge of a commercial craft by the chief executive under section 125AB(2) of the former Act must be treated as notification by the chief executive under **section 87(2)** of this Act. 5
- (2) For the purposes of this Act, any decision made by the chief executive under section 125AB of the former Act must be treated as a decision made by the chief executive under **section 87** of this Act. 10
- 376 Requirement for carrier and person in charge of commercial craft to provide further information if requested, and to provide access to further information**
- (1) The chief executive may, within 24 hours after the arrival in New Zealand of a craft, request information under section 125AD of the former Act as if that Act had not been repealed, if the craft on which the person to whom the information relates intended to, or did, travel to New Zealand arrives in New Zealand within 24 hours before the commencement of this section. 15
20
- (2) The chief executive may request further information under **section 90** of this Act if the craft on which the person to whom the information relates intended to, or did, travel to New Zealand arrives after the commencement of this section. 25
- 377 Reporting obligations of carriers and persons in charge of craft leaving New Zealand**
- (1) This section applies where a person—
- (a) before the commencement of this section, was on board a craft when it arrived in New Zealand; and 30
- (b) was exempt under section 11(1)(c), (d), or (e) of the former Act from the requirement to hold a permit to be in New Zealand; and
- (c) after the commencement of this section, is not then aboard the craft. 35
- (2) The obligations of the carrier and the person in charge of the craft to report to an immigration officer under **section 109(1)(c)** of this Act apply in respect of a person described in **subsection**

(1) as if the person were a member of the crew or a prescribed person, as the case may be.

378 Obligations of carriers of craft leaving New Zealand to provide passage

- (1) This section applies where— 5
- (a) a person—
- (i) before the commencement of this section, was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand, not being the holder of a visa under the former Act, and was neither exempt under that Act from the requirement to hold a permit nor was granted a permit or pre-cleared permit on or before arrival in New Zealand; or 10
- (ii) before the commencement of this section, arrived in New Zealand as a member of the crew of the craft, or any other craft operated by the carrier, and, otherwise than in accordance with the former Act, remained in New Zealand after the departure of that craft; and 15
- (b) the person had not left New Zealand before the commencement of this section. 20
- (2) The obligations of the carrier under **section 109(2)(a)** of this Act to provide passage from New Zealand at the cost in all respects of the carrier, or to bear the cost of passage from New Zealand by any other carrier, apply in respect of a person described in **subsection (1)** as if the person were a person described in **section 109(2)(a)** of this Act. 25
- (3) The obligations of the carrier under **section 109(2)(b)** of this Act to pay all costs incurred by the Crown in detaining and maintaining a person pending the person's departure from New Zealand apply in respect of a person described in **subsection (1)** as if the person were a person described in **section 109(2)(a)**, and regardless of whether the Crown incurred the costs before or after the commencement of this section. 30
- 35

379 Responsibilities of carrier and person in charge of craft en route to New Zealand

- (1) For the purposes of this Act, any demand by an immigration officer under section 125(2)(c) of the former Act for a list

giving specified details must be treated as a demand by an immigration officer for such a list under **section 89(2)(a)** of this Act.

- (2) For the purposes of this Act, any information required by an immigration officer under section 125(2)(d) of the former Act must be treated as information required by an immigration officer under **section 89(2)(b)** of this Act. 5
- (3) For the purposes of this Act, where a craft arrives, or is to arrive, in New Zealand elsewhere than at a place that is or contains an immigration control area because of weather conditions or other unforeseen circumstances, the prescribed time referred to in **section 89(1)(c)** of this Act must be calculated by including any time that has elapsed between the arrival of the craft and the commencement of this section. 10

Refugee and protection status 15

380 Persons recognised as refugees under former Act

For the purposes of this Act, any person who was recognised as a refugee in New Zealand under Part 6A of the former Act, or before 1 October 1999, must be treated as a person recognised as a refugee in New Zealand under this Act. 20

381 Existing claim for recognition as refugee in New Zealand

- (1) This section applies where, before the commencement of this section, a person had made a claim (other than a subsequent claim) to be recognised as a refugee in New Zealand, and that claim had not yet been determined. 25
- (2) The determination officer considering the claim must treat the claim as if it had been made under **Part 5** of this Act.
- (3) Any appeal against a decision to decline recognition as a refugee or protected person where this section applies must be made under **section 176** of this Act. 30

382 Previous acts of refugee status officers

For the purposes of this Act, any act or thing done by a refugee status officer under the former Act is to be treated as an act or thing done by a determination officer under this Act.

- 383 Existing subsequent claim for recognition as refugee in New Zealand**
- (1) This section applies where, before the commencement of this section,—
- (a) a person had made a subsequent claim to be recognised as a refugee in New Zealand; and 5
 - (b) a refugee status officer had not yet decided whether to consider the subsequent claim.
- (2) Section 129J of the former Act continues to apply to the subsequent claim, subject to **subsections (3) and (4)** of this section. 10
- (3) Section 129J of the former Act must be read as if references to a refugee status officer were references to a determination officer.
- (4) If the subsequent claim is accepted for consideration, **Part 5** of this Act applies accordingly. 15
- 384 Cessation determinations made by refugee status officers under former Act**
- (1) This section applies where—
- (a) before the commencement of this section, a refugee status officer had determined that— 20
 - (i) a person should cease to be recognised as a refugee in terms of section 129L(1)(b) of the former Act; or
 - (ii) any of Articles 1D, 1E, and 1F should be applied to a person from the protection of the Refugee Convention, in terms of section 129L(1)(c) of the former Act; and 25
 - (b) the person does not appeal against the refugee status officer's determination within the time set out in section 129O(3) of the former Act. 30
- (2) The person must be treated as being liable for deportation in terms of **section 151** of this Act, subject to **subsection (3)** of this section.
- (3) The person may not appeal to the Tribunal against liability for deportation on the facts where a court has convicted the person of acquiring recognition as a refugee by fraud, forgery, false or misleading representation, or concealment of relevant information. 35

- (4) For the purposes of this section, the period of time to be calculated under **subsection (1)(b)** must be calculated by including any time that has elapsed before the commencement of this section.
- 385 Special provision relating to refugee claimants granted temporary permits** 5
- (1) **Subsection (2)** applies to any person who, immediately before the commencement of this section,—
- (a) was a refugee claimant to whom a temporary permit had been granted on or after 1 October 1999 (whether before or after the person became a claimant); or 10
- (b) having been a person to whom **paragraph (a)** applies, ceased to be a refugee status claimant by virtue of having his or her claim under Part 6A of the former Act to be recognised as a refugee declined. 15
- (2) The person must be treated as a person to whom **section 139** of this Act applies.
- Turnaround, revocation of permits, removal, and deportation*
- 386 Person to whom section 128 of former Act applied**
- (1) This section applies where, immediately before the commencement of this section, section 128 of the former Act applied to a person. 20
- (2) The person must be treated as a person to whom **section 105** of this Act applies.
- (3) For the purposes of **section 106** of this Act, any period of time must be calculated including any time before the commencement of this section. 25
- 387 Person to whom section 128B of former Act applied**
- (1) This section applies where, immediately before the commencement of this section, section 128B of the former Act applied to a person. 30
- (2) The person must be treated as a person to whom **section 105** of this Act applies.
- (3) For the purposes of **section 106** of this Act, any period of time must be calculated including any time before the commencement of this section. 35

388 Revocation of temporary permit

- (1) Where, before the commencement of this section, a notice revoking a permit was given under section 33 or 33A of the former Act, then, subject to **subsection (2)**, that Act continues to apply as if it had not been repealed in respect of that notice and as if the notice related to a visa deemed to be held by the person under this Part. 5
- (2) A person is unlawfully in New Zealand, and **section 143** of this Act applies, if—
- (a) the notice was given to a person to whom section 33(4) of the former Act applied and the person has not left New Zealand; or 10
- (b) the person does not leave New Zealand by the date specified in the notice.
- (3) Nothing in this section allows a person granted a limited purpose permit under section 34A of the former Act to bring any appeal, whether under the former Act or this Act. 15

389 Revocation of residence permit

- (1) Where, before the commencement of this section, the Minister has revoked a residence permit under section 20 of the former Act, the former Act continues to apply in respect of that revocation as if it applied to a visa deemed to be held under this Part, subject to **subsections (2) to (6)** of this section. 20
- (2) A person whose residence permit is revoked under section 20 of the former Act and who has not appealed against that revocation may apply for a temporary visa before the date on which the revocation becomes effective. 25
- (3) Sections 22(7) and (8) and 23(2) of the former Act must be read as if references to a temporary permit were references to a temporary visa. 30
- (4) **Subsection (5)** applies where—
- (a) a temporary permit was granted following a direction under section 22(7) of the former Act made before the commencement of this section; or
- (b) a temporary visa is granted following a direction under section 22(7) of the former Act made after the commencement of this section. 35
- (5) Where this subsection applies and the holder becomes unlawfully in New Zealand,—

- (a) the person has no right to appeal to the Tribunal under **section 143**; and
 - (b) the person may be deported in accordance with **Part 6** at any time after the expiry of 7 days from when the person became unlawfully in New Zealand. 5
- (6) Where a person has appealed under section 22 of the former Act and the Deportation Review Tribunal confirms the revocation—
- (a) the person has no right to apply to—
 - (i) the Tribunal under **section 143** of this Act; or 10
 - (ii) the Removal Review Authority under section 47 of the former Act; and
 - (b) unless the Deportation Review Tribunal makes an order under section 22(7) of the former Act, the person may immediately be deported from New Zealand under **Part 6**. 15

390 Revocation of returning resident's visa

Where, before the commencement of this section, the Minister has revoked a returning resident's visa under section 20A of the former Act, the former Act continues to apply in respect of that revocation and as if it applied to a visa deemed to be held under this Part. 20

391 Removal order served under former Act

- (1) This section applies where a removal order has been made under section 54 of the former Act. 25
- (2) The removal order remains in force as if the former Act had not been repealed, and the time for which the order is in force must be calculated including any time before the commencement of this section.
- (3) A removal order may be cancelled under section 58 of the former Act as if that Act had not been repealed. 30
- (4) Where, on the date this section comes into force, a removal order has been served on a person, but not yet executed, the person may be deported under **Part 6** as if the person had become liable for deportation under this Act. 35

- 392 Deportation of person threatening national security**
- (1) Where the Governor-General has, before the commencement of this section, ordered the deportation from New Zealand of a person under section 72 of the former Act, and the person has not yet left New Zealand, then the order remains in force as if the former Act had not been repealed, and, subject to **subsection (2)**, the former Act continues to apply in respect of the person's deportation from New Zealand. 5
- (2) **Subsection (1)** is subject to **sections 449 and 450**.
- 393 Deportation order under section 73 of former Act** 10
- (1) Where the Minister had, before the commencement of this section, ordered the deportation from New Zealand of a person under section 73 of the former Act, then the order remains in force as if the former Act had not been repealed, and, subject to **subsection (2)**, that Act continues to apply in respect of the person's deportation from New Zealand and any appeal against the making of the order. 15
- (2) **Subsection (1)** is subject to **sections 449 and 450**.
- 394 Deportation orders under section 91 or 92 of former Act**
- (1) Where the Minister had, before the commencement of this section, ordered the deportation from New Zealand of a person under section 91 or 92 of the former Act, then that order remains in force as if the former Act had not been repealed, and, subject to **subsection (2)**, that Act continues to apply in respect of the person's deportation from New Zealand and any appeal against the deportation order. 20 25
- (2) **Subsection (1)** is subject to **sections 449 and 450**.
- 395 Revocation of entry permission or cancellation of visa where permit granted prior to commencement of section 2**
- (1) **Subsection 2** applies where— 30
- (a) a person had been granted a permit under the former Act; and
- (b) an immigration officer determines that the permit was granted as a result of administrative error (as defined in **section 103(4)**); and 35
- (c) the person is, after the commencement of this section, still in the immigration control area where the error was made.

- (2) An immigration officer may, under **section 103**, revoke the visa, and entry permission, deemed to be held as if it were entry permission granted under this Act.
- (3) **Subsection (4)** applies where—
- (a) a person had been granted a permit under the former Act; and 5
 - (b) an immigration officer determines that the permit was granted as a result of administrative error (as defined in **section 55(5)**); and
 - (c) the person to whom the permit was granted is, after the commencement of this section, still in the immigration control area or office of the department in which the visa was granted. 10
- (4) An immigration officer may, under **section 103**, revoke the visa deemed to be held as if it were granted under this Act. 15

396 Executing deportation or removal of persons

- (1) This section applies where—
- (a) a person has been served with a deportation order under the former Act and, on the date of commencement of this section, that person has not yet been deported from New Zealand; or 20
 - (b) a person has been served with a removal order under the former Act but, on the date of commencement of this section, the execution of that removal order has not yet commenced; or 25
 - (c) a person is served with a deportation order in accordance with this Part.
- (2) The deportation or removal of the person must be effected in accordance with **section 166** of this Act as if the person had become liable for deportation under this Act and been served with a deportation order. 30

397 Deportation liability in respect of permits, exemptions, and actions prior to commencement of section

- (1) To avoid doubt, a person may be liable for deportation under **Part 6** of this Act in respect of a visa that is deemed to be held by the person under this Part. 35
- (2) A person may be, or may become, liable for deportation under—

- (a) **section 144** of this Act, whether the visa was granted before or after the commencement of this section:
- (b) **section 146** of this Act, whether the visa was granted, or the matter that gives rise to the determination there is sufficient reason to deport the temporary entry class visa holder arose, before or after the commencement of this section: 5
- (c) **section 147** of this Act, whether—
- (i) the conviction for an offence referred to in **section 147(1)(a)**, occurred before or after the commencement of this section; or 10
- (ii) the fraud, forgery, false or misleading representation, or concealment of relevant information occurred before or after the commencement of this section; or 15
- (iii) the visa, or visa on the basis of which the visa was granted, was granted before or after the commencement of this section; or
- (iv) the immigration status referred to in **section 147(2)(b)** or citizenship was obtained before or after the commencement of this section; or 20
- (d) **section 148** of this Act, whether the conditions were imposed, or the visa was granted, before or after the commencement of this section:
- (e) **section 149** of this Act, whether the new information relates to a matter arising before or after the commencement of this section: 25
- (f) **section 150** of this Act, whether the offence was committed before or after the commencement of this section: 30
- (g) **section 151** of this Act, whether—
- (i) the fraud, forgery, false or misleading representation, or concealment of relevant information occurred before or after the commencement of this section; or 35
- (ii) the recognition as a refugee or protected person was gained before or after the commencement of this section.

- 398 No deportation liability where deportation prohibited under former Act** 5
 Nothing in this Act renders a person, or allows a person to be rendered, liable for deportation in respect of a matter if, before the commencement of this section, the making of a deportation order in respect of the person in relation to that matter was prohibited under section 93 of the former Act.
- Reviews and appeals*
- 399 No new appeal rights created** 10
 Subject to any specific provision to the contrary, nothing in this Part allows a person who had a right of appeal under the former Act in relation to a matter to take a further appeal under this Act in respect of that matter, whether the person did in fact appeal or not.
- 400 Reconsideration where application for another temporary permit has been declined** 15
- (1) Where, before the commencement of this section, an application for a further temporary permit has been declined, the applicant may, as long as the applicant is lawfully in New Zealand (and subject to **subsections (2) and (5)**), apply for a reconsideration of the decision in accordance with **section 170** of this Act as if the decision were a decision to decline a temporary entry class visa under this Act. 20
- (2) Where, immediately before the commencement of this section, a decision to decline an application for a further temporary permit was being reconsidered, that reconsideration must continue as if section 31 of the former Act had not been repealed (but subject to **subsection (3)**). 25
- (3) Where **subsection (2)** applies— 30
- (a) section 31(2) of the former Act must be read as if it prohibited a person's deportation from New Zealand; and
- (b) references to permits in section 31 of the former Act must be read as references to visas; and
- (c) the right to appeal against the obligation to leave New Zealand must, in respect of a person who becomes unlawfully in New Zealand after the commencement of this section, be read as an appeal under **section 185** of this 35

Act by a person liable for deportation under **section 143** of this Act.

- (4) The Minister or an immigration officer may, following a reconsideration referred to in **subsection (2)**, grant the person a visa in accordance with this Act. 5
- (5) Nothing in this Act gives any right to any further reconsideration of a decision that has already been subject to reconsideration under section 31 of the former Act, and no such further application may be made or considered.
- 401 Appeals where application for residence visa or residence permit declined** 10
- (1) This section applies where, before the commencement of this section, an immigration officer has refused to grant an application for a residence visa or residence permit and the person has not appealed under section 18C of the former Act against that refusal. 15
- (2) The applicant may, within the 42-day period referred to in section 18C(3)(c) of the former Act, appeal to the Residence Review Board under section 18C of the former Act (unless an appeal is prohibited under subsection (2) or (2A) of that section) and, subject to **subsection (4)** of this section, that Act applies in respect of any such appeal as if it had not been repealed. 20
- (3) When calculating the 42-day period referred to in **subsection (2)** of this section, that period must be calculated including any time before the commencement of this section. 25
- (4) References to the issue of a residence visa or grant of a residence permit in sections 18D(2) and 18E of the former Act must be read as references to the grant of the relevant type of residence class visa. 30
- 402 Appeal before Residence Review Board**
- (1) This section applies where an appeal has been brought under section 18C of the former Act and has, immediately before the commencement of this section, not been determined.
- (2) Subject to **subsection (3)**, the former Act continues to apply in respect of the appeal as if it had not been repealed. 35
- (3) References to the issue of a residence visa or grant of a residence permit in sections 18D(2) and 18E of the former Act

must be read as references to the grant of the relevant type of residence class visa.

403 Further appeals from Residence Review Board

- (1) Any appeals or review proceedings in respect of a decision of the Residence Review Board made after the commencement of this section must be brought in accordance with **section 219 or 222** of this Act as if references in that section to the Tribunal were references to the Residence Review Board. 5
- (2) Despite **section 219(4)(b)** of this Act, the Court must not remit the matter to the Tribunal, but may remit the matter to the Residence Review Board, together with any directions as to how the matter should be dealt with. 10

404 Appeal against decision to decline claim for refugee status

- (1) This section applies where, before the commencement of this section, a claim for refugee status has been declined by a refugee status officer, and the person has not yet appealed against the decision to decline. 15
- (2) The claimant may appeal to the Refugee Status Appeals Authority within the time period set out in section 129O of the former Act. 20
- (3) That time period must be calculated including any time before the commencement of this section.
- (4) The Refugee Status Appeals Authority must determine the appeal as if it were an appeal to the Tribunal under **section 176(1)(a)** of this Act, and, for the purposes of this section, that Authority has the powers and functions of the Tribunal under this Act to determine the appeal. 25

405 Appeal before Refugee Status Appeals Authority under section 129O(1) of former Act

- (1) This section applies where an appeal under section 129O(1) of the former Act against a decision of a refugee status officer to decline a claim has been lodged and, on the date of commencement of this section, has not yet been determined. 30
- (2) The Refugee Status Appeals Authority must determine the appeal as if it were an appeal to the Tribunal under **section 176(1)(a)** of this Act, and, for the purposes of this section, that 35

Authority has the powers and functions of the Tribunal under this Act to determine the appeal.

- (3) Nothing in this section requires the Refugee Status Appeals Authority to provide a further oral hearing to an appellant who has already been interviewed by the Refugee Status Appeals Authority, but the Authority may, in its absolute discretion, provide such a hearing. 5
- 406 Appeal against refusal to consider subsequent claim**
- (1) This section applies where—
- (a) before the commencement of this section, a refugee status officer has refused to consider a subsequent claim on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim; or 10 15
- (b) before the commencement of this section, a person had appealed to the Refugee Status Appeals Authority against a decision to refuse to consider a subsequent claim under section 129O(1) of the former Act and, at the date of commencement of this section, that appeal had not yet been determined. 20
- (2) Where **subsection (1)(a)** applies,—
- (a) the claimant may appeal to the Refugee Status Appeals Authority under section 129O of the former Act within the time period set out in section 129O(3) of that Act; and 25
- (b) the period of time must be calculated including any time before the commencement of this section.
- (3) Subject to **subsection (4)**, the former Act continues to apply in respect of that appeal. 30
- (4) However, if the Refugee Status Appeals Authority determines that the subsequent claim should be considered, the Authority must then determine the matter as if it were an appeal to the Tribunal under **section 176(1)(a)** of this Act and, for the purposes of this subsection, has the powers of the Tribunal under this Act to determine the appeal. 35

- 407 Appeals or matters before Refugee Status Appeals Authority relating to cancellation or cessation of refugee status**
- (1) This section applies where, before the commencement of this section,—
- (a) a refugee status officer had made an application under section 129L(1)(f) of the former Act and, on the date of commencement of this section, that application has not yet been determined; or
 - (b) a refugee status officer had made a decision of a type referred to in section 129O(2) of the former Act but, on the date of commencement of this section, the person had not appealed against the decision; or
 - (c) a person has appealed under section 129O(2) of the former Act against a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) of the former Act but, on the date of commencement of this section, the appeal had not yet been determined.
- (2) Where **subsection (1)(b)** applies,—
- (a) the person may appeal to the Refugee Status Appeals Authority under section 129O(2) of the former Act as if that Act had not been repealed, within the time set out in section 129O(3) of the former Act; and
 - (b) the period of time must be calculated including any time before the commencement of this section.
- (3) The Refugee Status Appeals Authority must determine the appeal or matter as if the former Act had not been repealed.
- (4) **Subsection (5)** applies if the Refugee Status Appeals Authority determines that—
- (a) the Authority should cease to recognise a person as a refugee in terms of section 129L(1)(f)(ii) of the former Act; or
 - (b) any of Articles 1D, 1E, and 1F should be applied to exclude a person from the protection of the Convention, in terms of section 129L(1)(f)(iii) of the former Act; or
 - (c) a refugee status officer's decision made under section 129L(1)(b) or (c) of the former Act should be upheld.
- (5) The person must be treated as liable for deportation in terms of **section 151** of this Act but may appeal to the Tribunal against liability for deportation on humanitarian grounds only.

- 408 Appeal against decision of Refugee Status Appeals Authority**
- (1) A decision of the Refugee Status Appeals Authority determined after the commencement of this section may be subject to an appeal to the High Court under **section 219** of this Act or to review proceedings. 5
- (2) Despite **section 219(4)(b)** of this Act, the Court must not remit the matter to the Tribunal, but may remit the matter to the Refugee Status Appeals Authority, together with any directions as to how the matter should be dealt with. 10
- 409 Appeal by person unlawfully in New Zealand on commencement of Act**
- (1) A person who, on the commencement of this section, is unlawfully in New Zealand may appeal to the Tribunal under **section 185** of this Act within the period set out in **section 143(2)** of this Act, unless the person has already appealed to the Removal Review Authority under section 47 of the former Act. 15
- (2) For the purposes of **section 143(2)** of this Act, the period during which a person has been unlawfully in New Zealand must be calculated inclusive of any time during which the person was unlawfully in New Zealand before the commencement of this section. 20
- 410 Appeal before Removal Review Authority**
- (1) This section applies where an appeal has been brought under section 47 of the former Act and, on the date of commencement of this section, has not been determined. 25
- (2) Subject to **subsection (3)**, the former Act continues to apply as if it had not been repealed in respect of the appeal.
- (3) Section 52 of the former Act must be read as if— 30
- (a) references to a residence permit or a temporary permit were references to a residence class visa or a temporary visa, as the case may be;
- (b) the reference to section 18A(4) to (7) were a reference to **sections 38 to 43** of this Act. 35

- 411 Further appeals from decisions of Removal Review Authority**
- (1) Any appeals or review proceedings in respect of decisions of the Removal Review Authority made after the commencement of this section must be brought in accordance with **section 219 or 222** of this Act as if references in those sections to the Tribunal were references to the Authority. 5
- (2) Despite **section 219(4)(b)** of this Act, the Court must not remit the matter to the Tribunal, but may remit the matter to the Removal Review Authority, together with any directions as to how the matter should be dealt with. 10
- 412 Appeal before High Court under section 81 of former Act**
- (1) This section applies where, before the commencement of this section, an appeal against the making of a deportation order has been lodged under section 81 of the former Act and, on the date of commencement of this section, has not been determined. 15
- (2) The former Act continues to apply in respect of the appeal as if it had not been repealed. 20
- 413 Appeal before Deportation Review Tribunal**
- (1) This section applies where, before the commencement of this section, an appeal against deportation has been lodged under section 104 of the former Act and, on the date of commencement of this section, has not been determined. 25
- (2) Subject to **subsection (3)**, the former Act continues to apply in respect of the appeal as if it had not been repealed.
- (3) The references in section 107 of the former Act to sections 99, 101, or 98 of the former Act must be read as references to **sections 277, 279, 280, or 282** of this Act, as appropriate. 30
- 414 Further appeals from decisions of Deportation Review Tribunal**
- (1) Any appeals or review proceedings in respect of decisions of the Deportation Review Tribunal made after the commencement of this section must be brought in accordance with **section 219 or 222** of this Act as if references in those sections 35

- to the Tribunal were references to the Deportation Review Tribunal.
- (2) Despite **section 219(4)(b)** of this Act, the Court must not remit the matter to the Tribunal, but may remit the matter to the Deportation Review Tribunal, together with any directions as to how the matter should be dealt with. 5
- 415 Existing appeal under section 115 or 115A of former Act**
- (1) This section applies where an appeal has been lodged under section 115 or 115A of the former Act and, at the date of commencement of this section, has not been determined. 10
- (2) The former Act continues to apply in relation to the appeal as if it had not been repealed.
- 416 Existing appeal under section 116 of former Act**
- (1) This section applies where an appeal has been lodged under section 116 of the former Act and, at the date of commencement of this section, has not been determined. 15
- (2) The former Act continues to apply in relation to the appeal as if it had not been repealed.
- 417 Existing appeal under section 117 of former Act**
- (1) This section applies where an appeal has been lodged under section 117 of the former Act and, at the date of commencement of this section, has not been determined. 20
- (2) Subject to **subsection (3)**, the former Act continues to apply as if it had not been repealed in relation to the appeal.
- (3) The references in section 117 of the former Act to sections 99, 101, or 98 of the former Act must be read as references to **sections 277, 279, 280, or 282** of this Act as appropriate. 25
- 418 Application of appeal provisions to existing applications, etc**
- (1) This section applies in relation to appeals concerning applications for permits or visas or claims for refugee status— 30
- (a) made before the commencement of this section; but
- (b) not determined until after its commencement.
- (2) **Section 170** of this Act applies regardless of whether the application for the visa was made before or after the commencement of this section. 35

- (3) **Section 171** of this Act applies regardless of whether the application for the residence class visa was made before or after the commencement of this section.
- (4) **Section 176** of this Act applies regardless of whether a person claimed refugee status (including as a subsequent claim) before or after the commencement of this section. 5

General transitional provisions relating to appeals bodies

419 Continuation of appeals bodies

- (1) Despite the repeals effected by this Act, the appeals bodies remain in office for so long as required for the purposes of determining any proceedings under **sections 401 to 416** that are within the jurisdiction of the appeals body. 10
- (2) However, **subsection (1)** is subject to **sections 420 to 422**.
- (3) While the appeals bodies remain in office, they must be serviced by employees of the department of State designated under **clause 6(1) of Schedule 2** of this Act. 15
- (4) The chair of the Tribunal is responsible for managing the allocation of work and the orderly and expeditious determination of appeals and other matters for the period during which the appeals bodies remain in office. 20
- (5) To avoid doubt, nothing in this Act entitles a member of an appeals body to any compensation in respect of the repeal of the former Act, including for any salary or allowances that would otherwise be payable for the remainder of the term of an appointment affected by the repeal. 25

420 Appeals or other matters allocated at commencement date

- (1) Subject to **section 422** of this Act and **subsection (3)** of this section, any appeal or other matter under the former Act that has been, immediately before the commencement of this section, allocated to a member of an appeals body for determination, must be heard and determined by that member. 30
- (2) Where **subsection (1)** applies, despite the repeals effected by this Act, the member is deemed to continue as a member of the appeals body for the purposes of determining the appeal or matter. 35
- (3) However, if, for any reason, the member to whom the appeal or matter was allocated becomes unavailable, the chair of the

Tribunal may allocate it to another member for consideration in accordance with **section 422** of this Act.

421 Appeals before Deportation Review Tribunal

- (1) Where an appeal to the Deportation Review Tribunal under the former Act has, immediately before the commencement of this section, been set down for hearing, that appeal must be heard and determined as if the former Act had not been repealed. 5
- (2) However, where an appeal to the Deportation Review Tribunal under the former Act has not, immediately before the commencement of this section, been set down for a hearing, the chair of the Tribunal may direct under **section 422** that the appeal be heard and determined by the Tribunal in the name of the Deportation Review Tribunal. 10
- (3) To avoid doubt, where an appeal is to be heard and determined under **subsection (2)**, the Tribunal consists of 1 member, unless the chair directs otherwise in accordance with **section 197(2)**. 15

422 Appeals or other matters not allocated at commencement date

- (1) This section applies where— 20
- (a) an appeal or other matter under the former Act had not yet been allocated to a member of an appeals body; or
- (b) the member to whom an appeal or matter was allocated before the commencement of this section becomes unavailable; or 25
- (c) **section 421(2)** applies; or
- (d) an appeal or other matter is lodged after the commencement of this section for determination by an appeals body in accordance with **sections 419 to 421**; or
- (e) an appeal or other matter is remitted back to an appeals body by the High Court. 30
- (2) The chair of the Tribunal may direct any member of the Tribunal to hear and determine, in the name of the relevant appeals body, any proceedings under this Part, and that member is, without further authority than this section, deemed to be authorised to hear and determine those proceedings. 35

- 423 Appeals bodies to retain powers under former Act**
 For the purposes of **sections 419 to 422**, and subject to any provision to the contrary, the appeals bodies have all the necessary powers, and may exercise, despite the repeal of the former Act effected by this Act, the powers conferred on them by the former Act, which apply accordingly with all necessary modifications. 5
- Disclosure of immigration information to other agencies, bodies, or persons*
- 424 Disclosure of immigration information for Corrections purposes** 10
- (1) This section applies where, before the commencement of this section, the chief executive of the Department of Labour and the chief executive of the Department of Corrections have made arrangements in writing for the disclosure of information by the Department of Labour to the Department of Corrections under section 141AC of the former Act. 15
- (2) The arrangements described in **subsection (1)**—
- (a) are to be treated for the purposes of **section 261** of this Act as arrangements made in writing made between the chief executive and the chief executive of the department of State for the time being responsible for the administration of the Corrections Act 2004; and 20
- (b) continue in force according to their general tenor, read with any necessary modifications. 25
- 425 Disclosure of immigration information for fines enforcement purposes**
- (1) This section applies where, before the commencement of this section, the Secretary of Labour and the chief executive of the Ministry of Justice entered into an agreement for the disclosure of immigration information by the Department of Labour to the Ministry of Justice under section 141AE of the former Act. 30
- (2) The agreement described in **subsection (1)**—
- (a) is to be treated for the purposes of **section 262** of this Act as an agreement made between the chief executive and the chief executive of the department of State for the time being responsible for the enforcement of fines; and 35

- (b) continues in force according to its general tenor, read with any necessary modifications.

426 Disclosure of immigration information to Ministry of Social Development

- (1) This section applies where, before the commencement of this section, the chief executive of the Department of Labour and the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 made arrangements or entered into an agreement for the disclosure of information by the Department of Labour under section 141A of the former Act to the department for the time being responsible for the administration of the Social Security Act 1964. 5 10
- (2) The arrangements and agreement described in **subsection (1)**—
- (a) are to be treated for the purposes of **section 265** of this Act as arrangements or as an agreement, whichever applies, made between the chief executive and the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964; and 15 20
- (b) continue in force according to their general tenor, read with any necessary modifications.

427 Disclosure of information overseas

- (1) This section applies where, before the commencement of this section, the chief executive of the Department of Labour entered into an agreement for the disclosure of information, or disclosed information, under section 141AA of the former Act to an overseas agency, body, or person. 25
- (2) The agreement described in **subsection (1)**—
- (a) is to be treated for the purposes of **section 269** of this Act as an agreement entered into between the chief executive and the agency, body, or person concerned; and 30
- (b) continues in force according to its general tenor, read with any necessary modifications.
- (3) If the chief executive has disclosed information under section 141AA(8) of the former Act, any conditions to which the disclosure of the information was subject continue to apply unless varied or revoked by the chief executive. 35

*Detention and monitoring***428 Detention without warrant**

- (1) This section applies where, immediately before the commencement of this section, a person was being detained without warrant under the former Act. 5
- (2) The person may continue to be detained without warrant under the relevant section of the former Act for the time period allowed under that section, and the former Act continues to apply in respect of such detention as if it had not been repealed. 10
- (3) The time period referred to in **subsection (2)** must be calculated including any time the person was in detention before the commencement of this Act.
- (4) Any application for a warrant of commitment authorising the continued or further detention of the person must be made under **section 278** of this Act, and this Act then applies accordingly. 15

429 Detention under existing warrant of commitment

- (1) This section applies where, immediately before the commencement of this section, a person was being detained pursuant to a warrant of commitment issued under the former Act. 20
- (2) The warrant of commitment remains in force for the time period for which it was issued, and the former Act continues to apply in respect of that detention as if it had not been repealed. 25
- (3) The time period referred to in **subsection (2)** must be calculated including any time the warrant was in force before the commencement of this section.
- (4) An application for a further warrant of commitment must be made under **section 278** of this Act, and this Act then applies accordingly. 30
- (5) For the purposes of **Part 9** of this Act, a person whose deportation had been ordered under section 72 or 73 of the former Act must be treated as if his or her deportation had been ordered under **section 152** of this Act. 35

430 Existing release on conditions

- (1) This section applies where, immediately before the commencement of this section, a person has been released on conditions under the former Act.
- (2) The person remains subject to the relevant conditions and the former Act continues to apply in respect of that person's release on conditions until—
- (a) the person leaves New Zealand; or
 - (b) in the case of a person to whom section 128AA of the former Act applies, the date on which the order that the person be conditionally released from custody expires, or the occurrence of the event upon which it expires.
- (3) If **subsection (2)(b)** applies, the person must deliver himself or herself to an immigration officer at the location stated in the order, and an immigration officer may—
- (a) cause the person to be arrested and detained under **section 275** of this Act, and this Act then applies accordingly; or
 - (b) agree to residence and reporting requirements under **section 277** of this Act, and this Act then applies accordingly.
- (4) If **subsection (2)(b)** applies, and the person fails to deliver himself or herself to an immigration officer as required, the person may be arrested and detained under **section 275** of this Act, and this Act then applies accordingly.

431 Persons subject to residence and reporting requirements under section 98 of former Act

- (1) Any residence and reporting requirements imposed under section 98 of the former Act that were in force immediately before the commencement of this section remain in force and, subject to **subsection (2)**, the former Act continues to apply as if it had not been repealed in respect of those requirements, until the person leaves New Zealand.
- (2) If section 98(4) of the former Act applies, the person may be arrested and detained under **section 275** of this Act as if the person were a person who had failed to comply with an agreement made under **section 277** of this Act.

- 432 Application of sections 285 and 286 of this Act to detention commencing before commencement of this section**
- (1) Subject to **subsection (2), sections 285 and 286** of this Act apply regardless of whether a person was initially detained before or after the commencement of this section. 5
- (2) **Sections 285 and 286** of this Act do not apply to a person whose deportation was or is ordered under section 72 or 73 of the former Act.
- 433 Application of section 108 of this Act** 10
- Section 108** of this Act applies only in respect of persons to whom **section 72** of this Act first applies after the commencement of this Act.
- 434 Persons subject to Part 4A of former Act**
- (1) Where, before the commencement of this section, a security risk certificate was provided under section 114D of the former Act in respect of a person, then, subject to **subsection (2)**, Part 4A of the former Act continues to apply in relation to that certificate and that person as if it had not been repealed. 15
- (2) Where section 114L of the former Act (as continued by **subsection (1)**) applies, any resumption of immigration processing must recommence subject to any necessary modifications in accordance with this Part. 20
- (3) Where the Minister directs the chief executive to act in reliance on a certificate under section 114K(1) of the former Act, and such direction requires the revocation or cancellation of a visa or the making of a removal order or deportation order,— 25
- (a) such revocation or cancellation, or the making of an order, must be made as if the former Act had not been repealed; and 30
- (b) the former Act continues to apply as if it had not been repealed in relation to the making, serving, and execution of the order, and any related appeals or review proceedings.
- (4) This section overrides any provision to the contrary in this Part. 35

*Use of classified information in decision making***435 Classified information**

A decision may be made using classified information in accordance with this Act regardless of whether the relevant application, claim, or other matter arose before or after the commencement of this Act. 5

*Offences, etc***436 Offences**

- (1) **Section 306(1)(d)** of this Act applies whether the condition was imposed (or deemed to be imposed) under this Act or was a requirement or condition imposed under the former Act. 10
- (2) **Section 307(a)** of this Act applies whether the document or information was required by an immigration officer before or after the commencement of the Act, if the requirement could lawfully be made under the former Act. 15

437 Offences by employers

- (1) **Subsection (2)** applies where, before the commencement of this section,—
- (a) an employer allowed a person to undertake employment in the employer's service; and 20
 - (b) at the time that the person commenced employment in the employer's service, the employer had a reasonable excuse under section 39(1B) of the former Act for allowing the person to undertake that employment; and
 - (c) the person is not entitled under this Act to undertake that employment. 25
- (2) No employer to whom **subsection (1)** applies is liable for an offence against **section 313(1)(b)** of this Act in respect of any period during which the employer continues to employ the employee, unless, at any time within the preceding 12 months, the employer has been informed in writing by an immigration officer that the employee is not entitled to undertake that employment. 30

438 Evidence in proceedings

In any proceedings relating to any matter under this Act, whether before a court or the Tribunal, a certificate signed by an immigration officer and containing a statement in relation 35

to any person to the effect of all or any of the matters described in section 143(1) of the former Act is deemed to be proof of the truth of the statement, in the absence of proof to the contrary established on the balance of probabilities.

Miscellaneous provisions

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439	Children to have responsible adult to represent their interests	
	For the purposes of this Act, any person who has been nominated as a responsible adult for a minor under section 141B of the former Act must be treated as a person who has been nominated as a responsible adult under section 338 of this Act.	10
440	Special directions	
(1)	A special direction made in accordance with section 130 of the former Act remains in force according to its tenor and with any necessary modifications.	15
(2)	A special direction saved by subsection (1) may be revoked or amended by further special direction given under section 341 of this Act.	
441	Delegation of powers of Minister	
(1)	A delegation made by the Minister under section 131 of the former Act remains in force according to its tenor and with any necessary modifications.	20
(2)	A delegation saved by subsection (1) may be revoked by the Minister under section 342(3) of this Act.	
442	Immigration officers	25
(1)	Immigration officers designated under section 133 of the former Act, including customs officers and other persons designated as immigration officers in accordance with paragraphs (b) and (c) of the definition of immigration officer in section 2(1) of the former Act, must be treated as immigration officers designated under section 346 of this Act as authorised to exercise visa and entry permission decision-making powers.	30
(2)	Visa officers designated in accordance with paragraphs (b) and (c) of the definition of visa officer in section 2(1) of the former Act must be treated as immigration officers designated	35

- under **section 346** of this Act as authorised to make decisions relating to visas outside New Zealand.
- (3) For the purposes of this Act, any act or thing done by an immigration officer or visa officer under the former Act is to be treated as an act or thing done by an immigration officer under this Act. 5
- (4) A designation deemed to continue by **subsection (1) or (2)** may be revoked by the chief executive under **section 349** of this Act.
- (5) **Subsections (1) and (2)** are subject to any condition imposed on the designation or special direction. 10
- 443 Exercise of certain powers by customs officers**
- (1) A customs officer who was designated as an immigration officer under the former Act may exercise the powers in **sections 250, 251, and 252** of this Act on and from the date appointed by Order in Council made under **section 2(1)** of this Act until the date those sections are brought into force under **section 2(2)** of this Act, and **sections 250, 251, and 252** of this Act apply as if references to an immigration officer were references to a customs officer. 15
- (2) It is sufficient compliance with **section 290(1)(b)** of this Act if the officer exercising powers in accordance with this section produces his or her identity card or other means of identification provided for in section 7 of the Customs and Excise Act 1996. 20
- 444 Transitional exercise of powers by members of police**
- A member of the police may exercise the powers in **sections 245, 250, 251, 252, and 253** of this Act on and from the date appointed by **section 2(1)** of this Act, and this Act applies accordingly as if references to an immigration officer were references to a member of the police. 25
- 445 Refugee status officers** 30
- (1) A person designated as a refugee status officer under section 129E of the former Act must be treated as a determination officer designated under **section 348** of this Act.
- (2) A designation deemed to continue by **subsection (1)** may be revoked by the chief executive under **section 349** of this Act. 35

- 446 Forms**
A form approved under section 132 of the former Act must be treated as if it had been approved under **section 343** of this Act, and must be read with the necessary modifications.
- 447 Bonds imposed under former Act** 5
(1) A bond imposed under the former Act may be refunded or forfeited in accordance with **section 354** of this Act as if it had been imposed under this Act.
(2) The period during which a person must apply for a refund of the bond under **section 354(2)** of this Act must be calculated including any time before the commencement of this section. 10
- 448 Sponsorship under former Act**
(1) This section applies where any person has supplied a written undertaking relating to the employment, accommodation, maintenance, or repatriation of an applicant for a visa or permit under the former Act (whether under section 28 of that Act or otherwise). 15
(2) Where that undertaking is still in force on the commencement of this section, it must be treated as an undertaking to which **section 46** of this Act applies. 20
- Regulations and instructions for transitional purposes*
- 449 Transitional regulations**
(1) The Governor-General may from time to time, by Order in Council, make regulations adding to or modifying the provisions of **subpart 2 of Part 12** for the purpose of facilitating or ensuring an orderly transition from the provisions of the former Act to the provisions of this Act. 25
(2) No regulations made under this section may be made, or continue in force, later than 2 years after the date specified for the commencement of this Act under **section 2(1)**. 30
- 450 Transitional immigration instructions**
Immigration instructions formulated and certified under **section 20** may make any appropriate or necessary provision for facilitating or ensuring an orderly transition from the application of provisions and policy under the former Act to 35

the application of the provisions of this Act and immigration instructions made under it.

Schedule 1 s 117(2)
Convention Relating to the Status of Refugees
 Done at Geneva on 28 July 1951 ¹

Entry into force: 22 April 1954, in accordance with Article 43 5
 Text: United Nations Treaty Series No. 2545, Vol. 189, p. 137

PREAMBLE

The High Contracting Parties

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. 10

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms. 15

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement. 20

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation. 25

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States. 30

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the

¹ The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V) adopted by the General Assembly of the United Nations on 14 December 1950. For the text of this resolution, see Official Records of the General Assembly, Fifth Session, Supplement No 20 (A/1775) p 48. 35
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effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner.

Have agreed as follows:

CHAPTER I

5

GENERAL PROVISIONS

Article 1

Definition of the term "Refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

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(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization:

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Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country: or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

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In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

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B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either:

- (a) “events occurring in Europe before 1 January 1951”; or
 (b) “events occurring in Europe or elsewhere before 1 January 1951”,

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.²

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a

² On acceding to the Convention on 30 June 1960 the New Zealand Government declared, in accordance with Section B (1) of Article 1 of the Convention, that “for the purposes of the New Zealand Government’s obligations under the Convention, the words ‘events occurring before 1 January 1951’ in Section A of Article 1 shall be understood to mean ‘events occurring in Europe or elsewhere before 1 January 1951’”. See also Article I of the 1967 Protocol Relating to the Status of Refugees, as included in this schedule.

refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence. 5

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. 10

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention. 15

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: 20

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; 25

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations. 30

Article 2

General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order. 35

Article 3

Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

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Article 4

Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

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Article 5

Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

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Article 6

The term "in the same circumstances"

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

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Article 7

Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

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2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the

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absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3. 5

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide. 10

Article 8

Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this Article, shall, in appropriate cases, grant exemptions in favour of such refugees. 15
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Article 9

Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security. 25
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Article 10

Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory. 35

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required. 5

Article 11

Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country. 10
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CHAPTER II

JURIDICAL STATUS

Article 12

Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. 20

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee. 25

Article 13

Movable and immovable property 30

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property. 35

Article 14

Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15

Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16

Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III

GAINFUL EMPLOYMENT

Article 17

Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions: 5

- (a) He has completed 3 years' residence in the country;
- (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse; 10
- (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes. 15

Article 18

Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies. 20 25

Article 19

Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. 30

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible. 35

CHAPTER IV

WELFARE

Article 20

Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals. 5

Article 21

Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. 10
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Article 22

Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. 20

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. 25

Article 23

Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals. 30

Article 24

Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters: 5

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining; 10

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations: 15

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition; 20

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension. 25

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.³ 30

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired 35

³ On acceding to the Convention on 20 June 1960 the New Zealand Government entered a reservation to Article 24 (2) in the following terms: "the Government of New Zealand can only undertake to give effect to the provisions contained in paragraph (2) of Article 24 of the Convention so far as the law of New Zealand allows". 40

rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States. 5

CHAPTER V

ADMINISTRATIVE MEASURES

Article 25 10

Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority. 15

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. 20

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services. 25

5. The provisions of this Article shall be without prejudice to Articles 27 and 28. 30

Article 26

Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances. 35

Article 27

Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

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Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

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2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

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Article 29

Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

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2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

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Article 30

Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

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2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31

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Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

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2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

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Article 32

Expulsion

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1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

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3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

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Article 33

Prohibition of expulsion or return ("refoulement")

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1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion,

nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. 5

Article 34

Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. 10

CHAPTER VI

EXECUTORY AND TRANSITORY PROVISIONS 15

Article 35

Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention. 20

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning: 25

- (a) the condition of refugees,
- (b) the implementation of this Convention, and
- (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees. 30

Article 36

Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention. 35

Article 37

Relation to previous Conventions

Without prejudice to Article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946. 5

CHAPTER VII

FINAL CLAUSES 10

Article 38

Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute. 15

Article 39

Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952. 20

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations. 25 30

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations. 35

Article 40

Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned. 5

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later. 10

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories. 15

Article 41 20

Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those Articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States, 25

(b) With respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment. 30 35

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the

Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.	5
Article 42	
Reservations	
1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16 (1), 33, 36–46 inclusive.	10
2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.	
Article 43	
Entry into force	
1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.	
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.	20
Article 44	
Denunciation	
1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.	
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.	30
3. Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.	35

Article 45

Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations. 5

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in Article 39: 10

(a) of declarations and notifications in accordance with Section B of Article 1; 15

(b) of signatures, ratifications and accessions in accordance with Article 39; 15

(c) of declarations and notifications in accordance with Article 40;
 (d) of reservations and withdrawals in accordance with Article 42;
 (e) of the date on which this Convention will come into force in accordance with Article 43; 20

(f) of denunciations and notifications in accordance with Article 44;

(g) of requests for revision in accordance with Article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments. 25

DONE AT GENEVA, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in Article 39. 30

III

PROTOCOL RELATING TO THE STATUS OF REFUGEES
OF 31 JANUARY 1967 ⁴

Entry into force: 4 October 1967, in accordance with Article VIII

Text: United Nations Treaty Series No. 8791, Vol. 606, p. 267 5

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951, 10

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951, 15

Have agreed as follows:

Article I

General provision

1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined. 20

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and ..." and the words "... as a result of such events", in Article 1 A (2) were omitted. 25

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance 30

⁴ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

with Article 1 B (1) (a) of the Convention, shall, unless extended under Article 1 B (2) thereof, apply also under the present Protocol.⁵

Article II

Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol. 5 10

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning: 15

(a) The condition of refugees:

(b) The implementation of the present Protocol:

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees. 20

Article III

Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol. 25

Article IV

Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute. 30

⁵ For New Zealand's declaration, see footnote to Article 1 B (1) of the Convention as it appears in this schedule. 35

Article V

Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States:
- (b) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

Reservations and declarations

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article I of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under Article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraphs 2 and 3, and of Article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

Notifications by the Secretary-General of the United Nations 5

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto. 10

Article XI

Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above. 15

Schedule 2

s 211

Provisions relating to Tribunal

- 1 Term of office of members**
- (1) Every member of the Tribunal holds office for such period not exceeding 5 years as is fixed in the member's warrant of appointment. 5
- (2) A member of the Tribunal may be reappointed.
- (3) Any member of the Tribunal who is not a District Court Judge may at any time be removed from office by the Governor-General for disability affecting the performance of his or her duties, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General. 10
- (4) A member of the Tribunal may at any time resign the office by writing addressed to the Governor-General.
- (5) Despite the expiry of the term of office of a member of the Tribunal, or the member's resignation, the member is deemed to continue as a member of the Tribunal for the purpose of deciding any matter that was wholly heard before the expiry of the term of office or before the resignation took effect. 15
- 2 Oath of office** 20
- Each member of the Tribunal must, before entering on the exercise of any of his or her functions under this Act, swear or affirm before a Judge of the High Court that he or she will faithfully and impartially perform his or her duties as a member of the Tribunal. 25
- 3 Chair not to sit as District Court Judge**
- While acting as chair of the Tribunal, the chair may not also sit as a District Court Judge.
- 4 Deputy chair of Tribunal**
- (1) The Minister of Justice may from time to time designate a member or members of the Tribunal as deputy chair or chairs of the Tribunal and may at any time revoke such a designation. 30
- (2) If the chair of the Tribunal is unable to act as chair by reason of illness, absence from New Zealand, or other sufficient cause, a member designated under **subclause (1)** may act as chair, subject to **subclause (3)**. 35

- (3) A member may only act as chair in any proceedings involving classified information if the member is a District Court Judge.
- (4) The fact that a member designated under **subclause (1)** acts as chair of the Tribunal is conclusive evidence of the member's authority to do so. 5
- 5 Remuneration**
- (1) The remuneration of the District Court Judge who is chair of the Tribunal, and of any other seconded member who is a District Court Judge, is that set under the Remuneration Authority Act 1977. 10
- (2) The other members of the Tribunal must be paid remuneration by way of fees, salary, and allowances (including travelling allowances and expenses) in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies as if the members were members of a statutory Board within the meaning of that Act. 15
- 6 Administration and staffing**
- (1) The administration services and staffing necessary to enable the Tribunal to carry out its functions under this Act are to be provided by the department of State for the time being designated for the purpose by the Prime Minister. 20
- (2) The chief executive of the department designated under **subclause (1)** must, from time to time, consult the chair of the Tribunal about the level of administration services and staffing to be provided. 25
- 7 Members of Tribunal not personally liable**
- No member of the Tribunal is personally liable for any act done or omitted to be done by the Tribunal or any member of it in good faith in pursuance or intended pursuance of the powers and functions of the Tribunal. 30
- Compare: 1987 No 74 Schedule 3C cl 10
- 8 Appeal to continue on change in Tribunal**
- (1) Where any change takes place in a member constituting the Tribunal (including by reason of any vacancy in the membership of the Tribunal), any appeal then in progress does not 35

abate and is not affected, but is to continue and is to be dealt with by the Tribunal as if no change had taken place.

- (2) However, the Tribunal may, in its discretion, require evidence to be reheard where necessary.

Proceedings of Tribunal

5

9 Evidence

- (1) The Tribunal may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the proceedings before it, whether or not it would be admissible in a court of law. 10
- (2) Subject to **subclause (1) and section 331(1)**, the Evidence Act 2006 applies to the Tribunal as if it were a court.

10 Tribunal may take evidence on oath

- (1) The Tribunal may take evidence on oath, and for that purpose a member of the Tribunal or a member of the staff of the Tribunal may administer an oath. 15
- (2) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

11 Powers of investigation

20

- (1) For the purposes of any of its proceedings, the Tribunal, or any person authorised by it in writing to do so, may—
- (a) inspect and examine any papers, documents, records, or things:
- (b) require any person (including any Government agency) to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made: 25 30
- (c) require any person (including any Government agency) to provide, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records. 35
- (2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts provided

under this section be verified by statutory declaration or otherwise as the Tribunal may require.

- (3) For the purposes of its proceedings, the Tribunal may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, provided or produced to it be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy. 5 10
- (4) This clause is subject to **section 32(3)**.

12 Power to summon witnesses

- (1) For the purposes of its proceedings, the Tribunal may of its own motion, or on application, issue in writing a summons in the prescribed form requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the proceedings. 15
- (2) For the purposes of this Act, the power to issue summonses, or to do any other act preliminary or incidental to the hearing of any matter by the Tribunal, may be exercised by the Tribunal, or by an officer of the Tribunal purporting to act by direction or with the authority of the Tribunal. 20
- (3) If a summons is issued by the Tribunal in respect of a person detained in custody, the manager or other person in charge of the relevant prison or other premises, or the other person having custody of the detained person, must produce or allow the production of the person as directed in the summons. 25
- (4) This clause is subject to **section 32(3)**. 30

13 Service of summons

- (1) A summons to a witness must be served by personal service on the person summoned.
- (2) The summons must be served at least 24 hours before the attendance of the witness is required. 35

- 14 Representation of parties**
- (1) Any party or person involved in an appeal before the Tribunal, or called upon to appear before the Tribunal, may—
- (a) appear personally; or
 - (b) be represented—
 - (i) by an agent; or
 - (ii) by a lawyer.
- 5
- 15 Service outside New Zealand**
- Any document relating to an appeal before the Tribunal may be served out of New Zealand—
- (a) by leave of the Tribunal; and
 - (b) in accordance with regulations made under this Act.
- 10
- 16 Privileges and protections of witnesses, counsel, etc**
- (1) Every person has the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records, and things to the Tribunal as witnesses have in courts of law.
- 15
- (2) Every witness giving evidence, and every counsel or agent or other person appearing before the Tribunal, has the same privileges and immunities as witnesses and counsel in courts of law.
- 20
- 17 Witnesses' fees, allowances, and expenses**
- (1) A witness appearing before the Tribunal under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Summary Proceedings Act 1957.
- 25
- (2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served, or at some other reasonable time before the hearing.
- 30
- 18 Decisions of Tribunal**
- (1) Where the Tribunal consists of more than 1 member on an appeal or other matter, the decision on that matter must be a majority decision.
- 35

- (2) If the members are evenly divided, the matter must be determined in favour of the appellant or other person affected.
- (3) A decision of the Tribunal must be given in writing, and include reasons both for the decision and for any minority view. 5
- (4) The Tribunal must notify the appellant or other affected party to the proceedings of its decision, and provide a copy of the decision.
- (5) A decision of the Tribunal is final once notified to the appellant or other affected party. 10
Compare: 1987 No 74 s 129Q
- 19 Public access to hearings**
- (1) Subject to **subclauses (2) and (3)**, every oral hearing is open to the public.
- (2) The Tribunal may receive any particular evidence in private, or deliberate in private as to its decision on the appeal or as to any question arising in the course of the proceedings. 15
- (3) Where an appeal is brought by a claimant, a refugee or protected person, or a person formerly recognised as a refugee or protected person, the Tribunal must conduct the hearing in private. 20
- (4) The Tribunal may make an order prohibiting the publication of any evidence received by it, or any report or description of the proceedings or of any part of the proceedings, in respect of any appeal or matter before the Tribunal. 25
- (5) This clause is subject to **section 231**.
- 20 Publication of decisions**
- (1) Subject to **subclauses (2) and (4)**, the Tribunal must publish its decisions.
- (2) Where an appeal is brought by a claimant, a refugee or protected person, or a person formerly recognised as a refugee or protected person, the Tribunal must edit the decision in such a way as to remove the name of the person, and any particulars likely to lead to the identification of the person. 30
- (3) **Subclause (2)** does not apply to publication to persons involved in the appeal or involved in the administration of **Part 5**. 35

-
- (4) The Tribunal may, in any other case, edit the decision in such a way as to remove the name of the appellant or any other person, and any particulars likely to lead to the identification of the appellant or other person, before publishing it to persons other than persons involved in the appeal or involved in the administration of this Act. 5
- (5) This clause is subject to **section 231**.
- 21 Correction of errors**
- (1) The Tribunal may correct a decision it gives to the extent necessary to rectify— 10
- (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material miscalculation of figures or material mistake in the description of any person, thing, or matter referred to; or 15
 - (d) a defect of form.
- (2) A correction may be made on application by a party, or on the Tribunal's own motion.
- 22 Tribunal to have seal**
- The Tribunal must have a seal, which must be judicially noticed in all courts and for all purposes. 20
-

s 363(1)

Schedule 3 Enactments amended

Aviation Crimes Act 1972 (1972 No 137)

Section 21: omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

5

Births, Deaths, and Marriages Registration Act 1995 (1995 No 16)

Section 9(1)(b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Care of Children Act 2004 (2004 No 90)

10

Section 106(2)(a): omit “political refugees or political asylum” and substitute “refugees or protected persons”.

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Section 244: repeal and substitute:

15

“244 Immigration Act 2007 (other than sections 305 to 317) not affected

Nothing in sections 214 to 243 limits or affects any provision of the Immigration Act **2007** other than **sections 305 to 317** (offence provisions) of that Act.”

20

Citizenship Act 1977 (1977 No 61)

Section 3(2B)(a) and (b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case.

Section 6(1)(b)(ii) and (6)(b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case.

25

Section 8(2)(a) and (2)(b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case.

Section 8(3)(a): repeal and substitute:

“(a) conditions have been imposed under the Immigration Act **2007** on the person’s entitlement to reside in New Zealand indefinitely; and”.

30

Section 8(3)(b): omit “requirements” and substitute “conditions”.

Section 8(7)(a)(ii): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 26B(1): omit “Department of Labour” and substitute “department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act **2007**”.

35

Citizenship Amendment Act 2005 (2005 No 43)	
Section 17(2)(d)(i): repeal and substitute:	
“(i) includes time spent in New Zealand before the commencement of the Immigration Act 2007 while holding a valid immigration permit or being exempt from the requirement to hold a permit, and time spent in New Zealand after the commencement of that Act while holding a valid visa; but”.	5
Section 17(3)(b): repeal and substitute:	10
“(b) became so entitled on or after the date of commencement of this Act pursuant to an application made under the Immigration Act 1987 or the Immigration Act 2007 .”	
Citizenship (Western Samoa) Act 1982 (1982 No 11)	
Section 7(1)(b)(ii): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	15
Section 8(2): omit “section 7 of the Immigration Act 1987” and substitute “ section 9 of the Immigration Act 2007 ”.	
Civil Aviation Act 1990 (1990 No 98)	
Section 53A(1)(b): omit “a permanent resident of” and substitute “normally resident in”.	20
Corrections Act 2004 (2004 No 50)	
Section 3(1): omit “Immigration Act 1987 from paragraph (c)(ii) of the definition of offender and substitute “Immigration Act 2007 ”.	25
Section 66(1) and (2): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ” in each case.	
Section 181(1): repeal and substitute:	
“(1) The purpose of this section is to facilitate the disclosure of information by the department to the department of State for the time being responsible for the administration of the Immigration Act 2007 (the responsible department), for the purpose of assisting the Minister of Immigration or an immigration officer to exercise any power conferred by that Act to determine that a person is liable for deportation or to deport any person.”	30 35
Section 181(2), (2)(a), (2)(b), (4), and (5): omit Department of Labour and substitute “responsible department” in each case.	
Section 203(a): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	40

Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980 (1980 No 44)

Section 17: omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

5

Crimes of Torture Act 1989 (1989 No 106)

Section 16: omit “Immigration Act 1987” from paragraph (g) of the definition of **place of detention** and substitute “Immigration Act **2007**”.

Customs and Excise Act 1996 (1996 No 27)

10

Section 32B: omit “**Immigration Act 1987**” and substitute “**Immigration Act 2007**” in the section heading.

Section 32B(2) and (4)(a): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case.

Section 32B(5): omit “Immigration Act 1987” from the definition of **authorised officer** and from paragraphs (a), (b), and (c) of the definition of **processing** and substitute “Immigration Act **2007**” in each case.

15

Section 175C(1)(b)(iv): repeal and substitute:

“(iv) **section 305(c) or 308(a)** of the Immigration Act **2007**.”

20

Section 280(4): repeal and substitute:

“(4) Nothing in subsection (3) applies in respect of persons who are exempted by regulations or special direction made under the Immigration Act **2007** from, as the case may require, the requirement to—

25

“(a) apply for a visa or entry permission in the prescribed manner under **section 91(1)(b) and (c)** of that Act; or

“(b) complete documentation on departure from New Zealand under **section 110(1)(c)** of that Act.”

30

District Courts Act (1947 No 16)

Section 5(2): omit “140” and substitute “141”.

Education Act 1964 (1964 No 135)

Section 2(1): repeal the definition of **domestic student** and substitute:

35

“**domestic student**, at any time, means a person who is then—

“(a) a New Zealand citizen; or

Education Act 1964 (1964 No 135)—*continued*

- “(b) the holder of a residence class visa granted under the Immigration Act 2007; or
- “(c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not foreign students”.

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Education Act 1989 (1989 No 80)

Section 2(1): repeal the definition of **domestic student** and substitute:

“**domestic student**, at any time, means a person who is then—

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- “(a) a New Zealand citizen; or
- “(b) the holder of a residence class visa granted under the Immigration Act 2007 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or
- “(c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not foreign students”.

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Section 2(4): omit “residence permit under the Immigration Act 1987” and substitute “residence class visa granted under the Immigration Act 2007”.

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Section 60: repeal the definition of **foreign student** and substitute:

“**foreign student** means a person who is not a New Zealand citizen and is—

- “(a) a person to whom **section 9 or 10** of the Immigration Act 2007 applies; or
- “(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately by or within a specified time; or
- “(c) treated for the purposes of that Act as being in New Zealand unlawfully”.

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Section 103(1)(c): repeal and substitute:

- “(e) is not a New Zealand citizen, and is—
 - “(i) a person to whom **section 9 or 10** of the Immigration Act 2007 applies; or
 - “(ii) a person obliged by or under that Act or any other enactment to leave New Zealand immediately by or within a specified time (being a time that, when specified, was less than 12 months); or

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Education Act 1989 (1989 No 80)—*continued*

“(iii) treated for the purposes of that Act as being in New Zealand unlawfully,—”.

Section 159(1): repeal the definition of **domestic student** and substitute:

“**domestic student**, at any time, means a person who is then— 5

“(a) a New Zealand citizen; or

“(b) the holder of a residence class visa granted under the Immigration Act 2007 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or 10

“(c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not foreign students”.

Section 159(4): omit “residence permit under the Immigration Act 1987” and substitute “residence class visa granted under the Immigration Act 2007”. 15

Section 236B(1): omit “paragraph (a) of the definition of that term in section 2(1) of the Immigration Act 1987” and substitute “**section 4(1)** of the Immigration Act 2007”.

Electoral Act 1993 (1993 No 87) 20

Section 73(a) and (b): repeal and substitute:

“(a) resides in New Zealand; and

“(b) is not—

“(i) a person to whom **section 9 or 10** of the Immigration Act 2007 applies; or 25

“(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or

“(iii) treated for the purposes of that Act as being in New Zealand unlawfully.” 30

Section 263A: repeal and substitute:

“263A Disclosure of immigration information for matching purposes

“(1) In this section,—

“**immigration information**, in relation to any person, means— 35

“(a) information concerning—

Electoral Act 1993 (1993 No 87)—*continued*

- “(i) any person whom the chief executive of the responsible department believes is in New Zealand unlawfully; or
- “(ii) any person who is in New Zealand lawfully but only by virtue of being the holder of a temporary entry class visa of whatever type; and 5
- “(b) information that, in relation to any person described in **paragraph (a)(i) or (a)(ii)**, is as follows:
- “(i) the person’s full name;
- “(ii) any aliases known to be used by that person: 10
- “(iii) the person’s date of birth;
- “(iv) the person’s address (if known);
- “(v) the expiry date of any visa held by the person
- “**responsible department** means the department of state that is, with the authority of the Prime Minister, responsible for the administration of the Immigration Act 2007. 15
- “(2) The purpose of this section is to facilitate the disclosure of information from the responsible department to the Chief Registrar for the purposes of—
- “(a) verifying, for the purposes of this Act, that any person registered as an elector of an electoral district is qualified to be registered as an elector of that electoral district: 20
- “(b) verifying that a person registered as an elector is a person whom the chief executive of the responsible department believes to be either— 25
- “(i) a person who is in New Zealand unlawfully; or
- “(ii) a person who is in New Zealand lawfully but only by virtue of being the holder of a temporary entry class visa of whatever type. 30
- “(3) For the purposes of this section, any officer or employee or agent of the responsible department authorised in that behalf by the chief executive of that department may from time to time, at the request of the Chief Registrar, supply to the Chief Registrar any immigration information held by that department. 35
- “(4) Where, in relation to any person, immigration information is supplied to the Chief Registrar pursuant to **subsection (3)**, the Chief Registrar may cause a comparison of that information to

Electoral Act 1993 (1993 No 87)—*continued*

be made with any information which is held by the Chief Registrar and which relates to that person.

- “(5) Where the result of a comparison carried out pursuant to **subsection (4)** indicates that any person on the electoral roll is— 5
- “(a) a person whom the chief executive of the responsible department believes is in New Zealand unlawfully; or
- “(b) a person who is in New Zealand lawfully but only by virtue of being the holder of a temporary entry class visa of whatever type,— 10
- the Chief Executive must advise the Registrar of the electoral district in which that person is registered as an elector accordingly.
- “(6) Where any Registrar receives advice from the Chief Registrar under **subsection (5)** that, in relation to any person, either of the circumstances referred to in **subsection (5)** applies, the Registrar must, under section 96, object to the name of that person being on the roll for the district.” 15

Electronic Transactions Act 2002 (2002 No 35)

Schedule, Part 4, clause (14): repeal and substitute: 20

- “(14) the Refugee Status Appeals Authority, the Removal Review Authority, and the Residence Review Board continued by, and the Immigration and Protection Tribunal established under, the Immigration Act **2007**:”.

Extradition Act 1999 (1999 No 55) 25

Section 91: omit “**permit**” and substitute “**visa**” in the section heading.

Section 91(1): omit “permit under the Immigration Act 1987” and substitute “visa under the Immigration Act **2007**”.

Section 91(2): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 30

Section 94(3): repeal and substitute:

- “(3) If the Minister issues a certificate, the Minister may, if he or she thinks fit, refer the person’s case to the Minister of Immigration for consideration under **section 52** of the Immigration Act **2007**, and in that case that section applies for the purposes of this section as if the person were a person required to hold a visa under that Act to be in New Zealand.” 35

Extradition Act 1999 (1999 No 55)—<i>continued</i>	
Section 94(4): omit “Immigration Act 1987” and substitute “Immigration Act 2007”.	
Section 94(5)(a): omit “permit” and substitute “visa”.	
Section 96(8): omit “Immigration Act 1987” and substitute “Immigration Act 2007”.	5
Section 107: omit “ Immigration Act 1987 ” and substitute “ Immigration Act 2007 ” in the section heading.	
Section 107: omit “Immigration Act 1987” and substitute “Immigration Act 2007”.	
Fisheries Act 1996 (1996 No 88)	
Section 57G(1)(c): repeal and substitute:	10
“(e) none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 9 or 10 of the Immigration Act 2007 (which list certain persons not eligible for visas or entry permission under that Act):”.	15
Section 57I: omit “ Immigration Act 1987 ” and substitute “ Immigration Act 2007 ” in the section heading.	
Section 57I(2): repeal and substitute:	
“(2) For the purposes of section 57G(1)(e) , an individual is not an individual of the kind referred to in section 9 or 10 of the Immigration Act 2007 if a special direction referred to in section 11(1)(a) of that Act has been made permitting a visa and entry permission to be granted to that individual under that Act.”	20 25
Section 103(5)(a): omit “a work permit under the Immigration Act 1987” and substitute “a temporary entry class visa with conditions that allow the person to work under the Immigration Act 2007”.	
Government Communications Security Bureau Act 2003 (2003 No 9)	
Section 4: omit “residence permit under the Immigration Act 1987” from the definition of permanent resident and substitute “residence class visa under the Immigration Act 2007”.	30
Habeas Corpus Act 2001 (2001 No 31)	
Section 8(b): omit “Immigration Act 1987” and substitute “Immigration Act 2007”.	35
Section 8(c): repeal and substitute:	
“(c) the chief executive of the department of State that is, with the authority of the Prime Minister, for the time	

Habeas Corpus Act 2001 (2001 No 31)—*continued*

being responsible for the administration of the Immigration Act 2007, if the detained person is alleged to be illegally detained in custody following the exercise of powers under that Act; or”.

Health Act 1956 (1956 No 65)

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Section 99(1)(b): omit “Immigration Act 1987” and substitute “Immigration Act 2007”.

Immigration Advisers Licensing Act 2007 (2007 No 15)

Section 5: repeal the definitions of **immigration application or request** and **immigration matter** and substitute:

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“**immigration application or request** means the putting forward of any application, request, claim, appeal, or other approach seeking to have the Minister, the Department, the Immigration and Protection Tribunal, or an immigration officer or determination officer deal with an immigration matter

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“**immigration matter** means any matter arising under or concerning the application of the Immigration Act 2007 (including any regulations or instructions made under that Act); and includes—

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“(a) applications and potential applications for residence class visas, temporary entry class visas, or transit visas:

“(b) requests and potential requests for special directions:

“(c) claims for recognition as a refugee or protected person, and related appeals:

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“(d) immigration sponsorship:

“(e) immigration obligations:

“(f) appeals in relation to immigration matters”.

Section 5: repeal the definition of **permit**.

Section 5: insert “protected persons,” after “refugees,” in the definition of **settlement services** (twice).

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Section 5: repeal the definition of **visa** and substitute:

“**visa** means a visa granted under the Immigration Act 2007”.

Section 7(b)(ii): repeal and substitute:

“(ii) directing a person to the Minister or the Department, or to an immigration officer or determination officer (within the meaning of the Immigration Act 2007), or to a list of licensed immigration advisers; or”.

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Immigration Advisers Licensing Act 2007 (2007 No 15)—*continued*

Section 9(2): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	
Section 11(h): omit “student visas or student permits only” and substitute “only temporary entry class visas with conditions authorising study in New Zealand only”.	
Section 15(1)(c) and (d): repeal and substitute:	5
“(c) has been convicted of an offence against the Immigration Act 2007 , the Immigration Act 1987, or the Immigration Act 1964; or	
“(d) has been removed or deported from New Zealand under the Immigration Act 2007 , the Immigration Act 1987, or the Immigration Act 1964; or”.	10
Section 15(2)(b): add:	
“(c) any immigration officer or determination officer (as defined in the Immigration Act 2007).”	
Section 91: omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	15
Income Tax Act 2004 (2004 No 35)	
Section CW 17(2): omit “Immigration Act 1987” from paragraph (d) of the definition of non-resident crew member and substitute “Immigration Act 2007 ”.	20
Section NC 8A(1): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	
Section OB 1: repeal paragraph (c) of the definition of resident and substitute:	
“(c) does not include being lawfully resident in New Zealand only because of holding a temporary entry class visa.”	25
Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)	
Section 17(1)(b): repeal and substitute:	30
“(b) is in 1 of the following categories:	
“(i) a New Zealand citizen;	
“(ii) a holder of a residence class visa granted under the Immigration Act 2007 ;	
“(iii) a person who is a spouse or a partner, child, or other dependant of any person referred to in subparagraph (i) or (ii) , and who generally	35

Injury Prevention, Rehabilitation, and Compensation Act**2001 (2001 No 49)**—*continued*

accompanies the person referred to in the subparagraph.”

Section 17(5): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

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Section 127(2): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 286(5)(g): repeal and substitute:

“(g) Immigration Act **2007**.”

International Crimes and International Criminal Court Act

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2000 (2000 No 26)

Section 150(3): repeal and substitute:

“(3) If the Minister issues a certificate, the Minister may refer the person’s case to the Minister of Immigration for consideration under **section 52** of the Immigration Act **2007**, and, in that case, that section applies for the purposes of this section as if the person were a person required to hold a visa under that Act to be in New Zealand.”

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Section 150(4): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

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Section 151(a)(i): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 155: omit “**permit**” and substitute “**visa**” in the section heading.

Section 155: omit “permit under the Immigration Act 1987” and substitute “visa under the Immigration Act **2007**”.

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International War Crimes Tribunals Act 1995 (1995 No 27)

Section 34(4): omit “temporary permit under the Immigration Act 1987” and substitute “limited visa under the Immigration Act **2007**”.

Judicature Act 1908 (1908 No 89)

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Section 56CA: repeal and substitute:

“**56CA Judicial review of decisions under Immigration Act 2007**

The provisions of this Act are to be read subject to **section 222** of the Immigration Act **2007** in relation to any proceedings reviewing a statutory power of decision arising out of or under that Act.”

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Kiwisaver Act 2006 (2006 No 40)

Section 6(1)(b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Lawyers and Conveyancers Act 2006 (2006 No 1)

Section 335(b) and (c): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case. 5

Legal Services Act 2000 (2000 No 42)

Section 7(1)(j), (k), (l), and (m): repeal and substitute:

“(j) proceedings before the Immigration and Protection Tribunal, as established by the Immigration Act **2007**, in respect of appeals against decisions to decline to grant recognition as a refugee or protected person, or decisions to cease to recognise a person as a refugee or protected person, as provided in **section 176(1) and (2)** of that Act, or against liability for deportation arising under **section 151** of that Act: 10

“(k) the processing, under **Part 5** of the Immigration Act **2007**, of any claim for recognition as a refugee or protected person: 15

“(l) any proceedings before the District Court or High Court following an application made under **section 278 or 287** of the Immigration Act **2007**: 20

“(m) any appeal or review proceedings (as defined in **section 4(1)** of the Immigration Act **2007**) in respect of proceedings or matters to which **paragraph (j) or (k)** applies: 25

“(ma) any proceedings or application under or in relation to the Immigration Act 1987 for which legal aid could have been granted under any of **paragraphs (j), (k), (l), and (m)** of this subsection as in force before their repeal and replacement by **section 256(1)** of the Immigration Act **2007**:”. 30

Section 7(4)(f) and (g): repeal and substitute:

“(f) any appeal to the Immigration and Protection Tribunal against a decision concerning a residence class visa under **section 171** of the Immigration Act **2007** (or any appeal to the Residence Appeal Authority under section 18C of the Immigration Act 1987): 35

“(g) any appeal to the Immigration and Protection Tribunal against liability for deportation on humanitarian grounds by a person liable for deportation under **section** 40

Legal Services Act 2000 (2000 No 42)—*continued*

143 of the Immigration Act **2007** (or any appeal to the Removal Review Authority under Part 2 of the Immigration Act 1987).”

Section 10(1) and (2): repeal and substitute:

- “(1) Subject to **subsection (2)**, the Agency may not grant legal aid in respect of— 5
- “(a) proceedings involving a decision under the Immigration Act **2007** to a person who—
- “(i) is unlawfully in New Zealand in terms of that Act; or 10
- “(ii) is lawfully in New Zealand only by being the holder of a temporary entry class visa granted under that Act; or
- “(ii) is not in New Zealand and— 15
- “(A) is not a New Zealand citizen; or
- “(B) does not hold a residence class visa granted under that Act;
- “(b) proceedings involving a decision or matter under the Immigration Act 1987 to a person who—
- “(i) was unlawfully in New Zealand in terms of that Act; or 20
- “(ii) not having been granted legal aid for the purpose of any particular proceedings in New Zealand before the person arrived in New Zealand, was lawfully in New Zealand only by virtue of being the holder of a temporary permit or a limited purposes permit. 25
- “(2) **Subsection (1)** does not apply in respect of—
- “(a) proceedings referred to in **subsection (1)(b)** for which a person was granted legal aid before the date fixed under **section 2(1)** of the Immigration Act **2007** for the coming into force of that Act; or 30
- “(b) proceedings specified in **section 7(1)(j) to (ma)** of this Act.”

Lincoln University Act 1961 (1961 No 52)

Section 2(1): repeal the definition of **foreign student** and substitute: 35

“**foreign student** means a person who is not a New Zealand citizen and is—

- “(a) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or

Lincoln University Act 1961 (1961 No 52) — <i>continued</i>	
“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or	
“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.	5
Maritime Crimes Act 1999 (1999 No 56)	
Section 19: repeal and substitute:	
“19 Immigration Act 2007 not limited	
This Act does not limit the Immigration Act 2007.”	
Maritime Security Act 2004 (2004 No 16)	10
Section 59(1)(a)(ii)(D): repeal and substitute:	
“(D) the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Immigration Act 2007; and”.	15
Massey University Act 1963 (1963 No 7)	
Section 2(1): repeal the definition of foreign student and substitute:	
“foreign student means a person who is not a New Zealand citizen and is—	20
“(a) a person to whom section 9 or 10 of the Immigration Act 2007 applies; or	
“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or	25
“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.	
Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)	
Section 13(1): omit “temporary permit under the Immigration Act 1987” and substitute “limited visa under the Immigration Act 2007”.	30
Section 42(5): omit “temporary permit under the Immigration Act 1987” and substitute “limited visa under the Immigration Act 2007”.	
New Zealand Security Intelligence Service Act 1969 (1969 No 24)	
Section 2: repeal the definition of permanent resident and substitute:	35

New Zealand Security Intelligence Service Act 1969**(1969 No 24)**—*continued*

“**permanent resident** means a person who is in New Zealand and who is the holder, or is deemed to be the holder, of a residence class visa under the Immigration Act **2007**”.

Section 4(1)(bc): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 5

Official Information Act 1982 (1982 No 156)

Section 2: repeal the definition of **permanent resident of New Zealand** and substitute:

“**permanent resident of New Zealand** means a person who— 10

“(a) resides in New Zealand; and

“(b) is not—

“(i) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or 15

“(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or

“(iii) treated for the purposes of that Act as being in New Zealand unlawfully”. 20

Overseas Investment Act 2005 (2005 No 82)

Section 6(2)(a): repeal and substitute:

“(a) holds a residence class visa granted under the Immigration Act **2007**; and”.

Section 16(1)(d): repeal and substitute: 25

“(d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in **section 9 or 10** of the Immigration Act **2007** (which sections list certain persons not eligible for visas or entry permission under that Act):”. 30

Section 18(1)(d): repeal and substitute:

“(d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in **section 9 or 10** of the Immigration Act **2007** (which sections list certain persons not eligible for visas or entry permission under that Act).” 35

Overseas Investment Act 2005 (2005 No 82)—*continued*

Section 19: omit “**Immigration Act 1987**” and substitute “**Immigration Act 2007**” in the section heading.

Section 19(2): repeal and substitute:

“(2) For the purposes of **sections 16(1)(d) and 18(1)(d)**, an individual is not an individual of a kind referred to in **section 9 or 10** of the Immigration Act **2007** if a special direction referred to in **section 11(1)(a)** of that Act has been made permitting a visa or entry permission to be granted to that individual.” 5

Parole Act 2002 (2002 No 10)

Section 55(1)(b) and (c): repeal and substitute: 10

“(b) the offender—

“(i) has been ordered to be deported from New Zealand under **section 152** of the Immigration Act **2007**; or

“(ii) the offender is liable for deportation under **section 150** of that Act; and 15

“(c) a copy of the order, or a deportation liability notice, has been served on the offender; and”.

Section 55(1)(d)(i): repeal and substitute:

“(i) the offender has no right of appeal under that Act against the making of that order, or against the offender’s liability for deportation:” 20

Section 55(1)(d)(iii): repeal and substitute:

“(iii) any such appeal has been determined and liability for deportation has been upheld.” 25

Passports Act 1992 (1992 No 92)

Section 2: repeal the definition of **refugee** and substitute:

“**refugee** means a person who—

“(a) has been—

“(i) recognised by a determination officer or the Immigration and Protection Tribunal as a refugee within the meaning of the Immigration Act **2007**; or 30

“(ii) recognised offshore as a refugee under the Refugee Convention (as defined in **section 4(1)** of the Immigration Act **2007** and brought to New Zealand under a government-mandated programme on the basis of that recognition; or 35

Passports Act 1992 (1992 No 92)—continued

- “(iii) determined, before the date fixed under **section 2(1)** of the Immigration Act **2007** for the coming into force of that Act, to be a refugee in accordance with the Refugee Convention (as defined in section 2(1) of the Immigration Act 1987); or 5
- “(iv) granted a permit by the Minister of Immigration or an immigration officer under the Immigration Act 1987 on the basis that he or she was mandated as a refugee by the United Nations High Commissioner for Refugees; or 10
- “(v) recognised, before 1 January 1991, as a refugee by the Interdepartmental Committee on Refugees; and
- “(b) continues to be recognised as a refugee in New Zealand”. 15

Pitcairn Trials Act 2002 (2002 No 83)

Section 10: repeal and substitute:

- “10 Limited visas under Immigration Act 2007 for certain participants in trials”** 20
- “(1) If this section applies to a person, the Minister (as defined in **section 4(1)** of the Immigration Act **2007**) or an immigration officer may, if he or she thinks fit, grant a limited visa (or a further limited visa, if appropriate) and entry permission to the person under the Immigration Act **2007**. 25
- “(2) This section applies to a person only if—
- “(a) the person is a person specified in section 11; and
- “(b) the person is coming to, or is in, New Zealand; and
- “(c) the person is not a New Zealand citizen or a person who already holds a visa (other than a transit visa) granted under the Immigration Act **2007**; and 30
- “(d) the person’s presence in New Zealand is or will be necessary or desirable in connection with a purpose specified in section 12.
- “(3) This section applies whether or not the person concerned applies for, or consents to the granting of the visa or entry permission, and despite anything to the contrary in any provision of the Immigration Act **2007** that relates to the granting of limited visas. 35

Pitcairn Trials Act 2002 (2002 No 83)—continued

- “(4) The grant of a visa or entry permission under this section and the Immigration Act 2007 does not affect the application of that Act to the person concerned.
- “(5) **Subsection (4)** is subject to **subsection (3)** and **section 13**.”
- Section 13: repeal and substitute: 5
- “13 Expiry of limited visa and liability for deportation may be effective immediately upon giving or service of notice**
- “(1) This section applies to the holder of a limited visa (or further limited visa) granted in accordance with **section 10** if—
- “(a) an immigration officer is, under **section 73(2)** of the Immigration Act 2007 (as applied by section 10 of this Act), to give the holder a notice specifying an expiry date for the visa that is a date earlier than the latest date on which the visa will expire; or 10
- “(b) the holder of the visa is determined to be liable for deportation under **section 146(1)** of the Immigration Act 2007 (as applied by **section 10** of this Act). 15
- “(2) In the situation in **subsection (1)(a)**, the notice specifying an earlier expiry date for the visa may, despite **section 73(2)** of the Immigration Act 2007, specify an earlier expiry date that is a date (for example, the date upon which the notice is given to the holder) sooner than 14 days after the notice is given to the holder. 20
- “(3) In the situation in **subsection (1)(b)**, the deportation liability notice given under **section 115** of the Immigration Act 2007 must notify the holder that the holder is immediately liable for deportation.” 25
- Section 14(1)(b): repeal and substitute:
- “(b) Immigration Act 2007:”.
- Section 62(5)(b) and (7): omit “Immigration Act 1987” and substitute “Immigration Act 2007”. 30
- Section 66(4) and (5): omit “Immigration Act 1987” and substitute “Immigration Act 2007”.
- Privacy Act 1993 (1993 No 28)**
- Section 2: repeal the definition of **permanent resident of New Zealand** and substitute: 35
- “**permanent resident of New Zealand** means a person who—
- “(a) resides in New Zealand; and

Privacy Act 1993 (1993 No 28)—*continued*

“(b) is not—

“(i) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or

“(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or

“(iii) treated for the purposes of that Act as being in New Zealand unlawfully.”

Section 97: repeal paragraph (g) of the definition of **adverse action** and substitute:

“(g) to serve the individual with a deportation liability notice or to deport the individual from New Zealand”.

Schedule 3: omit the item relating to the Immigration Act 1987 and substitute:

Immigration Act **2007**

Sections 261, 262, 265, and 266

Prostitution Reform Act 2003 (2003 No 28)

Section 19: repeal and substitute:

“19 Application of Immigration Act 2007

“(1) No visa may be granted under the Immigration Act **2007** to a person on the basis that the person—

“(a) has provided, or intends to provide, commercial sexual services; or

“(b) has acted, or intends to act, as an operator of a business of prostitution; or

“(c) has invested, or intends to invest, in a business of prostitution.

“(2) It is a condition of every temporary entry class visa granted under the Immigration Act **2007** that the holder of the visa may not, while in New Zealand,—

“(a) provide commercial sexual services; or

“(b) act as an operator of a New Zealand business of prostitution; or

“(c) invest in a New Zealand business of prostitution.

“(3) It is sufficient reason for the Minister of Immigration or an immigration officer to determine that a temporary entry class visa holder is liable for deportation under **section 146** of the Immigration Act **2007** if the holder does any of the things listed in **subsection (2)(a) to (c)** of this section.

Prostitution Reform Act 2003 (2003 No 28)—*continued*

- “(4) Any conditions of a resident visa are deemed not to have been met and the resident is liable for deportation under **section 148** of the Immigration Act **2007** if the Minister of Immigration or an immigration officer determines that the holder of a resident visa acts as an operator of, or invests in, a New Zealand business of prostitution. 5
- “(5) This section applies to all visas and permits held and all requirements and conditions imposed under the Immigration Act 1987 or the Immigration Act **2007**, whether granted or imposed before or after the commencement of this section.” 10

Ship Registration Act 1992 (1992 No 89)

Section 8(2)(ba) and (c): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case.

Social Security Act 1964 (1964 No 136)

Section 74A(1): repeal and substitute: 15

- “(1) A person who is—
- “(a) unlawfully resident or present in New Zealand; or
 - “(b) lawfully resident or present in New Zealand but only by virtue of holding a temporary entry class visa—
- is not entitled to receive a benefit, but the chief executive may grant an emergency benefit under section 61 or temporary additional support under section 61G, or may continue, under section 23 of the Social Security (Working for Families) Amendment Act 2004, a special benefit already granted to any such person if the chief executive is satisfied that the person is— 20
- “(c) a person lawfully present in New Zealand who is awaiting the outcome of his or her claim for recognition as a refugee or protected person in New Zealand; or
 - “(d) a person who is recognised as a refugee or protected person in New Zealand; or 30
 - “(e) a person applying for a residence class visa under the Immigration Act **2007** who is compelled to remain in New Zealand through some unforeseen circumstances.” 25

Summary Proceedings Act 1957 (1957 No 87) 35

Schedule 1, Part 2: omit the item relating to the Immigration Act 1987 and substitute:

Summary Proceedings Act 1957 (1957 No 87)—continued

Title of Act	Section of Act	Offence	
Immigration Act 2007	305(b)	Using false or misleading document or information	
	306(1)(a)	Assisting person to be or remain in New Zealand unlawfully, or breach visa conditions	5
	306(1)(b)	Assisting person to enter New Zealand unlawfully	
	306(1)(c)	Assisting completion of arrival document in false or misleading manner	10
	308	Improper use of document relating to another person or forged or fraudulently obtained	15
	311	Modifying form after completion and signing.	

Trade in Endangered Species Act 1989 (1989 No 18)

Section 28(1): omit “or permanent resident or intending resident” and substitute “, person resident in New Zealand, or person intending to reside in New Zealand”.	20
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University of Auckland Act 1961 (1961 No 50)

Section 2(1): repeal the definition of foreign student and substitute: “ foreign student means a person who is not a New Zealand citizen and is—	25
“(a) a person to whom section 9 or 10 of the Immigration Act 2007 applies; or	
“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or	30
“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.	

University of Canterbury Act 1961 (1961 No 49)

Section 2(1): repeal the definition of foreign student and substitute: “ foreign student means a person who is not a New Zealand citizen and is—	35
“(a) a person to whom section 9 or 10 of the Immigration Act 2007 applies; or	
“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or	40

University of Canterbury Act 1961 (1961 No 49)—continued

“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.

University of Otago Amendment Act 1961 (1961 No 48)

Section 2(1): repeal the definition of **foreign student** and substitute:

“**foreign student** means a person who is not a New Zealand citizen and is— 5

“(a) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or

“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or 10

“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.

University of Waikato Act 1963 (1963 No 8)

Section 2(1): repeal the definition of **foreign student** and substitute: 15

“**foreign student** means a person who is not a New Zealand citizen and is—

“(a) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or

“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or 20

“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.

Victims’ Rights Act 2002 (2002 No 39) 25

Section 39: repeal and substitute:

“39 Notice of proposal to cancel or suspend liability for deportation

“(1) The chief executive of the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act **2007**, must perform the actions in **subsection (2)** if— 30

“(a) a person’s liability for deportation arises out of a conviction for a particular offence in terms of **section 150** of the Immigration Act **2007**; and 35

“(b) the Minister of Immigration is considering cancelling or suspending the person’s liability for deportation or the person appeals against his or her liability for deportation to the Immigration and Protection Tribunal.

Victims' Rights Act 2002 (2002 No 39)—*continued*

- “(2) If **subsection (1)** applies, the chief executive must—
- “(a) advise each specified person (as defined in **subsection (4)**) that—
- “(i) the Minister is considering suspending or cancelling the liability for deportation of the criminal offender; or 5
- “(ii) the criminal offender has appealed against his or her liability for deportation to the Immigration and Protection Tribunal; and
- “(b) ask the specified person to provide the current address of the victim of the offence to the chief executive if that address— 10
- “(i) has been given or forwarded to the specified person under section 31 or 33; and
- “(ii) has not been forwarded by the specified person under section 33. 15
- “(3) Each specified person must, as soon as practicable after receiving a request under **subsection (2)(b)**, consider, respond to, and if possible comply with, that request.
- “(4) For the purposes of **subsection (2)**, each of the following persons is a specified person: 20
- “(a) the Commissioner of Police;
- “(b) the chief executive of the Department of Corrections;
- “(c) the Director-General of Health.
- “(5) If the victim's address is given to the chief executive under **subsection (2)**,— 25
- “(a) the chief executive must, if practicable, give the victim notice that the Minister is considering cancelling or suspending the deportation liability of the offender under **section 160** of the Immigration Act 2007; and 30
- “(b) if a deportation liability notice has been served and the offender concerned appeals against that liability for deportation under **section 185** of that Act, the chief executive must give the victim's address to the Immigration and Protection Tribunal, and that Tribunal must 35
- give the victim prior notice of the hearing of the appeal.
- “(6) Failure to comply with **subsection (2) or (5)** does not invalidate any decision of the kind referred to in **subsection (5)(a)** or a decision on an appeal of the kind referred to in **subsection (5)(b)**.” 40

Victims' Rights Act 2002 (2002 No 39)—*continued*

Section 48: repeal and substitute:

“48 Victim may make submission on consideration of cancellation or suspension of liability for deportation, or offender’s appeal against deportation

A victim to whom this section applies may make submissions to the Minister of Immigration and to the Immigration and Protection Tribunal, in accordance with **sections 160 and 187** of the Immigration Act **2007**.”

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Victoria University of Wellington Act 1961 (1961 No 51)

Section 2(1): repeal the definition of **foreign student** and substitute:

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“foreign student means a person who is not a New Zealand citizen and is—

“(a) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or

“(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or

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“(c) treated for the purposes of that Act as being in New Zealand unlawfully”.

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Schedule 4 Regulations, rules, and orders amended

Corrections Regulations 2005 (SR 2005/53)	
Regulation 70(6): omit “Immigration Act 1987” and substitute “Immigration Act 2007”.	5
Regulation 184: omit “ Immigration Act 1987 ” and substitute “ Immigration Act 2007 ” in the regulation heading.	
Regulation 184: omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	
Regulation 188(2): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	10
Regulation 193(1)(c) and (2): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	
Customs and Excise Regulations 1996 (SR 1996/232)	
Regulation 2: revoke the definition of certificate of identity and substitute:	15
“ certificate of identity has the same meaning as in section 4(1) of the Immigration Act 2007 ”.	
Diplomatic Privileges (EC) Order 2004 (SR 2004/56)	
Clause 3(1): revoke paragraph (a) of the definition of New Zealand national and substitute:	20
“(a) a New Zealand citizen or the holder of a residence class visa under the Immigration Act 2007 ; and”.	
Clause 3(1): revoke the definition of permanent resident .	
Diplomatic Privileges (International Criminal Court) Order 2004 (SR 2004/79)	
Clause 3: revoke the definition of permanent resident and substitute:	25
“ permanent resident means a person who is the holder of a residence class visa under the Immigration Act 2007 ”.	30
Health Entitlement Cards Regulations 1993 (SR 1993/169)	
Regulation 2(1): revoke the definition of ordinarily resident in New Zealand and substitute:	
“ ordinarily resident in New Zealand , in relation to any person, includes a person whom the Director-General is satisfied is in the process of claiming recognition as a refugee or protected person in New Zealand; but does not include any other person—	35
“(a) unlawfully resident or present in New Zealand; or	

Health Entitlement Cards Regulations 1993 (SR 1993/169)—*continued*

- “(b) lawfully resident or present in New Zealand only by virtue of holding a temporary entry class visa or transit visa”.

Health (Quarantine) Regulations 1983 (SR 1983/52)

Regulation 27: omit “Immigration Act 1964” and substitute “Immigration Act **2007**”.

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Land Transport (Driver Licensing) Rule 1999 (SR 1999/100)

Rule 10(1)(f): omit “section 2(1) of the Immigration Act 1987” and substitute “**section 4(1)** of the Immigration Act **2007**”.

Sale of Liquor Regulations 1990 (SR 1990/61)

Regulation 21C(f): omit “section 2(1) of the Immigration Act 1987” and substitute “**section 4(1)** of the Immigration Act **2007**”.

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Regulation 21C(g): revoke.

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)

Regulation 10A: revoke and substitute:

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“10A Variation of upper limit for persons awaiting decision on refugee or protected person claims, refugees and protected persons, and certain applicants for residence class visas

“(1) **Subclause (2)** applies, instead of regulation 10(3), when calculating under regulation 10(1) the amount of temporary additional support that may be granted per week to a person who the chief executive is satisfied is—

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- “(a) a person of the kind referred to in section 74A(1)(c) of the Act (a person lawfully present in New Zealand awaiting the outcome of his or her claim for recognition as a refugee or protected person in New Zealand); or

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- “(b) a person referred to in section 74A(1)(d) of the Act (a person who is recognised as a refugee or protected person in New Zealand); or

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- “(c) a person referred to in section 74A(1)(e) of the Act (a person applying for a residence class visa under the Immigration Act **2007** who is compelled to remain in New Zealand through some unforeseen circumstances).

Social Security (Temporary Additional Support) Regulations**2005 (SR 2005/334)—continued**

- “(2) The **upper limit** is the higher of—
- “(a) the appropriate maximum rate of accommodation supplement that would be applicable if section 74A(1) of the Act did not prohibit the person receiving a benefit; and 5
 - “(b) the upper limit in regulation 10(3).”

Student Allowances Regulations 1998 (SR 1998/277)

Regulation 12(1)(a): revoke and substitute:

- “(a) he or she— 10
 - “(i) is a New Zealand citizen; or
 - “(ii) satisfies the chief executive that he or she is ordinarily resident in New Zealand, has lived in New Zealand for at least 2 years, and has been entitled under the Immigration Act **2007** to reside indefinitely in New Zealand for at least 2 years; 15
 - or
 - “(iii) satisfies the chief executive that he or she is a refugee or protected person and is entitled under the Immigration Act **2007** to reside indefinitely in New Zealand; and”. 20

United Nations Sanctions (Afghanistan) Regulations 2001 (SR 2001/26)

Regulation 12A(2) and (3): revoke and substitute:

- “(2) A visa may be granted under the Immigration Act **2007** to a person who is a specified entity only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1). 25
- “(3) This regulation operates in addition to the requirements of the Immigration Act **2007** and of any regulations made under that Act.” 30

United Nations Sanctions (Côte d’Ivoire) Regulations 2005 (SR 2005/339)

Regulation 13(3) and (4): revoke and substitute:

- “(3) A visa may be granted under the Immigration Act **2007** to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1). 35

United Nations Sanctions (Côte d’Ivoire) Regulations 2005 (SR 2005/339)—continued	
“(4) This regulation operates in addition to the requirements of the Immigration Act 2007 and of any regulations made under that Act.”	
United Nations Sanctions (Democratic People’s Republic of Korea) Regulations 2006 (SR 2006/382)	5
Regulation 17(3) and (4): revoke and substitute:	
“(3) A visa may be granted under the Immigration Act 2007 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).	10
“(4) This regulation operates in addition to the requirements of the Immigration Act 2007 and any regulations made under that Act.”	
United Nations Sanctions (Liberia) Regulations 2001 (SR 2001/134)	15
Regulation 16(2) and (3): revoke and substitute:	
“(2) A visa may be granted under the Immigration Act 2007 to a Liberian citizen only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).	20
“(3) This regulation operates in addition to the requirements of the Immigration Act 2007 and of any regulations made under that Act.”	
United Nations Sanctions (Sierra Leone) Regulations 1997 (SR 1997/281)	25
Regulation 11(4): omit “Immigration Act 1987” and substitute “Immigration Act 2007 ”.	

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Schedule 5**Visas corresponding to visas and permits held under former Act**

Visa or permit held under former Act	Visa the holder is deemed to hold under this Act	5
Residence visa	Resident visa permitting travel to New Zealand current for the period or until the date specified in the visa, and effective for specified number of journeys within that period until that date	5
Residence visa that specifies requirements that are to be imposed under section 18A of former Act on grant of permit	Resident class visa permitting travel to New Zealand that is— (a) current for the period or until the date specified on the visa, and effective for specified number of journeys within that period until that date; and (b) subject to the conditions specified under section 14B(6) of former Act	10 15
Returning residence visa of limited duration or allowing limited number of return trips to New Zealand	Resident visa permitting travel to New Zealand current for the period or until the date specified in the visa, and effective for specified number of journeys within that period until that date	20
Returning residence visa of indefinite duration	Permanent resident visa	
Temporary visa	Temporary visa current for the period or until the date specified in the visa, and effective for specified number of journeys within that period until that date	25
Student visa	Temporary visa— (a) current for the period or until the date specified in the visa; and (b) effective for specified number of journeys within that period until that date; and (c) with the condition that the holder may undertake a specified course of study	30
Work visa	Temporary visa— (a) current for the period or until the date specified in the visa; and (b) effective for specified number of journeys within that period until that date; and (c) with the condition that the holder may undertake the specified work	35 40
Temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992	Limited visa granted under section 72 — (a) current for the period or until the date specified in the visa; and (b) for the purpose specified on the visa	45

Visa or permit held under former Act	Visa the holder is deemed to hold under this Act	
Limited purpose visa	Limited visa— (a) current for the period or until the date specified in the visa, and effective for specified number of journeys within that period until that date; and (b) for the purpose specified on the visa	5
Transit visa	Transit visa current for the period or until the date specified in the visa, and effective for specified number of journeys within that period or until that date	10
Residence permit subject to requirements imposed under section 18A of former Act	Resident visa permitting stay in New Zealand only, subject to conditions that are the same as the requirements imposed under section 18A of former Act	15
Residence permit with no requirements	Resident visa permitting stay in New Zealand only	
Temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992	Limited visa permitting stay in New Zealand only until the date or for the period stated in it, as if granted under section 72 for the purpose stated in it	20
Student permit	Temporary visa— (a) permitting stay in New Zealand only until the date or for the period stated on the permit; and (b) that permits the holder to undertake a course of study in New Zealand; and (c) subject to conditions that are the same as conditions imposed under section 27 of former Act (if any)	25 30
Work permit	Temporary visa— (a) permitting stay in New Zealand only until the date or for the period stated on the permit; and (b) that permits the holder to work in New Zealand; and (c) subject to conditions that are the same as conditions imposed under section 27 of former Act (if any)	35 40
Visitor's permit	Temporary visa— (a) permitting stay in New Zealand only until the date or for the period stated on the permit; and (b) that does not allow the holder to work or study in New Zealand; and (c) subject to conditions that are the same as conditions imposed under section 27 of the former Act (if any)	45
Limited purpose permit	Limited visa—	50

Visa or permit held under former Act**Visa the holder is deemed to hold under this Act**

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|-----|--|----|
| (a) | permitting stay in New Zealand only until the date or for the period stated on the permit; and | 5 |
| (b) | for the purpose for which the permit was granted; and | |
| (c) | subject to conditions that are the same as conditions imposed under section 34D(3) of former Act | 10 |