



Immigration (Mass Arrivals) Amendment Bill

214—1

Report of the Foreign Affairs, Defence and
Trade Committee

July 2023

Contents

Recommendation.....	2
About the bill as introduced.....	2
Submissions received on the bill.....	2
Our conclusion.....	4
Appendix.....	5

Hon Jenny Salesa
Chairperson

Immigration (Mass Arrivals) Amendment Bill

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Immigration (Mass Arrivals) Amendment Bill. We have been unable to agree on whether to recommend that the bill be passed.

About the bill as introduced

We have considered the Immigration (Mass Arrivals) Amendment Bill, which would amend the Immigration Act 2009. The bill's stated intention is to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and to protect the rights of all those involved. The bill would do this by extending the time for the District Court to consider an application for a mass arrival warrant of commitment.

The effect of the bill would be to increase the detention time without a warrant for mass arrival members. The current period of detention without warrant for people who arrive at New Zealand's border without a visa or other entry permission is no longer than 96 hours. Under the bill as introduced, the time that a constable could detain members of a mass arrival group without a warrant would increase from 96 hours (4 days) to up to 7 days. If it was not reasonably practicable for the District Court to consider an application for a mass arrival warrant of commitment within 7 days, the detention could be extended by a Judge to 28 days.

We received advice from the Department of Immigration that this increase may allow more time for members of a mass arrival to be afforded their rights to natural justice, including obtaining legal representation. We were further advised that a secondary purpose of the bill is to help New Zealand meet its obligations under the United Nations *Protocol Against the Smuggling of Migrants by Land, Sea and Air*.

Submissions received on the bill

Nearly all the submissions we received were opposed to the bill. The following issues were raised by some of these submitters.

International protocols

Some submitters noted that by ratifying the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) and its 1967 protocol, New Zealand undertook to allow refugees rights and entitlements.

Other submitters mentioned the Universal Declaration of Human Rights, which New Zealand seeks to uphold. They note that this declaration states that everyone has the right to seek asylum in other countries. The declaration further states that no one is subject to arbitrary

arrest, detention, or exile. Still other submissions stated that New Zealand has obligations under international maritime law, which are contrary to the purpose of the bill.

We note that the bill assumes the need for individual assessment of asylum seekers. Some submissions said that the United Nations Refugee Agency has already developed protocols for mass arrivals. Some submitters asserted that the bill bypasses the obligation to undertake individualised assessment of the need for detention, which they said is required by the United Nations High Commissioner for Refugees 2012 Guidelines on Detention.

Treatment of vulnerable people

Some submitters said that the bill treats asylum seekers as though they are “other”, rather than recognising their humanity. We heard that the ethical obligation to those displaced from their own countries by war, climate change, or other factors, is to support rather than detain. Some submitters noted that the bill makes no provision for vulnerable groups such as children, women, the disabled, or LGBTQIA+.

Some submitters told us that a reasonable response to a mass arrival would be to prepare a facility such as the Māngere Refugee Resettlement Centre. They said that New Zealand needs a prepared task force at the ready to accommodate such an arrival.

Detention of arrivals

We heard that the bill creates a presumption of detention for members of mass arrivals, which is contrary to the ethos of the Refugee Convention. Some submitters said that the bill would therefore unfairly distinguish asylum seekers who arrive by boat from those who arrive by other means. Detention of a large group of refugees would likely mean breaking up families.

Further, some submitters said that the bill’s use of the word “detention” would allow for detention in custodial facilities. We heard that the bill’s extended period of detention would amount to *de facto* criminalisation of asylum seekers and refugees. We heard that detention of refugees in prisons further traumatises people who have often already experienced torture, trauma, and bereavement prior to arrival; many submitters questioned why the bill would treat them like criminals.

We were told that since 2015, 85 asylum seekers were detained in New Zealand custodial facilities. Our advisers confirmed that no asylum seekers have been detained in custody since early 2020.

Practical outcomes

Some submitters said that international experience has shown that policies of deterrence and punishment do not deter people-smugglers and people-traffickers. We heard that the bill is unnecessary, given New Zealand’s distance from other shores, and the consequent improbability of a mass arrival by boat. We received advice that neither the existing provisions of the Immigration Act, nor the bill’s proposals, are intended to act as a deterrent to a mass arrival.

Some submitters questioned one of the stated purposes of the bill, to ensure that asylum-seekers can obtain access to legal representation. They considered that, on the contrary, it

is very difficult to access support or legal representation from within prison, particularly with English as a second language.

Our conclusion

We note that in May 2022 Immigration New Zealand accepted all the recommendations in a review by Victoria Casey KC of its processes and procedures relating to the detention of asylum seekers, *Restriction of Movement of Asylum Seekers*.¹ The recommendations included that “detention of an asylum seeker is only justified as an exceptional measure of last resort”.

Some of us are uncertain why this bill was introduced. Some of us are also not convinced that there are good reasons for increasing the time that members of a mass arrival group may be detained without warrant.

We have been unable to agree on whether to recommend that the bill be passed.

¹ [You can read the report here.](#)

Appendix

Committee procedure

The Immigration (Mass Arrivals) Amendment Bill was referred to the committee on 28 March 2023. The closing date for submissions was 27 April 2023. We received and considered submissions from 322 interested groups and individuals. We heard oral evidence from 22 submitters by videoconference and in Wellington.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality.

Committee members

Hon Jenny Salesa (Chairperson)

Hon Gerry Brownlee

Golriz Ghahraman

Todd Muller

Ibrahim Omer

Dan Rosewarne

Simon O'Connor participated in our consideration of this item of business.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.