

Immigration Bill

As reported from the Transport and
Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Immigration Bill and recommends that it be passed with the amendments shown.

Introduction

The primary objective of reforming the legislation is to establish a stronger, more flexible, and enduring legislative foundation for New Zealand's immigration system. It aims to facilitate the entry into New Zealand, and continued presence, of the people New Zealand wants and needs; and to manage immigration in a fair and balanced way.

This commentary focuses on the main amendments we recommend and outlines the main issues we considered. It does not cover minor or technical amendments.

Commencement

We recommend an amendment to clause 2 to make it clear that more than one Order in Council could be made to allow the provisions listed in clause 2 to come into effect on different dates.

Interpretation

We recommend a number of amendments to clause 4(1).

The committee considered the definition of “biometric information” with regard to photographs. We recommend that the definition should specify that it means a photograph of a person’s head and shoulders. We recommend that the definition of “New Zealand address” should be expanded to include all relevant and current addresses. The definition of “New Zealand address” should be moved to a stand-alone clause in Part 11, where the definition is most pertinent.

As introduced the definition of “passport” does not specify that it must be current and valid. We recommend an amendment to correct this.

We also recommend that the term “stowaway” be defined in the bill. The bill currently terms those who make refugee and protection decisions “determination officers”. To provide a clearer indication of their role, we recommend that the people who make refugee and protection decisions be known as “refugee and protection officers”.

Rights of New Zealand citizens protected

Clause 7 states the right of every New Zealand citizen to enter and to be in New Zealand at any time. We believe, however, that it is also important that citizens establish their identity and prove their citizenship at the border to access this right. Without such a process the security and safety of the border would be at risk and the value of New Zealand citizenship would be compromised. As introduced, the bill does not make these requirements explicit.

We therefore recommend that clause 7 be amended to require explicitly that New Zealand citizens prove their citizenship and establish their identities at the border to establish their right to be in New Zealand as citizens.

Citizens holding multiple nationalities

We recommend an amendment to clause 7(4) to provide that New Zealand citizens who wish to enter New Zealand using a foreign passport can hold a New Zealand visa.

Overview of decision-making powers

Clauses 15 to 19 were intended to make the powers and roles of the Minister and officials clearer. However, these clauses contain no decision making powers, and may create confusion. We therefore recommend that they be removed.

Reasons must be given for declining a visa application

We recommend an amendment to clause 25 requiring that reasons be given for declining certain visa applications. We believe it should also apply when refusing entry permission at the border.

To ensure that standards are consistent in the information being provided, we also recommend an amendment requiring the reasons for the decision to be provided in the form prescribed by section 23 of the Official Information Act 1982.

Use of biometric information in decision making

Clause 29 provides for the use of biometric information to establish a record of a person's identity, to verify identity, and to assist decision making. Many of the submissions on this clause raised general privacy and human rights issues regarding the collection and use of biometric information.

The Privacy Commissioner raised concerns about the bill's lack of transparency as to how biometric information would be used, how its accuracy would be ensured, the security measures for storing the data, and how long it could be retained, which domestic and external agencies would receive the data, and how they would use it.

We recommend amendments to ensure that the handling of biometric information is consistent with the provisions of the Privacy Act 1993. We also recommend amendments based on four key recommendations of the Privacy Commissioner:

- a requirement for the Department of Labour to complete a privacy impact assessment of the handling of biometric information under the provisions of the bill and under operational policy
- a requirement that the department consult the Privacy Commissioner on the privacy impact assessment

- a requirement that the privacy impact assessment be updated when changes are made to the immigration legislation or operational policy on the handling of the biometric information, and that the consultation with the Privacy Commissioner be repeated if this assessment indicates new or increased effects on privacy impacts
- a requirement for all privacy impact assessments to be published on the department's website.

We also note that the bill's biometric provisions would not be available for use on enactment, but would be brought into force by the Governor-General by Order in Council at a later date. Cabinet would need to be satisfied that the procedures, processes, and facilities for the use of the biometric information provisions were robust.

Collection and storage of biometric information

We recommend the insertion of new clause 29A to make it clear that the collection of biometric information may be done by an automated system or otherwise, by an immigration officer or refugee and protection officer, or an agent on their behalf. This should ensure any biometric system is as secure, efficient and effective as possible.

Collection of biometric information from people leaving New Zealand

To make it possible to verify a person's identity at all points of engagement with the immigration system, we believe that the bill should ensure that the identity of persons other than New Zealand citizens departing New Zealand could also be verified through biometric information.

Verifying the identity of people entering and departing New Zealand is crucial to facilitating the management of migrants and visitors to New Zealand. The availability of advanced techniques of identification by biometric information should help ensure the integrity of the border control and immigration systems.

The ability to collect biometric information from non-citizens departing New Zealand would reduce the risk of identity fraud. It would also make it possible to match arrivals and departures more accurately, for example when a non-citizen who was unlawfully in New Zealand departed using a false passport or identity.

We therefore recommend the insertion of new clause 110A to provide for the collection of biometric information from non-citizens leaving New Zealand.

Failing to provide biometric information

As introduced, the bill does not make it clear that it would be an offence for a citizen or non-citizen to refuse to supply biometric information at the border.

To correct this omission we recommend amending clause 307 to provide clearly that it is an offence for citizens or non-citizens to fail to provide biometric information when required to do so at the border.

Classified information

Almost all the submissions we received registered some opposition to the bill's classified information provisions. A belief was expressed that the use of classified information amounted to a deprivation of natural justice and of the right to a fair trial, and concern that classified information might be used without the person concerned knowing the allegations against him or her.

Definition of classified information

Many submitters argued that the definition of classified information in clause 5 was too broad, because it allowed any public service chief executive to certify information as classified. It was also suggested that the definition of classified information should be narrowed down to focus on matters of security, intelligence, and law enforcement.

We believe that allowing any public service chief executive to certify information as "classified" is not necessary for the immigration system to function effectively. We therefore recommend that the bill be amended to limit the definition of classified information to information received from listed security, defence, law enforcement, and border agencies, along with the Ministry of Foreign Affairs and Trade and the Department of Internal Affairs (in recognition of that department's responsibility for managing New Zealand citizenship and passports). The relevant agencies are listed in clause 4(1).

We also recommend that clause 5(1) be amended by deleting the words "in the opinion of the chief executive", making the definition

more objective, and consistent with the definition in the Official Information and Privacy Acts.

In addition we recommend that the chief executive's power of delegation under section 40 of the State Sector Act 1988 should not apply to the chief executive's powers relating to classified information under clause 5.

Reliance on classified information in decision making

Clause 30 provides that classified information may be used in decision making if the Minister of Immigration determines that the information relates to matters of security or criminal conduct, or matters that may have a significant impact on New Zealand's international reputation. Submitters commented that relying on concerns about the potential effect on New Zealand's international reputation is subjective.

We agree that the clause 30(1) criterion of "a significant impact on New Zealand's international reputation" is not necessary and recommend it be deleted.

Concerns were also raised by several submitters about the use of undisclosed classified information. The Chief Ombudsman submitted that clause 30 among others, refers to the situation when classified information is "used" in decision-making. This expression would capture all information that had been certified as classified, irrespective of whether it had been actually relied on to make a decision.

We note that the interpretation that caused concern was not the intention, and recommend substituting the words "relied on" for the word "used" in clause 30 and associated clauses.

Refugee or protection claims to first be decided by refugee and protection officer

As introduced, clause 30(2)(b) requires first-instance refugee or protection matters using classified information to be referred to the Immigration and Protection Tribunal. This was intended to protect such classified information by limiting the number of people who had access to it.

However, we believe that the measure would be likely to result in longer and more costly Tribunal hearings, because detailed preliminary work would not have been carried out by a refugee and protection

officer while making a first-instance decision. It would also remove an avenue of appeal from claimants or other affected people.

We recommend an amendment to allow senior security-cleared refugee and protection officers to decide refugee and protection matters in the first instance using classified information. We note that the affected person would then retain the right to appeal this decision. This amendment would entail consequential amendments to a number of the bill's provisions, including the deletion of clause 137.

Minister may receive briefing

We recommend the deletion of clause 31(1)(d) because it would require the entire content of a briefing to be withheld, irrespective of whether all of it consisted of classified information.

Application of other Acts

We recommend an amendment to clause 32 to clarify that the bill's classified information provisions would not rule out the application of the Ombudsman Act 1975, the Official Information Act, or the Privacy Act.

Classified information must be balanced

We also recommend that clause 32(4) be deleted and be replaced by new clause 32A to clarify the balancing provisions that must be applied by the chief executive of the relevant agency when providing classified information.

Summary of allegations to be developed

Clause 34 provides for a summary of the allegations arising from classified information to be provided to the person who is the subject of a proposed decision relying on that information. To give more weight to natural justice, and to enable New Zealand to act on reliable information that cannot be disclosed in its entirety, we recommend inserting new subclause 2A. The new subclause provides that where potentially prejudicial information and reasons for decisions are required under clause 34(1), classified information must not be relied

on in decision making if a summary of allegations arising from that information cannot be provided to the affected person.

Proceedings of Tribunal involving classified information to be heard by nominated District Court Judges

Under clause 214 as introduced, proceedings involving classified information must be heard by one or more, but not more than three, Tribunal members who are District Court Judges.

We recommend that the bill be amended to make it clear that the chair of the Tribunal must be one of the members involved in the classified information proceedings.

Tribunal to approve summary of allegations

Clause 216(6) states that a special advocate may not be involved in the process of approving, amending, or updating the summary of allegations. There was concern that this clause would mean there would be no-one to put the interests of the appellant or affected person before the Tribunal in relation to the summary of allegations.

The special advocate would see all the information that would be summarised. However, the summary itself would be the domain of the Tribunal.

It would be clearer if the bill instead listed those who might be involved in the process of developing and approving the summary of allegations. We recommend that clause 216 be amended to clarify that the Tribunal, when approving the summary, must have regard to the views of the relevant agency and may have regard to the views of the person who made the decision under appeal.

Matters to be considered by the Tribunal

Clause 217 sets out the matters to be considered by the Tribunal where classified information is involved.

Under 217(3), the Tribunal would have to disregard any information it does not consider met the definition of “classified information” in clause 5 of the bill. This would preclude the Tribunal from considering information that might be of benefit to the affected person.

We recommend that the bill be amended to allow the Tribunal to consider information of benefit to the individual, regardless of whether

or not the Tribunal considers it meets the definition of classified information in clause 5.

Summary of allegations to be provided at court proceedings

As classified information can be withdrawn, added to, or updated throughout any appeal or review proceedings, we recommend the insertion of new clause 227A to require that a summary of allegations be provided in court proceedings. The summary would have to be updated where classified information was withdrawn, updated or added to.

Role of special advocates

Clause 235(1) specifies that the role of the special advocate is to represent the interests of the appellant in any proceedings involving classified information.

We recommend that clause 235 be amended to make it clear that special advocates could also represent non-citizens at warrant of commitment hearings involving classified information.

We also recommend an amendment to make it clear that the role of special advocates in matters involving classified information includes representing the interests of the appellant or affected person in closed hearings, and making submissions on their behalf.

Special advocates to lodge or commence proceedings

As introduced clause 235(2) states that it is not the role of the special advocate to lodge or commence any proceedings.

Submitters expressed concern that this would limit natural justice, and put the special advocate in the position of being unable to do anything about serious injustices concerning the use of classified information.

We agree that a special advocate may be the most appropriate person to lodge an appeal on a point of law or seek judicial review on behalf of a non-citizen, in respect of the classified information aspect of their case.

We therefore recommend that the bill be amended to remove the limitation on the special advocate's ability to lodge or commence proceedings on behalf of a non-citizen.

Recognition of special advocates

Clause 236(4) provides that the designated agency can withdraw the special advocate's recognition at any time for disability affecting performance of duties, bankruptcy, neglect of duty, or misconduct, or if the special advocate ceases to hold an appropriate security clearance.

As introduced, this provision may cut across the Lawyers and Conveyancers Act 2006, which provides for lawyers to be struck off or suspended in defined situations. The exception to this is the security clearance requirement, which is particular to a special advocate.

We therefore recommend that the bill be amended to take out particular criteria for the removal of a special advocate, and replace them with generic reference to a person being struck off or suspended under the Lawyers and Conveyancers Act 2006.

We also recommend that the bill be amended to provide a mechanism for appointing special advocates for matters under Part 9.

Appointment of special advocate in individual case

Clause 237(1) provides that where a decision involving classified information may be appealed, the Minister must notify the designated agency to this effect.

We believe that this notification should also occur where a decision is to be reviewed, and recommend amending the clause accordingly. Concern was also raised about operational and administrative problems that could arise for the Tribunal and courts as a result of relying on the affected person to appoint a special advocate.

The purpose of setting up the classified information system is to enable the use of classified information while at the same time ensuring, as far as possible, the greatest possible fairness to affected persons.

We therefore recommend that the bill be amended to allow a special advocate to be appointed for an appellant or affected person, regardless of whether or not he or she chooses to appoint one.

Communication between special advocate and person to whom classified information relates

Under clause 238, a special advocate who wishes to communicate with an appellant, after having been given access to the classified information, may only communicate by writing through the Tribunal

or court. A number of submissions opposed this clause, expressing the view that this is a serious limitation on the ability of a special advocate to represent the appellant. We are told that this clause is necessary to prevent classified information being inadvertently released.

Appointment of amicus curiae

We believe there would be merit in allowing the Tribunal or courts to appoint an amicus curiae (friend of the court) in any case involving classified information.

Further, we consider that the Tribunal or courts should be able to appoint an amicus curiae regardless of whether an affected person has also appointed a special advocate. The role of an amicus is to assist a court or Tribunal, rather than to represent the interests of an appellant or affected person. For this reason, persons appointed to this role should not be limited to those eligible to be special advocates. However, if dealing with any classified information, the amicus curiae would have to receive an appropriate security clearance.

Visas

Part 3 of the bill establishes a universal visa system. We recommend a number of minor and technical amendments to Part 3 to ensure clarity and reduce repetition. A number of clauses have been moved so that Part 3 follows a more consistent structure.

Variation of conditions of visas

The Minister or an immigration officer may vary conditions on a resident visa or a temporary entry visa subject to restricted temporary entry instructions after the visa is granted only if the visa is granted as an exception to immigration instructions.

We heard concerns that the ability to vary the conditions on visas provides too much opportunity for setting immigration policy without legislative change. The Human Rights Commission also expressed concern that the ability to amend or impose conditions on visa holders in this way could be abused where there was a perceived risk to national security.

We believe, however, that the flexibility to tailor conditions is not intended to allow unjustified discrimination or to circumvent appropriate constraints on the changing of immigration policy. The power to change conditions would allow the bill to respond to individual circumstances, and provide clarity and certainty for non-citizens who were issued visas, under a policy that imposed common conditions upon the making of such changes. We recommend deleting clause 39 and amending clause 41 and inserting new clauses 41A and 41B to allow the Minister, by special direction, to vary the conditions of resident visas and temporary entry visas subject to restricted temporary entry instructions, regardless of whether or not the visa was granted as an exception to immigration instructions.

Applications by minors

There was some concern from submitters about clause 49, which provides that the Minister or an immigration officer can decline a minor's visa application if either is not satisfied that a parent or guardian consents to it. This provision is based on section 35(2) of the 1987 Act. It is not intended to discriminate against minors or hinder genuine asylum seekers, but to protect children and young people against exploitation by third parties in order to fulfil New Zealand's obligations under the Hague Convention on Civil Aspects of International Child Abduction, and the United Nations Convention on the Rights of the Child. We recommend no change to this clause.

Grant of visa when granted in error

Clause 56 gives the Minister of Immigration or an immigration officer discretion to grant a non-citizen a temporary entry class visa to replace a visa granted as a result of an administrative error. We note, however, that this provision does not extend to allowing the granting of residence class visas in this situation.

We recommend an amendment to allow the granting of any appropriate class or type of visa to a non-citizen who holds a visa granted in error.

Who may apply for temporary or limited visa

As introduced, clause 70 would not allow a non-citizen who is outside New Zealand and subject to a visa waiver, to apply for a temporary

entry visa. On occasions, such a non-citizen may legitimately wish to apply for a temporary entry visa—for example, if he or she is at risk of being refused a visa and entry permission at the border.

To provide for such occasions we recommend that clauses 59, 68, and 70 be amended so that a non-citizen who wished to come to New Zealand for any purpose for which a temporary entry visa may be granted could apply for a temporary entry visa even if they are subject to a visa waiver.

Limited visas

Limited visas permit visitors to enter for a specific purpose stating the date on which they will depart New Zealand, and provide no right to appeal or alter the terms of the visa.

We consider that limited visas and permits are currently being under-utilised by the department. Although the operation of limited visas and permits is governed by policy decisions rather than legislation, some of us believe that they can be an efficient means of ensuring a visitor is in New Zealand only for the stated reason and cannot make further immigration claims. Some of us believe the department should make more use of these visas.

Limitations and conditions on holders of limited visas

To ensure that non-citizens would not be prevented from appealing decisions about refugee or protected person status on the basis of the type of visa they hold, we recommend that clause 74 be amended to clarify that a holder of a limited visa would be permitted to lodge a refugee or protection appeal.

Arrivals and departures

Chief executive may prevent person boarding craft to travel to New Zealand

Clause 87 provides that the department's chief executive cannot make a decision preventing a New Zealand citizen who holds a New Zealand passport from boarding a craft to travel to New Zealand or place conditions on such a person. We recommend that clause 87 be amended so that the chief executive would not be permitted to make a decision that adversely affected the boarding rights of a person

who held a foreign passport with an endorsement indicating that the holder was a New Zealand citizen.

Refugee and protection system

A number of submitters were concerned that the bill is not consistent with New Zealand's international obligations under the Convention Relating to the Status of Refugees (Refugee Convention), the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR). We generally agree, and recommend a number of amendments to ensure that the bill reflects these obligations.

We recommend that clause 119 be amended so that a non-citizen must be recognised as a refugee if he or she met the requirements of the Refugee Convention.

Recognition as protected person under the Convention Against Torture and under the Covenant on Civil and Political Rights

The current wording in clauses 120 and 121 regarding the CAT and ICCPR may not accurately codify New Zealand's obligations.

To correct this, we recommend that the bill be amended so that the provisions relating to recognition as a protected person under CAT reflect more closely the wording of Article 3 of CAT, and that those provisions relating to recognition as a protected person under ICCPR are consistent, as far as possible, with the amended provisions relating to recognition as a protected person under CAT.

The Refugee Convention requires New Zealand to meet minimum standards for the treatment of refugees, such as non-discrimination, and access to employment, housing, education, and the courts. The CAT and the ICCPR do not include any such requirements for the treatment of protected persons once they are in New Zealand, and there is no intention to replicate New Zealand's refugee obligations for protected persons in the legislation. New Zealand's fundamental immigration-related obligation arising from the CAT and the ICCPR is not to return a person to a country where he or she would be in danger of particular human rights abuses.

We therefore recommend that the bill be amended to make it clear that protection status only prevents a non-citizen from being returned to a country where he or she would be in danger of torture, arbitrary

deprivation of life, or cruel treatment; and it does not bestow a particular immigration status or prevent deportation to other countries where the non-citizen would not face that danger.

Additional requirements for recognition as a protected person

Many submitters argued that clause 122 is inherently undesirable and fails to meet New Zealand's international obligations.

Of particular concern was subclause (b) which requires that, in order for a person to gain protection status, the torture, arbitrary deprivation of life, or cruel treatment in question would "not be faced generally by other persons in or from that country". In the opinion of the Refugee Status Appeals Authority, this provision is unprincipled, unnecessary and fails to meet New Zealand's international obligations.

The UN High Commissioner for Refugees suggested that a more appropriate test would be whether the claimant "can reasonably and effectively find protection from serious harm in other parts of the country".

The general intent of clause 122 is that non-citizens who can avail themselves of protection in their country or countries of nationality or former habitual residence should not be recognised as protected persons in New Zealand. It is logical that people who are protected elsewhere should not be entitled to the protection of another country.

We believe consideration should also be given to whether there are substantial grounds for believing the claimant would be in danger of torture, arbitrary deprivation of life, or cruel treatment, in every part of his or her country. This would exclude people who could escape the danger in question by moving elsewhere in their own countries. Allowing protection status to be granted to claimants who were "unwilling" to avail themselves of their country's protection could undermine the system of protection status. If claimants could argue that they are not personally willing to seek protection from their States, this would introduce a subjective element into the judgement as to their eligibility for protection, in addition to the objective question of whether the claimant was in specific danger. We believe the bill should focus on whether claimants could really access meaningful protection in their country or countries of nationality or former habitual residence.

We therefore recommend that clause 122 be removed. Instead, clauses 120 and 121 should be amended to make it clear that where a claimant could access meaningful protection in their country of nationality or usual habitual residence, they could not be recognised as a protected person in New Zealand.

Claims not to be accepted from certain persons

Clause 123(1)(b) would prevent refugee and protection officers from considering a claim for refugee or protection status from a person who was a resident or permanent resident, unless he or she had been served with a deportation liability notice (DLN).

Clause 152, however, would allow the deportation of non-citizens threatening security. Such non-citizens would not be served with a DLN (as per clause 158(b)). This would mean that residents or permanent residents who were liable for deportation under clause 152 would be prevented from claiming refugee or protection status.

As a signatory to the Refugee Convention, the CAT and the ICCPR, New Zealand is obliged not to return a person to a country where they could face serious harm. Issues about this obligation do not usually arise in relation to citizens, or residents and permanent residents, who have a right to remain in New Zealand. Residents and permanent residents who are being deported should not, however, be prevented from having a refugee or protection claim considered, regardless of the grounds of their deportation.

We therefore recommend that clause 123 be amended to enable residents or permanent residents who were liable for deportation under clause 152, and who were not served with a DLN, to have their claim to refugee or protection status considered.

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

Clause 125 specifies the criteria under which a refugee and protection officer could decline to accept a claim. Among the matters that could be taken into account are whether a claimant had been recognised as a refugee or given protection in another country, and if so, whether he or she would be received back in that country without risk of being returned to another country where he or she would be at risk of treatment that would give rise to refugee or protection status.

Several submissions specifically opposed this clause, mainly on the grounds that it could lead to refoulement and a breach of New Zealand's international obligations. The UN High Commissioner for Refugees and Amnesty International called for the clause to be deleted, and the Human Rights Commission called it "fundamentally flawed" and unnecessary.

We have recognised these concerns, and recommend that the bill be amended to make consideration of whether a claimant had the protection of another country or had been recognised as a refugee in another country a matter to be determined in assessing a claim, rather than a reason to decline to consider a claim.

Under this clause, a refugee and protection officer could refuse to accept a claim for consideration if, in the light of any international arrangements or agreement, the claimant might have lodged, or had the opportunity to lodge, a claim for recognition in another country. New Zealand is not currently a party to any relevant international arrangements or agreements, but this clause is intended to provide for the possibility that it may be in the future. However, we consider that the kind of agreements or arrangements to which this clause applies should be clearer. We therefore recommend that clause 125 be amended to specify that it would allow New Zealand to negotiate arrangements or agreements relating to the processing of claims for refugee or protection status.

We also recommend an amendment to set out the factors the Government would have to take into consideration when negotiating any such international arrangement or agreement. It should require that any partner country to such an agreement

- be a signatory to the Refugee Convention, CAT and ICCPR; and
- have satisfactory processes for dealing with refugee and protection claims.

Matters to be determined by refugee and protection officer

Clause 127(2) sets out the matters to be determined when processing a claim for recognition as a protected person. They include whether there were serious reasons for considering that the claimant had committed war crimes or other serious crimes, or been guilty of acts contrary to the purpose and principles of the United Nations. These

provisions replicate the exclusion provisions of Article 1F of the Refugee Convention and apply them to the process for determining protection status. However, they are not intended to exclude anyone from protection status.

Clause 127(2) would enable refugee and protection officers to consider the claimant's "character", as well as CAT and ICCPR grounds. These issues are not relevant to whether people get protection, but they are relevant to the immigration status New Zealand would grant them in order to deliver that protection.

We recommend that the bill clarify that an adverse finding under clause 127(2) would not prevent the granting of protection status to a non-citizen.

Limitation on subsequent claims

Clause 130, as introduced, would mean that if a former refugee status claimant under the 1987 Act tried to lodge a protection claim under the bill, their claim would be refused if their circumstances had not changed. This would potentially breach New Zealand's obligations under the CAT and the ICCPR.

To avoid any such breach, we recommend an amendment requiring a refugee and protection officer to dismiss a subsequent refugee claim, but not a protection claim, if there has been no significant change in circumstances, or if the change was created by the claimant for a purpose of creating grounds for recognition as a refugee.

We also recommend new clause 130A be inserted to allow refugee and protection officers considering subsequent claims to rely on findings of credibility or fact made by refugee status officers and the Refugee Status Appeals Authority under the 1987 Act.

Confidentiality to be maintained

Clause 140 would protect the confidentiality of refugee and protection claimants, refugees, and protected persons, and all aspects of their claims. It is very similar to section 129T of the 1987 Act.

The Court of Appeal in *Attorney-General v X and Z [2007] NZCA 388* held that section 129T of the 1987 Act prevents information from refugee status claims being used for extradition or prosecution purposes. However, the Supreme Court later overturned this decision

and determined that section 129T of the 1987 Act allows the information to be used for these purposes.

We recommend that clause 140 be amended to ensure that the status quo arising from the Supreme Court decision is retained in the context of the bill. The intent is to ensure that the clause appropriately protects the confidentiality of claims, while also continuing to allow information from refugee and protection status claims and proceedings to be disclosed as appropriate, for purposes including extradition and prosecution.

Limitation on deportation of persons with or claiming refugee or protection status

As introduced, clause 153(2) is silent on whether it applies to refugee status claimants. To clarify matters, we recommend that clause 153(2) be amended to apply explicitly to such claimants.

We recommend that clause 153(3) be redrafted as a stand-alone clause to reflect its importance. It provides that immigration officers, in carrying out functions in relation to refugees or refugee or protection claimants, must have regard to the provisions of Part 5 of the bill and to the Refugee Convention.

Effect on prohibition on entry

Clause 167 provides that non-citizens who have been deported are prohibited from entry. We believe that clause 167 needs to be redrafted to ensure that the intended ban periods, detailed below, would be given effect.

Deportation reason	Ban period
Visa granted in error	None
Unlawfully in New Zealand and departs voluntarily and pays own costs	
Unlawfully in New Zealand, if served with a deportation order and deported after overstaying for one year or less	Two years

Deportation reason	Ban period
Unlawfully in New Zealand, if served with a deportation order and deported after overstaying for more than one year	Five years
Unlawfully in New Zealand, if served with a deportation order and deported after overstaying on a second or subsequent occasion	
Sufficient reasons to revoke temporary or limited visa	
Ministerial determination that resident visa conditions breached or not met	
Visa granted in false identity	Permanent
Threat or risk to national or international security	
Conviction of resident or permanent resident visa gained by fraud	
Ministerial determination that resident or permanent resident visa gained by fraud	
New information as to character of residence class visa holder	Until any costs of deportation repaid
All of the above	

We recommend that clause 164(1A) be inserted to clarify that a non-citizen who holds a visa who departed New Zealand before a deportation order was served, but was subsequently served with a deportation order offshore, would be subject to the same prohibition on entry as if they had been served with the notice or order in New Zealand.

Furthermore, we recommend an amendment to provide that a non-citizen under 18 years of age would not be subject to a prohibition on entry, nor the requirement to pay the costs associated with their deportation.

We have also noted that the cancellation of a deportation order served on a person unlawfully in New Zealand is not possible under the bill, as the current Act allows. We think that it should be possible potentially for two reasons: first, to enable voluntary departures; and, sec-

ondly, to ensure that an appropriate humanitarian response be made. We understand that officials will prepare a supplementary order paper on this issue.

The appeals process

Many submitters were concerned about what they perceived to be a loss of existing appeal rights under the bill. The bill would not exclude the right of access to relevant appeals. It would, however, ensure that repeat or duplicate avenues of review and appeal in relation to the same matter were avoided.

Rights of appeal in relation to decisions concerning residence class visas

Under the bill, there would be no right of appeal against a decision to refuse a residence class visa if the decision were made by the Minister. We believe that excluding such appeals where classified information was relied on would prevent appropriate independent scrutiny by the Tribunal of the veracity and relevance of the classified information in question.

We therefore recommend that clause 171 be amended to provide an exception to the usual rule, to allow an appeal against residence class visa decisions made by the Minister where classified information had been relied on.

Rights of appeal in relation to decisions concerning refugee or protection status (other than subsequent claims)

It was suggested that the appeals process should be a “one-stop-shop”. As introduced, for example, the bill would not allow most refugee or protected person appeals and humanitarian appeals against deportation to be heard at the same time with a view to issuing a single decision.

The appeals system is difficult to streamline, primarily because non-citizens may lodge appeals at various stages of their interaction with the immigration system as their circumstances change. It is therefore not possible to have a “one-stop-shop” appeal process to cover all possible appeals with one decision.

To improve the efficiency of the appeals process, we recommend that the bill be amended to require failed refugee and protection claimants who would have access to a humanitarian appeal if they were to become unlawfully in New Zealand to lodge their humanitarian appeal at the same time as their appeals against their declined refugee or protection claims. If their refugee and protection appeal were successful, their humanitarian appeal would not then be considered. If their refugee and protection appeal did not succeed, the Tribunal could consider any humanitarian appeal lodged.

As introduced, clause 176(1)(b) does not allow a person to appeal to the Tribunal if the refugee and protection officer recognised him or her on one ground (for example, refugee status), and not the others (for example, protection status). This is inconsistent with the approach taken to first-instance refugee and protection claims and appeals.

We recommend that the bill be amended to allow appeals on subsequent claims for refugee and protection status, whether or not the refugee and protection officer recognised the person on one ground but not another. This would ensure consistency with the equivalent provisions regarding appeals for first-instance claims and appeals.

Right of appeal in relation to decisions concerning refugee or protection status

The bill omits a provision in the 1987 Act for a right of appeal against the decision of a refugee status officer to refuse to accept a claim for consideration in the light of a relevant international agreement.

We believe that this appeal right should be reinstated. We therefore recommend inserting new clause 176(1)(aa), to include a right of appeal to the Tribunal against a decision by a refugee and protection officer to refuse to consider a claim on the grounds that, in the light of an international agreement or arrangement, the person had the opportunity to, or did, lodge a claim for refugee or protection status in another country.

Tribunal may make orders on allowing appeal against liability for deportation

While the Tribunal could make orders under clause 188 when an appeal was successful, there is no specific provision in the bill for deportation to be delayed if the appeal is unsuccessful.

Such a delay would allow an unsuccessful appellant time to tidy his or her affairs before departure from New Zealand. Some might need time to resign from their employment, and make arrangements for returning, and removing their belongings, to their home countries.

We therefore recommend new clause 192A be inserted to allow the Tribunal to make an order delaying deportation if it considers it necessary, where an appeal against liability for deportation is not successful.

Immigration and Protection Tribunal

The bill creates a new appeal system to replace the four existing appeal bodies (the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board, and the Deportation Review Tribunal) with a single Tribunal. The Tribunal would be able to consider all grounds for an appeal together and make a single decision in many instances. This would improve the overall efficiency of the immigration system.

Nature of Tribunal

Clause 194 sets out the role of the Tribunal as a specialist body. We recommend amendments to clause 194 to properly reflect the fact that the Tribunal makes finding of fact and applies the relevant law.

Clause 194(2) states that the proceedings of the Tribunal are inquisitorial rather than adversarial. However, the Refugee Status Appeals Authority submitted that this is not always the case, and recommended more flexibility to permit the Tribunal to take either an adversarial or inquisitorial approach, or a mixture of the two.

We recommend that the bill be amended to provide more flexibility for the Tribunal to determine which approach to adopt for each case, and to allow it to take different approaches within the course of each case.

Membership of Tribunal

Clause 195(1)(b) requires members of the Tribunal to be lawyers who have held practising certificates for at least five years. However, it neglects to preserve the status quo from the 1987 Act by specifying that members may be appointed on the basis of other equivalent or appropriate experience, in New Zealand or overseas.

To correct this oversight we recommend an amendment to include provisions for members of the Tribunal to be appointed if they have appropriate equivalent experience (in New Zealand or overseas) to holding a practising certificate for at least five years.

Prohibited persons

We also recommend that the bill be amended to prohibit any person who has been a refugee status officer, visa officer, or immigration officer under the 1987 Act in the previous five years from appointment as a member of the Tribunal.

Minister or department may elect to be party to proceedings

There is a lack of clarity as to whether the Minister and department can be a party to any proceedings before the Tribunal, and we recommend the insertion of new clause 202A to make this clear.

Tribunal may require chief executive to provide information

Under clause 204 the Tribunal may require the chief executive to seek information relevant to an appeal or matter before it.

We recommend that the bill be amended to clarify the status of the chief executive as an agent of the Tribunal in these circumstances, making it clear that this status would apply for the purposes of the Privacy Act as well as the Official Information Act. This provision is not intended to allow the appellant or affected person, or their agent, to request information from the chief executive via the Tribunal, and the bill should make this clear.

We note, however, that the Tribunal must act in accordance with the principles of natural justice in relation to any adverse information.

Deemed withdrawal of certain appeals where person leaves New Zealand

Clause 213 provides that an appeal is deemed to be withdrawn from the Tribunal when a non-citizen leaves New Zealand, if the appeal is against liability for deportation under specified clauses, or against the decision to decline refugee or protected status.

Submitters were concerned that this clause would deny residence class visa holders, refugees, and protected persons the right to leave New Zealand without forfeiting any appeal they might have lodged against deportation, cancellation of refugee status, or protected person status.

This provision retains the status quo for certain refugee appeals, and the 1987 Act is silent on the effect of a non-citizen who has lodged a deportation appeal leaving the country.

We believe the bill should be clear on the implications of leaving New Zealand while an appeal is undecided. It is appropriate that the appeals listed should be deemed to be withdrawn when a non-citizen leaves New Zealand.

However, the bill should make it clear that if a non-citizen's liability for deportation is suspended, leaving New Zealand during the suspension period should not result in the withdrawal of their appeal under clause 213. If a resident had lodged a humanitarian appeal against liability for deportation, and the liability was suspended, the humanitarian appeal might also be adjourned. It would be unfair if this appeal were deemed withdrawn if the person left New Zealand during the period of the suspension.

We therefore recommend that the bill be amended so that if a non-citizen's liability for deportation is suspended, leaving New Zealand during this suspension period would not result in the withdrawal of their appeal under clause 213.

We also recommend amendment to remove duplication between clauses 131 and 213(2)(b).

Powers of immigration officers

The bill seeks to provide immigration officers with the necessary powers to carry out their roles effectively. However some submitters felt that it would give unwarranted power to immigration officers,

and raised concern about the ability of an immigration officer to detain a non-citizen for up to four hours.

The powers of immigration officers provided for in the bill are generally not new powers. Under the 1987 Act, these same powers are currently exercised by police and customs officers in the immigration context or on behalf of the department.

Powers of immigration officer to require information and documents where offence suspected

We recommend that clause 246 be amended to provide that where an offence against the Act is suspected, if a non-citizen does not have information or documents in his or her possession that can clarify his or her name, date and country of birth, nationality and residential address, that he or she must give the officer details of where they can be found and who is holding them.

Powers of entry and search relating to deportation

As drafted, clause 253 provides only powers of entry for immigration officers, where it is intended that they should also be provided with search powers. We recommend that the bill be amended to allow an immigration officer to search premises and buildings for non-citizens in order to serve a deportation liability notice, or serve or execute a deportation order.

Initial detention for up to 96 hours without warrant

As introduced, clause 275(1) states that a member of the police may arrest the non-citizen without warrant and place him or her into custody at the request of an immigration officer, making the arrest discretionary in these circumstances. We consider that difficulties could arise if police officers were to choose not to arrest a non-citizen when so requested by an immigration officer.

To clarify this, we recommend an amendment to require police officers to arrest a non-citizen if requested to do so by an immigration officer.

Immigration officers

Clause 346(3) requires warrants of designation to be issued to immigration officers where they exercise powers of entry and inspection or search. Clause 346(8) requires an immigration officer to produce a warrant of designation if called on to do so when exercising powers of “request or requirement or demand”.

However, it was not intended that immigration officers should have to be issued with warrants of designation, or to produce them when making visa and entry permission decisions, although it is appropriate in other circumstances.

To clarify the scope of this requirement we recommend that the bill be amended to allow immigration officers to be issued with a warrant of designation, and to be required to produce the warrant upon request, where they exercise the following powers provided for in the bill:

- (a) the power to deport a person
- (b) the power of entry and inspection
- (c) the powers to require information or documents
- (d) the powers of entry and search at the border
- (e) the power of entry and search relating to deportation;
- (f) the power to obtain certain information pending a person’s deportation
- (g) the power to detain a person liable for turnaround or deportation, or suspected of deportation or turnaround.

Detention and monitoring

Clause 271 sets out the purpose of Part 9, which is to establish a tiered detention and monitoring scheme for managing people who are liable for deportation or turnaround, and to ensure the country’s safety and security where a person liable for deportation might be a threat or risk to security.

Several submitters were concerned that clause 271 did not mention human rights, and in particular that the monitoring and detention framework should be aligned with New Zealand’s national and international human rights obligations.

We note that the detention provisions in the bill have been developed to comply with the human right standards in the New Zealand Bill of Rights Act 1990. There may be instances where the courts, in considering a warrant of commitment application, could exercise their

inherent jurisdiction to grant bail to a non-citizen. We consider that this power could be used to undermine the specific provisions for immigration detention and monitoring in the bill, and we recommend new clause 271A to clarify that the bill constitutes a code for the immigration detention of non-citizens.

Purpose for which arrest and detention power may be exercised

Part 9 does not contain a general provision as to the purposes of arrest detention. Clause 275(2) sets out the purposes of detention. We suggest that clause 275 might be better framed as a general provision, and recommend this change accordingly.

Decisions on warrants of commitment where detention is beyond 6 months

Clause 285, as introduced, provides the courts with the discretion to issue a warrant for the further detention of non-citizens who hinder their own departure after six months. This might create an incentive for non-citizens wishing to avoid deportation to create delays because, after six months, they could seek to secure their release before deportation. In addition, courts have determined that the length of time spent in detention itself constitutes “exceptional circumstances” under which a non-citizen may be released from detention. This might result in non-citizens choosing to hinder their departure by “waiting out” time in detention in order to create an “exceptional circumstance” to justify their release.

We recommend an amendment to clause 285 to create a presumption that, except in exceptional circumstances, a non-citizen who hinders their departure will be detained. We also recommend an amendment to exclude length of detention from the “exceptional circumstances” to be considered.

Provision of false or misleading information

Under the bill, and in the 1987 Act, it is an offence to knowingly produce any false or misleading document to an immigration officer or refugee and protection officer without “reasonable excuse”.

Different interpretations by the courts of what constitutes a “reasonable excuse” have caused the department significant difficulty obtaining convictions for this serious offence.

New Zealand has an obligation under the Refugee Convention to ensure that genuine refugees who provide false documentation or information are not penalised where they “present themselves without delay to the authorities”. Discretion is currently exercised in deciding whether or not to prosecute failed refugee status claimants who produce false or misleading documentation. We believe this should continue, but that explicit reference should be made in the legislation to New Zealand’s obligations under the Refugee Convention.

To address these issues we recommend an amendment to remove the reference to “reasonable excuse” from clause 305(1)(b), and another, inserting new subclause (2), to recognise that the offence does not limit the application of Article 31.1 of the Refugee Convention in any way.

Offences by employers

Submitters representing employers pointed out that the bill would change the status quo regarding the “reasonable excuse defence” of holding a signed IR330 tax code declaration, where an employer hires someone without an entitlement to work. Concerns were raised that this change would increase compliance costs, and might result in employers asking for evidence of entitlement to work only from people who appear likely to be non-citizens.

We do not propose any amendment to clause 313, but wish to point out precisely how the defence for an employer who is facing a charge of employing a non-citizen without entitlement to work would change, and the measures employers could take to check applicants’ entitlements to work.

The bill does not place a positive obligation on employers to check entitlement to work in New Zealand. Instead it provides an employer with a defence for employing a non-citizen without entitlement to work if he or she did not know the non-citizen was not entitled to work, and took reasonable precautions and exercised due diligence to ascertain whether the non-citizen was entitled to work.

Many employers already have an effective employment process, usually requiring employees to supply a passport, birth certificate, or other document indicating their immigration status. Such processes could be adapted without significant cost to show that the employer has taken reasonable precautions.

The bill would allow the department to disclose certain immigration status information to prospective employers. Implementation planning for the new legislation includes the development of an online system to enable prospective employers to check entitlement to work. The system would provide relevant information about a non-citizen's entitlement to work and any conditions on it. Alternative methods of checking (for example, by fax or phone) would also be available.

The Department of Labour will provide advice to employers on what steps to take to show they have taken reasonable precaution and exercised due diligence to meet the reasonable excuse defence.

Miscellaneous provisions

Minors to have responsible adult to represent their interests

Clause 338 requires that a dependent child have a responsible adult to represent their interests in refugee and protection status claims, and in deportation, appeal, and detention decisions.

We believe the provision for the appointment of a responsible adult should be broadened to include minors as well as dependent children, and recommend the bill be amended accordingly.

Endorsements in foreign passports

An endorsement in a foreign passport would provide evidence that a person holding a foreign passport was also a New Zealand citizen.

We believe it is appropriate to require that a description of the evidence that must be provided to obtain an endorsement be contained in regulations, and recommend inserting new clause 343(AB).

We also recommend that a citizen applying for an endorsement who does not hold a New Zealand passport should be required to provide photographic biometric information in order to comply with border entry requirements. In addition, we recommend that the bill be amended to provide that an endorsement can be cancelled where a person is deprived of, or renounces, their citizenship under the Citizenship Act 1977.

Part 12 transitional provisions

We note that Part 12 dealing with transitional provisions has been substantially rewritten to enhance clarity and accuracy.

Green Party minority view

The Green Party appreciates changes made in the committee to make the process fairer and subject to provisions in the Privacy Act and Official Information Act.

The Green Party is concerned at the extension of the use of secret information in immigration cases that will make it harder for people to defend themselves. The Green Party favours a more traditional definition of classified information, that is, information from intelligence agencies. The Green Party doesn't believe that 14 agencies, from the Department of Corrections to the Ministry of Fisheries, should have the right to keep from those involved in immigration cases, and their lawyers, information they are using against them. This problem is only partly addressed by summaries of the allegations in the classified information being provided to a person whose fate is being decided. There is no guarantee those summaries will be adequate. In certain circumstances there will be special advocates for those affected. However, the Green member agrees with the Privacy Commissioner that it is difficult for them to adequately advocate for their clients when, after seeing the classified information, they will only be allowed to communicate with their client in writing via the new Immigration and Protection Tribunal. The provision in clause 289 that 'classified information must be treated (by the High Court) as accurate' is disturbing, after the committee heard from the special advocate in the Ahmed Zaoui case that much of the classified information he saw was hearsay or inaccurate. It is also concerning that no complaints to the Inspector-General of Intelligence and Security are allowed, and temporary visa applicants from outside New Zealand are excluded from access to even a summary of the classified information being used against them.

The Green member is concerned that some provisions in the bill will be oppressive for some migrants or refugees threatened with deportation. Clause 271 makes it difficult for the courts to grant them bail, and under clause 285 the length of an asylum seekers detention will be excluded as an "exceptional circumstance" to be considered in a bail application. This would allow for indefinite detention, in contradiction to human rights law. This could exacerbate problems such we have seen recently, with Iranian Christian converts from Islam who, after being denied refugee status, have been detained for long periods when they have been unable to be removed because they have

not signed Iranian passport papers. Under clause 285 a person's "in-action" on such a matter as signing passport papers will be deemed a reason for their continuing detention. Clause 130 seems to contradict the Refugee Convention in excluding those who by their actions, such as talking publicly about their case, put themselves in more danger of persecution in their home countries.

The Green member is also worried about increased search and detention powers, which in some cases go beyond that currently enjoyed by police. For example, clause 253 grants immigration officers on deportation cases the power to enter and search certain premises without a warrant, making more likely a repeat of the "dawn raids" of the past. The Green Party does not believe there is sufficient justification for extending the period of detention an immigration officer can impose prior to a court appearance from the present 72 hours to 96 hours.

The Green Party is also worried about the way, under clause 270, the sharing of information with foreign agencies goes beyond those possibly involved in criminal activities (clause 270(1)(d)) to the "general history of specified people" (clause 270(1)(e)) which could open the way to political discrimination.

The Green member does not favour the escalation of biometric surveillance at the border allowed for in this bill. This explicitly includes fingerprinting and iris scans, as well as facial recognition systems. The Green member does, however, welcome the committee's amendments to involve the Privacy Commissioner more in this area.

Appendix

Committee process

The Immigration Bill was referred to the committee on 16 August 2007. The closing date for submissions was 2 November 2007. We received and considered 90 submissions from interested groups and individuals. We heard 61 submissions, which included holding hearings in Auckland.

We received advice from the Department of Labour. The Regulations Review Committee reported to the committee on the powers contained in clause 242.

Committee membership

Hon Mark Gosche (Chairperson)

Hon Maurice Williamson (Deputy Chairperson)

David Bennett

Peter Brown

Russell Fairbrother

Darien Fenton

Lesley Soper

Hon Judith Tizard

Kate Wilkinson

Pansy Wong

Dr the Hon Lockwood Smith replaced Hon Maurice Williamson for this item of business. Keith Locke was a non-voting member of the committee for this item of business.

Immigration Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Clayton Cosgrove

Immigration Bill

Government Bill

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Schedule 5

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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)** except as provided in **subsections (2) and (3)**. 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— 10
- (a) the same date as that appointed under **subsection (1)**;
or
- (b) a later date.
- (2) **Sections 29, 29A, 50, 88, 92, 98, 110A, 138(1)(e), 245, 250 to 258, 274, and 358(1a)** come into force on a date to 15
be appointed by the Governor-General by Order in Council (being not earlier than the date appointed under **subsection (1)**); and 1 or more Orders in Council may be made appointing different dates for different provisions.
- (3) **Section 1, this section, and section 430** come into force 20
on the day after the date on which this Act receives the Royal assent.

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. 25
- (2) In managing immigration, the Act— 30
- (a) contributes to the New Zealand workforce through facilitating access to skills and labour; and
- (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.

3 Purpose

- (1) The purpose of this Act is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals. 5
- (2) To achieve this purpose, the Act establishes an immigration system that— 10
 - (a) requires persons who are not New Zealand citizens to hold a visa to travel to, and to be granted entry permission to stay in, New Zealand; and
 - (b) provides for the development of immigration instructions for visas that enable people to stay in New Zealand to meet objectives determined by the Minister, which may include objectives such as— 15
 - (i) contributing to the New Zealand workforce through facilitating access to skills and labour; and 20
 - (ii) supporting families; and
 - (c) allows for the management of the immigration aspects of border control, by setting requirements that apply to persons arriving in New Zealand or who are intending to arrive in New Zealand; and 25
 - (d) provides a process for recognising and ensuring compliance with specified immigration-related international obligations; and
 - (e) includes mechanisms to ensure that those who engage with the immigration system comply with its requirements, including mechanisms that— 30
 - (i) enable immigration officers to gather information in relation to visa holders, employers, and education providers to determine compliance with obligations in respect of the system; and 35
 - (ii) allow for the deportation of people who are not New Zealand citizens and who fail to comply with immigration requirements, who commit

- criminal offences, or are considered to pose a threat or risk to security; and
- (f) establishes a specialist tribunal to consider appeals against decisions made under the Act; and
- (g) supports the settlement of migrants, refugees, and protected persons. 5

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- absolute discretion** has the meaning and effect described in **section 26** 10
- absolute discretion** has the meaning given to it in **section 5D**
- administrative error**, in relation to the granting of a visa or entry permission, has the meaning given to it in **section 5A**
- airport** has the meaning given to it in section 2 of the Airport Authorities Act 1966 15
- allow to undertake**, in relation to a course of study, includes accept for enrolment in that course
- appeal on humanitarian grounds** means an appeal against liability for deportation on the grounds set out in **section 186**
- appeal on the facts** means an appeal against liability for deportation on a ground set out in **section 181** 20
- appeals body** means 1 or more of the following bodies established or continued under the former Act, as the case may be:
- (a) the Residence Review Board:
- (b) the Removal Review Authority: 25
- (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—
- (a) providing information to the chief executive under **section 86**; or 30
- (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 35

biometric information, in relation to a person,—

- (a) means any or all of—
 - (i) a photograph of ~~the person~~ all or part of the person's head and shoulders;
 - (ii) the person's fingerprints: 5
 - (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~~** **sections 91 to 94, 110, and 110A** 10

~~**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~~ 15

carrier, in relation to a craft,—

- (a) means the owner or charterer of the craft; and
- (b) if the owner or charterer is not in New Zealand, includes the agent in New Zealand of the owner or charterer; and 20
- (c) if there is no agent in New Zealand, includes the person in charge of the craft

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— 25
 - (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 30
- (b) includes—
 - (i) any emergency travel document or refugee travel document issued under the Passports Act 1992; and 35
 - (ii) any travel document issued by any international organisation for the time being specified by the Minister for ~~that purpose~~ the purpose of this definition

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**

claim means, as the case may be, a claim in New Zealand by a person for recognition as—

- (a) a refugee in New Zealand under the Refugee Convention;
- (b) a protected person in New Zealand under the Convention Against Torture;
- (c) a protected person in New Zealand under the Covenant on Civil and Political Rights

claimant—

- (a) means a person who has made a claim; but
- (b) does not include a person whose claim has been finally determined

classified information has the meaning given to it by **section 5 section 5(1)**

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

compulsion order means an order made by a District Court Judge under **section 257(1)** requiring a person to allow the collection of specified biometric information from him or her

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 (whether imposed by an immigration officer, the Minister, or the Tribunal)

contiguous zone has the meaning given to it by section 8A(2) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

Convention Against Torture has the meaning given to it by **section 114** means the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984

Covenant on Civil and Political Rights has the meaning given to it by **section 114**

course of study—

- (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
- (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
 - (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
- (c) does not include any course or study extended from this definition by immigration instructions

course of study—

- (a) means—
 - (i) 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
- (ii) 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 5
- (iii) 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 10
- (b) does not include any course of tuition or instruction excluded from this definition by immigration instructions 15
- Covenant on Civil and Political Rights** means the International Covenant on Civil and Political Rights done at New York on 16 December 1966
- 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 20
- ~~**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~~ 25
- crew**, in relation to a craft,—
- (a) means every person employed or engaged in working or providing a service in or on the craft; and
- (b) includes the person in charge of the craft 30
- Crown entity** has the ~~same meaning as in~~ meaning given to it by 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 35

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 5

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 10

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**~~ 15

(b) ~~in **Part 12**~~; means a ~~deportation order made under the former Act~~

deportation order, —

(a) other than in **Part 12**, —

(i) means an order containing the information described in **section 165** that, when served on a person in accordance with **section 164**, authorises the deportation of the person to be executed; and 20

(ii) includes an Order in Council made under **section 152**; 25

(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** 30

disembarkation means the process of physically leaving a craft, whether onto land or otherwise

domestic passenger means a passenger, not being an internationally ticketed passenger, who has an entitlement to air travel for a domestic sector on either— 35

(a) an aircraft that—

(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—
 - (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

domestic sector means a journey from one customs airport to another within New Zealand 10

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: 15
- (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: 20
- (c) in relation to any university, means the appropriate university council:
- (d) in any other case, means the institution, body, or person ~~which that~~ or who is entitled to the fees payable by or on behalf of the persons undertaking the course, or ~~which that~~ or who would be so entitled if any such fees were payable 25

employee means a person who does work for an employer (whether under a contract of service or a contract for services) 30

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** 35

entry permission is the permission that the following persons are required to obtain before being allowed to enter New Zealand:

- (a) a person who is not a New Zealand citizen:
- (b) a New Zealand citizen who is a national of 1 or more other countries and who wishes to enter New Zealand other than as a New Zealand citizen

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

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

exclusive economic zone of New Zealand has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

execute, in relation to a deportation order, has the meaning described in **section 166(4)(1A)**

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

grant, in relation to any visa₂ or entry permission, includes the situation where this Act or any regulations made under this Act deems a grant of the relevant visa₂ or entry permission to occur

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

holder, in relation to a visa granted under this Act,—

- (a) means the person in respect of whom the visa is granted;
but

- (b) does not include a person whose visa has expired or been cancelled

immigration control area means an area or place designated as such under **section 84** **section 343A**

immigration instructions means immigration instructions certified under **section 20**; and includes residence instructions and temporary entry instructions 5

immigration instructions—

- (a) means immigration instructions certified under **section 20**; and 10

- (b) includes residence instructions, temporary entry instructions, and transit instructions

immigration officer means an immigration officer designated under **section 346**, and includes the chief executive

immigration status means the basis on which a person is in New Zealand under this Act, being whether a person— 15

- (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

- (b) is unlawfully in New Zealand (including by reason of being subject to **section 105**) 20

immigration status means the status of a person under this Act, being whether the person—

- (a) holds a visa and, if so, what class and type of visa the person holds, and any conditions of the visa; or 25

- (b) is—

- (i) lawfully in New Zealand and, if so, what class and type of visa the person holds, and any conditions of the visa; or

- (ii) unlawfully in New Zealand (within the meaning of **section 5B**) 30

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 35

infringement fee, in relation to an infringement offence, means the fee set in respect of that offence by regulations made under **section 358**

infringement offence has the meaning given to it by **section 322** 5

internal waters of New Zealand has the meaning given to it in the same meaning as in section 4 of 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 travel tickets for an international journey that— 10

- (a) began outside New Zealand; or
- (b) began inside New Zealand and is to continue outside New Zealand 15

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— 20

- (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~~ 25

leave New Zealand means, except in the circumstances specified in ~~**subsection (3)**~~ **section 111AA**, leave New Zealand for a destination in another country 30

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 35

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 64 and 65 14A(a), 20(1)(c)(ii), 61(d), 62(1)(b)(ii), 65(3)(a), and 370(2)(a)**, the territorial sea of New Zealand; and
- (d) for the purposes of **section 250(2)(a)**, the area of sea 5
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: 10
 - (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)**: 15
- (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:
 - (i) the address at which the person has currently agreed or been required to reside under the relevant section: 20
 - (ii) where applicable, that person's New Zealand address within the meaning of **paragraph (c), (d), or (e)**: 25
- (c) in relation to a person who is in custody under **Part 9**; means— 25
 - (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)**: 30
- (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— 30
 - (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: 35
 - (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):
- (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)**: 5
 - (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: 10
 - (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)** 15

New Zealand address has the meaning set out in **section 345A**

New Zealand citizen means a person who has New Zealand citizenship as provided in the Citizenship Act 1977 or the Citizenship (Western Samoa) Act 1982 20

onshore, in relation to an applicant for a visa, means that the applicant is in New Zealand other than in an immigration control area 25

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: 30
- (b) in relation to an airport,—
 - (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 35
 - (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

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 5

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— 10

- (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; and
- (c) has not expired 15

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 20

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 25

~~**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~~ 30

port—

- (a) 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 35
- (b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the port or its administration

prescribed means prescribed by regulations made under this Act

proceedings involving classified information means—

- (a) an appeal or review proceedings involving classified information; or 5
- (b) consideration by a court of an application made under **Part 9**, where classified information is used in order to determine the application; or
- (c) consideration by the Tribunal of a claim or matter under **section 137** 10

proceedings involving classified information has the meaning given to it in **section 5(5)**

protected person means a person recognised as a protected person under **section 120 or 121**

refugee means a person recognised as a refugee under **section 116 or 119** 15

Refugee Convention has the meaning given to it by **section 444**

refugee and protection officer means a person designated under **section 348** as a refugee and protection officer 20

Refugee Convention—

- (a) means the United Nations Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951; and
- (b) includes the Protocol Relating to the Status of Refugees done at New York on 31 January 1967 25

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)** 30

relevant agency means the following New Zealand government agency, as the case may be, that holds, was the source of, or was provided with, classified information:

- (a) Aviation Security Service;
- (b) Civil Aviation Authority of New Zealand: 35
- (c) Department of Corrections;
- (d) Department of Internal Affairs;
- (e) Department of Labour:

-
- (f) Government Communications Security Bureau:
- (g) Maritime New Zealand:
- (h) Ministry of Agriculture and Forestry:
- (i) Ministry of Fisheries:
- (j) Ministry of Foreign Affairs and Trade: 5
- (k) New Zealand Customs Service:
- (l) New Zealand Defence Force:
- (m) New Zealand Police:
- (n) New Zealand Security Intelligence Service:
- (o) a government agency established in substitution for or 10
set up to take over any function of a department or
agency listed in **paragraphs (a) to (n)**
- residence class visa** includes permanent resident visas and
~~resident visas~~ means a permanent resident visa or a resident
visa 15
- residence instructions** means immigration instructions certi-
fied 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 20
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 en- 25
try 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 discre-
tion exercised must be in terms of those instructions
- review proceedings** means proceedings— 30
- (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 35

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 5
- (b) operated in a manner where each flight or voyage is open to use by members of the public 10

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 ~~with~~ in New Zealand: 15
 - (iii) the identification of foreign capabilities, intentions, or activities ~~with~~ in or relating to New Zealand that ~~impact~~affect adversely ~~on~~ New Zealand's international well-being, reputation, or economic well-being: 20
 - (iv) the protection of New Zealand from activities ~~with~~ in or relating to New Zealand that—
 - (A) are influenced by any foreign organisation or any foreign person; and 25
 - (B) are clandestine or deceptive, or threaten the safety of any person; and
 - (C) ~~impact~~affect adversely ~~on~~ New Zealand's international well-being, reputation, or economic well-being: 30
 - (v) the prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act:
 - (vi) the prevention, investigation, and detection of organised crime, including transnational organised crime: 35
- (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

special advocate means a ~~person~~ lawyer recognised as a special advocate under **section 236**

5

special direction means a direction given by the Minister in accordance with **section 341**

stowaway means a person who is carried in or on a craft without the consent of the carrier or the person in charge

study means undertake a course of study

10

subsequent claim, in relation to a claim for recognition as a refugee or protected person, has the meaning given to it by **section 144**

subsequent claim means a claim (of whatever kind) under **Part 5** by a person who has previously made a claim of any kind under that Part (or under Part 6A of the former Act) that has been finally determined

15

temporary entry class visa includes any temporary visa, limited visa, or interim visa, but does not include a transit visa

temporary entry class visa means a temporary visa, a limited visa, or an interim visa

20

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

25

temporary entry instructions—

(a) means immigration instructions that relate to the grant of temporary entry class visas; and

(b) includes restricted temporary entry instructions

territorial sea of New Zealand has the meaning given to it in same meaning as in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

30

transit passenger means the holder of a transit visa

transit instructions means immigration instructions that relate to the grant of transit visas

35

transit period means the period prescribed for the purposes of **section 76(1AA)**

travelling to New Zealand includes, but is not limited to, travelling to New Zealand from another country in transit to another destination outside New Zealand

Tribunal means the Immigration and Protection Tribunal established by **section 193**

5

turnaround means to effect, under **section 166(1A)**, the departure from New Zealand of a person to whom **section 105** applies, as if the person were a person who had been served with a deportation order

unlawfully in New Zealand, in relation to a person, has the meaning set out in **section 5B**

10

visa has the meaning and effect described in **section 37**; and includes any visa of a class specified in **section 58**

visa—

(a) means an entry in the records of the Department—

15

(i) made in accordance with **section 53**; and

(ii) having the effect set out in **section 37**; and

(b) includes—

(i) any visa of a class specified in **section 58**; and

(ii) any visa deemed to be, or treated as being, held under this Act

20

visa waiver means a waiver under **section 57** of the requirement to hold a visa permitting travel to New Zealand

warrant of commitment means a warrant of commitment issued under **section 279 or 280**

25

work means any activity undertaken for gain or reward; but does not include activity excluded from this definition by immigration instructions.

work—

(a) means any activity undertaken for gain or reward; but

30

(b) does not include an activity excluded, or excluded for a particular purpose, from this definition by immigration instructions.

(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;

35

- that is a public holiday or a departmental holiday determined by the chief executive.
- (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 5 and, before arriving in another country,—
- (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. 10
- (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; 15 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.
- (5) For the purposes of this Act, no person is deported from any country merely because that person is surrendered to another 20 country in accordance with a request for the extradition of that person to that other country.
- (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)— 25
- (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 30 New Zealand under **section 167**.
- (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.

4A Notifications

- (1) Where a provision of this Act provides that a person must be notified of any decision, matter, or other thing, the person must be notified in accordance with **section 345(3)**.
- (2) **Subsection (1)** is subject to any provision that expressly provides otherwise. 5

4B How periods of time to be calculated

- (1) A period of time prescribed by a provision of this Act for the making of any application under this Act, or the lodging of an appeal to the Tribunal, must be calculated excluding any day that— 10
- (a) is a public holiday or a Department holiday determined by the chief executive; and
- (b) is not a Saturday or Sunday.
- (2) **Subsection (1)** does not apply for the purposes of calculating working days under **section 176(4)**. 15

5 Definition Meaning of classified information and proceedings involving classified information

- (1) In this Act, **classified information** means information that the chief executive of ~~the~~ a relevant agency certifies in writing cannot be disclosed under this Act (except as ~~provided under this Act expressly provided for~~) because; ~~in the opinion of that chief executive,—~~ 20
- (a) the information is information of a kind specified in **subsection (2)**; and 25
- (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,~~ identification, 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 30
- (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 35

- (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~~ from which the information has been provided will not consent to the disclosure. 5
- (3) Disclosure of information falls within **subsection (1)(b)** if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of New Zealand; or 10
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or 15
- (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.~~ 20
- (5) In this Act, **proceedings involving classified information** means any proceedings in which classified information— 25
- (a) was relied on in making the decision appealed against or subject to review proceedings (including a decision of the Tribunal); or
- (b) is first raised or proposed to be raised in the course of an application to the Tribunal or on appeal or in review proceedings; or 30
- (c) is used to determine an application under **Part 9**.
- (6) A chief executive of a relevant agency must not delegate to any person the ability to certify information as classified information under **subsection (1)**. 35
- (7) **Subsection (6)** does not limit section 40 of the State Sector Act 1988.

5A Meaning of granting visa or entry permission as result of administrative error

(1) In this Act, a visa is granted as a result of an administrative error if—

- (a) it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in **section 7(4)(b)**); or** 5
- (b) it is granted to an excluded person (unless **section 11** applies); or**
- (c) the person granting it intended to grant a visa of a type other than the one that was actually granted; or** 10
- (d) it is granted for a period exceeding the period specified in immigration instructions for visas of that type (unless the Minister or an immigration officer deliberately and properly granted it as an exception to the immigration instructions); or** 15
- (e) it is granted on the basis of the person holding a visa that was granted as a result of an administrative error; or**
- (f) it is granted in contravention of—** 20
 - (i) a special direction; or**
 - (ii) immigration instructions (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or** 25
 - (iii) an instruction of a kind referred to in **section 341(7)**.**

(2) In this Act, entry permission is granted as a result of an administrative error if—

- (a) it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in **section 7(4)(b)**); or** 30
- (b) it is granted to an excluded person (unless **section 11** applies); or**
- (c) it is granted in contravention of—** 35
 - (i) a special direction; or**
 - (ii) immigration instructions (unless the Minister or an immigration officer deliberately and properly**

- granted it as an exception to immigration instructions); or
- (d) it is granted on the basis of, or in conjunction with,—
- (i) a visa that was itself granted on the basis of an administrative error; or 5
- (ii) a visa that was granted for a period exceeding the period specified in immigration instructions for a visa of that type (unless the Minister or an immigration officer deliberately and properly granted the visa as an exception to the immigration instructions); or 10
- (iii) a visa of a class or type other than that intended to be granted.

Compare: 1987 No 74 ss 19(4), 32(4)

5B Meaning of unlawfully in New Zealand (in relation to person who is not New Zealand citizen) 15

- (1) In this Act, a person who is not a New Zealand citizen is **unlawfully in New Zealand** if the person is in New Zealand but—
- (a) is not the holder of a visa granted under this Act; or 20
- (b) has not been granted entry permission under this Act.
- (2) A person's status as being unlawfully in New Zealand is calculated—
- (a) as starting on the date the person arrived in New Zealand, if the person has never been lawfully in New Zealand since his or her arrival; or 25
- (b) as starting on the day after the date on which the person's visa expired or was cancelled without another visa being granted; or
- (c) in accordance with **sections 336 and 337**, if— 30
- (i) the person was born in New Zealand on or after 1 January 2006; and
- (ii) he or she is not a New Zealand citizen.

5C Meaning of deported

- (1) For the purposes of this Act, a person is deported from a country— 35

- (a) if the person leaves the country (whether or not at the expense of the government of the country) while liable for deportation from the country; and
- (b) includes the situation where an order for the person's departure, made by the government of the country, an authorised official of the country, or a judicial authority in the country, is in force. 5
- (2) For the purposes of this Act, a person is not deported from a country merely because the person is surrendered to another country in accordance with a request for the extradition of the person to that country. 10
- (3) For the purposes of this Act, a person is deported from New Zealand if—
- (a) the person leaves New Zealand (whether or not at the expense of the Government of New Zealand)— 15
- (i) on or after the date on which a deportation order may be served on the person under **section 164**;
- or
- (ii) after a deportation order has been served on the person; or 20
- (iii) while he or she is subject to a prohibition on entry to New Zealand under **section 167 or 167A**; or
- (b) the person is served with a deportation order when he or she is outside New Zealand.
- 5D** **Meaning of absolute discretion of the decision maker** 25
- If a provision of this Act provides that a decision or matter is in the **absolute discretion** of the decision maker concerned, it means that—
- (a) the matter or decision may not be applied for; and
- (b) if a person purports to apply for the matter or decision, there is no obligation on the decision maker concerned to consider the purported application; and 30
- (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 35

- (ii) **section 25** of this Act and section 23 of the Official Information Act 1982 do not apply in respect of the purported application.

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

5

6 **Act binds the Crown**

This Act binds the Crown.

Part 2

Core provisions and matters in relation to decision making

10

Eligibility to be in or enter New Zealand

7 **~~Rights of New Zealand citizens protected~~ New Zealand citizens may enter and be in New Zealand at any time**

- (1) For the purposes of this Act, every New Zealand citizen has, by virtue of ~~that~~ his or her citizenship, the right to enter and be in New Zealand at any time. 15

- (1A) However, to establish his or her right to enter and be in New Zealand, a New Zealand citizen must prove his or her citizenship and establish his or her identity by complying with border requirements. 20

- (2) Nothing in this Act (other than **subsection (1A)**) abrogates the right declared in **subsection (1)**, and— 25
- (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.~~ 30

- (4) Without limiting **subsection (2)**, no New Zealand citizen—
- (a) requires a visa; or
 - (b) may hold a visa, except a New Zealand citizen who is a national of 1 or more other countries and who wishes to enter New Zealand other than as a New Zealand citizen. 35

Compare: 1987 No 74 s 3

8 Requirement to hold visa to travel to and be in New Zealand
Persons other than New Zealand citizens must 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
 - (ii) is a person to whom a visa waiver applies (whether authorised by regulation or special direction); and
 - (b) enter and be in New Zealand only if the person is the holder of a visa granted under this Act and he or she has been granted entry permission.
- (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.~~
- (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~~ To avoid doubt, the fact that an application for a visa has been made by or for any person who is onshore does not—
- (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
 - (d) inhibit any deportation procedures under this Act that may apply to the person.
- (5) This Act applies subject to—
- (a) sections 90 to 96 of the Extradition Act 1999; and
 - (b) sections 150 to 155 of the International Crimes and International Criminal Court Act 2000.

Compare: 1987 No 74 s 4

*Excluded persons***9 Certain convicted or deported persons not eligible for visa or entry permission to enter or be in New Zealand**

- (1) ~~Subject to **section 11**, no~~ No visa or entry permission may be granted, and no visa waiver may apply, to any person— 5
- (a) who, at any time (whether before or after the commencement of this ~~Act~~ section), 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 10
 - (b) who, at any time ~~with~~ in the preceding 10 years (whether before or after the commencement of this ~~Act~~ section), 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 15
 - (c) who is subject to a period of prohibition on entry to New Zealand under **section 167 or 167A**; or
 - (d) ~~subject to **subsection (3)**~~; who at any time (whether before or after the commencement of this ~~Act~~ section) has been removed or deported from New Zealand under any enactment; or 20
 - (e) who is excluded from New Zealand under any enactment; or 25
 - (f) who has, at any time, been removed, excluded, or deported from another country.
- (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: 30
 - (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: 35
 - (c) where a person has been convicted of 2 or more offences, and a single sentence has been imposed in re-

spect 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—
- (a) has been deported from New Zealand under section 158 of the Shipping and Seamen Act 1952; or 5
 - (b) was subject to a removal order under section 54 of the former Act, if the removal order has expired or been cancelled; or
 - (c) was deported under this Act, if the relevant prohibition on entry under **section 167 or 192** has expired; or 10
 - (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.
- (4) This section is subject to **section 11**. 15
 Compare: 1987 No 74 s 7(1)(a)–(d), (2)

10 Certain other persons not eligible for visa or entry permission

- (1) ~~Subject to **section 11**, no~~ No visa or entry permission may be granted, and no visa waiver may apply, to any person who— 20
- (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 25 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. 30
- (2) This section is subject to **section 11**.
 Compare: 1987 No 74 s 7(1)(e)–(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— 35
- (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~~
- (a) entry permission must be granted to—
- (i) the holder of a permanent resident visa; and 5
- (ii) the holder of a resident visa granted in New Zealand; and
- (iii) the holder of a resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa; 10
- (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. 15
- (3) A decision to grant a visa and entry permission under **subsection (1) or (2)(b)** is in the absolute discretion of the decision maker; ~~and **section 26** applies in relation to such a decision.~~ 20
- Compare: 1987 No 74 ss 7(3), (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 unlawfully in New Zealand ~~unlawfully~~ has an obligation to leave New Zealand. 25
- (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.~~ 30
- (3) The obligation ~~to leave~~ created by under **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 35
- by any failure or alleged failure of the chief executive

to communicate the obligation and related implications under **section 13**; but

- (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. 5

Compare: 1987 No 74 s 45

13 Duty of chief executive to communicate obligation to leave New Zealand

- (1) The chief executive must communicate to persons who are seeking visas to come to New Zealand or visas to be in New Zealand— 10
 - (a) the obligation to leave New Zealand created by **section 12**; and
 - (b) that a person who fails to meet that obligation ~~may face~~ is liable for deportation. 15
- (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)**—
 - (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: 20
 - (b) on application forms for visas:
 - (c) in immigration control areas, by way of notices that can be readily seen by all arriving entrants: 25
 - (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.~~ 30
- (3) The chief executive may communicate the information in 1 or more languages as he or she thinks fit.
- (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 35

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 5

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)

14A No right for person unlawfully in New Zealand to work or study 10

A person who is unlawfully in New Zealand may not—

(a) work in New Zealand or in the exclusive economic zone of New Zealand; or

(b) study in New Zealand. 15

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;
 - (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;
 - (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.
- 5
- 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—
- 15
- (a) the power to make decisions on visa applications and applications for entry permission;
 - (b) the power to carry out certain compliance activities under this Act and to detain persons for the purposes of this Act.
- 20
- 18 **Powers of determination officers**
 Determination officers have the power to make decisions in relation to—
- 25
- (a) refugee status; and
 - (b) protection under other international conventions as provided for under this Act.
- 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.
- 30

*Immigration instructions***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: 5
 - (b) entry permission:
 - (c) conditions relating to ~~residence class visas and~~ resident visas, temporary entry class visas, and transit visas, including, without limitation, conditions relating to— 10
 - (i) travel to New Zealand:
 - (ii) the holder's ability to work or study in New Zealand or in the exclusive economic zone of New Zealand:
 - (d) the periods for which each type of temporary entry class visa may be granted: 15
 - (e) ~~names and descriptions of~~ the types of temporary visas that may be granted, and the name and description of each type.
- (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:~~ 25
- (2) Immigration instructions take effect from—
- (a) the date they are certified; or
 - (b) a date specified in the instructions as being the date on which they come into effect, which must not be earlier than the date they are certified. 30
- (2A) Applications for temporary entry class visas or transit visas that are made before any relevant immigration instructions take effect may be determined in accordance with those immigration instructions when those instructions take effect.
- (2B) **Subsection (2A)** does not apply to applications for temporary entry class visas subject to restricted temporary entry instructions. 35

- (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 ~~in-~~
instructions policy:
 - (b) any rules or criteria for determining the eligibility of a 5
person for the grant of a visa of any kind, or for entry
permission, being rules or criteria relating to the circum-
stances of that person:
 - (c) any indicators, attributes, or other relevant information 10
or matters that may or must be taken into account in
assessing a person's eligibility for a visa or entry per-
mission:
 - (d) any statement of, or rules or criteria or process for deter-
mining, the number or categories or ranking of persons 15
or classes of persons whose applications for visas of any
kind or entry permission may be granted at any particu-
lar time or over any particular period:
 - (da) any rules or criteria for the lapsing of applications in 20
respect of which no decision to grant a visa has been
made:
 - (e) any matters relevant to balancing individual eligibility
for a visa or entry permission against the overall object-
ives or requirements of immigration instructions:
 - (f) any requirements relating to documentation, consult- 25
ation, or other evidence or information required to as-
sess a person's eligibility for a visa or entry permission:
 - (g) any statement of the conditions or types of conditions 30
that may be imposed upon a person to whom a visa of
any particular kind is granted, and the circumstances in
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 35
or criteria relating to eligibility for a visa or entry permission—
- (a) may include matters relating to—
 - (i) health:
 - (ii) character:

- (iii) the immigration status of applicants for visas (whether currently or at any time in the past):
 - (iv) sponsorship:
 - (v) the provision of bonds:
- (b) may, in respect of any 1 or more specified classes or categories of person who wish to apply for a visa,—
 - (i) include a requirement that persons of that class or category may ~~so~~ apply for a visa only if invited to do so by the Minister or an immigration officer:
 - (ii) stipulate any period for which an expression of interest under section 80 will remain current:
 - (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:
 - (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, not exceeding 5 years, for which they may be imposed. ~~for which they may be imposed; which maximum period may in no case exceed 5 years.~~
- (6) Immigration instructions certified by the Minister under **subsection (1)**—
 - (a) are statements of government policy:
 - (b) are not regulations for the purposes of the Regulations (Disallowance) Act 1989 or the Acts and Regulations Publication Act 1989.

Compare: 1987 No 74 s 13B

21 Residence instructions and temporary entry instructions
Immigration instructions classified as residence

35

instructions, temporary entry instructions, or transit instructions

- (1) The Minister must classify ~~any~~ immigration instructions ~~cer-~~
tified under **section 20** as—
- (a) residence instructions; or 5
 - (b) temporary entry instructions (and, if appropriate, as re-
stricted temporary entry instructions); or
 - (c) transit instructions.
- (2) To avoid doubt, any temporary entry instructions are not resi-
dence instructions, regardless of whether the granting of a visa 10
or entry permission under those instructions may affect eligi-
bility for, or otherwise relate to, the grant of a residence class
visa.

22 Publication of immigration instructions

- (1) The chief executive must publish immigration instructions cer- 15
tified 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—
- (a) offices of the Department; and 20
 - (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 25
with the provisions of the Official Information Act 1982, were
a request to be made for the information under that Act.

Compare: 1987 No 74 s 13A

**23 Rules and criteria Immigration instructions for lapsing of
applications for visas**

- (1) The Minister may ~~formulate and~~ certify in accordance with 30
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; 35
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 occurs or, as the case may be, has not occurred. 5
 - (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 that must be reached within any stipulated period or by any stipulated date if the application is not to lapse. 10
 - (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 the Minister or 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 15
 - (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 20
 - (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. 25
 - (5) The effect of lapsing an application is that no further processing or decision in respect of that application is required. 30
 - (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. 35
 - (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)**.

- (8) In this section (except **subsection (6)** **subsections (6) and (7)**), **application** includes an expression of interest under **section 80** in obtaining an invitation to apply. 5

Compare: 1987 no 74 s 13BB

23A Publication of immigration instructions

- (1) The chief executive must publish immigration instructions.
- (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. 15
- (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. 20

Compare: 1987 No 74 s 13A

Processing claims and applications for visas and entry permission

- 24 Chief executive may make arrangements for processing applications for visas** How claims and applications for visas and entry permission processed 25
- (1) The order and manner of processing any application for a visa or entry permission is a matter for the discretion of the Minister or an immigration officer.
- (1AA) **Subsection (1)** applies unless immigration instructions that particularly relate to the order or manner of processing applications for residence class visas, temporary entry class visas, or transit visas require otherwise. 30
- (1A) The order and manner of processing any claim is a matter for the discretion of a refugee and protection officer.
- (1B) However, the chief executive may give general instructions to immigration officers and refugee and protection officers as to 35

- the order and manner of processing any application or claim, or specified classes of application or claim, and, if so, an immigration officer or a refugee and protection officer must process an application or claim in accordance with those instructions.
- (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.~~ 5
- (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.~~ 10
- (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~~ General instructions may apply to 15
any or all applications or claims regardless of the fact that—
- (a) the general instructions may be different from those existing at the time that the applications or claims were made; or
- (b) the general instructions may result in applications or claims 20
being processed in a different order or manner than would otherwise have occurred.
- (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**.~~ 25
- (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.~~ 30
- (8) The question whether ~~or not~~ an application or claim 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~~ the immigration officer or refugee and protection officer concerned, and— 35
- (a) no appeal lies against ~~the decision of the officer concerned~~ his or her decision, whether to the Minister, the Tribunal, a court, or otherwise; and

- (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 5
 - (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 10
 - (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. 15
- (9) The chief executive may make arrangements for providing assistance to the Minister, immigration officers, and refugee and protection officers in processing applications and claims.
- (10) To avoid doubt, general instructions given under this section—
- (a) are matters of rules and practice of the Department; and 20
 - (b) are not immigration instructions.
- (11) To avoid doubt, nothing in this Act, or in any other law or enactment, requires an immigration officer or a refugee and protection officer to process an application or claim in any particular order or manner unless required to do so by— 25
- (a) general instructions given under this section; or
 - (b) immigration instructions that particularly relate to the order or manner of processing applications for residence class visas, temporary entrance class visas, or transit visas. 30

Compare: 1987 No 74 s 13BA

Reasons for decisions

25 Reasons for decisions must be given if visa or entry permission refused to certain persons

- (1) Except as otherwise provided in this Act, where a person who 35
applied for a visa; onshore or in an immigration control area; or for entry permission 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—

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

5

(2) The reasons must—

- (a) be given in writing; and
- (b) contain the information required under section 23 of the Official Information Act 1982 as if the request were a request to which that section applies.

10

(3) **Subsection (1)(c)** is subject to **section 36(2)(d).**

Compare: 1987 No 74 s 36

No right to apply for or have certain matters considered

15

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
- (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
 - (ii) **section 25** of this Act and section 23 of the Official Information Act 1982 do not apply in respect of the purported application.

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25

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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 by the Department 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 (with or without conditions), or refuse to grant an application for a visa: 10
 - (d) process, grant, or refuse to grant an application for entry permission.
- (1A) An automated electronic system may be used by the Department to process, grant (with or without conditions), or refuse to grant an interim visa. 15
- (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.
- (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 section 40, 41, 41A, 41B, or 41C**, 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 30

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. 35

29 Use of biometric information in decision making

~~Where biometric information is~~ Biometric information
 required from persons in accordance with this Act; ~~that infor-~~
~~mation~~ may be used to—

- (a) establish a record of a person's identity; or 5
- (b) verify a person's identity; or
- (c) assist in decision making under this Act.

29A Collection and storage of biometric information

(1) Biometric information collected under this Act may be col-
lected, using an automated system or otherwise, by— 10

- (a) an immigration officer or a refugee and protection offi-
cer; or
- (b) an agent or person on behalf of an immigration officer
or a refugee and protection officer.

(2) Biometric information must be dealt with in accordance with
the Privacy Act 1993. 15

(3) **Subsection (2)** is for the avoidance of doubt.

29B Department to undertake privacy impact assessment

(1) The Department must complete a privacy impact assessment
in respect of the collection and handling of biometric informa-
tion under this Act to— 20

- (a) identify the potential effects that the Act may have on
personal privacy; and
- (b) examine how any detrimental effects on privacy might
be lessened. 25

(2) The Department must consult the Privacy Commissioner—

- (a) on the terms of reference developed for the assessment;
and
- (b) when completing the assessment.

(3) The Department must review its privacy impact assessment if
changes are made to this Act, regulations made under it, or
operational policy in respect of the collection or handling of
biometric information and, if the review establishes that new
or increased privacy impacts have resulted from the changes,
must— 30

- (a) amend or replace the privacy impact assessment; and 35

- (b) consult the Privacy Commissioner on the amended or replacement assessment.
- (4) The Department must ensure the current privacy impact assessment is—
- (a) available on the Department’s Internet site; and 5
- (b) available or readily obtainable for inspection, free of charge, at—
- (i) offices of the Department; and
- (ii) New Zealand government offices overseas that deal with immigration matters. 10
- (5) Nothing in **subsection (4)** 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.
- Use of Reliance on classified information in decision making* 15
- 30 Classified information relating to security or criminal conduct may be used relied on in decision making**
- (1) Classified information may be ~~used~~ relied on in making decisions or determining proceedings 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 or criminal conduct. 20
- (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— 25
- (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— 30
- (i) in relation to a claim for recognition as a refugee or protected person; or 35
- (ii) whether to cancel the recognition of a person as a refugee or protected person.

- (2) If **subsection (1)** applies, the Minister may—
- (a) rely on the information to make a decision under **Part 3, 4, or 6**; or
 - (b) direct that the information be provided to a refugee and protection officer (who has been authorised by the chief executive to make decisions under **Part 5** relying on classified information) so that the officer may rely on it to make—
 - (i) a decision under **Part 5**; or
 - (ii) an application to the Tribunal under that Part; or
 - (c) refer the information to the Tribunal or a court, as the case may be, if the information is first to be relied on—
 - (i) in an appeal to the Tribunal or the court; or
 - (ii) in an application to the Tribunal; or
 - (iii) in review proceedings.
- (3) **Sections 31 to 34 31 to 36B** apply, as appropriate, when decisions are made using relying on classified information to which **subsection (1)** applies.
- (4) **Sections 214 to 218 and 224 to 239 Sections 214 to 217A and 224 to 239A** apply to proceedings involving classified information to which **subsection (1)** applies.

31 Minister may receive briefing

- (1) Where classified information may be relevant to a decision under this Act,—
- (a) the Minister may request ~~a~~ an oral or a written 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
 - (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.~~
- (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)**.

- (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. 5

32 Protection of classified information

- (1) Classified information ~~used~~ relied on 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** sections 215(1), 231(1), and 238(2). 10

- (2) **Subsection (1)** applies despite any enactment or rule of law to the contrary.

- (2) **Subsection (1)**— 15

(a) does not limit or affect the application of the Ombudsmen Act 1975, the Official Information Act 1982, or the Privacy Act 1993; but

(b) otherwise applies despite any other enactment or rule of law to the contrary. 20

- (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)**). 25

- (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—

(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 30

(b) any classified information that is favourable to the person subject to the decision or proceedings is also provided; and 35

- (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 (4)** may commit an offence under section 20A of the Summary Offences Act 1981.~~ 5

32A Classified information must be balanced

- (1) The chief executive of a relevant agency who provides classified information to the Minister under this Act must ensure that— 10
- (a) the information is provided in a manner that does not, by reason of the omission of any other relevant classified or non-classified information, give a misleading view of the information supplied; and
- (b) any classified or non-classified information that is favourable to the person subject to the decision or proceedings is also provided; and 15
- (c) any further classified information that becomes available and that is relevant to the decision or proceedings is provided. 20
- (2) The obligation to provide further information ceases on the date—
- (a) the decision concerned is made;
- (b) the date a decision on the proceedings concerned is made. 25

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~~ to the Minister under this Act. 30
- (1A) If the classified information is updated or added to, the Minister must make a further determination under **section 30(1)** on whether the information may be used.
- (2) ~~Where the chief executive of the relevant agency updates or adds to the classified information~~ If the Minister determines that the information may be used— 35

- (a) ~~provided to the Minister~~ before the Minister makes a decision under **Part 3, 4, or 6**, the Minister must, if the information is relevant to the decision being made, take that new or updated information into account in making the decision: 5
- (ab) before a refugee and protection officer makes a decision under **Part 5**, the officer must, if the information is relevant to the decision being made, take the new or updated information into account in making the decision:
- (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)**:~~ 10
- (b) raised in proceedings involving classified information,— 15
- (i) the Tribunal or court must treat the new or updated information in the same way as classified information originally provided to it under **section 215(1) or 231(1)**; and
- (ii) the Tribunal must determine in relation to the new or updated information the matters set out in **section 217(1)(a), (b), and (c)**. 20
- (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.~~ 25
- (3) If the chief executive of the relevant agency withdraws any classified information,—
- (a) the classified information must be kept confidential and must not be disclosed by the Tribunal or the court; and
- (b) the Tribunal or the court must continue to determine the proceedings— 30
- (i) without regard to that classified information (but subject to **section 217(2)** in the case of the Tribunal); and
- (ii) in the case of an appeal, matter, or review proceedings, as if that information had not been available in making the decision subject to the appeal, matter, or review proceedings. 35

- (4) The chief executive of the relevant agency may at any time direct any person to return classified information to the relevant agency.
- (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.~~ 5

34 Summary of allegations to be developed

- (1) This section and **section 35** apply where classified information is to be ~~used~~ relied on, or may be ~~used~~ relied on, in the making of any decision (a **relevant decision**) in relation to— 10
- (a) ~~an application for a visa, where—~~
- (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~~ 15
- (a) an application for a visa, if the application is for—
- (i) a residence class visa; or
- (ii) a temporary visa or a limited visa, and the applicant is onshore; or
- (b) a person's liability for deportation; or 20
- (c) any matter to which **Part 5** applies.
- (2) Before a relevant decision is made ~~under this Act using that relies on any~~ classified information that is or may be prejudicial to the person who is the subject of the proposed decision,—
- (a) ~~the chief executive of the relevant agency and the Minister or the refugee and protection officer concerned, as the case may be, must agree 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 Minister or the refugee and protection officer 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. 30 35
- (2A) The classified information must not be relied on for the purposes of making the relevant decision to the extent that the allegations arising from it cannot be summarised without the

summary itself involving a disclosure of classified information that would be likely to prejudice the interests described in **section 5(3)**.

- (3) Nothing in **subsection (2)** 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. 10
- (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—
 - (a) any classified information that was proposed to be ~~used~~ relied on in making the decision is withdrawn (unless all of the classified information is withdrawn); or 15
 - (b) the chief executive of the relevant agency adds to or updates the classified information that will be ~~used~~ relied on in making the decision.
- (5) An updated summary must be prepared in the same way as if it were a summary prepared under **subsection (2)(a)**. 20

35 Process Reasons, etc, to be given where prejudicial decision made using classified information

- (1) Where a decision of a kind referred to in **section 34(1)** has been made ~~using~~ relying on 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—
 - (a) the fact that classified information was ~~used~~ relied on in making the decision; and 30
 - (b) the reasons for the decision (except to the extent that providing reasons would involve ~~disclosure~~ a disclosure of classified information that would be likely to prejudice the interests referred to in **section 5(3)**); and
 - (c) the appeal rights, if any, available in respect of the decision; and 35
 - (d) if appeal rights are available, the right to be represented by a special advocate.

- (1A) Reasons must—
- (a) be given in writing; and
 - (b) contain the information required under section 23 of the Official Information Act 1982 as if the reasons were given in response to a request to which that section applies. 5
- (2) The Minister or a refugee and protection officer, as the case may be, 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. 10
- (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.~~ 15
- 36 Where classified information may be used relied on 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, 20
- (a) the Minister is not required to—
 - (i) ~~provide potentially prejudicial information based on classified information to the person concerned for comment; or~~ 25
 - (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.~~
- (1) **Subsection (1A)** applies to the Minister if— 30
- (a) he or she is making a decision under this Act relying on classified information; and
 - (b) the decision is not a decision of the type to which **section 34** applies.
- (1A) The Minister is not required to— 35
- (i) provide potentially prejudicial information based on classified information to the person concerned for comment; or

- (ii) give reasons for the decision, and section 23 of the Official Information Act 1982 and **section 25** of this Act do not apply in respect of the decision.
- (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,—
- (a) ~~where **section 26** applies; or~~
- (a) if the decision concerned is in the absolute discretion of the decision maker; or 10
- (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~~ 15
- (ca) to applicants for temporary entry class visas who are outside New Zealand; or
- (cb) in relation to applications for visas made in an immigration control area; or
- (d) in relation to applications for entry permission. 20

36A Declassification of classified information

- (1) **Subsection (2)** applies to classified information if—
- (a) it is relied on, or may be relied on, to make a decision or determine proceedings under this Act; and
- (b) during the process of making a decision or determining proceedings under this Act, the information is declassified. 25
- (2) As from the date of declassification, the information is no longer subject to any of the confidentiality, process, or other requirements of this Act that apply to classified information or the users of the information. 30
- (3) For the purposes of this section, information is declassified when the chief executive of the relevant agency certifies in writing that, as from a specified date, the classified information concerned is no longer classified information within the meaning of **section 5**. 35

36B No right of complaint to Inspector-General of Intelligence and Security

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. 5

Part 3 Visas

Subpart 1—Visas generally 10

37 Meaning and effect of visa

(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,— 15

(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 20

(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): 25

(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)**: 30

(2) A visa may give permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys:

(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)**: 35

(4) A person may hold only 1 visa that is current at any one time:

37 Effect of visa

(1) A visa (other than a transit visa) granted outside New Zealand indicates that—

- (a) the holder of the visa has permission to travel to New Zealand and apply for entry permission; and 5
- (b) at the time the visa is granted, there is no reason to believe that the holder will be refused entry permission if the holder's travel is consistent with the travel-related conditions of the visa; and
- (c) if the holder is granted entry permission, the holder has permission to stay in New Zealand in accordance with the conditions of the visa (if any). 10

(2) A visa (other than a transit visa) granted onshore or in an immigration control area indicates that the holder,—

- (a) if granted entry permission, has permission to stay in New Zealand in accordance with the conditions of the visa (if any); and 15
- (b) has permission to travel to New Zealand subsequently and apply for entry permission in accordance with the conditions of the visa (if any). 20

(3) A transit visa indicates that the holder of the visa has permission to travel to New Zealand, and to remain, for no longer than the transit period,—

- (a) on the craft concerned; or
- (b) in an immigration control area; or 25
- (c) in the custody of the police.

37AA Person may hold only 1 current visa

At any one time, a person may hold only 1 current visa.

37A Granting of visa generally matter of discretion

(1) No person is entitled to a visa as of right. 30

(2) In determining a visa application, the Minister or, subject to any special direction, an immigration officer, in his or her discretion,—

- (a) may grant or refuse to grant a visa; and
- (b) regardless of the class and type of visa that was applied for, may grant a visa of any class and type; and 35

- (c) may impose conditions on the visa granted, or vary or waive conditions that would otherwise apply to it.
- (3) This section applies unless any provision in this Act expressly provides otherwise.
 Compare: 1987 No 74 ss 8–10, 35 5
- 37B Granting of visa does not guarantee entry permission**
- (1) The granting of a visa does not of itself entitle the holder to be granted entry permission.
- (2) **Subsection (1)** applies except if the visa granted is—
- (a) a permanent resident visa; or 10
- (b) a resident visa, and the visa was granted in New Zealand; or
- (c) a resident visa, and the holder of the visa is arriving in New Zealand for a second or subsequent time as the holder of the visa. 15

Conditions of visas Visa conditions

38 Visas may be subject to conditions

- (1) 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,— 20
- (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~~ was made for the visa was made: 25
- (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~~ applicable at the time the visa was granted: 30
- (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: 35

- (ca) in the case of transit visas, specified in transit instructions applicable at the time the visa was granted:
- (d) imposed by the Minister or an immigration officer under **section 39 or 40 section 40, 41, 41A, 41B, or 41C:**
- (e) imposed by or under any other Act. 5
- (2) A visa may—
 - (a) give permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys;
or
 - (b) give permission to travel to New Zealand for or within a specified time period; or 10
 - (c) expressly not authorise any further travel to New Zealand.
- 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.
- (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)**: 10
- (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**.
- 40 Variation of conditions of Conditions on resident visas** 15
- (1) The Minister may, ~~on~~ On granting a resident visa as an exception to residence instructions, ~~the Minister may—~~
- (a) impose conditions in addition to those specified in residence instructions in relation to a visa of that type the applicable residence instructions: 20
- (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,—
- (a) impose further conditions whether or not those conditions are specified in residence instructions in relation to a visa of that type: 25
- (b) vary or cancel conditions that would otherwise apply to a visa of that type; or that were imposed under **subsection (1)**: 30
- (2) Following the grant of a resident visa, the Minister may, by special direction,—
- (a) impose further conditions whether or not the conditions are specified in the applicable residence instructions: 35
- (b) vary or cancel conditions that would otherwise apply to the visa or were imposed under **subsection (1)**.

- (3) The Minister may ~~do one~~ also do 1 or more of the things in **subsection (2)** either by agreement with the visa holder or by notification under **section 43** by agreement with the visa holder.
- (3A) A condition imposed, varied, waived, or cancelled under this section— 5
- (a) must be notified to the visa holder by the Minister or an immigration officer; and
 - (b) takes effect—
 - (i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or 10
 - (ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case. 15
- (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.
- (4) To avoid doubt,— 20
- (a) **subsection (2)** applies whether the resident visa was granted as an exception to residence instructions or otherwise:
 - (b) nothing in this section allows the Minister to impose conditions on a permanent resident visa, whether at the time of or subsequent to granting the visa. 25
- 41 Resident visa holder may apply for variation of conditions**
- (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. 30
- (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. 35

41 Resident visa holder may apply for variation of travel conditions

- (1) A resident visa holder may apply, in the prescribed manner, for a variation of the conditions of his or her visa relating to travel to and from New Zealand. 5
- (2) An immigration officer must determine the application in accordance with the residence instructions applicable at the time the application for the variation was made.
- (3) However, the Minister may vary conditions of a visa under this section by special direction, as an exception to residence instructions. 10

41A Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions)

- (1) On granting a temporary entry class visa, the Minister or an immigration officer may— 15
- (a) impose conditions in addition to those specified in temporary entry 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) Following the grant of a temporary entry class visa, the Minister or an immigration officer may—
- (a) impose further conditions, whether or not the conditions are specified in the temporary entry 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 were imposed under **subsection (1).**
- (3) The Minister or an immigration officer may also do 1 or more of the things in **subsection (2)** by agreement with the visa holder. 30
- (4) A condition imposed, varied, waived, or cancelled under this section—
- (a) must be notified to the visa holder by the Minister or an immigration officer; and 35
- (b) takes effect—

- (i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or
 - (ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case. 5
- (5) Nothing in this section applies to a temporary entry class visa that is subject to restricted temporary entry instructions.
- 41B** **Conditions on temporary entry class visas subject to restricted temporary entry instructions** 10
- (1) On granting a temporary entry class visa subject to restricted temporary entry instructions, as an exception to those instructions, the Minister may—
 - (a) impose conditions in addition to those specified in temporary entry instructions in relation to a visa of that type: 15
 - (b) vary or waive conditions that would otherwise apply to a visa of that type.
- (2) Following the grant of a temporary entry class visa subject to restricted temporary entry instructions, the Minister may, by special direction,— 20
 - (a) impose further conditions, whether or not the conditions are specified in temporary entry instructions in relation to a visa of that class or type:
 - (b) vary or cancel conditions that would otherwise apply to a visa of that class or type or were imposed under subsection (1). 25
- (3) The Minister may also do 1 or more of the things in subsection (2) by agreement with the visa holder.
- (4) A condition imposed, varied, waived, or cancelled under this section— 30
 - (a) must be notified to the visa holder by the Minister or an immigration officer; and
 - (b) takes effect—
 - (i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or 35

- (ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.
- (5) To avoid doubt, **subsection (2)** applies whether the temporary entry class visa was granted as an exception to temporary entry instructions or otherwise. 5
- 41C Conditions on transit visas**
- (1) On granting a transit visa, the Minister or an immigration officer may—
- (a) impose conditions in addition to those specified in transit instructions; 10
- (b) vary or waive conditions that would otherwise apply to a transit visa.
- (2) Following the grant of a transit visa, the Minister or an immigration officer may— 15
- (a) impose further conditions, whether or not the conditions are specified in the transit instructions;
- (b) vary or cancel conditions that would otherwise apply to a transit visa or were imposed under **subsection (1)**.
- (3) The Minister or an immigration officer may also do 1 or more of the things in **subsection (2)** by agreement with the visa holder. 20
- (4) A condition imposed, varied, waived, or cancelled under this section—
- (a) must be notified to the visa holder by the Minister or an immigration officer; and 25
- (b) takes effect—
- (i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or 30
- (ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.
- 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 sec- 35

tion 40(2), takes effect from the date specified in the notice under **section 43**.

- (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

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- (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)**.

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44 Visa holder must abide by comply with conditions

- (1) The holder of a visa that is subject to conditions must abide by comply with the conditions of the visa.

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- (2) In the case of conditions imposed by or under any other Act, or specified in immigration instructions, the obligation to comply with those conditions arises whether or not the visa holder is aware of the obligation conditions, or of the implications of not meeting it complying with them.

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- (3) A visa holder must comply with conditions imposed or varied and notified by the Minister or an immigration officer under **section 39 or 40** that are notified under **section 43 section 40, 41, 41A, 41B, or 41C**.

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- (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)**.

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- (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 40, 41, 41A, 41B, or 41C** if notice of them was given in accordance with **section 345**.

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45 Visa may be conditional on payment of bond

- (1) Without limiting the generality of **sections 38 to 40 41B**, 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~~ is forfeited under **section 354** in whole or in part does not affect other action taken, or that may be taken, in respect of a failure to ~~meet comply~~ with conditions imposed under **section 38, 39, or 40 section 38 to 41B**. 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 sections 38 to 41B**, 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—~~ 20
- (a) ~~immigration instructions, in any class of case; or~~
- (b) ~~the Minister or an immigration officer, in any particular case.~~
- (2) The requirement for a sponsor may be imposed by— 25
- (a) immigration instructions, in relation to any class or type of visa; or
- (b) the Minister or an immigration officer, in relation to any particular visa.
- (3) Without limiting **subsection (1)**, the matters specified may, ~~in relation to the applicant and any dependants of the applicant,~~ 30
- relate to—
- (a) employment of the applicant and any dependants of the applicant:
- (b) accommodation of the applicant and any dependants of the applicant: 35

-
- (c) maintenance (including the cost of any publicly funded services or benefits) of the applicant and any dependants of the applicant:
- (d) costs of repatriation or deportation of the applicant and any dependants of the applicant. 5
- (4) An undertaking required under **subsection (1)** may relate to the sponsor—
- (a) providing any matter directly; or
- (b) paying the costs of any matter where the matter is provided by another person. 10
- (5) A sponsor—
- (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 resident~~; or 15
- (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 relevant immigration instructions ~~in the appropriate class of case~~. 20
- (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.~~ 25
- (7) An undertaking must be in a form approved by the chief executive.
- (8) A sponsor must comply with an undertaking made under this section.
- (9) Any failure to comply ~~with the undertaking~~ results in the sponsor having a— 30
- (a) ~~in a~~ debt due to the Crown, recoverable by the Crown in any court of competent jurisdiction, if a cost has been incurred by the Crown as a result of the failure:
- (b) ~~in a~~ debt due to a third party, recoverable by the third party in any court of competent jurisdiction, if a cost has been incurred by the third party as a result of the failure. 35

- (10) It is a matter for the absolute discretion of the Minister or ~~an immigration officer~~ the immigration officer concerned 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~~ his or her decision, whether to any court, 5
the Tribunal, the Minister, or otherwise.

General rules relating to visas

47 Applications for visas

- (1) An application for a visa must be made in the manner pre- 10
scribed for the class or type of visa sought.
- (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 which advice of any visa that may be granted pursuant to the application, may be sent, or at which any notice may be served under this 15
Act.
- (3) ~~The~~ An 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)**.
- (4) An applicant for a visa may also specify in an application an 20
electronic address to which any communication relating to the application, or to which advice of any visa that may be granted pursuant to the application, may be sent (and may substitute a different address by written notice to an immigration officer).

48 Obligation on applicant to inform of all relevant facts, 25
including changed circumstances

- (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. 30
- (2) The Minister or immigration officer considering the application—
- (a) is not obliged to seek any further information, evidence, or submissions; and
 - (b) may determine the application on the basis of the infor- 35
mation, evidence, and submissions provided.

- (3) It is also the responsibility of an applicant for a visa to inform the Minister or 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— 5
- (a) may affect the decision on the application; or
 - (b) may affect a decision to grant entry permission in reliance on the visa for which the application is made.
- (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. 10
- (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**. 15
- (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 20
 - (b) did not ensure that an immigration officer was informed of any material change in circumstances to which **subsection (3)** applies between the time of making the application and the time of a decision on the application. 25

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. 30 35

Compare: 1987 No 74 s 35(2)

50 Biometric information may be required from visa applicant

- (1) ~~Subject to regulations made under this Act, an~~ An applicant for a visa must allow ~~the collection of~~ biometric information to be collected from him or her. 5
- (2) ~~If the applicant fails to allow the collection of the~~ biometric information to be collected, the Minister or an immigration officer may refuse to grant the visa applied for.
- (3) The requirement in **subsection (1)** does not apply if the person is exempt from providing the information in accordance with regulations made under **section 358(la).** 10

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— 15
- (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. 20
- (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: 25
- (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: 30
- (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: 35

-
- (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 in New Zealand; 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 other conditions of the visa:
 - (e) for those persons granted entry permission, the date or dates 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.
- (4) To avoid doubt, no electronic or physical record is required to be created for a visa that is deemed to be granted by or under this Act. 30

53A Expiry of visa

A visa expires on the earliest of—

- (a) the beginning of the day after the date of the event the occurrence of which is specified as the expiry date of the visa: 35
- (b) the beginning of the day after the last day of the period for which the visa is granted:

- (c) the day and time its holder leaves New Zealand, if the visa does not allow further travel to New Zealand:
- (d) the beginning of the day after the date that is specified as the last day of the period of time within which the visa allows travel to New Zealand, in relation to a visa holder who is outside New Zealand: 5
- (e) immediately after the last of the number of trips for which the visa allows travel to New Zealand is completed, in relation to a visa holder who is outside New Zealand: 10
- (f) the beginning of the day that is 3 months after the day on which an epidemic management notice expires, if the visa—
 - (i) is a temporary entry class visa to which **section 66** applies; and 15
 - (ii) has not been cancelled earlier.

54 Cancellation of visas on ~~certain occurrences~~ triggering event

- (1) A visa is ~~deemed to be~~ cancelled in the following circumstances: 20
 - (a) on the deportation of its holder from New Zealand:
 - (b) on the refusal of entry permission to its holder:
 - (ba) on entry permission granted to its holder being revoked:
 - (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
 - (ii) on the holder failing to comply with the instruction of an immigration officer to remain in the area: 30
 - (d) if the holder arrived at a place other than an immigration control area, on failing to present himself or herself in the prescribed manner and within the ~~time prescribed for the purposes of section 94~~ prescribed time as required under **section 91(1)(b)**: 35
 - (e) ~~subject to **subsection (2)**~~; on the start date of a further visa granted to its holder:
 - (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:
- (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. 5
- (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)**.~~
- (2) Despite **subsection (1)(e)**, the grant of a temporary entry class visa to the holder of a residence class visa does not cancel the residence class visa unless the grant of the temporary entry class visa was made under **section 56**. 10
- 55AA Cancellation of resident visa before holder first arrives in New Zealand as holder of visa** 15
- (1) The Minister or an immigration officer may cancel a resident visa at any time before its holder first arrives in New Zealand as the holder of the visa, if—
- (a) the visa was granted outside New Zealand; and
- (b) the person no longer meets the immigration instructions applicable at the time the application for the visa was made. 20
- (2) The Minister or an immigration officer must notify a person, in writing, at the address supplied under **section 47(2)** if his or her visa is cancelled under this section. 25
- 55 Cancellation of ~~visa~~ temporary entry class or transit 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: 30
- (b) ~~cancel a resident visa at any time before its holder first arrives in New Zealand as the holder of the visa:~~
- (ba) cancel a temporary entry class visa that has been extended in accordance with **section 66**: 35
- (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—
- (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
 - (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,—
- (a) entry permission is treated as having been revoked; and
 - (b) **section 105** applies.
- (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) 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
 - (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
 - (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.
- (6) The Minister or an immigration officer must notify a person, in writing, if—
- (a) his or her visa is cancelled under this section; and

(b) he or she is outside New Zealand.

Compare: 1987 No 74 ss 19, 32

55A Cancellation of visa for administrative error

An immigration officer may cancel a visa that the officer believes on reasonable grounds was granted as a result of an administrative error if— 5

- (a) the visa was granted to a person in an immigration control area, or an office of the Department, in New Zealand and the person is still in the control area or office; or
- (b) advice of the grant of the visa has not been sent or given to the person concerned, in any other case. 10

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 an administrative error (~~as described in **section 55(5)**~~) but the visa was not cancelled ~~in accordance with **section 55** under **section 55B**~~, the Minister or immigration officer may, in his or her absolute discretion, ~~instead of determining that the visa holder is liable for deportation,—~~ 15
 - (a) offer the holder a ~~temporary entry class~~ visa of such class and type, and subject to such conditions, as the Minister or immigration officer considers appropriate; 20
 - and
 - (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.~~ 25
- (3) If the holder does not agree, the Minister may determine that the holder is liable for deportation in accordance with **section 144(1)**.

Waiver of requirement for visa permitting travel to New Zealand in certain cases 30

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 speci-~~ 35

fixed in the regulations and provide for any conditions of such a waiver.

- (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: 5
 - (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: 10
 - (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: 15
 - (a) their nationality:
 - (b) the country or place from which they are travelling (whether it be their original or an intermediate point of departure): 20
 - (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. 25
- (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: 30
 - (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: 35
 - (c) is to be treated for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of 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.
- (6) A waiver under this section does not of itself entitle a person subject to the waiver to be granted entry permission. 5
- Compare: 1987 No 74 ss 11, 12

Subpart 2—Classes of visa

58 Classes of visa

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

- (a) residence class visas, consisting of— 10
- (i) permanent resident visas:
 - (ii) resident visas:
- (b) temporary entry class visas, consisting of—
- (i) temporary visas:
 - (ii) limited visas: 15
 - (iii) interim visas:
- (c) transit visas.

Compare: 1987 No 74 s 14

Residence class visas

59 Who may apply for residence class visas 20

- (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:
- (b) a person who is in New Zealand onshore and is the holder of a temporary visa or a resident visa: 25
- (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.~~
- (c) a person— 30
- (i) to whom a visa waiver applies; and
 - (ii) who falls within a class prescribed by regulations as a person who may apply for a residence class visa in an immigration control area or other prescribed place on his or her arrival in New Zealand. 35

- (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.
- (3) ~~No~~ A person may apply for a resident visa or a permanent resident visa in response to an invitation to apply only if the application is ~~not made with in any relevant time frame stipulated by immigration instructions~~ the time frame specified in the residence instructions. 5
- (4) To avoid doubt, no limited visa holder, interim visa holder, transit visa holder, or person who is liable for deportation may apply for a residence class visa. 10
- (5) However, the Minister, in his or her absolute discretion, may grant a residence class visa to a person to whom **subsection (4)** applies. 15

Compare: 1987 No 74 s ~~17A~~ 17

60 **Decisions on applications for residence class ~~visas~~ visa**

- (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. 20
- (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. 25
- (3) Nothing in this section prevents the Minister, in his or her absolute discretion, from making any decision to grant a residence class visa as an exception to residence instructions in any particular case. 30
- (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.~~

Compare: 1987 No 74 ss 13C, 17A(2)

35

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;
- (c) to stay in New Zealand indefinitely following the grant 5
of entry permission;
- (d) to work in New Zealand or ~~within~~ in the exclusive economic zone of New Zealand;
- (e) to study in New Zealand.

62 Currency and nature of resident visa

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(1) The holder of a resident visa—

- (a) is ~~permitted~~ entitled to travel to New Zealand and apply for entry permission; and
- (b) if granted entry permission is ~~subject to~~ entitled, in accordance with conditions (if any), ~~entitled—~~ 15
 - (i) to stay in New Zealand indefinitely;
 - (ii) to work in New Zealand or ~~within~~ in the exclusive economic zone of New Zealand;
 - (iii) to study in New Zealand.

(2) It may be a condition of a resident visa that—

20

- (a) the visa does not entitle its holder to travel to New Zealand on a later occasion and be granted entry permission; or
- (b) the visa allows later travel to New Zealand and entry permission only for a specified period or for a specified 25
number of trips.

(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 30
New Zealand following travel that is not consistent with the conditions of the visa.

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 35
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:

- (2) A person to whom **subsection (1)** applies may be liable for deportation under **section 147(2)**:

63 Former New Zealand citizens deemed to hold resident visa 5

- (1) This section applies to a person in New Zealand who—
 (a) renounces his or her New Zealand citizenship; or
 (b) is deprived of his or her New Zealand citizenship.
 (2) The person is deemed, from the date of renouncing, or being deprived of, his or her citizenship, to hold a resident visa—
 (a) permitting the person to stay in New Zealand; and
 (b) subject to any conditions specified in residence instructions certified for the purposes of this section at the time the person renounced or was deprived of his or her citizenship. 15

*Temporary entry class visas: provisions
 applying to all types*

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 or an immigration officer may, in 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. 25
 (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~~ However, nothing in **subsection (2)** prevents the Minister in his or her absolute discretion from making a decision to grant a visa as an exception to restricted temporary entry instructions in any particular case. 30
 (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. 35

65 ~~Nature and currency~~ Currency and nature of temporary entry class visas ~~visa~~

- (1) The holder of a temporary entry class visa—
- (a) is ~~permitted~~ entitled to travel to New Zealand and apply for entry permission; and 5
 - (b) if granted entry permission, is ~~subject to~~ entitled, in accordance with conditions (if any), ~~entitled~~ to stay in New Zealand during the currency of the visa.
- (2) ~~To avoid doubt, a temporary entry class visa does not entitle the holder to be granted entry permission to New Zealand.~~ 10
- (3) The holder of a temporary entry class visa may—
- (a) work in New Zealand, or ~~within~~ in the exclusive economic zone of New Zealand, only if the conditions of the visa allow, and only consistently with those conditions: 15
 - (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—~~
- (a) ~~the visa does not entitle its holder to travel to New Zealand on a later occasion; or~~ 20
 - (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~~ temporary entry class visa expiring during epidemic

- (1) This section applies to a temporary entry class visa held by a person in New Zealand if— 25
- (a) it was current immediately before the commencement of an epidemic management notice; and
 - (b) but for this section, it would expire before the day that is 14 days after the day on which the notice expires. 30
- (2) ~~A temporary entry class visa to which this section applies~~ The visa must, for all purposes, be treated as if it continues to be a ~~valid~~ current visa allowing stay in New Zealand until the earlier of the following events:
- (a) its cancellation: 35
 - (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~~ the visa; or
 - (b) the issue of a document extending ~~a~~ the visa; or
 - (c) the grant of a new visa.

Compare: 1987 No 74 s 35AC

5

*Temporary entry class visas: provisions
applying to temporary visas*

67 Types of temporary visas

Temporary visas may have a variety of different types and names as specified in temporary entry instructions.

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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): 15
- (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: 20

- (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: 25

- (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:

- (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. 30

35

Compare: 1987 No 74 s 25(1)

68 Who may apply for temporary visa

(1) The following persons may apply for a temporary visa:

- (a) a person, including a person to whom a visa waiver applies, who is outside New Zealand and who wishes to come to New Zealand for any purpose for which a temporary visa may be granted: 5
- (b) a person arriving in New Zealand and to whom a visa waiver applies:
- (c) a person who is onshore and is already the holder of a temporary visa. 10

(2) No person who is of a class or category that, by virtue of immigration instructions, may only apply for a temporary visa by invitation may apply for such a visa without an invitation.

(3) A person may apply for a temporary visa (or a temporary visa of a particular type) in response to an invitation to apply only if the application is made in the time frame specified in the temporary entry instructions. 15

(4) To avoid doubt,—

- (a) no limited visa holder, interim visa holder, or transit visa holder may apply for a temporary visa; and 20
- (b) a person liable for deportation may only apply—
 - (i) for a visa of the same class and type that he or she held before becoming liable for deportation; and
 - (ii) if he or she is not unlawfully in New Zealand.

(5) However, the Minister, in his or her absolute discretion, may grant a temporary visa to a person prohibited from applying for a temporary visa under **subsection (4)**. 25

Compare: 1987 No 74 s 25(1)

*Temporary entry class visas: provisions
applying to interim ~~Interim~~ visas*

30

69 Interim visas visa

(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— 35

- (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.~~ 5
- (3) The holder of an interim visa may not apply for a visa of any other class or type.

*Limited Temporary entry class visas: provisions
applying to limited visas* 10

70 Who may apply for limited visa

The following persons may apply for a limited visa:

- (a) a person, including a person to whom a visa waiver applies, who is outside New Zealand and who wishes to come to New Zealand for an express purpose: 15
- (b) a person arriving in New Zealand ~~who is subject to a visa waiver and~~ to whom a visa waiver applies who wishes to stay in New Zealand for an express purpose:
- (c) a person in New Zealand onshore who is— 20
 - (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. 25

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 the person a limited visa rather than the temporary visa applied for if, and only if,— 30
 - (a) the person,—
 - (i) including a person to whom a visa waiver applies, is outside New Zealand and wishes to come to New Zealand for an express purpose; ~~and is not~~ 35
 - ~~subject to a visa waiver;~~ or

- (ii) is a person to whom a visa waiver applies who 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 5
- (b) the Minister or ~~the~~ 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 10
- (c) the Minister or ~~the~~ 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:**
- (3) If the holder of a temporary visa applies for entry permission, the Minister or an immigration officer may cancel the temporary visa by granting the person a limited visa, and grant entry permission to the person on the basis of the limited visa if, and only if,— 15
 - (a) the person wishes to enter New Zealand for an express purpose; and 20
 - (b) the Minister or the immigration officer identifies a risk that the person will remain in New Zealand beyond the expiry of his or her visa; and
 - (c) the Minister or the immigration officer considers that the grant of a limited visa (and entry permission on the basis of that visa) is necessary to manage that risk; and 25
 - (d) the person agrees to the grant of a limited visa and entry permission on the basis of that visa.

Compare: 1987 No 74 s 14DA(2)

30

72 Grant of limited visa in relation to criminal matters

- (1) A limited visa may be granted to a person if—
 - (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 35
 - (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. 5
 - (2) A limited visa may also 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. 10
- 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~~ the period that— 15
 - (a) is appropriate to achieve the express purpose for which the visa is granted; and
 - (b) does not exceed ~~the period (if any)~~ any period specified in respect of limited visas of that category by temporary entry instructions. 20
- (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,—
 - (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~~ being a date not earlier than 14 days after that notice is given to the ~~limited~~ visa holder); and 25
 - (b) the visa then expires on that earlier expiry date. 30

Compare: 1987 No 74 s 34C

74 Limitations and conditions on holders of limited visas visa

- (1) The holder of a limited visa must leave New Zealand no later than the day that the visa expires.
- (2) ~~A limited visa holder~~ The holder of a limited visa may not, whether before or after the expiry of the visa,— 35

- (a) apply for a visa of a different class or type while in New Zealand; or
 - (b) while in New Zealand, request a special direction, or a visa under **section 52**; or
 - (c) bring any appeal under this Act (other than an appeal under **section 176 or 176A**), whether to a court, the Tribunal, or otherwise. 5
- (3) Every limited visa is to be granted subject to conditions relating to its purpose. 10
- 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.~~ 15
- (1A) **Subsection (1)** ~~applies to the person unless he or she is classified as a person to whom a transit visa waiver applies—~~ 20
- (a) ~~by regulations made under **section 358**; or~~
 - (b) ~~by a special direction of the Minister under **subsection (3)**.~~
- (2) ~~Any regulations~~ Regulations classifying persons as persons ~~who are subject to~~ to whom a transit visa waiver ~~for the purposes of this section~~ apply— 25
- (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: 30
 - (ii) the country or place from which they are travelling (whether it be their original or intermediate point of departure):
 - (iii) their immediate or ultimate destination after transiting through New Zealand: 35

- (iv) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued:
 - (b) are subject to any special direction made under ~~this section~~ **subsection (3)** that suspends any relevant transit visa ~~requirement~~ waiver. 5
- (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~~ to whom a transit visa waiver applies (whether by reference to the matters referred to in **subsection (2)(a)** or otherwise): 10
 - (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~~ any country concerned; and 15
 - (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. 20
- (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.
- (6) In this section, **transit passenger** means a person who— 25
 - (a) arrives in New Zealand from another country while in transit to another overseas destination; and
 - (b) throughout the entire period during which he or she is in New Zealand, remains—
 - (i) on board the craft concerned; or 30
 - (ii) in an immigration control area; or
 - (iii) in the custody of the police.

Compare: 1987 No 74 s 14E(1)–(2D)

75A Decisions on applications for transit visa

Where the Minister or an immigration officer makes any decision in relation to an application for a transit visa, the Minister or immigration officer may, in his or her discretion, grant a 35

transit visa as an exception to immigration instructions in any particular case.

76 Currency and nature of transit visa

(1AA) Regulations made under **section 358** may prescribe the period for which a person may be in New Zealand as the holder of a transit visa. 5

(1) 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 with in that period or before that date.

(2) To avoid doubt, 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, as the case may be, throughout the whole period during which the person is in New Zealand, unless that period exceeds the prescribed period. 10 15

Compare: 1987 No 74 s 14E(3)

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. 20

(2) While in New Zealand during the prescribed period, the holder of a transit visa may not apply for— 25

- (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. 30

Compare: 1987 No 74 s 14E(4), (5)

77 Limitations on holders of transit visa

(1) The holder of a transit visa may not apply for entry permission or any class or type of visa while in New Zealand during the transit period.

(2) However, the Minister or an immigration officer, in his or her absolute discretion, may grant to the person a visa of the type and class that the Minister or immigration officer thinks fit. 5
 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.~~ 10
 (2) ~~Where an immigration officer cancels a transit visa after the transit passenger's arrival in New Zealand, **section 405** applies to the person.~~

78 Cancellation of transit visa

An immigration officer may cancel a transit visa at any time but, if he or she cancels the visa after the holder of the visa has arrived in New Zealand, the person is liable for turnaround. 15

79 Expiry of transit period

(1) ~~Where the holder of a transit visa is still in New Zealand upon the expiry of the transit period prescribed for the purposes of **section 77(1)**, an immigration officer may, in his or her absolute discretion,—~~ 20
 (a) ~~grant the person a further transit visa; or~~
 (a) extend the period for which the person may remain in New Zealand as the holder of the visa; or 25
 (b) ~~grant the person a visa and entry permission.~~
 (c) ~~refuse to grant a visa and entry permission (in which case **section 405** applies to the person).~~
 (2) If the immigration officer does neither of the things referred to in **subsection (1)**, the person is liable for turnaround. 30

*Invitation to apply for a visa***80 Expressions of interest**

(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 par-

ticular 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.

- (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 ~~which~~ 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. 5
- (3) A person may at any time, by written notice to an immigration officer, substitute a different address for that specified under **subsection (2)**. 10
- (4) A person may also specify in an expression of interest an electronic address to which any communication relating to the expression of interest, or to which any invitation to apply as a result of the expression of interest or visa granted as a result of the expression of interest may be sent (and may substitute a different address by written notice to an immigration officer). 15

81 Obligation to inform of all relevant facts, including changed circumstances

- (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. 20
- (2) The Minister or immigration officer considering the expression of interest—
 - (a) is not obliged to seek any further information, evidence, or submissions; and
 - (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. 30
- (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~~ It is also the responsibility of a person expressing an interest in obtaining an invitation to apply for a visa under **section 82** ~~must to~~ inform the Minister or 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~~ person submitting an expression of interest or other person included in the expression of interest, and may relate to any matter relevant to ~~the applicable policy~~ this Act or immigration instructions. 10 15
- (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

20

- (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. 25
- (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.
- (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 35

has expressed his or her interest in the manner required by this Act or immigration instructions.

- (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. 5
- (6) Despite **sections 60(1) and 64(2) 64(1)**, a decision as to whether ~~or not~~ to issue an invitation to apply for a visa may be made having regard to the immigration instructions applicable at the time of the decision, even if ~~that differs from~~ they differ from the immigration instructions applicable at the time of notification of the relevant expression of interest. 10
- (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 or visa to which restricted temporary entry instructions apply 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. 15 20

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. 25
- (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~~ direction, an immigration officer. 30
- (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.~~ 35

- (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**. 5
- Compare: 1987 No 74 s 10A

Part 4

Arrivals and departures

Immigration control areas

- 84 Chief executive to designate immigration control areas** 10
- (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. 15
- (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 20
 - (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— 25
- (a) offices of the Department; and
 - (b) New Zealand Government offices overseas that deal with immigration matters. 30
- 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 35

necessary and suitable for carrying out immigration functions in relation to arrivals in and departures from New Zealand:

- (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)**: 5
- (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. 10
- (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. 15

Compare: 1996 No 27 s 18(1); (2); (3)(a)

Advance passenger processing

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— 20
 - (a) ~~he or she~~ the carrier or the person is notified by the chief executive that—
 - (i) ~~he or she~~ the carrier or the person 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~~ the carrier or the person is the carrier or the person in charge departs from another country to travel to New Zealand; or 25
 - (ii) the craft in relation to which ~~he or she~~ the carrier or the person is the carrier or the person in charge is a craft of a kind in relation to which ~~he or she~~ the carrier or the person must comply with the responsibilities specified in **subsection (2)** before the craft departs from another country to travel to New Zealand; and 30
 - (b) either— 35

- (i) the craft is scheduled to travel to New Zealand in the course of a scheduled international service; or
 - (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 5
 departs from another country to travel to New Zealand,—
 - (a) obtain from every person who intends to board the craft 10
 for the purpose of travelling to New Zealand the information prescribed by regulations for the purposes of this subsection:
 - (b) provide to the chief executive, by means of an approved 10
 system, the information prescribed by regulations for the purposes of this subsection.
- (3) The chief executive may, in writing, exempt a person to whom 15
 this section applies from complying with some or all of ~~he~~ the carrier's or the person's responsibilities under this section in all or any specified circumstances.
 Compare: 1987 No 74 s 125AA(1), (2), (3)

**87 Chief executive may make decision about person boarding 20
 craft for purpose of travelling to New Zealand**

- (1) The chief executive may decide that a person in relation to 20
 whom information has been received under **section 86 sec-**
tion 86(2)—
 - (a) may board a craft for the purpose of travelling to New 25
 Zealand; or
 - (b) may not board a craft for the purpose of travelling to
 New Zealand; or
 - (c) may board a craft for the purpose of travelling to New
 Zealand only if he or she complies with conditions spe- 30
 cified by the chief executive.
- (2) The chief executive—
 - (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, in- 35
 cluding, but not limited to, by means of an approved
 system, which may contain code that represents the out-
 come of the decision; and

- (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)**.
- (3) The chief executive— 5
- (a) may make ~~any~~ a 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~~ a person to whom a visa waiver applies; but 10
- (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, before boarding the craft, holds and produces a New Zealand passport; or 15
- (ia) a New Zealand citizen who, before boarding the craft, holds and produces a foreign passport containing an endorsement of a type described in **section 343B**; or 20
- (ib) a New Zealand citizen who, before boarding the craft, produces a returning resident's visa (within the meaning of section 2(1) of the former Act) endorsed in a current passport; or
- (ii) a permanent resident; or 25
- (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 and the visa was granted outside New Zealand. 30
- (4) A person in relation to whom a decision is made under **subsection (1)** may not—
- (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. 35
- (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.

(5) A person in relation to whom a decision is made under **subsection (1)**—

(a) may not appeal the decision to any court, the Tribunal, the Minister, or otherwise; 5

(b) may bring review proceedings in relation to the decision only 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

(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)** the decision. 15

(7) To avoid doubt, **section 269** does not apply to the chief executive when he or she is notifying a carrier or person in charge to whom **section 86** applies of a decision made under **subsection (1)**. 20

Compare: 1987 No 74 s 125AB

88 Collection of biometric information from proposed arrivals

(1) ~~Subject to regulations made under this Act, a~~ A person who is proposing to board a craft for the purposes of travelling to New Zealand must allow the collection of biometric information to be collected from him or her. 25

(1A) The requirement in **subsection (1)** does not apply if the person is exempt from providing the information in accordance with regulations made under **section 358(la).** 30

(2) If the person fails to allow the ~~collection of~~ biometric information to be collected, the chief executive may make a decision of a type described in **section 87(1)(b) or (c)** in respect of the person.

(3) ~~Nothing in this section applies to a person who, before boarding the craft, produces a New Zealand passport or a foreign~~ 35

passport containing an endorsement of a type described in **section 344** :

- (3) Nothing in this section applies to a person who, before boarding the craft, holds and produces—
- (a) a New Zealand passport; or 5
 - (b) a foreign passport containing an endorsement of a type described in **section 343B**; or
 - (c) a foreign passport containing a returning resident's visa (within the meaning of section 2(1) of the former Act).

Obligations in relation to craft coming to New Zealand 10

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: 15
- (a) to ensure that all persons ~~aboard~~ boarding the craft have the prescribed documentation for immigration purposes:
 - (b) on arrival of the craft at a place that is or contains an immigration control area,— 20
 - (i) to produce for inspection such prescribed documents as an immigration officer may specify; and
 - (ii) if applicable, 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: 25
 - (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)**: 30 35
 - (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:
- (a) in the case of a craft that is not a commercial passenger aircraft on a ~~regularly scheduled flight~~ scheduled international service, 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: 5
 - (b) in the case of a commercial passenger aircraft on a ~~regularly scheduled flight~~ scheduled international service, to supply such available information as may be required by an immigration officer relating to any person who may have been on board the craft since its last place of call. 10
- (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**. 20
- (4) **Subsections (1) to (3)** are subject to any applicable special direction or to regulations made under **section 358**. 25
- 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— 30
- (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. 35
- (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 5
 - (b) ensure that the chief executive has access to the information described in **paragraph (a)**.
- (3) The circumstances are that the chief executive has made the request for the information ~~within not more than~~ 14 days ~~either side of~~ before or 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. 10
- (4) A person to whom **subsection (2)** applies must ensure that the chief executive has access to the information— 15
 - (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. 20
- (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: 25
 - (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:
 - (b) the person has been refused, on arrival, a visa (if required) and entry permission: 30
 - (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):
 - (d) the information gives the chief executive good cause to suspect that an ~~immigration~~ offence against this Act is being, or may have been, committed: 35
 - (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)**.
- (7) To avoid doubt, information retained under **subsection (5)** 5 may be further dealt with as permitted under the Privacy Act 1993.

Compare: 1987 No 74 s 125AD

Obligations on persons arriving in New Zealand

91 Obligations on persons arriving in New Zealand 10

- (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:
- (a) if the person arrives at an immigration control area, to present himself or herself to an immigration officer without delay: 15
 - (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: 20
 - (c) to apply for a visa in the prescribed manner, if the person is ~~subject to a visa waiver~~ a person to whom a visa waiver applies: 20
 - (~~d~~) ~~to apply for entry permission in the prescribed manner (unless the person is a New Zealand citizen, or **subsection (2)** applies):~~ 25
 - (d) to apply for entry permission in the prescribed manner unless—
 - (i) the person is a New Zealand citizen and holds and produces a New Zealand passport; or 30
 - (ii) the person is a New Zealand citizen and holds and produces a foreign passport containing an endorsement of a type described in **section 343B**; or
 - (iii) the person holds and produces a foreign passport containing a returning resident's visa (within the meaning of section 2(1) of the former Act); or 35

- (iv) the person is a transit passenger (within the meaning of **section 76(6)**.
- (e) in the case of a New Zealand citizen who is entering New Zealand as a New Zealand citizen, to comply with any requirements prescribed for the purpose of confirming the person's status as a New Zealand citizen: 5
- (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. 10
- (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)** :~~ 15
- (3) Where a person arriving in New Zealand is, by reason of age or disability, incapable of complying with any of 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. 20
- (4) Every passport or certificate of identity produced by a person to an immigration officer under this section— 25
- (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. 30
- (5) To avoid doubt, a New Zealand citizen arriving in New Zealand who is a national of 1 or more other countries and who wishes to enter New Zealand other than as a New Zealand citizen must apply for entry permission in the prescribed manner. 35

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

92 New Zealand citizens arriving in New Zealand required to provide photograph to be photographed

- (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 section 343B** 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
- (2) A photograph taken under **subsection (1)** (including any electronic record of the photograph) may be compared with— 15
- (a) information in the person's passport; or
 - (b) information held by the department of State for the time being responsible for the administration of the Passports Act 1992; or 20
 - (c) if the person does not hold a New Zealand passport, information held by the Department.
- (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. 25
- (4) ~~If the photograph~~ A photograph taken under **subsection (1)** that 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. 30

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. 35

- (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 travel 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. 5
- (3) Every passport, certificate of identity, boarding pass, or ~~tickets~~ travel ticket 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 inspected immediately and returned to the person as soon as the inspection is concluded; or 10
- (b) may, if the person does not hold a visa ~~and~~ or 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. 15

Compare: 1987 No 74 s 126A

94 Responsibilities of domestic passengers travelling by air within New Zealand 20

- (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. 25
- (2) Every person to whom this section applies must; ~~on demand made by an immigration officer,~~—
- (a) produce for inspection ~~such of~~ on demand by an immigration officer the following documents as the officer may specify: 30
- (i) the person's boarding pass:
- (ii) the person's travel tickets:
- (iii) if carried by the person, his or her passport or certificate of identity: 35
- (iv) ~~such other document or documents as may from time to time be prescribed; or~~
- (iv) any other prescribed document; or

- (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. 5
- (4) Every boarding pass, travel ticket, passport, certificate of identity, or other documents ~~or tickets~~ produced by a person to an immigration officer under **subsection (2)** must be either— 10
- (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 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~~ document. 15
- (5) Nothing in this section limits the exercise by an immigration officer of any power contained in any other provision of this Act. 20

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.~~ 25
- (1) A person granted entry permission to New Zealand may enter New Zealand.
- (2) The grant of entry permission has no effect unless the person ~~to whom it is granted~~ also holds a visa; ~~or is granted a visa at the same time.~~ 30
- (2A) Entry permission is granted by the Minister or an immigration officer.
- (3) The effect of a refusal to grant a person entry permission to New Zealand is that— 35
- (a) any visa the person holds is cancelled; and

- (b) the person is subject to **section 405** liable for turnaround.

96 Decision whether or not to grant entry permission, and related visas, to different categories of person

- (1) A permanent resident must be granted entry permission. 5
- (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
 - (b) the holder's travel to New Zealand was consistent with any conditions of the resident visa relating to travel. 10
- (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,—
- (a) grant entry permission on the basis of the resident's existing visa; or 15
 - (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
 - (c) cancel the resident visa by granting a visa of another type; and grant entry permission; or 20
 - (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 25
 - (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 30
 - (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 35

~~(b) refuse to grant a visa.~~

96 **Decisions on entry permission in relation to residence class visa holders**

- (1) The holder of a permanent resident visa must be granted entry permission. 5
- (2) The holder of a resident visa granted in New Zealand must be granted entry permission.
- (3) The holder of a resident visa granted outside New Zealand must be granted entry permission if it is his or her second or subsequent entry to New Zealand as the holder of the visa. 10
- (4) If the holder of a resident visa arrives in New Zealand for the first time as the holder of the visa and the visa was granted outside New Zealand—
 - (a) the Minister, or, subject to any special direction, an immigration officer may, in his or her discretion,— 15
 - (i) grant entry permission to the person; or
 - (ii) refuse entry permission to the person; and
 - (b) the Minister may, by special direction, impose further conditions on the visa, or vary or cancel any conditions that would otherwise apply to the visa. 20
- (5) The Minister's or immigration officer's decision under **subsection (4)(a)** must be made, and any discretion exercised, in terms of the residence instructions applicable at the time the person applied for the visa.
- (6) For the purposes of **subsection (4)**, the following matters are matters for the discretion of the Minister or immigration officer and, subject to **section 171(1)(c)**, no appeal lies against his or her decision, whether to a court, the Tribunal, the Minister, or otherwise: 25
 - (a) a decision to grant the visa holder entry permission: 30
 - (b) a decision to grant the visa holder entry permission, but to impose, vary, or cancel any conditions of the visa relating to stay in New Zealand:
- (7) **Subsection (6)** does not limit or affect the right of the person to bring review proceedings. 35

- (8) Nothing in this section prevents the Minister, in his or her absolute discretion, from granting entry permission to a person as an exception to residence instructions.

96A Decisions on entry permission in relation to temporary entry class visa holders

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- (1) The Minister or, subject to any special direction, an immigration officer may, in his or her discretion,—

(a) grant the holder of a temporary entry class visa entry permission on the basis of his or her visa; or

(b) in accordance with **section 71**, cancel the visa of the holder of a temporary entry class visa, grant a limited visa in its place, and grant the person entry permission on the basis of the limited visa; or

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(c) refuse the holder of a temporary entry class visa entry permission.

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- (2) The Minister may also, by special direction, impose further conditions on the holder of a temporary entry class visa subject to restricted temporary entry instructions, or vary or cancel any conditions that would otherwise apply to the visa, and grant the holder entry permission on the basis of the amended visa.

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- (3) A decision under **subsection (1)** that relates to a temporary entry class visa of a type subject to restricted temporary entry instructions, and a decision under **subsection (2)** must be made in terms of the temporary entry instructions applicable at the time the person applied for the visa.

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- (4) For the purposes of **subsections (1) and (2)**, the following matters are matters for the discretion of the Minister or immigration officer, as the case may be, and no appeal lies against his or her decision, whether to a court, the Tribunal, the Minister, or otherwise:

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(a) a decision to grant the visa holder entry permission on the basis of the existing temporary entry class visa;

(b) a decision to grant the visa holder entry permission on the basis of the existing temporary entry class visa, but to impose, vary, or cancel conditions relating to stay in New Zealand;

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(c) a decision to refuse the visa holder entry permission.

- (5) **Subsection (3)** does not limit or affect the right of the person to bring review proceedings.
- (6) Nothing in this section prevents—
- (a) the Minister or an immigration officer, in his or her discretion, from granting entry permission to the holder of a temporary entry class visa (other than a holder of a temporary entry class visa of a type subject to restricted temporary entry instructions) as an exception to temporary entry instructions: 5
 - (b) the Minister, in his or her absolute discretion, from granting entry permission to the holder of a temporary entry class visa of a type subject to restricted temporary entry instructions, as an exception to the restricted temporary entry instructions. 10
- 97 Applicant for entry permission to provide address** 15
- 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: 20
 - (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)**:
- 97 Applicant for entry permission to provide address** 25
- A person who applies for entry permission—
- (a) must specify a physical address in New Zealand to which any communication may be sent, or at which any notice may be served under this Act; and
 - (b) may specify an electronic address to which any communication may be sent; and 30
 - (c) 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) or (b)**.

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.

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98 Applicant for entry permission to allow collection of biometric information

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- (1) A person who applies for entry permission must allow biometric information to be collected from him or her.
- (2) If he or she fails to allow the biometric information to be collected, the Minister or an immigration officer may refuse to grant the person entry permission.
- (3) The requirement in **subsection (1)** does not apply if the person is exempt from providing the information in accordance with regulations made under **section 358(la)**.

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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.
- (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.

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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 tempo-

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rary 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.

- (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. 5
- (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. 10
- (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** 15
- (1) Except as provided in **section 96(1) and (2)**,—
 - (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: 20
 - (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: 25
 - (iii) a decision to grant entry permission but cancel the existing visa by granting a visa of a different class or type:
 - (iv) a decision to refuse entry permission. 30
- (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.
- (3) Nothing in **subsection (2)** limits or affects the right of any person to bring review proceedings. 35

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— 5
- (a) is not obliged to seek any further information, evidence, or submissions; and
- (b) may determine the application on the basis of the information, evidence, and submissions provided. 10
- (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. 15
- (1A) The Minister or immigration officer considering the application—
- (a) is not obliged to seek any further information, evidence, or submissions; and
- (b) may determine the application on the basis of the information, evidence, and submissions provided. 20
- (2) It is also the responsibility of an applicant for entry permission to inform the Minister or 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 on the basis of that visa, 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 this Act or 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
- (5) It is sufficient grounds for the Minister or an immigration officer to decline to grant entry permission to a person if the Minister or officer is satisfied that the person,—

- (a) in applying for entry permission, whether personally or through an agent, submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the permission; or
- (b) did not ensure that the Minister or an immigration officer was informed of any material change in circumstances (within the meaning of **subsection (2)**) between the time of being granted a visa and the time of applying for entry permission. 5
- 103 Revocation of entry permission; and related visas, before person leaves immigration control area for administrative error** 10
- (1) An immigration officer may, at any time before the person leaves the immigration control area where the error was made, revoke any a person's entry permission if the immigration officer believes on reasonable grounds that the entry permission was granted as a result of an administrative error. 15
- (1A) Entry permission may be revoked at any time before the person leaves the immigration control area where the error was made.
- (2) A revocation under this section is made by entry on the ~~departmental record~~ records of the Department, and takes effect immediately. 20
- (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,— 25
- (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
- (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). 30
- (4) For the purposes of this section, entry permission is granted as a result of administrative error if it is granted—
- (a) to a New Zealand citizen; or 35
- (b) to a person who is an excluded person; or
- (c) in contravention of any special direction; or
- (d) contrary to immigration instructions; or

- (c) ~~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~~ 5
 - (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 10

A member of the police may arrest a person, and present him or her to an immigration officer for the purposes of making decisions in relation to the person under this Act, 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 other prescribed place, and did not comply with the requirements of; ~~or prescribed under, section 91 or any regulations referred to in that section;~~ 15
- (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 any regulations referred to in that section;~~ 20
- (c) the person arrived in New Zealand from another country at an immigration control area or other prescribed place and did not comply with the requirements of; ~~or prescribed under, section 91 or any regulations referred to in that section.~~ 25

Compare: 1987 No 74 s 126(6) 30

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—
 - (a) ~~is subject to a visa waiver~~ a person to whom a visa waiver applies and fails to apply for a visa and entry permission or is refused a visa; or 35

- (ab) is not a person to whom a visa waiver applies and is not the holder of a visa granted under this Act; or
- (b) holds a visa but—
- (i) the visa is subsequently ~~deemed to be~~ cancelled under **section 54(1)(b), (ba), (c), or (d)**; or 5
- (ii) the visa is cancelled under **section 55(2) section 55B** while the person is in an immigration control area (unless some other visa is granted to the person or the person is a New Zealand citizen); or 10
- (c) ~~is refused entry permission; or~~
- (d) is a stowaway; or
- (e) after arriving in New Zealand, is a person whose transit visa ~~has been~~ is cancelled by an immigration officer under **section 78**; or 15
- (f) is the holder of a transit visa and the transit period concerned has expired.
- (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**: 20
- (2) The person—
- (a) is, for the purposes of this Act, unlawfully in New Zealand; and
- (b) does not have any rights of appeal on humanitarian grounds so long as this section applies to the person; and 25
- (c) is liable to be arrested and detained under **Part 9**; and
- (d) is liable for turnaround.
- (3) A person to whom this section applies—
- (a) ~~is deemed for the purposes of this Act to be in New Zealand unlawfully; but~~ 30
- (b) ~~does not have any rights of appeal under **section 185** for so long as this section continues to apply to the person.~~
- 106 When section 105 ceases to apply to person** 35
- (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 a 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**, unless a further warrant of commitment is issued or the person is released on conditions under **Part 9** or agrees to residence and reporting requirements under **section 277**. 15
- (2) This section is subject to **section 108**. 20
- (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. 25
- Compare: 1987 No 74 s 128(1)–(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. 30

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**— 35

- (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.
- (2) If a person is arrested and detained under this Act during any 5
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)**.

108 When turnaround ceases to apply to person remanded in 10
custody or imprisoned

- (1) **Subsection (2)** applies to a person who is—
 - (a) liable for turnaround; and
 - (b) remanded in custody for suspected criminal offending,
or imprisoned in a prison for criminal offending.
- (2) The person remains liable for turnaround until the expiry of 72 15
hours after the person is released from custody or prison.
- (3) **Subsection (4)** applies to a person who is liable for
turnaround and who is arrested and detained not later than
72 hours after he or she has been released from custody or
imprisonment for suspected criminal offending, or criminal 20
offending.
- (4) The person remains liable for turnaround until the earlier of
the following:
 - (a) the person is granted a visa and entry permission;
 - (b) the expiry of a warrant of commitment issued under 25
section 279 or 280, unless a further warrant of com-
mitment is issued or the person is released on conditions
under **Part 9** or agrees to residence and reporting re-
quirements under **section 277**.

Obligations in relation to departure from New 30
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:
 - (a) to allow the following persons to board the craft for 35
passage from New Zealand:

-
- (i) any person being deported:
 - (ii) any person ~~subject to~~ **section 405** liable for turnaround:
 - (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: 5
 - (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— 10
 - (i) was on board the craft when it arrived in New Zealand; and 15
 - (ii) is not then on board the craft.
 - (2) The carrier of a craft leaving New Zealand also has the following responsibilities:
 - (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— 20
 - (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 25
 - (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 in New Zealand after the departure of that craft: 30
 - (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. 35
 - (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

(ii) in relation to a person ~~subject to a deportation order~~ being deported, 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.

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

10

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:

(a) to present himself or herself to an immigration officer at an immigration control area or any other prescribed place: 15

(b) to comply with any direction of an immigration officer while at such an area or place:

(c) to provide such information and complete such documentation as may be prescribed. 20

(2) Where a person leaving New Zealand is, by reason of age or disability, incapable of complying with any of 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

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

110A Persons other than New Zealand citizens leaving New Zealand to allow biometric information to be collected

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(1) A person leaving New Zealand who is not a New Zealand citizen must allow biometric information to be collected from him or her.(2) The requirement in **subsection (1)** does not apply if the person is exempt from providing the information in accordance with regulations made under **section 358(la)**. 35

*Special provision for emergencies, etc***111AA Persons deemed not to leave New Zealand in certain circumstances**

- (1) For the purposes of this Act, a person is deemed not to leave New Zealand if he or she departs for another country on any craft and, before arriving in another country,— 5
- (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. 10
- (2) **Subsection (1)** does not apply to a person liable for turnaround. 10

111 Special provisions relating to persons returning to New Zealand in emergency or other circumstances beyond their control 15

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 20
- (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,— 25

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. 30

Compare: 1987 No 74 s 127

*Protection for carriers and persons in charge of craft***112 Protection for carriers and persons in charge of craft** 35

A person who in good faith imposes reasonable measures, including restraint or reasonable force, on another person in ac-

cordance with ~~the~~ his or her 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.

Compare: 1987 No 74 s 125(9)

Part 5 Refugee and protection status determinations

5

113 Purpose of Part

The purpose of this Part is to provide a statutory basis for the system by which New Zealand—

10

- (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
- (b) codifies certain obligations under—
 - (i) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 15
 - (ii) the International Covenant on Civil and Political Rights.

Compare: 1987 No 74 s 129A

114 Interpretation

20

(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; 25
- (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 30

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 35

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

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

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

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 129D 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 Act

- (1) Every person who seeks to be recognised recognition as a refugee in New Zealand under the Refugee Convention must have that claim determined in accordance with this Part Act.
- (2) Every person who seeks to be recognised recognition as a protected person in New Zealand must have that claim determined in accordance with this Part Act.
- (3) Every question as to whether a person should continue to be recognised as a refugee in New Zealand or as a protected per-

son in New Zealand must be determined in accordance with this ~~Part~~ Act.

- (4) Nothing in **subsection (1) or (2)** affects **section 116**.

Compare: 1987 No 74 s 129C

116 Recognition of refugees selected ~~offshore~~ outside New Zealand 5

~~Despite anything in this Part, a~~ A person ~~may~~ must be recognised as a refugee in New Zealand, without the need for submission and determination of a claim under this Part, if, whether before or after the commencement of this ~~Part, the~~ person section, he or she has been— 10

- (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 129L(2)

15

117 Context for decision making

(1AA) Every claim under this Part must be determined by a refugee and protection officer.

- ~~(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.~~ 20

(1) In carrying out his or her functions under this Act, a refugee and protection officer must act—

- (a) in accordance with this Act; and 25
- (b) in relation to a refugee or a person claiming recognition as a refugee, in a way 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.~~ 30

Compare: 1987 No 74 s 129D

117A Matter not finally determined until expiry of appeal period or when appeal determined

A matter under this Part must not be treated as finally determined until—

- (a) the expiry of the appeal period for any appeal relating to the matter; or 5
- (b) if a person lodges an appeal, the appeal is determined.

Claims for recognition as refugee or protected person

118 Claims to be determined by determination officers 10

- (1) Every claim under this Part must be determined by a determination officer, except as provided in **subsection (2)**.
- (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 129E

119 Recognition as refugee

A person ~~may~~ must be recognised as a refugee if ~~the person~~ he or she is a refugee within the meaning of the Refugee Convention. 20

120 Recognition as protected person under Convention Against Torture

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

120 Recognition as protected person under Convention Against Torture 30

- (1) A person must be recognised as a protected person under the Convention Against Torture if there are substantial grounds for

believing that he or she would be in danger of being subjected to torture if deported from New Zealand.

- (2) Despite **subsection (1)**, a person must not be recognised as a protected person under the Convention Against Torture if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence. 5
- (3) For the purposes of determining whether there are substantial grounds for belief under **subsection (1)**, the refugee and protection officer concerned must take into account all relevant considerations, including, if applicable, the existence in the country concerned of a consistent pattern of gross, flagrant, or mass violations of human rights. 10
- (4) A person who has been recognised as a protected person under **subsection (1)** cannot be deported from New Zealand except in the circumstances set out in **section 153(4)**. 15
- (5) In this section, **torture** has the same meaning as in the Convention Against Torture.

121 Recognition as protected person under Covenant on Civil and Political Rights 20

- (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. 25
- (1) A person must be recognised as a protected person under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. 30
- (1AA) Despite **subsection (1)**, a person must not be recognised as a protected person under the Covenant on Civil and Political Rights if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence. 35
- (1A) For the purposes of determining whether there are substantial grounds for belief under **subsection (1)**, the refugee and

protection officer concerned must take into account all relevant considerations, including, if applicable, the existence in the country concerned of a consistent pattern of gross, flagrant, or mass violations of human rights.

- (1B) A person who has been recognised as a protected person under **subsection (1)** cannot be deported from New Zealand except in the circumstances set out in **section 153(4)**. 5
- (2) For the purposes of this section and **section 122**,—
- (a) **cruel treatment** means ~~cruel, inhuman, or degrading treatment or punishment~~; 10
- (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:
- (c) the impact on the person of the inability of a country 15
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.
- (3) In this section, **cruel treatment** means cruel, inhuman, or degrading treatment or punishment. 20

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 25
- (b) torture, arbitrary deprivation of life, or cruel treatment 30
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.

123 Claims not to be accepted from certain persons 35

- (1) A ~~determination officer~~ may refugee and protection officer
must 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.~~
- (b) a resident or permanent resident, unless—
 - (i) the person has been served with a deportation liability notice; or 5
 - (ii) the person is named in an Order in Council made under **section 152**.
- ~~(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.~~ 10
- (2) Nothing in this section affects the power of a refugee and protection officer to re-open a claim for further consideration under **section 132, 132A, 133, 133A, or 133B**. 15

Compare: 1987 No 74 s 129K

124 How claim made

- (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. 20
- (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.
- (3) A claimant must as soon as is possible endeavour to provide to a ~~determination officer~~ refugee and protection officer all information relevant to his or her claim, including— 25
 - (a) a statement of the grounds for the claim ~~to be recognised~~ seeking recognition as a refugee or a protected person; and
 - (b) a statement of any grounds for any other potential claim ~~to be recognised~~ seeking recognition as a refugee or a protected person. 30
- ~~(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.~~ 35

- (4) If a claimant is aware that any member of his or her immediate family who is in New Zealand is seeking recognition as a refugee or a protected person, the claimant must, as soon as possible after making a claim, inform a refugee and protection officer and, if possible, state whether the family member's claim is on different grounds. 5
- (5) A claimant must provide a ~~determination officer~~ refugee and protection 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. 10
Compare: 1987 No 74 s 129G(1)–(4)
- 125 Matters that may be taken into account when determining whether to accept claim for consideration** 15
- (1) ~~In determining whether to accept a claim for consideration, a determination officer may take the matters specified in **subsection (2)** into account.~~
- (2) The matters that a determination officer may take into account include, but are not limited to, the following: 20
- (a) ~~whether—~~
- (i) ~~the claimant has been recognised as a refugee or given protection in another country; and~~
- (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.**~~ 25 30
- (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.~~
- (3) A determination officer may decline to accept a claim if— 35
- (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

- (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: 5

125 Whether to accept claim for consideration

- (1) In determining whether to accept a claim for consideration, a refugee and protection officer may take into account whether,— 10

(a) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for refugee status in another country:

(b) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for protection in another country. 15

- (2) A refugee and protection officer may decline to accept a claim for consideration whether,—

(a) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for refugee status in another country: 20

(b) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for protection in another country.

- (3) In this section, **international arrangement or agreement** means an arrangement or agreement— 25

(a) between New Zealand and 1 or more other countries in respect of the processing of claims for refugee or protection status; and

(b) that was entered into by the Minister only after being satisfied that— 30

(i) the country is a party to the Refugee Convention, the Convention Against Torture, and the Covenant on Civil and Political Rights; and

(ii) the country has appropriate processes for dealing with refugee and protection claims. 35

126 Procedure for determining claim Claimant responsible for establishing claim

- (1) It is the responsibility of ~~the~~ a claimant to establish ~~that he or she meets the grounds~~ his or her claim for recognition under **section 119, 120, or 121** as a refugee or a protected person. 5
- (2) ~~The~~ To this end, the claimant must ensure that, before a ~~determination officer~~ refugee and protection officer makes a determination on ~~the~~ his or her claim, all information, evidence, and submissions—
 - (a) that the claimant wishes to have considered in support of the claim are provided to the ~~determination officer~~ refugee and protection officer; and 10
 - (b) that the claimant would wish to have considered in support of any other potential claim under ~~either of the Conventions or the Covenant~~ **section 119, 120, or 121** are provided to the ~~determination officer~~ refugee and protection officer. 15
- (3) ~~For the purpose of determining a claim, a determination officer—~~
 - (a) ~~must determine the matters set out in~~ **section 127**; and 20
 - (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~~ 25
 - (iii) ~~may determine the claim on the basis of the information, evidence, and submissions provided by the claimant.~~
- (4) ~~A determination officer may determine the procedures that will be followed on a claim, subject to—~~ 30
 - (a) ~~this Part; and~~
 - (b) ~~any regulations made for the purposes of this Part; and~~
 - (c) ~~any general instructions given by the chief executive.~~

Compare: 1987 No 74 s 129G(5)

126A How refugee and protection officer to determine claim 35

- (1) For the purpose of determining a claim, a refugee and protection officer must determine the matters set out in **section 127**.

- (2) In doing so, the refugee and protection officer may seek information from any source, but is not obliged to seek any information, evidence, or submissions further to that provided by the claimant.
- (3) The refugee and protection officer may determine the procedures that will be followed on the claim, subject to— 5
 (a) this Part; and
 (b) any regulations made for the purposes of this Part; and
 (c) any general instructions given by the chief executive.
- (4) To avoid doubt, the refugee and protection officer may determine the claim on the basis only of the information, evidence, and submissions provided by the claimant concerned. 10
Compare: 1987 No 74 s 129G(6), (7)

127 Matters to be determined by ~~determination officer~~ refugee and protection officer 15

- (1) If a ~~determination officer~~ determines that a claim should be accepted for consideration in New Zealand, the officer For each claim accepted for consideration, a refugee and protection officer must determine, in the following order: 20
 (a) whether to recognise the ~~person~~ claimant as a refugee on the ground set out in **section 119**; and
 (b) whether to recognise the ~~person~~ claimant as a protected person on the ground set out in **section 120**; and
 (c) whether to recognise the ~~person~~ claimant as a protected person on the ground set out in **section 121**. 25
- (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)** For each claim accepted for consideration, a refugee and protection officer must also determine, as part of the process in respect of a determination under **subsection 1(b) or (c)**, whether there are serious reasons for considering that the claimant has— 30
 (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 35
 (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.
- (2A) To avoid doubt, a determination made under **subsection (2)**—
- (a) must not be used as grounds to refuse a claim by the person concerned for recognition as a protected person; and 5
- (b) is relevant only if the person is recognised as a protected person; and
- (c) if answered in the affirmative, requires the Minister to determine the immigration status of the protected person in accordance with **section 129**. 10
- (2B) For each claim accepted for consideration, a refugee and protection officer must also determine whether the claimant has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand. 15 20
- (3) To avoid doubt, a ~~determination officer~~ refugee and protection officer—
- (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)** ~~subsections (1), (2) and (2B)~~, regardless of whether the claim was made only on 1 or 2 of the 3 grounds set out in **sections 119 to 121**. 25
- (c) may determine the matters specified in this section on the basis of the information, evidence, and submissions provided by the claimant. 30

128 Decision on claim

- (1) The ~~determination officer~~ A refugee and protection officer must ~~grant a claimant recognition~~ recognise a person as—
- (a) a refugee if satisfied that the grounds for recognition in **section 119** have been met: 35
- (b) a protected person if satisfied that the grounds for recognition in **section 120 or 121** (or both) have been met.

- (1A) Despite **subsection (1)**, a refugee and protection officer may refuse to recognise a person as a refugee or a protected person if he or she is satisfied that the person has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand. 5
- (2) The decision of the ~~determination officer~~ refugee and protection officer is final, unless overturned by the Tribunal on appeal under **section 176**. 10
- (3) The ~~determination officer~~ refugee and protection officer must notify the claimant, in the prescribed manner, of— 15
- (a) the officer's decision on the claim; and
 - (b) the reasons for the decision, which must contain the information required under section 23 of the Official Information Act 1982 as if the decision were a response to a request to which that section applies; and
 - (c) the officer's determination in relation to **section 127(2)**; and
 - (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~~ refugee and protection officer may, in his or her absolute discretion, re-open the claim for further consideration under **sections 132 and 133 section 132, 132A, 133, 133A, or 133B**. 25

Compare: 1987 No 74 s 129I

- 129 Immigration status of certain protected persons Minister to decide immigration status of protected person who may have committed certain crimes or been guilty of certain acts** 30
- The Minister must make any decision about a protected person's immigration status ~~where a determination officer~~ if a refugee and protection officer has determined under **section 127(2)** that there are serious reasons for considering that the 35

person has committed a crime or been guilty of any act described in **section 127(2)** that section.

130 Limitation on subsequent claims

- (1) A ~~determination officer~~ may ~~refugee and protection officer~~ must not consider a subsequent claim for recognition as a refugee unless the officer is satisfied that—
 - (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~~ a purpose of creating grounds for recognition under **section 119, 120, or 121**.
- (2) A ~~determination officer~~ refugee and protection officer may refuse to consider a subsequent claim ~~where~~ for recognition as a refugee or a protected person if the officer is 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.~~
- (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.~~

Compare: 1987 No 74 s 129J

130A Procedure on subsequent claims

- (1) The procedures specified in **sections 126 to 129** apply to any subsequent claim accepted for consideration, except that any appeal to the Tribunal must be made under section 176A.
- (2) In a subsequent claim, a claimant may not challenge any finding of credibility or fact made by a refugee and protection officer (or by a refugee status officer under the former Act) or the Tribunal (or by the Refugee Status Appeals Authority under the former Act) in relation to a previous claim by the claimant.

and the refugee and protection officer determining the subsequent claim may rely on those findings.

131 Effect of claimant leaving Claim treated as withdrawn if claimant leaves New Zealand

If a claimant leaves New Zealand, his or her claim (including any subsequent claim) under this Part ~~or appeal under section 176~~ is to be treated as withdrawn. 5

Compare: 1987 No 74 s129V

*Cessation or cancellation of recognition, and
liability for deportation* 10

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: 15
- (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)**): 20

(2) A determination officer may also cease to recognise a person as a refugee under **subsection (1)(a)** where— 25

- (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: 30

132 Cessation of recognition as refugee or protected person

A refugee and protection officer may cease to recognise a person as a refugee or a protected person, as the case may be, if—

- (a) one of the following applies: 35

- (i) the original determination to recognise the person as a refugee or a protected person was made by a refugee and protection officer; or
- (ii) the original determination to recognise the person as a refugee was made under the former Act by a refugee status officer or before 1 October 1999; or 5
- (iii) the 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; and 10
- (b) 1 or more of the following apply:
 - (i) the Refugee Convention has ceased to apply to the person in terms of Article 1C:
 - (ii) there are no longer substantial grounds for believing that the person, if deported from New Zealand, would be in danger of being subjected to torture (as defined in **section 120(5)**): 15
 - (iii) there are no longer substantial grounds for believing that the person, if deported from New Zealand, would be in danger of being subjected to arbitrary deprivation of life or cruel treatment (as defined in **section 121(3)**). 20

132A Application to Tribunal for cessation of recognition as refugee or protected person 25

- (1) A refugee and protection officer may apply to the Tribunal for a determination as to whether a person's recognition as a refugee or a protected person should cease if the original determination to recognise the person as a refugee or a protected person was made by the Tribunal (or by the Refugee Status Appeals Authority under the former Act). 30
- (2) On an application made under **subsection (1)**, the Tribunal may cease to recognise a person as a refugee or a protected person if 1 or more of the circumstances referred to in **sub-paragraphs (i), (ii), and (iii) of section 132(1)(b)** apply in respect of the person. 35

133 Cancellation of New Zealand citizen's recognition as refugee or protected person

- (1) A ~~determination officer~~ refugee and protection officer may cancel the recognition of a ~~person~~ New Zealand citizen as a refugee or a protected person ~~where~~, as the case may be, if— 5
- (aa) one of the following applies:
- (i) the original determination to recognise the person as a refugee or a protected person was made by a refugee and protection officer; or
 - (ii) the original determination to recognise the person as a refugee was made under the former Act by a refugee status officer or before 1 October 1999; or 10
 - (iii) the 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; and 15
- (a) ~~any 1 or more~~ of the following ~~applies~~ apply in respect of the person:
- (i) ~~the determination officer~~ refugee and protection officer has determined that the recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; ~~or~~; 20
 - (ii) the person has been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; ~~or~~; 25
 - (iii) ~~the determination officer~~ refugee and protection 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~~ refugee and protection officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; ~~or~~ and 30 35

- (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 5
 - (b) the ~~determination officer~~ refugee and protection officer has determined that the person is not a refugee or a protected person. 10
- (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. 15
- (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 whether or not to cancel recognition must be made by the Tribunal under **section 137**. 20

133A Cancellation of person's recognition as refugee or protected person (other than New Zealand citizen) 25

- (1) A refugee and protection officer may cancel the recognition of a person who is not a New Zealand citizen as a refugee or a protected person, as the case may be, if—
 - (a) 1 of the following applies:
 - (i) the original determination to recognise the person as a refugee or a protected person was made under this Act; or 30
 - (ii) the original determination to recognise the person as a refugee was made under the former Act or before 1 October 1999; or 35
 - (iii) the 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; and
- (b) 1 or more of the circumstances referred to in **subparagraphs (i), (ii), and (iii) of section 133(1)(a)** apply in respect of the person; and 5
 - (c) the refugee and protection officer has determined that the person is not a refugee or a protected person.
- (2) A person whose recognition as a refugee or a protected person is cancelled under this section—
- (a) is liable for deportation under **section 151**; and 10
 - (b) has the rights of appeal set out in **subsection (2) of that section**.
- 133B Application to Tribunal for cancellation of New Zealand citizen's recognition as refugee or protected person**
- (1) A refugee and protection officer may apply to the Tribunal for a determination as to whether the recognition of a New Zealand citizen as a refugee or a protected person should be cancelled if— 15
- (a) the original determination to recognise the person as a refugee or a protected person was made by the Tribunal; or 20
 - (b) the original determination to recognise the person as a refugee was made by the Refugee Status Appeals Authority under the former Act.
- (2) On an application made under **subsection (1)**, the Tribunal may cancel the recognition of a New Zealand citizen as a refugee or a protected person, as the case may be, if— 25
- (a) 1 or more of the following apply in respect of the person:
 - (i) the Tribunal has determined that the recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or 30
 - (ii) the person has been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or 35

- (iii) the Tribunal 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 the Tribunal or the refugee Status Appeals Authority for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and 5
- (b) the Tribunal has determined that the person is not a refugee or a protected person. 10
- 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.~~ 15
- (2) ~~Where a determination officer makes an application under **subsection (1)** to the Tribunal, the Tribunal must—~~ 20
- (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.~~
- 135 Determination officer may determine whether refugee may be deported** 25
- A determination officer may determine whether **section 153** prohibits the deportation of a refugee who is liable for deportation under **section 150** :
- 136 Procedures to be followed in cessation or cancellation of recognition and in determining whether refugee may be deported when refugee and protection officer making determination under **section 132, 133, 133A, or 153**** 30
- When making determinations under **section 132, 133, 133A, or 153, or 135,—** 35

- (a) a ~~determination officer~~ refugee and protection 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 sections 126, 126A(3), 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.

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 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 refugee and protection 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 a protected person is being investigated, a ~~determination officer~~ refugee and protection 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:
 - (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:
 - (d) if the officer has good cause to suspect that a person other than the person concerned has in his or her possession or control any document of the person concerned (including any passport or travel document), in the prescribed manner request ~~the~~ that other person to produce ~~any such~~ that document:
 - (e) require the person to allow ~~the collection of~~ biometric information to be collected from him or her:
 - (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. 5
- (2) A person who is requested to produce a document under **sub-section (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.
- (3) If a person is detained in custody, a ~~determination officer~~ refugee and protection 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— 10
- (a) provide the ~~determination officer~~ refugee and protection officer with access to the place where the person is being detained, and to the person; and 15
- (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. 20
- (5) Where a person who is required to attend an interview fails to attend at the appointed time and place, the ~~determination officer~~ refugee and protection officer may determine the claim or matter without conducting the interview. 25
- (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.~~ 30
- 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 35

- (b) having been a person to whom **paragraph (a)** applies, ceases to be a claimant by virtue of his or her claim being declined.
- (2) A person to whom this section applies may not, either before or after the expiry of the temporary entry class visa,— 5
- (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 10
- (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 for the claimant to be lawfully in New Zealand while the claim is determined. 15
- (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 a protected person; or 20
- (b) the person leaves New Zealand; or
- (c) the person is granted a visa (other than a temporary entry class visa granted under the exception referred to in subsection (3)). 25
- Compare: 1987, No 74 s 129U

140 Confidentiality to be maintained

- (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. 30
- (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 35

to identify the person concerned; or be likely to endanger any person.

- (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. 5
- (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— 10
 - (a) to a person necessarily involved in determining the relevant claim or matters; or
 - (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 15
 - (c) to the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or
 - (d) in dealings with an agency, body, or person for the purpose of determining matters under this Part; or 20
 - (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. 25
- (6) For the purposes of **subsection (5)(b)**, the functions referred to in that provision include, but are not limited to,—
 - (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. 30
 - (c) the administration or enforcement of other provisions of this Act;
 - (d) assessing a claimant's or person's eligibility for publicly funded services including health services; legal aid; or social welfare. 35
 - (e) the maintenance of the law, including the detection, investigation, and prosecution of offences.

140 Confidentiality to be maintained in respect of claimants, refugees, and protected persons

- (1) Confidentiality as to the fact that a person is a claimant, a refugee, or a protected person, and as to the particulars relating to the person's claim or status, must at all times during and subsequent to the determination of the claim or other matter be maintained by all persons and, in a particular case, may require confidentiality to be maintained as to the very fact or existence of a claim or case, if disclosure of its fact or existence would— 5
- (a) tend to identify the person concerned; or 10
- (b) be likely to endanger the safety of any person.
- (2) Despite **subsection (1)**, the fact of a claim or particulars relating to a claim may be disclosed—
- (a) for the purposes of determining the claim or matter, administering this Act, or determining any obligations, requirements, or entitlements of the claimant or other person concerned under any other enactment; or 15
- (b) for the purposes of the maintenance of the law, including for the prevention, investigation, and detection of offences in New Zealand or elsewhere; or 20
- (c) to the United Nations High Commissioner for Refugees (or a representative of the High Commissioner); or
- (d) if the particulars relating to a claim 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); or 25
- (e) if, in the circumstances of the particular case, there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure of the information. 30
- (3) In determining whether information may be released under **subsection (2)(e)**, the person considering whether to disclose the information may have regard to the protections that the person, agency, or body to whom the information is disclosed may apply to the information, including— 35
- (a) any applicable requirements of the Privacy Act 1993; and
- (b) any orders of the Tribunal or other court; and

- (c) any protection mechanisms that the person, agency, or body itself must or may apply.
- (4) To avoid doubt, —
- (a) a refugee and protection officer may disclose information under **subsection (2)(a)** when carrying out his or her functions under **section 126A(2) or 138(1)(c)**; 5
- (b) the chief executive may disclose information under **subsection (2)(a)** when collecting information on behalf of the Tribunal under **section 204**;
- (c) the Tribunal may disclose information under **subsection (2)(a)** when carrying out its functions under **section 203 or clause 11(1)(b) and (c) of Schedule 2**; 10
- (d) for the purposes of determining a claim, or cancelling the recognition of, or ceasing to recognise, a person as a refugee or a protected person, information may be disclosed under **subsection (2)(a)**. 15
- (5) Nothing in this section applies to prevent the disclosure of the fact that a person is a claimant, a refugee, or a protected person, or the disclosure of particulars in relation to a claimant, a refugee, or a protected person, to the extent that the person concerned has expressly waived his or her right to confidentiality under this section. 20
- 141 Disclosure to ~~determination officer~~ officers of information about claimant, refugee, or protected person by government agencies** 25
- (1) An officer or employee of any government agency may, for the purpose of assisting a ~~determination officer~~ refugee and protection officer or the Tribunal to determine a claim or investigate a matter involving a claimant or a refugee or a protected person in New Zealand, disclose information about that claimant, refugee, or person to the ~~determination officer~~ refugee and protection officer or the Tribunal. 30
- (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)**; 35
- (3) When requesting the assistance, the ~~determination officer~~ refugee and protection officer or the Tribunal must—

- (a) inform the other officer or employee of the requirements of confidentiality in **section 140**; and
 - (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 provided for in that section. 5
- (4) To avoid doubt, a refugee and protection officer or the Tribunal does not breach **section 140** when requesting the assistance of a person under **subsection (1).** 10

Part 6 Deportation

142 Purpose of Part

- The purpose of this Part is to support the integrity of the immigration system and the security of New Zealand by providing for the deportation of persons from New Zealand, including— 15
- (a) prescribing when a person ~~will be immediately~~ is liable for deportation:
 - (b) prescribing how that liability must be communicated to the person: 20
 - (c) establishing the consequences of that liability:
 - (ca) identifying when an appeal right exists in respect of that liability:
 - (d) providing for deportation to occur of the person to be executed if no appeal is made or an appeal is unsuccessful. 25

Liability for deportation

143 Deportation liability ~~where~~ if person unlawfully in New Zealand

- (1) A person unlawfully in New Zealand is liable for deportation. 30
 - (2) A person unlawfully in New Zealand may, ~~within~~ not later than 42 days after first becoming unlawfully in New Zealand, appeal on humanitarian grounds against his or her liability for deportation ~~under **section 185**.~~
- (2AA) **Subsection (2)** applies except if **subsection (2A)** applies. 35

- (2A) If the person is unlawfully in New Zealand following an unsuccessful reconsideration of a decision to decline his or her visa application under **section 170**, the person may appeal on humanitarian grounds against his or her liability for deportation not later than 42 days after the later of— 5
- (a) the day on which the person became unlawfully in New Zealand; or
- (b) the day on which the person received confirmation of the decision to decline his or her visa application.
- (3) The period of a person's unlawful status in New Zealand is calculated as commencing on— 10
- (a) the day after the date on which the person's visa expired (or was cancelled without another visa being granted); 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. 25
- 144 Deportation liability ~~where~~ if person's 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**. 30
- (1) A person is liable for deportation if—
- (a) the Minister determines that the person's visa was granted as a result of an administrative error; and 35
- (b) the visa was not cancelled under **section 55B**; and
- (c) no visa was granted to the person under **section 56**.

- (2) The holder of a temporary visa or interim visa to whom this section applies has 14 days from the date of service of a deportation liability notice to give good reason why ~~deportation should not proceed~~ he or she should not be deported.
- (2A) **Subsection (2)** does not apply if— 5
- (a) the person is the holder of a limited visa; or
 - (b) the Minister determines that the person is an excluded person.
- (3) A person liable for deportation under this section may, ~~within not later than~~ 28 days after the date of service of ~~the a~~ deportation liability notice, appeal to the Tribunal against his or her liability for deportation— 10
- (a) ~~under sections 180 and 185 in the case of a person holding a residence class visa;~~
 - (a) on the facts and on humanitarian grounds, if the person holds a residence class visa; or 15
 - (b) ~~under section 185 on humanitarian grounds only, in the case of a person holding a temporary visa or an interim visa.~~
- 145 Deportation liability where if visa held under false identity** 20
- (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
 - (b) the Minister determines that the person holds a visa under a false identity. 25
- (2) If a person is liable for deportation under this section and the visa is a temporary visa or interim visa,—
- (a) the person may appeal to the Tribunal ~~under section 185 within~~ on humanitarian grounds not later than 42 30 days after first becoming unlawfully in New Zealand ~~as determined under section 143(4); and~~
 - (b) ~~where if~~ subsection (1)(b) applies, the person has 14 days from the date of service of a deportation liability notice to give good reason why the deportation should not proceed. 35
- (3) If a person is liable for deportation under this section and the visa is a residence class visa,—

- (a) the person may appeal to the Tribunal ~~under section 185 within~~ on humanitarian grounds not later than 42 days after first becoming unlawfully in New Zealand ~~as determined under section 143(4)~~; and
- (b) ~~where if subsection (1)(b) applies, the person may, within~~ not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal on the facts against his or her liability for deportation ~~under section 180~~. 5
- (4) For the purposes of subsections (2) and (3), a person to whom a visa has been granted in a false identity is deemed to have been unlawfully in New Zealand since— 10
- (a) the date the person arrived in New Zealand, if he or she has held a visa in a false identity since that date; or
- (b) the day after the date on which a visa granted in the person's actual identity expired, or was cancelled without another visa being granted, if he or she has held a visa in his or her actual identity after arriving in New Zealand. 15
- 146 Deportation liability of temporary entry class visa holder for cause (other than false identity)** 20
- (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.
- (2) ~~Subject to subsection (3); the~~ The person has 14 days from the date of service of the deportation liability notice to give good reason why deportation should not proceed. 25
- (3) **Subsection (2)** does not apply ~~where if~~—
- (a) the person is the holder of a limited visa; or
- (b) the Minister determines that the person is an excluded person. 30
- (4) A temporary visa holder or interim visa holder who is liable for deportation under this section may, ~~within~~ not later than 28 days after the date of service of the deportation liability notice, appeal to the Tribunal on humanitarian grounds against his or her liability for deportation ~~under section 185~~. 35
- (5) For the purposes of **subsection (1)**, **sufficient reason** includes, but is ~~in no way~~ not limited to,—

- (a) breach of conditions of the person's visa:
- (b) criminal offending:
- (c) other matters relating to character:
- (d) concealment of relevant information in relation to the person's application for a visa: 5
- (e) a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

**147 Deportation liability of residence class visa holder ~~where~~
if visa or citizenship obtained by fraud, etc or held by
fraud, forgery, etc** 10

- (1) A residence class visa holder is liable for deportation if—
 - (a) the person is convicted of an offence where it is established that—
 - (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 15
 - (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 20
 - (b) the Minister determines that—
 - (i) the person's residence class visa or entry permission was procured through fraud, forgery, false or misleading representation, or concealment ~~or~~ of relevant information; or 25
 - (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. 30
- (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 35

- (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. 5
- (3) A person liable for deportation under this section may, ~~within~~ not later than 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~~ on humanitarian grounds only, if subsection (1)(a) or (2) applies: 10
- (b) ~~under sections 180 and 185, where~~ on the facts and on humanitarian grounds, if subsection (1)(b) applies.
- (4) If section 145 also applies to a person to whom this section applies, the person's deportation liability must be determined under section 145 and not this section. 15
- 148 Deportation liability of resident visa holder ~~where~~ if 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~~ not later than 28 days after the date of service of the deportation liability notice, appeal to the Tribunal both on the facts and on humanitarian grounds against his or her liability for deportation ~~under sections 180 and 185.~~ 25
- 149 Deportation liability of residence class visa holder ~~where~~ if new information as to character becomes available** 30
- (1) A residence class visa holder is liable for deportation if, ~~within~~ not later than 5 years after the date the person first held a residence class visa,—
- (a) new information becomes available that— 35
- (i) relates to the character of the person; and
- (ii) was relevant at the time the visa was granted; and

- (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. 5
- (3) A person liable for deportation under this section may, ~~within~~ not later than 28 days after the date of service of the deportation liability notice, appeal to the Tribunal both on the facts and on humanitarian grounds against his or her liability for deportation under **sections 180 and 185**. 10
- (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)**. 15

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~~ he or she is convicted, ~~whether in New Zealand or not in New Zealand or elsewhere,—~~ 20
- (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; 25
- or
- (ii) when the person held a temporary entry class visa; or
- (iii) ~~within~~ not later than 2 years after the person first held a residence class visa; or 30
- (b) of an offence for which the court has the power to impose imprisonment for a term of 2 years or more, if the offence was committed ~~within~~ not later than 5 years after the person first held a residence class visa; or
- (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 35

committed ~~within~~ not later than 10 years after the person first held a residence class 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 **section 185**.~~ 5
- (2) A person liable for deportation under this section may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal on humanitarian grounds against his or her liability for deportation and, if he or she is a refugee or a protected person, appeal against the decision of the refugee and protection officer concerned that he or she may be deported. 10
- (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 spent by the person in imprisonment following conviction for any offence. 15
- (4) **Subsection (1)(c)** applies—
- (a) whether the sentence is of immediate effect or is deferred or is suspended in whole or in part: 20
- (b) ~~where~~ if 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: 25
- (c) ~~where~~ if 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. 30
- (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 35
- (b) if the visa was granted outside of New Zealand, 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~~ first re-enters New Zealand after the continuous period of absence; or 5
- (d) if the person is ~~subject to a visa waiver~~ a person to whom a visa waiver applies 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~~ or first re-enters New Zealand (and is granted a residence class visa) after the continuous period of absence. 10
- (6) **Subsection (7)** applies to a person if he or she— 15
- (a) was exempt from the requirement to hold a permit under the former Act; but
- (b) is deemed to hold a residence class visa under **section 376(3)** of this Act.
- (7) For the purposes of this section, the person first holds a residence class visa— 20
- (a) on the date he or she first entered New Zealand and was exempt from the requirement to hold a residence permit under the former Act; or
- (b) on the date he or she first re-entered New Zealand and was exempt from the requirement to hold a residence permit under the former Act following a continuous period of absence from New Zealand of at least 5 years. 25

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

- 151 Deportation liability ~~where refugee or protection status obtained by fraud, etc~~ if refugee or protection status cancelled under section 133A** 30
- (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 35
- (b) the Tribunal has cancelled that recognition under **section 137**.

- (1) A person who is not a New Zealand citizen and who was previously recognised as a refugee or a protected person is liable for deportation if his or her recognition is cancelled under **section 133A**.
- (2) A person liable for deportation under **subsection (1)(a)** The person may, ~~within~~ not later than 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
- (a) on humanitarian grounds only, if the person has been convicted of an offence where it is established that he or she acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or 10
- (b) **sections 180 and 185**, on the facts and on humanitarian grounds, in any other case. 15

Compare: 1987 No 74 s 129L(1)(c)

152 **Deportation liability of persons threatening security**

- (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. 20
- (2) The person named in the order is accordingly liable for deportation.
- (3) The Governor-General may, by Order in Council, revoke an order made under **subsection (1)**. 25

Compare: 1987 No 74 ss 72, 73

153 **Limitation on deportation of persons with or claiming refugee or protection status**

- (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.~~ 30
- (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 35

~~claiming such recognition; immigration officers must have regard to the provisions of **Part 5** and of the Refugee Convention.~~

- (4) ~~For the purposes of this section, deportation includes where a person's departure is effected under **section 105**.~~ 5
~~Compare: 1987 No 76 s 129X~~

153 Limitation on deportation of persons recognised or claiming recognition as refugee or protected person

- (1) No person who is recognised as a refugee or a protected person in New Zealand, or who is a claimant, may be deported under this Act. 10
- (2) **Subsection (1)** applies despite anything in this Part, but subject to **subsections (3) and (4)**.
- (3) A refugee or a claimant for recognition as a refugee may be deported but only if Article 32.1 or 33 of the Refugee Convention allows the deportation of the person. 15
- (4) A protected person may be deported to any place other than a place in respect of which there are substantial grounds for believing that the person would be in danger of being subjected to torture or being subjected to arbitrary deprivation of life or cruel treatment. 20
- (5) A refugee and protection officer must determine the matter in **subsection (3) or (4)**, and **section 136** applies when making the determination, as if the determination were a determination to which that section applies. 25

153A Immigration officer must have regard to certain matters when dealing with claimants, refugees, or protected persons

An immigration officer must have regard to **Part 5 and Schedule 1** (being the text of the Refugee Convention) when carrying out his or her functions under this Act in relation to a claimant, a refugee, or a protected person. 30

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 35

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.

- 155 Period of deportation liability for residence class visa holders** 5
- (1) Residence class visa holders remain liable for deportation for a period of 10 years following the arising of the liability for deportation.
- (2) The period of 10 years in **subsection (1)** must be calculated exclusive of— 10
- (a) any time spent by the person in imprisonment following conviction for any offence;
 - (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 190 191**.
- ~~(3) Where a person is liable for deportation under **section 143**, that deportation liability continues as long as that section applies to the person.~~
- (3) To avoid doubt, a person liable for deportation under **section 143** (being a person unlawfully in New Zealand) remains liable for deportation as long as he or she is unlawfully in New Zealand. 20
- 156 Liability for deportation when person outside New Zealand** 25
- (1) A person may become liable for deportation under any of **sections 144, 145, 147, 148, 149, 150 and 151 to 152** 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. 30
- (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~~ he or she holds a visa, travel to New Zealand— 35
 - (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; and
 - (b) this Part ~~applies~~ and **Part 7** apply to the person as if the person were in New Zealand when the person became liable for deportation. 5
- (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; 10
 - or
 - (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. 15

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. 20
- (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— 25
 - (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. 30

157 Effect of being liable for deportation

- (1) A person liable for deportation may not—
 - (a) apply for a visa, if he or she is unlawfully in New Zealand; or 35

- (b) apply for a further visa of a different class or type, if he or she currently holds a visa.
- (2) However, the Minister or an immigration officer may, in his or her absolute discretion, grant a visa of a different class or type to a person to whom **subsection (1)(b)** applies. 5
- (3) While a person is liable for deportation, the processing of any application by the person for a visa of a different class or type must be suspended.
- (4) While a person is liable for deportation, the processing of any application by the person 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. 10

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— 15
- (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**. 20

158 Deportation liability notice

- (1) A deportation liability notice must be served on a person liable for deportation if it is intended to execute the deportation of the person.
- (2) **Subsection (1)** applies unless— 25
- (a) the person is liable for deportation on the grounds of being unlawfully in New Zealand; or
- (b) the person is named in a deportation order under **section 152**.

159 Contents of deportation liability notice 30

- 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 not later than~~ 14 days after the date of service of the notice, 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:
 - (ii) how to exercise the right of appeal: 10
 - (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~~ become subject to:
 - (f) the consequences of attempting to return to New Zealand during the prohibition: 15
 - (g) the requirement to repay any costs to the Crown of deportation:
 - (h) if applicable, that a ~~determination officer~~ refugee and protection 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 a residence class visa holder's~~ a residence class visa holder's 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~~ causing a deportation liability notice to be served 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~~ is served to leave New Zealand.
- (4) In the case of a person who has appealed against ~~their~~ his or her 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.~~
- (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.~~
- (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.
- (8) The Minister must notify the person concerned if the Minister cancels or suspends the person's liability for deportation under this section.

161 Right of victims to make submissions on suspension or cancellation of liability for deportation

- (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.
- (2) The Minister must, on a request for the purpose, make available to a lawyer or agent (if any) who is acting for ~~a~~ the person who is liable for deportation a copy of all written submissions made by the victim.

- (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~~ may not keep a copy of any of those submissions. 5
- (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. 10
- (5) Despite **subsection (1)**, the Minister must not have regard to any part of the victim's submissions that is withheld under **subsection (4)**. 10
- (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. 15
- 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— 20
- (a) the person may not apply for a visa of a different class or type; and
- (ab) the processing of any application made by the person for a visa of a different class or type must be suspended; 25
- 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 30 that requires the person to hold a residence class visa.
- (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.~~ 35

- (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.~~
- (2) If the Minister determines that a person has met the conditions stated by the Minister under **section 160(2)** for the period of the suspension, the Minister must— 5
- (a) cancel the person's liability for deportation; and
- (b) notify the person and the Tribunal of that fact.
- 163 Effect of suspension of deportation liability on appeal** 10
- (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 on humanitarian grounds lodged by the person under **section 185**.~~ 15
- (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.~~
- (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.~~ 20
- (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

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164 When deportation order may be served

- (1) ~~Subject to **subsection (2)**; a~~ An immigration officer or a member of the police may serve 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:~~ 30
- 35

- (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 reason why deportation should not proceed, and the person has no right of appeal against deportation, on or after the earlier of,— 5
- (i) if the person does not provide submissions as to good reason ~~as to~~ why deportation should not proceed, 15 days from the date of service; or
 - (ii) if the person purports to give good reasons, and the person to whom such reasons are provided 10 determines that deportation should continue, the day after ~~being notified~~ the person is notified of that determination:
- (c) where the person has a right to appeal under this Act against liability for deportation, on or after— 15
- (i) the expiry of the period for lodging such an appeal, where the person has not lodged such an appeal:
 - (ii) the day after the appeal is withdrawn, if the person withdraws an appeal to the Tribunal: 20
 - (iii) the date that is 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): 25
 - (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: 30
 - (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:
- (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: 35
- (e) in the case of a person who ~~had~~ has breached the conditions of a suspension of liability for deportation, the later of—

- (i) 28 days after receiving notification from the Minister under **section 160(3)** or the Tribunal under **section 191(3)(a)**; and
- (ii) any applicable day determined under **paragraph (c)**: 5
- (f) if the person was the holder of a limited visa and **paragraph (a)** does not apply, as soon as the visa expires.
- (1A) A deportation order may be served on a person—
- (a) inside New Zealand; or
- (b) outside New Zealand, but only if the person still holds a visa. 10
- (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.
- 165 Service and content** Content of deportation order 15
- (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.~~
- (2) A deportation order must specify—
- (a) that the person named in the order is ~~being~~ ordered to be deported from New Zealand; and
- (ab) that any visa held by the person will be cancelled when the person is deported; 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~~ 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~~ period of prohibition; and 30
- (f) any costs or estimate of costs to the Crown of the deportation, and the requirement to repay those costs.
- (3) A deportation order must be signed by—
- (a) the Governor-General, if the order is made under **section 152**; or 35
- (b) an immigration officer, in any other case.

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—

- (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.

(1) A deportation order may be executed once it has been served on the person subject to the order. 10

(1A) A deportation order may be executed by—

- (a) taking the person 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. 15

(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.

(2) A deportation order may be executed in respect of a person who is serving a sentence of imprisonment in a prison only if the Minister has ordered the release of the person in accordance with section 55 of the Parole Act 2002. 20

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. 25

(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— 30

- (a) for 2 years after that time, where the person was in New Zealand unlawfully for a period not exceeding 1 year in aggregate; 35
- (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
 - (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
 - (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.
 - (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—
 - (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.
 - (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.
 - (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.
- 167 Deported person may not enter New Zealand during period of prohibition on entry**
- (1) A person 18 years of age or over who is deported from New Zealand may not return to New Zealand, or be granted a visa

or entry permission, during the period of prohibition on entry that applies to the person as set out in the following table:

<u>Why person deported</u>	<u>Period of prohibition on entry (calculated from the date of deportation)</u>
<u>Section 144</u> applies (granted a visa as the result of an administrative error and visa not cancelled)	<u>none</u>
<u>Section 143</u> applies (unlawfully in New Zealand), and person is subject to deportation order and deported not more than 12 months after date on which person became unlawfully in New Zealand	<u>2 years</u>
<u>Section 143</u> applies (unlawfully in New Zealand), and person is subject to deportation order and deported 12 months or more after date on which person became unlawfully in New Zealand	<u>5 years</u>
<u>Section 143</u> applies (unlawfully in New Zealand), and person is subject to deportation order, and it is second or subsequent time that person has been unlawfully in New Zealand	<u>5 years</u>
<u>Section 146</u> applies (sufficient reasons for temporary entry class visa holder to be deported)	<u>5 years</u>
<u>Section 148</u> applies (breached resident visa conditions)	<u>5 years</u>
<u>Section 145</u> applies (visa granted on basis of false identity)	<u>permanent prohibition</u>
<u>Section 147</u> applies (convicted of gaining residence class visa by fraud, forgery, etc)	<u>permanent prohibition</u>
<u>Section 149</u> applies (new information as to character becomes available)	<u>permanent prohibition</u>
<u>Section 151</u> applies (refugee or protection status cancelled for fraud, forgery, etc)	<u>permanent prohibition</u>

<u>Why person deported</u>	<u>Period of prohibition on entry (calculated from the date of deportation)</u>
<u>Section 150 applies (residence class visa holder convicted of specified offence)</u>	<u>permanent prohibition</u>
<u>Section 152 applies (certified as person constituting threat or risk to security)</u>	<u>permanent prohibition</u>

- (2) A person who is unlawfully in New Zealand but leaves New Zealand voluntarily before he or she is served with a deportation order is not subject to any period of prohibition on entry.

167A Deported person may not enter New Zealand until costs of deportation repaid

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- (1) A person 18 years of age or over who is deported from New Zealand may not return to New Zealand, or be granted a visa or entry permission, until the person has repaid any debt due to the Crown in respect of the costs of his or her deportation.
- (2) The requirement of this section is in addition to the period of prohibition on entry under **section 167**.
- (3) The Minister may reduce or waive any debt due by a person under **subsection (1)** in his or her absolute discretion.

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167B Consequences for deported person if person enters or attempts to enter New Zealand during period of prohibition on entry

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- (1) **Subsection (2)** applies to a person who—
- (a) is deported from New Zealand; and
- (b) on deportation, is subject to a period of prohibition on entry to New Zealand under **sections 167 or 167A(1)**; and
- (c) attempts to enter or enters New Zealand during the period of prohibition in one of the following ways:
- (i) by boarding a craft, or attempting to board a craft, that is travelling to New Zealand;
- (ii) by arriving in New Zealand;
- (iii) by entering New Zealand.

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- (2) The period of prohibition on entry to which the person is subject under **section 167** restarts as from the later of the following dates:
- (a) the date the person attempts to re-enter, if the attempted entry is unsuccessful: 5
 - (b) the date the person is once again deported from New Zealand, if the attempted re-entry is successful.
- (3) If, despite a prohibition on entry applying to a person, a person re-enters New Zealand and the person becomes subject to a further prohibition on entry, the period of prohibition on entry that applies to the person on the subsequent deportation is the longest prohibition applicable under the table set out in **section 167**. 10
- 168 Minister or Tribunal may reduce may reduce or remove period of prohibition on entry** 15
- (1) The period of prohibition on entry may be reduced from that which would otherwise apply under **section 167(2)** **167(1)** by—
- (a) the Tribunal under **section 192**, when declining an appeal against liability for deportation; or 20
 - (b) the Minister by special direction:
- (1) The Minister may in his or her absolute discretion reduce, or remove altogether, the period of prohibition on entry that would otherwise apply to a person under **section 167(1)**.
- (2) Unless the Minister otherwise determines, any reduction by the Minister under **subsection (1)** remains subject to **section 167(3), (4), and (5)**: 25
- (2) A reduction or removal under **subsection (1)** remains subject to **section 167A(1)**, unless the Minister determines otherwise. 30
- (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:

Part 7

Reviews and appeals Appeals, reviews, and other proceedings

169AA Interpretation

In this Part, unless the context otherwise requires,— 5

affected person means a person who is—

- (a) the subject of an application made by a refugee and protection officer under **section 132A or 133B** to the Tribunal in relation to the cessation or cancellation of recognition of the person as a refugee or a protected person; or 10
- (b) the subject of an application made by the Minister under **section 191(2)** to the Tribunal on whether the person has breached the conditions of suspension of his or her liability for deportation 15

closed hearing, in relation to proceedings in the Tribunal or a court, means proceedings conducted in the absence of all persons other than—

- (a) the Judge or Judges hearing the case;
- (b) the chief executive of the relevant agency, or his or her security-cleared representative, or both; 20
- (c) the Minister, or his or her security-cleared representative, or both;
- (d) if applicable, a refugee and protection officer, or his or her security-cleared representative, or both; 25
- (e) any special advocate;
- (f) any person appointed as amicus curiae by a court;
- (g) any person authorised by the Tribunal or a court to provide administrative assistance in the proceedings and who has an appropriate security clearance 30

matter means —

- (a) an application made by a refugee and protection officer under **section 132A or 133B** to the Tribunal in relation to the cessation or cancellation of recognition of a person as a refugee or a protected person; 35
- (b) an application made by the Minister under **section 191(2)** to the Tribunal on whether a person has

breached the conditions of suspension of his or her liability for deportation.

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— 5

- (a) ~~providing for—~~
 - (i) reconsideration of certain temporary visa applications; and
 - (ii) appeals in respect of decisions on residence class visas; and 10
 - (iii) appeals in respect of decisions concerning recognition as a refugee or a 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 15
- (c) providing for appeals from the decisions of the Tribunal, and judicial review of decisions made under this Act.

169 Purpose of Part

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The purpose of this Part is—

- (a) to provide comprehensively for the system of appeal and review in respect of decision making under this Act, including by providing for—
 - (i) reconsideration of certain temporary visa applications; and 25
 - (ii) appeals in respect of decisions on residence class visas; and
 - (iii) appeals in respect of decisions concerning recognition of a person as a refugee or a protected person; and 30
 - (iv) appeals against liability for deportation; and
- (b) to establish the Immigration and Protection Tribunal, a specialist tribunal to determine appeals and other matters under this Act; and 35

- (c) to provide for appeals from the decisions of the Tribunal, and deal with judicial reviews of decisions made under this Act.

*Limited right of reconsideration concerning
temporary ~~visa~~ entry class visas*

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**170 ~~Reconsideration where~~ Right of reconsideration if
onshore application for further temporary visa declined**

- (1) This section applies ~~where~~ to a holder of a temporary visa if—
- (a) the holder of ~~a~~ the temporary visa (the **applicant**) is ~~in~~ New Zealand onshore and applies during the currency of that visa for a further temporary visa; and
- (b) the application for the further temporary visa is declined; and
- (c) the Minister did not make the decision to decline the application.
- (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~~ not later than 14 days after the date on which the applicant received notice of the decision to decline the further visa; and
- (b) the applicant is still lawfully ~~within~~ in 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.~~
- (4) ~~In any other case, the~~ 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.
- (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—
- (a) the decision; and

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- (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~~ 5
- (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.~~ 10
- (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 may appeal on humanitarian grounds against his or her liability for deportation not later than 42 days after the date on which the person received confirmation of the decision to decline the visa application. 15
- (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. 20
- (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. 25

Compare: 1987 No 74 s 31

Limited right of review in respect of temporary entry class visa decisions 30

170A Limited right of review in respect of temporary entry class visa decisions

- (1) No appeal lies against a decision of the Minister or an immigration officer on any matter in relation to a temporary entry class visa, whether to any court, the Tribunal, the Minister, or otherwise. 35

- (2) **Subsection (1)** applies except to the extent that **section 170** provides a right of reconsideration for the onshore holder of a temporary visa in some circumstances.
- (3) A person may bring review proceedings in a court in respect of a decision in relation to a temporary entry class visa except if the decision is in relation to the—
- (a) refusal or failure to grant a temporary entry class visa to a person outside New Zealand;
 - (b) cancellation of a temporary entry class visa before the holder of the visa arrives in New Zealand.

Appeals in relation to residence class visas

171 Rights of appeal in relation to decisions concerning residence class visas

- (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)**):~~
 - (a) an applicant for a residence class visa may appeal against—
 - (i) a decision of an immigration officer to decline to grant the visa (including in the circumstances described in **section 174(2)(b)**):
 - (ii) a decision by the Minister not to grant a residence class visa if classified information has been relied on in making the decision:
 - (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) 55A(1)**:
 - (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)**).
- (2) ~~No~~ However, no appeal lies under this section Act in respect of—

-
- (a) a decision by the Minister not to grant a residence class visa (except in the circumstances described in **subsection (1)(a)(ii)**); or
- (b) a refusal of the Minister or an immigration officer to grant a residence class visa or entry permission to an excluded person; or 5
- (c) ~~any~~ a refusal or failure of the Minister or an immigration officer to issue an invitation to apply for a visa; or
- (d) ~~any~~ a 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,— 10
- (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 15
- (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 20
- (e) ~~any~~ a 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 25
- (f) ~~any~~ a 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. 30
- (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 35
- (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~~ not later than 42 days after the date the appellant ~~was~~ is notified of the decision appealed against.
- (6) For the purposes of **subsection (5)**, a written notice that is sent by post to an address supplied by the appellant under **section 47(2)** is treated as having been notified to him or her—
- (a) 7 days after the date on which the notice was posted, if the address is in New Zealand; or
 - (b) 14 days after the date on which the notice was posted, if the address is outside New Zealand.
- (7) **Subsection (6)** applies unless the appellant proves that he or she was not notified of the decision and the lack of notification did not result from any fault on his or her behalf.
- (8) A person may bring review proceedings in a court in respect of a decision in relation to a residence class visa except if the decision is in relation to—
- (a) the refusal or failure to grant a residence class visa to a person outside New Zealand; or
 - (b) the cancellation of a resident visa granted offshore before the holder of the visa first arrives in New Zealand as the holder of the visa.

Compare: 1987 No 74 s 18C(1)–(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
 - (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 Minister or 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
- (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 Minister or 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~~ Minister, if he or she made the decision, or the chief executive, in any other case, 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
- (e) determine the appeal by cancelling the decision and referring the application back to the ~~chief executive~~ Minister, if he or she made the decision, or the chief executive, in any other case, for correct assessment in terms of the applicable residence instructions, where the Tribunal—
- (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
- (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 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~~ 5
- (b) if it considers that imposing conditions is appropriate, direct the Minister to impose under that section the conditions specified in its decision (which may be specified with the degree of generality or particularity that the Tribunal thinks fit); and 10
- (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)**: 15
- (4) Where the Tribunal refers an application back to the Minister or the chief executive under **subsection (1)(e)**, the Tribunal may give ~~the chief executive such directions as him or her the~~ directions it thinks fit as to how a correct assessment of the application should be carried out. 20
- (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. 25

Compare: 1987 No 74 s 18D

- 173 Further information in residence appeals Use of further information in appeals under section 171** 30
- (1) Subject to **subsections (2) to (5)**, the Tribunal, in determining an appeal under ~~section 474~~, In determining an appeal under **section 171**, the Tribunal may not consider any information or evidence adduced by the appellant that was not provided to the Minister or the immigration officer before the time at which ~~that officer~~ the Minister or the officer made the decision that is the subject of the appeal. 35

- (1A) **Subsection (1)** is subject to **subsections (2) to (5)**.
- (2) The Tribunal may consider information or evidence not provided by the appellant to the Minister or 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 Minister or the immigration officer at the time at which the Minister or the officer made the decision on the application; and
 - (iii) in all the circumstances it is fair to consider the information or evidence; or
 - (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)**.
- (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—
- (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
 - (c) the Tribunal considers that further written evidence or submissions will not assist to confirm or test those results.
- (4) ~~Any~~ An 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—
- (a) it comes to the attention of the Tribunal that any particular event has occurred after the time at which the Minister or the immigration officer made the decision on the appellant's visa application; and 5
 - (b) the Tribunal is satisfied that the event materially affects the applicant's eligibility under residence instructions. 10
- Compare: 1987 No 74 s 18F(4)–(6)

174 Procedure where appeal successful or Tribunal makes recommendation

- (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)**. 15
- (2) Nothing in **subsection (1)** requires a residence class visa or entry permission to be granted to a person—
 - (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—
 - (i) was not supplied to the appropriate Minister or the immigration officer concerned before the date on which the decision appealed against was made; or 25
 - (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
 - (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—
 - (i) the residence instructions applicable at the time of the relevant visa application; and 30
 - (ii) the residence instructions currently applicable. 35

- (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. 5
- (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)**.~~ 10
- (4) The Minister must not impose any conditions on a resident visa granted under **subsection (1)**, unless the Tribunal has directed the Minister to do so under **section 172(2)(b)**.
- (5) Where the Tribunal makes a recommendation under **section 172(1)(f)**, the Minister— 15
- (a) must consider whether ~~or not~~ a residence class visa should be granted to the appellant as an exception to residence instructions; and
- (b) may, if ~~the Minister~~ he or she grants a resident visa ~~to the appellant~~, impose conditions ~~on the appellant~~ in accordance with **section 40**. 20
- (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~~ any such decision. 25

Compare: 1987 No 74 s 18E

*No appeal or review rights in relation to
invitations to apply and transit visas*

- 174A No appeal or review rights in relation to invitations to apply** 30
- (1) No appeal lies against a decision of the Minister or an immigration officer on any matter in relation to whether to issue an invitation to apply for a visa, whether to any court, the Tribunal, the Minister, or otherwise. 35
- (2) No review proceedings may be brought in any court in respect of any refusal or failure of the Minister or an immigration of-

ficer to issue an invitation to apply for a visa or to revoke an invitation if an invitation is issued.

174B No appeal or review rights in relation to transit visas

- (1) No appeal lies against a decision of the Minister or an immigration officer on any matter in relation to a transit visa, whether to any court, the Tribunal, the Minister, or otherwise. 5
- (2) No review proceedings may be brought in any court in respect of any decision to refuse to grant or to cancel a transit visa.

Appeals against decisions relating to refugee or protection status 10

175 Tribunal consideration of refugee and protection matters

- (1) Every appeal relating to ~~recognition~~ whether a person should be recognised as a refugee or a protected person in New Zealand must be determined in accordance with this Part Act.
- (2) Every appeal as to whether a person should continue to be recognised as a refugee or a protected person in New Zealand must be determined in accordance with this Part Act. 15
- (3) In carrying out its functions under this Act in relation to the recognition of a person—
 - (a) as a refugee, the Tribunal must act in a manner that is consistent with New Zealand's obligations under the Refugee Convention: 20
 - (b) as a protected person, the Tribunal must act in a manner that is consistent with this Act.

176 Right of appeal in relation to decisions concerning refugee or protection status (other than subsequent claims) 25

- (1) A person may appeal to the Tribunal against a decision by a refugee and protection officer—
 - (aa) to refuse to consider the person's claim to be recognised as a refugee or a protected person on the grounds that— 30
 - (i) in light of an international agreement or arrangement (as defined in **section 125(3)**), the person may have lodged, or had the opportunity to lodge, a claim for refugee status in another country:

- (ii) in light of an international agreement or arrangement (as defined in **section 125(3)**), the person may have lodged, or had the opportunity to lodge, a claim for protection in another country:
- (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 a protected person (whether or not the determination officer recognised the person as a refugee or a protected person under 1 or both of the other grounds set out in those sections): 5
- (b) a decision by a determination officer to decline a subsequent claim by the person to be recognised as a refugee or protected person:
- (ba) to cease to recognise the person as a refugee or a protected person under **section 132**: 15
- (c) to cancel recognition of a New Zealand citizen as a refugee or a protected person on a ground under **section 133(1)(a)**.
- (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**: 20
- (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: 25
- (4) An appeal under this section must be brought,—
- (a) if the person is detained in detention under **Part 9**, within 5 days after the date of notification of the decision to decline the claim or cease recognition: not later than 5 working days after the date on which the appellant is notified of the decision to which the appeal relates; or 30
- (b) within 10 days after the date of notification of the decision to decline the claim or cease recognition, in any other case: 35

- (b) in any other case, not later than 10 working days after the date on which the appellant is notified of the decision to which the appeal relates.
- (5) The Tribunal may, however, extend the time for lodging an appeal if satisfied that special circumstances warrant an extension. 5
- (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.~~ 10
- (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**.~~ 15
- (7A) To avoid doubt, an appeal right arises under **subsection (1)(a)** if a person's claim is declined on the grounds that the person has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand. 20
- (8) **Subsection (9)** applies to a person who is entitled to an appeal under **subsection (1)(aa) or (a)** and who either 25
- (a) is liable for deportation and is entitled to a humanitarian appeal in respect of that liability; or
- (b) would be entitled to a humanitarian appeal in respect of his or her liability for deportation, if he or she became liable for deportation. 30
- (9) The person must lodge a humanitarian appeal at the same time as lodging an appeal under this section (and, in respect of a person to whom **subsection (8)(b)** applies, the humanitarian appeal must be conducted as if he or she were a person liable for deportation). If the person is— 35
- (a) successful on the appeal under this section, and the Tribunal must dispense with its consideration of the person's humanitarian appeal (and the person may lodge a

- humanitarian appeal subsequently if his or substantive claim for recognition is declined):
- (b) unsuccessful on the appeal under this section, the Tribunal must consider the person's humanitarian appeal.
- (10) If the person does not lodge a humanitarian appeal in accordance with **subsection (9)**, the person is not entitled to a humanitarian appeal against his or her liability for deportation whether the liability currently exists or may arise in the future. 5
- (11) To avoid doubt, nothing in **subsection (10)** applies to a person who— 10
- (a) complies with **subsection (9)**; and
- (b) is successful on the appeal under this section; and
- (c) becomes liable for deportation for any reason at some future date. 15
- (12) In **subsection (4)**, **working day** means a day of the week other than—
- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and 20
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and 25
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

Compare: 1987 No 74 s 1290

176A Right of appeal in relation to subsequent claims concerning refugee or protection status 30

- (1) A person may appeal to the Tribunal against a decision by a refugee and protection officer—
- (a) under **section 130(1)** to refuse to consider a subsequent claim by the person to be recognised as a refugee:
- (b) under **section 130(2)** to refuse to consider a subsequent claim by the person to be recognised as a refugee or a protected person, but only if the person's most re- 35

cent previous claim was declined under Part 6A of the former Act.

- (2) A person may appeal to the Tribunal against a decision by a refugee and protection officer to decline a subsequent claim by the person to be recognised under any of **sections 119, 120, or 121** as a refugee or a protected person (whether or not the refugee and protection officer recognised the person as a refugee or a protected person under 1 or both of the other grounds set out in those sections). 5
- (3) An appeal under this section must be brought,— 10

 - (a) if the person is in detention under **Part 9**, not later than 5 working days after the date on which the appellant is notified of the decision to which the appeal relates; or
 - (b) in any other case, not later than 10 working days after the date on which the appellant was notified of the decision to which the appeal relates. 15
- (4) The Tribunal may, however, extend the time for lodging an appeal in any particular case, if satisfied that special circumstances warrant an extension.
- (5) To avoid doubt, an appeal right arises under **subsection (2)** if a person's claim is declined on the grounds that the person has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand. 20 25
- (6) **Subsection 7** applies to a person who is entitled to appeal under this section and who either—

 - (a) is liable for deportation and is entitled to a humanitarian appeal in respect of that liability; or 30
 - (b) would be entitled to a humanitarian appeal in respect of his or her liability for deportation, if he or she became liable for deportation.
- (7) The person must lodge a humanitarian appeal at the same time as lodging an appeal under this section (and, in respect of a person to whom **subsection (6)(b)** applies, the humanitarian 35

appeal must be conducted as if he or she were a person liable for deportation). If the person is—

- (a) successful on the appeal under this section, and the Tribunal goes on to consider the substantive claim and grants the person recognition, it must dispense with its consideration of the person's humanitarian appeal: 5
- (b) successful on the appeal under this section, and the Tribunal goes on to consider the substantive claim but declines the claim, it must consider the person's humanitarian appeal: 10
- (c) unsuccessful on the appeal under this section, the Tribunal must consider the person's humanitarian appeal.
- (8) If the person does not lodge a humanitarian appeal in accordance with **subsection (7)**, the person is not entitled to a humanitarian appeal against his or her liability for deportation whether the liability currently exists or may arise in the future. 15
- (9) To avoid doubt, nothing in **subsection (8)** applies to a person who—
 - (a) complies with **subsection (7)**; and 20
 - (b) is successful on the appeal under this section; and
 - (c) becomes liable for deportation for any reason at some future date.
- (10) In **subsection (3)**, **working day** has the meaning given to it in **section 176(12)**. 25

176B Determination of appeal against refusal to consider claim in light of international arrangement or agreement

- (1) Where an appeal is brought under **section 176(1)(aa)**, the Tribunal must—
 - (a) determine the matter de novo; and 30
 - (b) determine whether, in light of any international arrangement or agreement (as defined in **section 125(3)**) the claimant may have lodged, or had the opportunity to lodge,—
 - (i) a claim for refugee status in another country: 35
 - (ii) a claim for protection in another country.
- (2) The Tribunal may uphold or reverse the decision of the refugee and protection officer, and if the Tribunal reverses the decision

it must refer the claim back to a refugee and protection officer for consideration.

- (3) To avoid doubt, nothing in **subsection (1)** requires the Tribunal to seek any information, evidence, or submissions further to those provided by the appellant. 5

177 Determination of appeal against refusal, cancellation, or cessation of recognition

- (1) Where an appeal is brought under **section 176(1)(a) or (2)(ba)**, the Tribunal must— 10
- (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 15
 - (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 **paragraph (b)(ii) and (iii)**, determine whether there are serious reasons for considering that the claimant has— 20
 - (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 25
 - (iii) been guilty of acts contrary to the purposes and principles of the United Nations.
- (1A) Where an appeal is brought under **section 176(1)(c)**, the Tribunal must— 30
- (a) determine the matter de novo; and
 - (b) determine whether—
 - (i) recognition of the person as a refugee or a protected person may have been procured by fraud, 35
 - forgery, false or misleading representation, or concealment of relevant information; or
 - (ii) 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 refugee and protection officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and 5
- (c) determine, in relation to the person, the matters referred to in **subsection (1)(c)**.
- (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. 10
- (3) The Tribunal may uphold or reverse the decision of the ~~determination officer~~ refugee and protection officer, but may not refer the claim back to a ~~determination officer~~ refugee and protection officer for reconsideration. 15
- (3A) If the Tribunal reverses a decision in relation to a person to whom **section 176A(8)** applies, the Tribunal must dispense with any humanitarian appeal lodged in accordance with **subsection (9)** of that section by the person. 20
- (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)
- 177A After successful appeal, Minister to decide immigration status of protected person who may have committed certain crimes or been guilty of certain acts** 25
- The Minister must make any decision about a person's immigration status if the Tribunal has determined that—
- (a) the person is a protected person; and 30
- (b) there are serious reasons under **section 177(1)(c)** for considering that the person has committed a crime or been guilty of any act described in that subsection.

178 Determination of appeal against refusal or decline of subsequent claim for recognition as refugee or protected person

- (1) Where an appeal is brought under ~~section 176(1)(b)~~ **section 176A(1)(a)**, 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~~ if so, whether the change was brought about by the appellant for ~~the~~ a purpose of creating grounds for recognition under **section 119, 120, or 121**.
- (2) If the Tribunal determines that there ~~was~~ is no significant change in circumstances, or that the change was brought about by the appellant for ~~the~~ a 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~~ is a significant change in circumstances, and does not determine that it was brought about by the appellant for ~~the~~ a 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~~ **177(1)**.
- (4) Where an appeal is brought under **section 176A(1)(b)**, the Tribunal must first consider whether the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim.
- (5) If the Tribunal determines that the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim, it must dismiss the appeal.
- (6) If the Tribunal does not determine that the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim, it must consider the substantive claim for recognition in accordance with **section 177(1)**.
- (7) Where an appeal is brought under **section 176A(2)**, the Tribunal must determine the matter in accordance with **section 177(1)**, as if the appeal were an appeal to which that section applied.

- (8) If the Tribunal reverses a decision in relation to a person to whom **subsection (6) of section 176A** applies, the Tribunal must dispense with its consideration of any humanitarian appeal lodged in accordance with **subsection (9) of that section** by the person.

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Appeal on facts against liability for deportation

179 Description of appeal on facts

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.

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180 Persons who may appeal to Tribunal on facts

- (1) The following persons may appeal to the Tribunal on the facts against their liability for deportation; ~~unless otherwise provided in **subsection (2)**:~~

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- (a) residents whose liability for deportation arises under **section 144, 145(1)(b), 147(1)(b), 148, or 149**;
- (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 **section 151(1)** other than persons described in **subsection (2)(b)**.

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- (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
 - (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**.

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(2) The following persons may not appeal to the Tribunal on the facts against their liability for deportation:

(a) residents or permanent residents whose liability for deportation arises under **section 145(1)(a), 147(1)(a), 147(2), or 150**: 5

(b) persons whose liability for deportation arises under **section 151(1)** and who have been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information: 10

(c) persons whose liability for deportation arises by way of a deportation order under **section 152**.

181 Grounds for determining appeal on facts

The Tribunal must allow an appeal against liability for deportation on the facts where,— 15

(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)**): 20

(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: 25

(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—

(i) the resident visa or permanent resident visa or entry permission concerned was not procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or 30

(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 35

- misleading representation, or concealment of relevant information:
- (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~~ of the resident visa were met; or
 - (ii) the resident ~~did not materially breach~~ has not materially breached 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—
 - (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:
 - (f) in the case of an appellant liable for deportation under **section 151**, the Tribunal is not satisfied; ~~on the balance of probabilities~~; that—
 - (i) the ~~person did not acquire~~ recognition as a refugee or a protected person through may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - (ii) the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention ~~were~~ may not have been able to be properly considered by a refugee and protection officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information.
 - (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
Process when entitlement to appeal on facts and humanitarian grounds

- (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. 5
- (2) Where practicable, the Tribunal must consider both appeals together, but—
 - (a) must first consider the appeal on the facts; and 10
 - (b) may dispense with its consideration of the humanitarian appeal if the appellant's appeal on the facts is successful.
- (3) This section is subject to **sections 176(9) and 176A(7)**.

183 Special provisions process where refugee or protection status acquired through fraud, etc 15

- (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~~ lodged), determine whether the person is currently a refugee or a protected person in terms of **sections 119 to 121**. 20
- (2) ~~Where~~ If the Tribunal has allowed an appeal on the facts under **section 181(f)**, the Tribunal need not consider— 25
 - (a) whether ~~or not~~ the person ~~should continue to be recognised as is currently~~ a refugee or a protected person; or
 - (b) any humanitarian appeal brought by the person.
- (3) ~~Where~~ If the Tribunal does not allow an appeal on the facts under **section 181(e)(f)**, the Tribunal must— 30
 - (a) first determine whether to recognise the person as a refugee or a protected person in terms of **sections 119 to 121** ~~section 119, 120, or 121~~; and
 - (b) if it does not recognise the person as a refugee or a protected person, then determine any humanitarian appeal 35
 by the person if it does not recognise the person as a refugee or protected person.

- (4) When determining whether to recognise a person as a refugee or a protected person for the purposes of this section, the Tribunal must determine the matter in accordance with **section 477 177(1)**.

184 Special process ~~where~~ if refugee or protected person liable for deportation under section 150 5

- (1) This section applies ~~where~~ if—
- (a) a refugee or a protected person is liable for deportation under **section 150**; and
 - (b) a ~~determination officer~~ refugee and protection officer has determined that the deportation of the person is not prohibited under **section 153**; and
 - (c) the person appeals against that determination under section 150(2)(b).
- (2) The Tribunal must— 15
- (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, then determine any appeal on humanitarian grounds brought by the person. 20

Appeal on humanitarian grounds against liability for deportation ~~on~~ humanitarian grounds 25

185 Who may appeal to Tribunal on humanitarian grounds

- (1) 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: 30
 - (b) a temporary visa holder or interim visa holder liable for deportation under **section 144, 145, or 146**:
 - (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**. 35

- (2) No person may appeal to the Tribunal on humanitarian grounds—
- (a) against any liability for deportation arising from the expiry or cancellation of a limited visa; or
 - (b) if he or she is a person to whom **section 189(2) or 192A(2)** applies; or 5
 - (c) whose liability for deportation arises by way of a deportation order under **section 152**.
- (3) To avoid doubt, a person described in—
- (a) **subsection (8) of section 176** may not exercise the right to appeal under this section if he or she lodged an appeal under **section 176(1)(a)** but did not, at the same time, lodge a humanitarian appeal against his or her liability or potential liability for deportation as required by **subsection (9) of that section**; 10 15
 - (b) **subsection (6) of section 176A** may not exercise the right to appeal under this section if he or she lodged an appeal under **section 176A(2)** but did not, at the same time, lodge a humanitarian appeal against his or her liability or potential liability for deportation in accordance with **section 176(9)**. 20

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—
- (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person appellant to be deported from New Zealand; and 25
 - (b) it would not in all the circumstances be contrary to the public interest to allow the person appellant to remain in New Zealand. 30
- (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**. 35

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~~ becomes liable for deportation under **section 150**, the Tribunal must have regard to—
- (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 5
 - (b) any relevant written submissions made by a victim to the Minister under **section 161**. 10
- (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.
- (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. 15
- (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. 20
- (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: 25
- (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)**: 30
 - (b) any part of the victim's written submissions under this section. 35
- (6) Despite **subsection (1)**, the Tribunal must not have regard to any part of the victim's submissions that is withheld under **subsection (5)**.
- (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**

~~Where~~ If 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. 5

189 Tribunal may order grant of visa on allowing appeal against liability for deportation

- (1) Without limiting **section 188**, if the Tribunal decides that an appeal against liability for deportation should be allowed 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— 10
- (a) ~~a permanent resident visa~~, or a resident visa subject to such conditions (if any) as the Tribunal determines; or 15
 - (b) a temporary visa for a period not exceeding 12 months subject to such conditions (if any) as the Tribunal determines.
- (2) ~~Where~~ If a temporary visa is granted following an order made under **subsection (1)(b)**, no further appeal against liability for deportation may be brought by the holder upon the expiry of the visa or upon the holder earlier becoming liable for deportation. 20
- (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 remain in New Zealand, whether or not the condition is of a kind authorised by residence instructions. 25 30
- (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**. 35
- (5) ~~Where~~ If the Tribunal orders the imposition of any condition on a visa,—

- (a) that condition must be notified to the visa holder in writing; and
 - (b) **section 44(1)** requires the holder to ~~abide by~~ comply with the conditions of the visa.
- (6) The chief executive must ensure that the terms of an order given under this section are complied with. 5
- Compare: 1987 No 74 s 52

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

- (1) In any case where, on an appeal under this Part, the Tribunal allows an appeal against liability for deportation, the appellant's liability for deportation is cancelled and the following provisions apply: 10
- (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:~~ 15
 - (a) if the appellant is in custody under this Act,—
 - (i) an immigration officer must immediately notify the manager or other person in charge of the prison or other premises in which the person is detained accordingly, in writing; and 20
 - (ii) the person must be immediately released from custody:
 - (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, in writing: 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~~ an immigration officer must immediately notify the person accordingly, in writing. 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

- (2) This section applies unless the Tribunal acts under **section 191**.

Compare: 1987 No 74 s 107

191 Tribunal may suspend liability for deportation on allowing humanitarian appeal

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- (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. 10
- (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.~~
- (2) If a person's liability for deportation has been suspended by the Tribunal under **subsection (1)**, the Minister may subsequently apply to the Tribunal for a determination on whether the person has failed to meet any condition imposed by the Tribunal. 15
- (3) ~~If the Tribunal determines that the person has failed to meet any condition imposed under **subsection (1)**,—~~ 20
- (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~~
- (b) ~~the person has 28 days from the date the notice was served to leave New Zealand before he or she may be deported.~~ 25
- (3) If the Tribunal determines that the person has failed to comply with any condition,—
- (a) the Tribunal may reactivate the liability for deportation by causing an immigration officer to serve a deportation liability notice on the person that sets out the grounds of the reactivation; and 30
- (b) the person has 28 days from the date the notice is served to leave New Zealand before he or she may be deported. 35

- (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.
- (5) **Section 162** applies where the Tribunal makes a suspension order under this section. 5
- (6) The suspension of a person's liability for deportation does not prevent the person from becoming liable for deportation on other grounds.

191A Effect of suspension

- (1) If a person's liability for deportation is suspended 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 class or type; and
- (b) the processing of any application made by the person for a visa of a different class or type must be suspended; and 15
- (c) 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 the person hold a residence class visa. 20
- (2) If the Minister determines that a person has met the conditions imposed by the Tribunal under **section 191(1)** for the period of the suspension, the Minister must— 25
- (a) cancel the person's liability for deportation; and
- (b) notify the person and the Tribunal of that fact.

191B Effect of suspension on appeal

- (1) This section applies if the Minister suspends a person's liability for deportation, and the person has lodged an appeal under this Part against that liability. 30
- (2) If the person does not withdraw the appeal, the Tribunal may, on the application of the appellant, adjourn any appeal on humanitarian grounds lodged by the person. 35

- (3) If the person's liability for deportation is cancelled under **section 160 or 162(2)**, the Tribunal may dispense with its consideration of any aspects of the appeal that have not been determined at that point.
- (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
- (5) To avoid doubt, a suspension of liability for deportation does not affect any time limit by which an appeal must be lodged under this Act. 10

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. 15
- (2) A reduction or removal under **subsection (1)** remains subject to **section 167(3) and (4)** **section 167A(1)**, unless the Tribunal otherwise orders. 20

192A Tribunal may make order delaying deportation if appeal unsuccessful

- (1) On refusing an appeal against liability for deportation, if the Tribunal considers it necessary to enable the appellant to remain in New Zealand for the purposes of getting his or her affairs in order, it may order— 25
- (a) that the deportation of the appellant be delayed for a period not exceeding 12 months, commencing on the date of the Tribunal's decision; or
- (b) that a temporary entry class visa, valid for a period not exceeding 12 months, commencing on the date of the Tribunal's decision, be granted to the appellant. 30
- (2) If the Tribunal grants a visa under **subsection (1)(b)**, no further appeal against liability for deportation may be brought by the holder upon the expiry of the visa or upon the holder earlier becoming liable for deportation. 35

*Immigration and Protection Tribunal***193 Immigration and Protection Tribunal**

- (1) For the purposes of this Act there is a ~~Tribunal~~ 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 a protected person: 10
 - (iia) decisions to cease to recognise a person as a refugee or a protected person:
 - (iib) decisions to cancel the recognition of a New Zealand citizen as a refugee or a protected person: 15
 - (iii) liability for deportation:
 - (~~b~~) ~~to make decisions in relation to recognition as a refugee or protected person at first instance, where the decision involves classified information~~:
 - (c) to determine applications— 20
 - (i) made by refugee and protection officers in relation to the cessation or cancellation of recognition of a New Zealand citizen as a refugee or a protected person, if the recognition was originally determined by the Tribunal (or by the Refugee Status Appeals Authority under the former Act): 25
 - (ii) made by the Minister under **section 191(2)** on whether a person has breached the conditions of suspension of liability for deportation: 30
 - (d) to deal with transitional matters under **Part 12** arising from the repeal of the Immigration Act 1987.

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. 35

- (2) The proceedings of the Tribunal are of an inquisitorial rather than an adversarial nature.

194 Nature of Tribunal

- (1) The Tribunal is a specialist body that has the role of deciding appeals and matters by making findings of fact, applying the relevant law, and making a determination. 5
- (2) In carrying out its role, the proceedings of the Tribunal in any particular case may be, as the Tribunal thinks fit,—
- (a) of an inquisitorial nature; or
 - (b) of an adversarial nature; or 10
 - (c) of both an inquisitorial and an adversarial nature.

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 **sub-section (3)**, being lawyers who have held a practising certificate for at least 5 years or have other equivalent or appropriate experience (whether in New Zealand or overseas): 15
 - (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: 20
 - (d) ~~any nominated~~ a 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. 25
- (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. 30
- (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 im-~~ 35

~~migration officer or a determination officer, may be appointed as a member of the Tribunal.~~

(4) None of the following persons may be appointed as a member of the Tribunal:

- (a) an immigration officer; or 5
- (b) a refugee and protection officer; or
- (c) any person who at any time in the previous 5 years has been—
 - (i) an immigration officer; or
 - (ii) a refugee and protection officer; or 10
 - (iii) an immigration officer, a visa officer, or a refugee status officer under the former Act.

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—
 - (i) in an orderly and expeditious ~~way~~ manner; 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
 - (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~~; 25
 - (b) develop a code of conduct for members of the Tribunal: 30
 - (c) require particular members of the Tribunal to determine particular appeals.

197 Exercise of jurisdiction

- (1) For the purpose of any ~~matter within appeal or matter in~~ its jurisdiction, the Tribunal consists of 1 member, except as provided in this section. 35

- (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; 5
 - and
 - (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 or a claimant for refugee status,— 10
- (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)**. 15

198 Procedure for determining appeals and matters generally

- (1) The Tribunal must determine an appeal or matter with all reasonable speed.
- (2) The chair of the Tribunal may decide the order in which appeals and matters are to be heard generally, or in any particular circumstances. 20
- (3) No decision on an appeal or matter is to be called into question on the basis that the appeal or matter ought to have been heard or decided earlier or later than any other appeal, matter, or category of appeal or matter. 25
- (4) The Tribunal may regulate its procedures as it sees fit, subject to this Act and any regulations made under this Act.
- (5) This section is subject to **section 228**.

199 Chair to ensure appeals and matters heard expeditiously

- (1) The chair of the Tribunal must make such directions as are necessary to ensure that appeals and matters are heard in an orderly and expeditious manner. 30
- (2) **Subsection (3)** applies ~~where~~ if—
 - (a) ~~more than 1 appeal is lodged by the same person, whether relating to the same matter or not; or~~ 35

- (a) more than 1 appeal is lodged by the same person whether or not—
- (i) relating to substantially the same set of circumstances; or
- (ii) lodged at the same time; or 5
- (b) appeals that are lodged by different persons—
- (i) are associated because of the relationship of the appellants; and—
- (ii) relate to substantially the same matter or set of circumstances. 10
- (b) appeals or matters that are lodged by different persons—
- (i) are associated because—
- (A) of the relationship of the appellant or appellants or affected person or persons; or 15
- (B) they relate to the same person; and
- (ii) relate to substantially the same set of circumstances; or
- (c) an appeal or matter is lodged and a previous appeal or matter has already been determined in respect of the same person. 20
- (3) ~~Where~~ If this subsection applies, the chair may, for the purposes of complying with **subsection (1)**, direct that—
- (a) the appeals or matters must be ~~heard~~ determined by the same member of the Tribunal; or 25
- (b) the appeals or matters must be ~~heard~~ determined together by the same member of the Tribunal; or
- (c) the appeal or matter be determined by the same member of the Tribunal who determined the previous appeal or matter. 30

200 Tribunal may dismiss frivolous or vexatious appeal

The Tribunal may at any time dismiss an appeal that it is satisfied is frivolous or vexatious.

*Procedure for appeals and matters***201 How appeal or matter lodged**

(1) An appeal or matter must be lodged in the prescribed manner and be accompanied by the prescribed fee (if any).

(2) ~~An~~ The appellant or affected person must— 5

(a) provide the Tribunal with,—

(i) except ~~where~~ if **subparagraph (iii)** applies, a current address in New Zealand to which communications relating to the appeal or matter may be sent; and 10

(ii) if applicable, the appellant's or affected person's current residential address in New Zealand (if any); and

(iii) in the case of an appeal under **section 171** by a person who is ~~offshore~~ outside New Zealand, 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.

(2A) An applicant must also provide to the Tribunal a current address in New Zealand to which communications relating to the appeal or matter may be sent. 20

(3) The Tribunal may rely on the latest address provided for the purpose of communications relating to an appeal or matter.

202 Proceedings on appeal or matter

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(1) It is the responsibility of an appellant or affected person to establish his or her case or claim on appeal, and the appellant or affected person must ensure that all information, evidence, and submissions that ~~the appellant~~ he or she wishes to have considered in support of the appeal or matter are provided to the Tribunal before it makes its decision on the appeal or matter. 30

(2) Where an appeal or matter is lodged,—

(a) subject to agreement between the Tribunal and the chief executive, the Tribunal must give the chief executive a copy of the notice of appeal or matter and any informa- 35

- tion, evidence, or submissions lodged by the appellant or affected person; 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 or matter 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.~~ 5
- (3) The Minister, the chief executive, or a refugee and protection officer may also, in the time allowed by the Tribunal for the purpose, lodge with the Tribunal any other information, evidence, or submissions in relation to the appeal or matter as he or she thinks fit. 10
- Compare: 1987 No 74 ss 18F(3), 129P(1)
- 202A Minister or Department is party to proceedings** 15
- The Minister, the chief executive, or a refugee and protection officer, as the case may be, is a party to any proceedings under this Act, including proceedings involving classified information.
- 203 Tribunal may consider appeal or matter on basis of information provided** 20
- In its consideration of an appeal or matter, 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 or the affected person, or the Minister, the chief executive, or a refugee and protection officer, as the case may be; and 25
- (c) may determine the appeal or matter on the basis of the information, evidence, and submissions provided by the appellant or the affected person, or the Minister, the chief executive, or a refugee and protection officer, as the case may be, and the chief executive. 30
- Compare: 1987 No 74 ss 18F(2), 129P(2), 129S

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 or matter, and the chief executive must comply, to the extent practicable, with such a requirement. 5
- (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;~~ 10
 - ~~or~~
 - (b) ~~information about the chief executive's process of seeking and providing the information.~~
- (2) Where the chief executive provides information to the Tribunal under **subsection (1)**, the chief executive must be treated as an agent of the Tribunal for the purposes of the Official Information Act 1982 and the Privacy Act 1993. 15
- (2A) No party to the appeal or matter may request the Tribunal to exercise its powers under this section.
- (3) This section is subject to **section 32(3)**. 20
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 or affected person, and give the appellant or affected person an opportunity to rebut or comment on, information or material that— 25
 - (a) is provided to the Tribunal by a source other than the appellant or affected person; and
 - (b) is or may be prejudicial to the appellant or affected person; and 30
 - (c) the Tribunal intends to take into account in determining the appeal or matter.
- (2) The Tribunal must set a reasonable time within which the appellant or affected person may rebut or comment on the information or material. 35
- (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**.
- (4) The Tribunal must, however, notify the appellant or affected person of the fact of any non-disclosure on the grounds specified in **subsection (3)**. 5
- Compare: 1987 No 74 ss 18F(7), (8), (9), 129P(2), (4) s 18F(7)–(9)

206 Findings of credibility and fact

~~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.~~ 10

Compare: 1987 No 74 s 129P(9)

206 Findings of credibility and fact

- (1) On any appeal or matter, the Tribunal may rely on any finding of credibility or fact— 15
- (a) by the Tribunal in any previous appeal or matter determined by the Tribunal that involved the appellant or affected person; or
 - (b) by any appeals body in any previous appeal or matter determined by the appeals body that involved the appellant or affected person. 20
- (2) A person may not challenge any finding of credibility or fact relied on by the Tribunal under **subsection (1)**.
- (3) For the purposes of **subsection (1)(b)**, matter includes an application by a refugee status officer under section 129L(1)(f) of the former Act. 25
- Compare: 1987 No 74 s 129P(9)

207 Tribunal may require provision of biometric information

For the purposes of assisting the Tribunal to determine an appeal or matter, the Tribunal may require the appellant or affected person to allow ~~the collection of~~ biometric information to be collected from him or her. 30

208 When Tribunal must or may provide oral hearing

- (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 or affected person currently or previously recognised as a refugee or a protected person, or a claimant for such recognition, unless—
 - (a) the ~~appellant~~ person was interviewed by a ~~determination officer~~ refugee and protection officer in the course of determining the relevant ~~matter~~ issue at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and
 - (b) the Tribunal considers that the appeal is prima facie manifestly unfounded or clearly abusive, or repeats a previous claim.
- (3) The Tribunal may, in its absolute discretion, provide an oral hearing in any other appeal against liability for deportation.

209 Appeal Decision 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 or affected person fails without reasonable excuse to attend a hearing notified by the Tribunal.
- (2) Except as otherwise provided in **section 208** (as subject to **subsection (1)** of this section), the Tribunal must determine an appeal or matter on the papers.

209A Tribunal may issue single decision when appeals or matters heard together

In any proceedings in which more than 1 appeal or matter is heard together, the Tribunal may issue a single decision in respect of the appeals or matters.

210 Appeals against deportation liability where person serving prison sentence

- (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~~ any appeal on humanitarian grounds 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. 5

- (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.

211 Procedure

Schedule 2 applies in relation to the proceedings of the Tribunal. 10

212 Withdrawal of appeal or matter

- (1) An appeal to the Tribunal may be withdrawn by the appellant at any time.

(1A) A matter lodged with the Tribunal may be withdrawn by the applicant at any time. 15

- (2) If a person withdraws an appeal against liability for deportation, the person may be served with a deportation order and 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.~~ 20

(3) In any other case, if an appeal is withdrawn, the decision appealed against stands.

~~(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.~~ 25

213 Deemed withdrawal of certain appeals where person leaves New Zealand

- (1) A person's appeal to the Tribunal is deemed to be withdrawn when the person leaves New Zealand if the appeal is— 30

- (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
- (b) an appeal against a decision to decline recognition as a refugee or a protected person; or 35

- (c) an appeal against a decision to cease to recognise a person as a refugee or a protected person.
- (2) **Subsection (1)** does not apply if—
- (a) the person's liability for deportation has been suspended under **section 160(2)**; and 5
- (b) the person leaves New Zealand during the suspension period.
- (3) In determining whether a person has left New Zealand, the Tribunal may rely on a certificate made under **section 329(2)(o)**.
- 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
- 214 How proceedings involving classified information to be conducted by Tribunal**
- (1) If proceedings before the Tribunal involve classified information, the Tribunal must consist of up to 3 members.

- (2) The chair of the Tribunal must always be a member and, if any other member or members of the Tribunal are sitting, each must be—
- (a) a member of the Tribunal who is a District Court Judge;
or 5
- (b) a nominated District Court Judge.
- (3) In this section, **nominated District Court Judge** means—
- (a) the Chief District Court Judge; or
- (b) a District Court Judge (other than the chair of the Tribunal) nominated by the Chief District Court Judge to be seconded to the Tribunal to exercise its jurisdiction in relation to proceedings involving classified information. 10
- (4) For the purposes of **subsection (2)(b)**, the Chief District Court Judge may nominate a maximum of 2 District Court Judges (other than himself or herself) at any one time. 15

215 Presentation of classified information to Tribunal

- (1) The Tribunal must be given access to classified information that—
- (a) ~~was used~~ relied on to make a decision that is on appeal to the Tribunal; or 20
- (b) is first raised in the course of an appeal to or a matter before ~~to~~ the Tribunal.
- (c) ~~is directed to be provided to the Tribunal under **section 30(2)(b)**.~~ 25
- (2) Before holding a substantive hearing on the appeal or ~~other~~ matter, the Tribunal must hold a ~~preliminary closed~~ hearing in which the chief executive of the relevant agency that holds the classified information makes a presentation on the classified information (a preliminary hearing). 30
- (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.~~ 35
- (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 and amicus curiae (if any and if relevant) to understand the classified information and to question—

- (a) the chief executive of the relevant agency about the information; or
- (b) if necessary, any other person from the relevant agency about the information.

5

(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~~ or affected person is provided with the names of the possible special advocates under **section 137(2)(c) or 237(2)**.

10

(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

15

(1) The purpose of this section is to give an appellant or affected person an opportunity to comment on potentially prejudicial information; ~~as relevant~~; in the course of proceedings involving classified information in the Tribunal.

(2) ~~Where~~ If proceedings before the Tribunal involve classified information,—

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- (a) the chief executive of the relevant agency that holds the classified information concerned 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—

- (i) approve the summary developed under **paragraph (a)**; or

30

- (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~~ or affected person,
the special advocate, and the amicus curiae (if any and
if relevant).

- (2A) The Tribunal must not rely on the classified information for the purposes of making its decision to the extent that the allegations arising from the information cannot be summarised without the summary itself involving a disclosure of classified information that would be likely to prejudice the interests described in **section 5(3)**. 5
- (3) ~~In determining whether, or how, to modify the summary, the Tribunal must have regard to the views of the relevant agency.~~ 10
- (3) In determining whether, or how, to modify the summary, the Tribunal—
- (a) must have regard to the views of the relevant agency; and 15
- (b) may have regard to the views of the applicant and the person who made the decision to which the proceedings apply.
- (4) Nothing in this section requires the summary to—
- (a) list any documents or other source material containing classified information; or 20
- (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. 25
- (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~~ An updated summary must be prepared and provided in the same way as if it were a summary prepared under **subsection (2)** if— 30
- (a) any classified information that was proposed to be ~~used~~ relied on in the course of the appeal or matter is withdrawn (unless all the information is withdrawn); or
- (b) further relevant classified information becomes available that ~~will be used~~ may be relied on in the course of the appeal or matter. 35

- (6) ~~A~~ To avoid doubt, a special advocate may not be involved in the process of approving, amending, or updating the summary a summary (including an updated summary).

217 Matters to be considered by Tribunal

- (1) Where proceedings involve classified information, the Tribunal must determine the following matters: 5
- (a) whether the classified information is relevant to the subject matter of the appeal or matter to which **section 137** applies concerned: 10
 - (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)**: 10
 - (c) whether the classified information is credible: 15
 - (d) the substantive grounds of the appeal or matter to which **section 137** applies, having regard to— 15
 - (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~~ or the matter was initially determined. 20
- (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. 25
- (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. 30
- (4) If the Tribunal considers under **subsection (1)(c)** that any classified information is not credible, it must disregard that information. 35
- (2) If the Tribunal considers that—
- (a) any classified information is not relevant to the appeal or matter, it must disregard that information; and

- (b) any information does not meet the criteria specified in **section 5(2) and (3)**, the Tribunal must disregard that information unless—
- (i) the relevant agency agrees to the disclosure of the information to the appellant or affected person; or 5
- (ii) the Tribunal considers that it is of benefit to the appellant or affected person; and
- (c) any classified information is not credible, it must disregard that information.
- (3) To avoid doubt, classified information may be relevant to an appeal or matter whether it is beneficial or detrimental to the appellant or affected person. 10

217A Tribunal may require mixture of closed and open hearings

- In any proceedings involving classified information, the Tribunal may require a mixture of— 15
- (a) closed hearings for those parts of the hearing in which classified information is involved; and
- (b) hearings at which the appellant or affected person may be present. 20

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. 25

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, an affected person, or the Minister, chief executive, or other ~~respondent~~ person) 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 30

of the Court of Appeal), appeal to the High Court on that question of law.

- (2) Every appeal under this section must be brought—
- (a) ~~within~~ not later than 28 days after the date on which the decision of the Tribunal to which the appeal relates was notified to the party appealing; or 5
 - (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.~~ 10
- (3A) 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 for its decision. 15
- (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 20
 - (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
 - (c) make such other orders in relation to the matter as it thinks fit. 25
- (5) Subject to ~~subsections (2) and (3); subsection (2)~~, every appeal under this section must be dealt with in accordance with the rules of the Court, with any modifications necessary to reflect the provisions of this Act and any protocols developed ~~under it~~ under the Act, including any ancillary general practices and procedures developed under section 232. 30

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 Minis-

ter, 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.

- (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. 5

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. 10
- (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. 15 20
- (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.
- (4) Every appeal under this section must be dealt with in accordance with the rules of the court, with any modifications necessary to reflect the provisions of this Act and any protocols developed under it Act, including any ancillary general practices and procedures developed under **section 232**. 25
- (5) ~~The decision of the Court of Appeal on any appeal under this section is final.~~ 30

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 not later than 28 days after the date of the decision on which the decision to which the review proceedings relate 35

is notified to the person, unless the High Court decides that, by reason of special circumstances, further time should be allowed.

- (2) Where a person intends to both appeal against a decision of the Tribunal under this ~~Part~~ Act and bring review proceedings in respect of that same decision,—
 - (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.
- (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.

Compare: 1987 No 74 s 146A

222A Minister, chief executive, or refugee and protection officer may be respondent in review proceedings relating to Tribunal decision

- (1) The Minister, the chief executive, or a refugee and protection officer, as the case may be, may be the respondent in any review proceedings relating to a decision of the Tribunal.
- (2) Nothing in **subsection (1)** applies if the Minister, the chief executive, or a refugee and protection officer is the applicant in any review proceedings relating to a decision of the Tribunal.

223 Restriction on review

- (1) No review proceedings may be brought in any court in respect of any decision; ~~where~~ if the decision, or the effect of the decision, may be subject to an appeal to the Tribunal under this ~~Part~~ Act.
- (2) Nothing in this section limits any other provision of this Act that affects or restricts the ability to bring review proceedings.

223A Certain appeals and judicial review applications to be treated as priority fixture

All courts must hear and determine any appeal or judicial review application relating to the following persons as if the appeal or review had been granted a priority fixture:

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- (a) persons who are unlawfully in New Zealand;
- (b) persons who are not New Zealand citizens and who hold temporary entry class visas.

General provisions relating to proceedings involving classified information

10

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.

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- (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.

20

- ~~(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)**;~~

- (3) For the purposes of **subsection (2)(b)**, the Chief High Court Judge may nominate a maximum of 2 High Court Judges (other than himself or herself) at any one time.

25

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.

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- (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.

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- (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 sections 224 and 227 to 239A** apply.
- (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. 5
- 226 Appeal to Court of Appeal or Supreme Court where involving classified information involved** 10
- (1) This section applies where classified information is ~~used~~ relied on in a decision (whether on appeal, review, or otherwise) that is subject to appeal to—
- (a) the Court of Appeal, whether under **section 221** or otherwise; or 15
- (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. 20
- (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 sections 227 to 239A** 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. 25
- 227 Appeal period where decision involving classified information to be appealed to Court of Appeal or Supreme Court**
- 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 not later than 10 days of the appellant being after the appellant is notified of the decision being appealed against. 30

227A Court to approve summary of allegations

- (1) The purpose of this section is to give an appellant, a respondent, or an affected person, as the case may be, an opportunity to comment on potentially prejudicial information in the course of proceedings involving classified information in a court. 5
- (2) If proceedings before a court involve classified information,—
- (a) the chief executive of the relevant agency that holds the classified information concerned must develop, and provide to the court for approval, a summary of the allegations arising from the classified information; and 10
 - (b) the court must—
 - (i) approve the summary developed under **paragraph (a)**; or
 - (ii) modify the summary and then approve it; and
 - (c) following approval (with or without modification) of the summary, the court must provide the summary to the appellant or affected person, the special advocate, and the amicus curiae (if any and if relevant). 15
- (3) The court must not rely on the classified information for the purposes of making its decision to the extent that the allegations arising from the information cannot be summarised without the summary itself involving a disclosure of classified information that would be likely to prejudice the interests described in **section 5(3)**. 20
- (4) In determining whether, or how, to modify the summary, the court— 25
- (a) must have regard to the views of the relevant agency; and
 - (b) may have regard to the views of the person who made the decision to which the proceedings apply. 30
- (5) Nothing in this section requires the summary to—
- (a) list any documents or other source material containing classified information; or
 - (b) detail the contents of any documents or other source material containing classified information; or 35
 - (c) specify the source of any documents or other source material containing classified information.

- (6) An updated summary must be prepared and provided in the same way as if it were a summary prepared under **subsection (2)**, if—
- (a) any classified information that was proposed to be relied on in the course of the proceedings is withdrawn (unless all the information is withdrawn); or 5
 - (b) further relevant classified information becomes available that will be relied on in the course of the proceedings.
- 228 Priority or urgency to be afforded to proceedings involving classified information** 10
- (1) A court and the Tribunal must give priority to setting down and determining any proceedings involving classified information.
 - (2) A court must treat with urgency proceedings involving classified information in relation to a person— 15
 - (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. 20
- 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~~ or a court, the relevant agency is entitled to be a party to the proceedings. 25
 - (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.~~ 30
 - (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.~~ 35

- (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)**. 5
- (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 10
- (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 15
- (c) the chief executive of the relevant agency may direct any person to return the classified information to the relevant agency. 20

231 Obligation and powers of courts and Tribunal to protect security in proceedings involving classified information
Tribunal and courts in relation to classified information

- (1) The chief executive of the relevant agency The Minister or a refugee and protection officer (as appropriate) must provide to the ~~courts or the Tribunal~~ or a court (as appropriate) classified information— 25
- (a) ~~used~~ relied on in making a decision that is appealed or subject to review proceedings in accordance with this Act; or 30
- (b) first raised in the course of an appeal to or a matter before the Tribunal; ~~or in any proceedings under section 137.~~
- (1A) Before providing the classified information, the Minister or the refugee and protection officer must consult the chief executive of the relevant agency. 35
- (2) The ~~courts and the Tribunal~~ and the courts must keep confidential and must not disclose any information provided as clas-

sified 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.

- (3) **Subsection (2)** applies both during and after completion of proceedings involving classified information. 5
- (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
- (4) The Tribunal and the courts must receive or hear the following in a closed hearing:
- (a) any information provided as classified information;
 - (b) any submissions in relation to information provided as classified information. 25
- (5) In any proceedings involving classified information, ~~a court or the Tribunal~~ or a court may, in order to comply with **subsection (2)**, make ~~any~~ 1 or more of the following orders:
- (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: 30
 - (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:
 - (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.~~ 35

- (c) subject to **subsection (4)**, an order excluding any person from the whole or any part of the Tribunal's or the court's proceedings, including—
- (i) the appellant or the appellant's representative; or
 - (ii) the affected person or the affected person's representative; or 5
 - (iii) staff of the Tribunal or court.
- (6) An order made under **subsection (5)**—
- (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 or the court~~; and 10
 - (c) if it is made permanently, may be reviewed by the ~~court or the Tribunal or the court~~ at any time.
- (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. 15
- 20
- 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 248, 217A, 224 to 239 239A, 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— 25
- (a) the chair of the Tribunal and the Attorney-General, in relation to proceedings involving classified information heard by the Tribunal; and 30
 - (b) the Chief Justice and the Attorney-General, in relation to all other ~~proceeding~~ proceedings.
- (2) Without limiting the generality of **subsection (1)**, general practices and procedures may be agreed ~~under that subsection~~ on the following matters: 35

- (a) measures relating to the physical protection of the classified information during and after all proceedings involving classified information:
- (b) the manner in which the classified information may be provided to the Tribunal or the court: 5
- (c) measures to preserve the integrity of the classified information until any appeals are withdrawn or finally determined.

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 in general from any agency. 10

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. 15
- (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— 20
 - (a) a determination of the Minister under **section 30** that classified information may be ~~used~~ relied on in making a decision under this Act:
 - (b) the form or content of a summary prepared and provided under **section 34** (including any updated summary): 25
 - (c) the form or content of information provided under **section 35**:
 - (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, 30 and approved under **section 216 or 227A** (including any updated summary), including the decision whether ~~or not~~ to modify, and the nature of any modifications to, the summary:
 - (f) a decision to withdraw, update, or add to classified information. 35

(2A) No appeal under **section 219** may be brought in relation to any proceedings involving classified information that are before the Tribunal unless the Tribunal has issued final determinations on all matters subject to the proceedings.

(3) No review proceedings may be brought in relation to any appeal or matter before the Tribunal to which **sections 214 to 218 subsection (2A) or sections 214 to 217A** apply unless the Tribunal has issued final determinations on all matters subject to the appeal or matter. 5

Special advocates

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235 Role of special advocates

(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,—~~ 15

(a) ~~to make oral submissions at any hearing where **section 231(4)** applies and to cross-examine witnesses at any such hearing;~~

(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.~~ 20

(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~~ 25

(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. 30

(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.

235 Role of special advocates

- (1) The role of a special advocate is to represent a person who is the subject of—
- (a) a decision made involving classified information; or
 - (b) proceedings involving classified information. 5
- (2) In particular, a special advocate may—
- (a) lodge or commence proceedings on behalf of the person;
 - (b) make oral submissions and cross-examine witnesses at any closed hearing; 10
 - (c) make written submissions to the Tribunal or the court, as the case may be.
- (3) At all times a special advocate must—
- (a) ensure that the confidentiality of the classified information remains protected; and 15
 - (b) act in accordance with his or her duties as an officer of the High Court.
- (4) The chief executive of the relevant agency must provide a special advocate with access to the classified information—
- (a) relied on in making the decision being appealed against; 20
 - or
 - (b) provided to the Tribunal for the purpose of determining the matter; or
 - (c) provided to the Tribunal or the court in the appeal or in the review proceedings; or 25
 - (d) provided to the court in warrant of commitment proceedings.
- (5) A special advocate must keep confidential and must not disclose classified information, except as expressly provided under this Act. 30
- (6) The chief executive of the Department 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 recog- 35

- nised 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.~~
- (4) The designated agency may withdraw a special advocate's recognition if he or she—
- (a) ceases to hold an appropriate security clearance; or
 - (b) is suspended from practice as a barrister, a solicitor, or both, under the Lawyers and Conveyancers Act 2006;
or
 - (c) is struck off the roll of barristers and solicitors of the High Court.
- (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, matter, or review proceedings involving classified information; and
 - (b) classified information may be ~~used~~ relied on in determining an application made under that Part.

237 Appointment of special advocate in individual case

- (1) Where it is likely that a decision under this Act (other than on an application or an appeal to the Tribunal) will be made

~~using~~ relying on classified information, and that the decision may be ~~appealed~~ subject to appeal or review, the Minister must notify the agency referred to in **section 236** (the **designated agency**) of that fact.

- (2) If a person subject to a decision made ~~using~~ under this Act ~~relying on~~ classified information ~~appeals against that decision~~ appeals the decision or applies for judicial review of the 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 not later than~~ within not later than 3 days after the person is ~~notified of the decision~~ lodges the appeal or files the application. 5 10
- (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. 15
- (4) **Subsection (5)** applies where—
 - (a) classified information is first raised or proposed to be raised in the course of an appeal to the Tribunal or matter before the Tribunal; or
 - (b) a person appeals against a decision of the Tribunal on an appeal or matter involving classified information; or
 - (c) a person brings review proceedings in relation to a decision made under this Act ~~using~~ relying on classified information (whether the decision was made by the Minister or is a determination of the Tribunal). 20 25
- (5) Where this subsection applies,—
 - (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 not later than~~ within not later than 3 days of receiving that notification. 30
- (6) An ~~appellant or other affected~~ appellant, applicant, or affected person, as the case may be, must determine whether to appoint a special advocate, and which special advocate to appoint, and notify the designated agency accordingly, ~~within not later than~~ within not later than 7 days ~~of after~~ being notified of the names of possible special advocates. 35

(6A) If the appellant, applicant, or affected person does not appoint a special advocate, the Department must make arrangements with the designated agency for a special advocate to be available on behalf of the person.

(6B) **Subsection (6)** does not apply if the appellant or applicant is the Minister, the chief executive, or a refugee and protection officer. 5

(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**. 10

237A Appointment of special advocate for purposes of Part 9 proceedings

(1) This section applies to a person if the person— 15

(a) has not appointed a special advocate to represent him or her in any appeal, matter, or review proceedings involving classified information; and

(b) is the subject of an application under **Part 9** in which classified information may be relied on in determining the application. 20

(2) The Department must contact the designated agency as soon as practicable after the person is arrested and detained and make arrangements for a special advocate to whom **section 236(5)** applies to be available on behalf of the person for the warrant of commitment hearing. 25

(2A) If the application is made directly to the High Court or is transferred to the High Court, the special advocate must be provided with access to the classified information provided to the Court before the warrant of commitment hearing. 30

(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 **Part 9**.

238 Communication between special advocate and appellant person to whom classified information relates 35

(1AA) In this section, **person A** means—

- (a) a person who has appointed a special advocate under **section 237(6)**; or
- (b) a person for whom a special advocate has been made available under **section 237(6A) or 237A**.
- (1) ~~When an appellant or other affected person has appointed a special advocate,—~~ 5
- (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
- (1) The special advocate may communicate with person A or person A's representative, on an unlimited basis until the special advocate has been provided with access to the classified information but once the special advocate has been provided with access to the classified information concerned, 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. 20
- (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 that is 29 days or more after the date on which the appellant or the affected person A was provided with the names of special advocates under **section 237** or had the special advocate made available to him or her under **section 237A**. 25 30
- (2A) **Subsection (2)** only applies to decisions to which **section 237** applies.
- (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)**. 35
- (4) The special advocate may, without the approval of the court or Tribunal or the court, communicate about the proceedings with—

-
- (a) the Judge or Judges ~~on~~ of the court or Tribunal or the court:
- (b) the Minister, or the Minister's security-cleared representative:
- (c) the chief executive of the relevant agency, or that chief executive's security-cleared representative: 5
- (d) any other person, except for ~~the appellant or other affected~~ person A 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. 10
- (5) A special advocate who wishes to communicate with ~~the appellant or other affected person, or that person's~~ person A or his or her representative, after having been given access to the classified information may submit a written communication to the Tribunal or the court (as appropriate) for approval and for forwarding to ~~the appellant or the appellant's~~ person A or his or her representative. 15
- (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~~ person A or his or her representative if the communication would not be likely to prejudice the interests referred to in **section 5(3)**; or 20
- (b) decline to forward the communication, and notify the special advocate of that decision. 25
- (7) The Tribunal or court may consult the chief executive of the relevant agency before determining—
- (a) whether to forward a communication, with or without amendment, to ~~the appellant or other affected person or that person's representative~~ person A or his or her representative; or 30
- (b) if it proposes to forward the communication, the nature of any amendments necessary; or
- (c) whether to decline to forward the communication. 35
- (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:
- (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. 5
- (9) ~~The appellant or other affected person~~ Person A may, of his or her own volition, communicate with the special advocate on any matter in accordance with **subsection (10)**.
- (10) The communication— 10
- (a) must be made in writing:
 - (b) may be made through ~~the appellant's~~ person A's representative.
- (11) The special advocate must not reply to such a communication except— 15
- (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~~ person A or his or her representative. 20
- 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~~ he or she is not guilty of— 25
- (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. 30
- (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. 35

239A Tribunal or court may appoint amicus curiae

- (1) The Tribunal or a court may appoint an amicus curiae for the purposes of any proceedings before it involving classified information.
- (2) The amicus curiae may be a special advocate but, if not, must be a person who holds an appropriate security clearance given by the chief executive of the Ministry of Justice. 5
- (3) **Subsection (1)** applies regardless of whether the person concerned has appointed a special advocate or a special advocate has been made available for the person. 10
- (4) The Tribunal or the court may provide the amicus curiae with access to the classified information concerned as it thinks fit.
- (5) An amicus curiae must keep confidential and must not disclose classified information, except as expressly provided under this Act. 15

Part 8**Compliance and enforcement information****240 Purpose of Part**

- The purpose of this Part is ~~to confer on immigration officers and other persons—~~ 20
- (a) to confer on immigration officers 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 25
the conditions of their ~~visa~~ visas:
- (b) to confer on immigration officers the powers to assist in locating ~~the power to locate~~ persons who are or may be liable for deportation:
- (c) ~~the authority for~~ to authorise the Department to share 30
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:
- (d) to confer on members of the police the powers described in **paragraphs (a) and (b)**. 35

240A Meaning of information, document, register, list, etc in sections 241, 243, 244, and 245

In sections 241, 243, 244, and 245, any reference to information, or a document, register, list, wages and time record, or record includes an electronic version of the information, document, register, list, wages and time record, or record.

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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~~ if 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.

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- (4) **Subsection (3)** applies ~~notwithstanding~~ despite 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.

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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 or identity information are as follows:

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- (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: 15
 - (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)**: 20
- (b) education providers, in relation only to enrolled students not in compulsory education: 25
- (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: 30
- (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. 35

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**

- (1) An immigration officer may exercise the powers in **subsection (2)** for the purposes of locating any person who is liable for deportation. 5
- (2) Where an immigration officer believes on reasonable grounds that the information contained in any register or list kept by an accommodation provider might ~~lead to the apprehension of~~ relate to any person who is liable for deportation, the officer may— 10
 - (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
 - (b) require the accommodation provider or 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~~ a person who is liable for deportation; and 15
 - (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. 20
- (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. 25
- (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. 30

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: 35

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- (a) determining whether a person is complying with work-related conditions of ~~the visa held by the person~~ his or her visa:
- (b) determining whether an employer is complying with obligations under this Act: 5
- (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— 10
- (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— 15
- (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); 20
- or
- (iii) ~~is~~ liable for deportation.
- (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 25
- (b) require the employer or the person appearing to have the record or document under that person's control to produce that record or document for inspection; and 30
- (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 busi- 35

ness, whether by day or by night, without a warrant or any other authority than this section.

Compare: 1987 No 74 s 138

- 245 Powers of entry and inspection relating to records of education providers** 5
- (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~~ his or her visa: 10
 - (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—
- (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— 20
 - (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 25
 - (ii) otherwise not complying with obligations under this Act (including obligations as an education provider); or
 - (iii) liable for deportation.
- (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. 30
- (4) An immigration officer may—
- (a) enter any part of ~~those~~ the education provider's premises in which the officer reasonably believes ~~the information or record is held~~; and 35
 - (b) require the education provider or person appearing to have the information or record under that person's con-

- trol to produce for inspection ~~any such~~ the information or record; and
- (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
- (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. 10
- Compare: 1987 No 74 s 138

Power to require production of documents, etc

246 Powers of immigration officer to require information and documents where offence suspected

- (1) 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(b);~~ require the person to do all or any of the following things: 15 20
- (a) ~~supply the person's name and address:~~
- (a) supply 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: 25
- (b) produce for inspection documentary or other evidence of the person's identity: 25
- (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:
- (d) produce evidence of any visa relating or purporting to relate to the person, whether or not it relates to any other person: 30
- (e) surrender any passport, certificate of identity, or evidence of any visa produced under **paragraph (c) or (d)**: 35
- (f) if the person does not currently have in his or her possession any of the documents or other things referred

to in **paragraphs (b) to (d)**, give the officer details of where they can be found and who is holding them.

(2) Before acting under **subsection (1)**, the immigration officer must—

- (a) inform the person that he or she suspects that the person has committed an offence against this Act; and
- (b) warn the person that if the person fails without reasonable excuse to comply with his or her request, the person may be charged with an offence against **section 307(b)**.

Compare: 1987 No 74 s 136(1)

247 Power of immigration officer to ~~require request~~ information and documents where liability for deportation or turnaround 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; or turnaround~~, 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—~~ request the person to do 1 or more of the following things:
- (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:~~
 - (a) supply 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:
 - (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:
 - (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:

- (b) produce for inspection documentary or other evidence of the person's identity:
 - (ba) 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
 - (bb) produce 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 turnaround:
 - (c) ~~to surrender to the officer~~ any of the documents or other things produced under **paragraph (b) paragraph (b), (ba), or (bb):** 10
 - (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), (ba), or (bb)**, ~~to give the officer~~ details of where they can be found and who is holding them. 15
- (2) ~~If the person refuses or fails without reasonable excuse to comply with any request under **subsection (1)**, the officer must warn the person that if the refusal or failure persists the person is liable to arrest and detention under this Act.~~ 20
- (2) Before acting under **subsection (1)**, the immigration officer must—
- (a) inform the person that he or she suspects that the person is liable for deportation or turnaround; and 25
 - (b) warn the person that if the person fails without reasonable excuse to comply with his or her request, the person is liable to arrest and detention under this Act.

Compare: 1987 No 74 s 138A(1), (2)

248 Powers on deportation or turnaround 30

- (1) Where a person is liable for deportation or ~~is a person to whom **section 105** applies~~ turnaround,—
- (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 of a kind referred to in **section 247(1)(b), (ba), or (bb)** held by or on behalf of the person; and
- (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
- (b) ~~those any documents or other things referred to in paragraph (a)(i) and (ii)~~ **surrendered or obtained** may be used by the Crown towards effecting the person's deportation or departure from New Zealand.
- (2) To the extent that any documents or things surrendered or obtained under **subsection (1) or section 247(1)** are not used or required for the person's deportation or departure, they must be returned to the person—
- (a) on the person's departure from New Zealand or on the person being granted a visa and entry permission; or
- (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** 20
- 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. 25
- 250 Powers at border**
- (1) An immigration officer may exercise the powers in **subsections (2) and (3)** ~~where subsections (2), (3), and (4)~~ if the officer believes on reasonable grounds that it is necessary for the purpose of— 30
- (a) detecting any offence against this Act; or
- (b) apprehending any person who is liable for deportation or is, or is likely to be, ~~a person to whom section 105 applies~~ liable for turnaround; or 35

- (c) processing arriving passengers, whether or not they have left the craft; or
 - (d) locating any stowaway; or
 - (e) deporting any person or facilitating the departure of persons ~~to whom~~ **section 405** applies liable for turnaround. 5
 - (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~~ either or both of the following things: 10
 - (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.
 - (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~~ a person from a craft,— 15
 - (a) interview ~~any~~ the person:
 - (b) view ~~a~~ the person's seating and identify those passengers seated with them: 20
 - (c) search for ~~a~~ the person's travel and identity documents.
 - (4) An immigration officer may retain any documents found in a search carried out under this section if retaining the documents is necessary for the purposes of administering this Act.
- 251 Power of entry and search of craft** 25
- (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
 - (b) be liable for deportation; or
 - (c) be, or be likely to be, ~~subject to~~ **section 405** liable for turnaround.
 - (2) An immigration officer may at any time, without a warrant or any other authority than this section, and by force if necessary, do the following things: 35

- (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~~ and 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~~ referred to in **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~~ referred to in **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 20
 - ~~(b) apprehending any person who is—~~
 - ~~(i) liable for deportation; or~~
 - ~~(ii) a person to whom section 105 applies.~~
 - (b) apprehending any person who is liable for deportation or turnaround. 25
- (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, and by force if necessary, enter and search any border place where the officer has good cause to believe that— 30
 - (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— 35
 - (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 container-base, immigration control area, wharf, or transit building;
- (d) a pier or other structure attached to and extending from any shore or bank described in **paragraph (b)**. 5

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,— 10

- (a) enter and search 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 15
- (b) serve the notice or execute the deportation order.

Compare: 1987 No 74 s 137(1)

254 Special powers pending deportation or turnaround or deportation

Where any person is liable for deportation or ~~is a person to whom section 105 applies turnaround~~, 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: 20

- (a) the power to photograph and measure the person: 25
- (b) the power to take the person's fingerprints, palm-prints, or footprints, or an iris scan of the person.

Compare: 1987 No 74 s 141

255 Immigration officer may require biometric information to determine compliance with Act 30

- (1) **Subsection (2)** applies where an immigration officer has good cause to suspect that a person—
 - (a) is liable for deportation or turnaround; or
 - (b) is not complying with, or is materially breaching, the conditions of the person's visa; or 35

- (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
- (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 to be collected from him or her. 5
- 256 Application for order authorising collection of biometric information** 10
- (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~~ a compulsion order in any case where—
- (a) there is good cause to suspect that ~~the~~ a person— 15
- (i) is liable for deportation or turnaround; or
- (ii) is not complying with, or is materially breaching, the conditions of the person's visa; or
- (iii) is undertaking work or a course of study where the person is not entitled to undertake that work 20 or study under this Act; or
- (iv) has obtained a visa under a fraudulent identity; and
- (b) the person has refused to allow the collection of biometric information in response to a requirement to do so by 25 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:
- (a) the facts relied on to show that there is good cause to 30 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 35 grounds to believe that collection of biometric information from the respondent would tend to confirm or dis-

prove that any ~~of the~~ matters in **subsection (1)(a)** applies to the person.

- (3) Where an application is made under this section,—
 - (a) the immigration officer must serve notice of the application on the respondent; and 5
 - (b) both the immigration officer and the respondent are entitled to appear and to adduce evidence at the hearing of the application.
- (4) In considering an application made under this section, the Judge may take into account any oral or documentary material 10 that the Judge considers relevant, whether or not it would be admissible in a court of law.

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)~~ a compulsion order requiring the respondent to allow ~~the collection of~~ specified biometric information to be collected from him or her, if the Judge is satisfied that— 15
 - (a) there is good cause to suspect that any ~~of the~~ matters in **section 256(1)(a)** applies to the respondent; and 20
 - (b) there are reasonable grounds to believe that ~~collection of~~ biometric information collected 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 to be collected from him or her in response to a requirement to do so by an immigration officer under **section 255(2)**; and 25
 - (d) in all the circumstances, it is reasonable to make the order. 30
- (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 35
 - (b) any evidence regarding the importance, to the investigation of the relevant matter, of obtaining biometric information from the respondent.

- (3) A person served with a compulsion order must allow the biometric information specified in the order to be collected from him or her.

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— 5
- (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. 10
- (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 compulsion order 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. 15

Powers generally

- 259 Immigration officer may have assistance** 20
- 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.
- 260 Police to have powers of immigration officers** 25
- 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 or by
other agencies, bodies, or persons*

261 Disclosure of immigration information etc for corrections purposes between Department and department of State responsible for Corrections Act 2004

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(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—

- (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
- (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.

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(1) The purpose of this section is to facilitate the disclosure 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 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.

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(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.

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(2) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information under this section and, in accordance with those arrangements, the chief executive of the responsible department may supply to the chief executive of the Department any identifying information—

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- (a) about a person who has been sentenced to imprisonment; or
- (b) if authorised by regulations made under the Corrections Act 2004, about a person who has received a community-based sentence.

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- (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. 5
- (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. 10
- (4) The chief executive of the Department may compare any information he or she receives under **subsection (2)** with any information held by the Department that relates to the person and, if the Department has immigration information about the person, the chief executive of the Department may, in accordance with the arrangements made under **subsection (2)**, supply to an authorised officer the following information relating to the person: 15
- (a) identifying information about the person; and
 - (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; 20
 - (iii) any proposed action to be taken under this Act in relation to that person. 25
- (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: 30
- (a) identifying information about the person;
 - (b) the person's immigration status under this Act and—
 - (i) any changes to that status: 35

- (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. 5
- (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. 10
- (7) The chief executive of the Department and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them— 15
 - (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.
- (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. 20
- (8) In this section,—
 - authorised officer** means an officer, employee, or agent of the responsible department who is authorised by the chief executive of that department to receive information from the chief executive of the Department in accordance with this section 25
 - identifying information**, in relation to any person, includes the person's— 30
 - (a) full name;
 - (b) date and place of birth;
 - (c) gender;
 - (d) any unique identifying number used by the responsible department; 35
 - (e) citizenship;
 - (f) known alias or aliases, if any.

Compare: 1987 No 74 s 141AC

262 Disclosure of immigration information for fines enforcement purposes between Department and department of State responsible for enforcement of fines

- (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.~~
- (2) For the purpose of this section, an authorised officer may supply to the chief executive of the Department any identifying information about a person who is in serious default in the payment of a fine, and the chief executive of the Department may compare that information with any information held by the Department that relates to the person and, if the Department has immigration information about the person, the chief executive of the Department may supply to an authorised officer 1 or more of the following:
- (a) the person's full name:
 - (b) the person's date of birth:
 - (c) the person's gender:
 - (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);
 - (h) the date that the person is expected to return to New Zealand (if applicable).
- (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.~~
- (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:
- (a) the person's full name: 5
 - (b) the person's date of birth:
 - (c) the person's sex:
 - (d) the person's nationality:
 - (e) the person's address:
 - (f) the person's occupation: 10
 - (g) the expiry date of any visa granted to the person (if applicable):
 - (h) the date that the person is expected to return to New Zealand (if applicable):
- (5) The chief executive of the Department and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them— 15
- (a) the frequency with which information may be supplied; and
 - (b) the form in which information may be supplied; and 20
 - (c) the method by which information may be supplied.
- (6) In this section and **section 263**, unless the context otherwise requires,—
- authorised officer** means ~~any~~ an 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,~~ supply information to the chief executive ~~under this~~ of the Department in accordance with this section 25
- fine** means—
- (a) a fine within the meaning of section 79 of the Summary Proceedings Act 1957 or an amount of reparation: 30
 - (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 35
- finances 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

identifying information means personal information that identifies an individual, which may include the individual's passport number

reparation means—

- (a) any amount that is required to be paid under a sentence of reparation; or 5
- (b) any amount that is required to be paid under any order of reparation as defined in section 145D of the Sentencing Act 2002

serious default, in relation to a person, means that— 10

- (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); 15
 - 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 20
- (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

- (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— 25
 - (a) after the arrival of the alleged defaulter in New Zealand; 30
 - or
 - (b) before the departure of the alleged defaulter from New Zealand.
- (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 35
 - 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.

- (3) Nothing in **subsection (2)** applies to or affects any question of the liability of the Crown to the alleged defaulter.

Compare: 1987 No 74 s 141AF

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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.~~

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- (1) This section applies to the chief executive of the Department if he or she is supplied with information about a specified fines defaulter (within the meaning of section 280F(3) of the Customs and Excise Act 1996) under section 280F(1) of that Act.

- (2) ~~The chief executive may supply the information to any person or persons concerned with the movement of persons out of New Zealand.~~

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- (2) The chief executive of the Department may supply the information to a commercial carrier—

(a) in any form and by any method that the chief executive thinks appropriate; and

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(b) in whole or in part, in the form of a code representing the information.

- (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~~

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(b) ~~may, in whole or in part, be in the form of a code representing the information.~~

- (4) In this section,—

commercial carrier means—

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(a) the owner or operator of a craft that carries persons from New Zealand to a point outside New Zealand for commercial purposes; or

(b) the agent of a person described in **paragraph (a)**

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

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Zealand, for commercial purposes, or the agent of an owner or operator of that kind

specified fines defaulter has the meaning given by section 280F of the Customs and Excise Act 1996.

Compare: 1987 No 74 s 141AG

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265 Disclosure of immigration information in relation to social security matters between Department and department of State responsible for Social Security Act 1964

- (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 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.
- (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)~~ The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information by the chief executive of the Department under this section and, in accordance with those arrangements, the chief executive of the Department may supply to an authorised officer the information described in subsection (3) in relation to the following persons:
 - (a) persons who the chief executive of the Department believes are unlawfully in New Zealand ~~unlawfully~~;
 - (b) persons who are lawfully in New Zealand ~~lawfully~~, but only by virtue of being the holder of a temporary entry class visa:

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- (c) persons who have made a claim ~~to be recognised for recognition~~, or have been recognised, as a refugee or a protected person:
 - (d) persons who have lodged an appeal against the decision of a ~~determination officer~~ refugee and protection officer to decline a claim ~~to be recognised for recognition~~ as a refugee or protected person: 5
 - (e) persons whose appeal against the decision of a ~~determination officer~~ refugee and protection officer to decline such a claim has been determined: 10
 - (f) persons who have been deported (whether under this Act or the former Act).
- (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: 15
 - (c) the person's date of birth:
 - (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: 20
 - (h) the date of the person's deportation from New Zealand (if applicable):
 - (i) the decision of a ~~determination officer~~ refugee and protection officer in relation to the person's claim (if any) for recognition as a refugee or a protected person: 25
 - (j) whether the person has lodged an appeal against a decision referred to in **paragraph (h)** paragraph (i):
 - (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.~~ 30
- (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. 35

- (5) The chief executive of the Department and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them—
- (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.
- (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;
 - (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.
- (6) In this section,—
- authorised officer** means an officer, employee, or agent of the responsible department who is authorised by the chief executive of that department to receive information from the chief executive of the Department in accordance with this section
- 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; and
 - (b) any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under section 124(1)(d) of that Act

Compare: 1987 No 74 s 141A

266 Disclosure of social security information for immigration purposes

- (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**.

- (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)**: 5
- (2) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information under this section and, in accordance with those arrangements, the chief executive of the responsible department may supply to an authorised officer of the Department the following information about a person in respect of whom an undertaking has been made under **section 46** relating to the payment of a benefit: 10
- (a) the person's full name and gender:
 - (b) any aliases known to the responsible department to be used by the person: 20
 - (c) the person's date of birth:
 - (d) the person's address:
 - (e) the nature of the benefit provided to the person (if any):
 - (f) the amount of benefit provided to the person (if any):
 - (g) any unique identifying number used by the responsible department. 25
- (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: 30
 - (c) the person's date of birth:
 - (d) the person's address:
 - (e) the nature of benefit provided to the person (if any):
 - (f) the amount of benefit provided to the person (if any):
 - (g) any unique identifying number used by the responsible department. 35
- (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:

- (5) Information supplied pursuant to a request made under **sub-section (2)** may be supplied in such form as is determined by agreement between the chief executive and the chief executive of the responsible department. 5
- (5) The chief executive and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them—
 - (a) the frequency with which information may be supplied; and 10
 - (b) the form in which information may be supplied; and
 - (c) the method by which information may be supplied.
- (6) In this section,—
 - authorised officer** means an officer, employee, or agent of the Department who is authorised by the chief executive of the Department to receive information from the chief executive of the responsible department in accordance with this section 15
 - benefit** has the same meaning as in section 3(1) of the Social Security Act 1964 and includes— 20
 - (a) a lump sum payable under any of sections 61DB, 61DC, and 61DD of that Act; and
 - (b) any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under section 124(1)(d) or (da) of that Act. 25

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— 30
 - (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. 35
- (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.
- (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: 5
- (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 10
 - (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— 15
 - (i) any changes to that status; and 20
 - (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)**. 25
- (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 30
 - (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 35
 - 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: 5
 - (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 10
 - (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 15
 - (c) as soon as practicable after conducting a review required to be taken under **paragraph (b)**, must report the result to the Privacy Commissioner.
- (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. 20
- (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~~ person. 25
- (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—
- (a) the number of agreements; and 30
 - (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.
- (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 35

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— 5

- (a) is determined by or under a statute; and
- (b) is related to, or affected by, 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. 10
- (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. 15
- (3) The chief executive must not disclose the information specified in **subsection (4)** unless satisfied that the request—
 - (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. 20
- (4) The information that may be disclosed under this section is as follows:
 - (a) whether the person is entitled to undertake that work in New Zealand: 25
 - (b) if the person is entitled to undertake that work in New Zealand,—
 - (i) the duration of the entitlement; and
 - (ii) any conditions imposed on that entitlement. 30
- (5) Where the chief executive discloses information under this section to an employer, the employer must be informed ~~that he or she must of the requirement to comply with the requirements of the Privacy Act 1993.~~

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—
- (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—
- (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,—
- (a) in the case of an agreement with an international agency or body, to help prevent, identify, or respond to the 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—
- (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 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
- (d) may state—
 - (i) the form in which information may be disclosed:
 - (ii) the method by which information may be disclosed; and 5
 - (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 10
 - (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. 15
 - (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. 20
 - (7) The chief executive may disclose information to an overseas agency, body, or person if—
 - (a) the functions of the agency, body, or person include the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; and 25
 - (b) the information is disclosed subject to conditions stating—
 - (i) the use the agency, body, or person may make of it; and
 - (ii) either— 30
 - (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 35 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:~~ that the agency or body has a function of preventing, identifying, or responding to:
 - (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: 20
 - (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): 25
 - (f) modus operandi of specified people:
 - (g) known currency and other financial transactions of relevant interest, including involvement in money laundering: 30
 - (h) intelligence analysis assessments and reports:
 - (i) details of mail interceptions:
 - (j) personal identification details (which may include photographs, distinguishing features, and details of identity or travel documents): 35
 - (k) names and details of immigration personnel and transport personnel:

- (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 5
or authorised by or under law, or any treaty, agreement, or arrangement concluded by the Government of New Zealand.
Compare: 1987 No 74 s 141AB

Part 9

Detention and monitoring

10

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~~ liable for deportation or turnaround; 15
and
- (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. 20

271A This Part code for detention and monitoring of person if detention and monitoring under this Act

This Part must be treated as a code for the purposes of detention and monitoring of any person if the reason for the detention or monitoring arises under this Act, and no person who is liable for arrest and detention under this Act may be granted bail from that detention. 25

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: 30
 - (a) ~~persons who are refused entry permission~~ who are liable for turnaround;
 - (b) persons who are liable for deportation (including persons recognised as refugees or protected persons but 35

- whose deportation is not prohibited under **section 153(3) or (4)**:
- (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 or turnaround and who ~~refuse upon request to provide~~ fail on request to supply satisfactory evidence of their identity when requested under **section 247**:
 - (e) persons who are, on reasonable grounds, suspected by an immigration officer or a member of the police ~~to constitute~~ of constituting a threat or risk to security.
- (2) The following persons are not liable to arrest and detention under this Part:
- (a) persons who are recognised as protected persons, except those whose deportation is not prohibited under **section 153(4)**:
 - (b) persons who are recognised as refugees, except those whose deportation is not prohibited under **section 153(3)** 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**.
- 272A Purpose for which arrest and detention powers may be exercised**
- The powers of arrest and detention under this Part may be exercised for the following purposes:
- (a) in the case of a person liable for turnaround, 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 liable for deportation,—
 - (i) to detain the person pending the making of a deportation order, including during the completion of any appeal brought by the person against his or her liability for deportation; or

- (ii) to deport the person following the making of the order by placing him or her on the first available craft leaving New Zealand:
- (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 or turnaround who fails to supply satisfactory evidence of his or her identity when requested under **section 247**, to detain the person pending satisfactory establishment of the person's identity: 5
- (d) in the case of a person— 10
 - (i) who is suspected of constituting a threat or risk to security, to detain the person pending the making of a deportation order; or
 - (ii) who is subject to a deportation order under **section 152**, to deport the person by placing him or her on the first available craft leaving New Zealand: 15
- (e) in the case of a person who has breached residence and reporting requirements, to detain the person pending a determination by a District Court Judge under **section 279, 280, or 282**. 20

273 Implications of liability to arrest and detention

Where a person is liable to arrest and detention under **section 272** this Part,—

- (a) the person may be subject to the 4-hour limited detention by an immigration officer provided for in **section 274**: 25
- (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**: 30
- (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**: 35
- (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 272A** until the earliest of—

- (a) the exercise by a member of the police of the power of arrest and detention under **section 275**; or 5
- (b) the delivery of the person into custody under this Act; or
- (c) the person no longer being liable to arrest and detention under this Part; or 10
- (ca) the purpose of the detention being achieved; 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

- (1) Where a person is liable to arrest and detention under this Part, a member of the police may, and if requested by an immigration officer must, for a purpose set out in **section 272A** arrest the person without warrant and place him or her in custody. 15
- (2) ~~The purpose of arrest and detention under this section is—~~ 20
 - (a) in the case of a person to whom **section 405** 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; 25
 - (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; 30
 - (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; 35

(c) ~~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**.~~

- (3) A person arrested and detained under this section may be detained only as long as is 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. 5
- (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**. 10

276 Persons arrested and detained pending making of deportation order

- (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. 15
- (2) If **subsection (1)** applies, a member of the police must as soon as is practicable 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. 20

Compare: 1987 No 74 s 75

277 Person may instead agree to residence and reporting requirements

- (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: 25 30
- (a) reside at a specified place:
 - (b) report to a specified place at specified periods or times in a specified manner:
 - (c) provide a guarantor who is responsible for—
 - (i) ensuring compliance with any requirements agreed under this section; and 35

- (ii) reporting any failure to ~~meet~~ comply with those requirements:
 - (d) if the person is a ~~refugee or protection status~~ claimant, attend any required interview with a ~~determination officer or refugee and protection officer or hearing~~ with the Tribunal: 5
 - (e) undertake any other action for the purpose of facilitating the person's deportation or departure from New Zealand.
- (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.~~ 10
- (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. 15
- (4) The agreement or variation of any residence or reporting requirements must be in writing and must—
 - (a) ~~specify the address of the place at which the person has agreed to reside; and~~ 20
 - (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~~ comply with any agreed requirement, the person may be detained under **section 274** or arrested and detained under **section 275**. 25
- (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.~~ 30
- (6) A person may be detained under **section 274** or arrested and detained under **section 275**—
 - (a) if an immigration officer determines that the person, without reasonable excuse,— 35
 - (i) has failed to reside at the specified place; or
 - (ii) has failed to comply with other agreed requirements; or

- (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.
- (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.

Compare: 1987 No 74 s 98

Warrants of commitment

10

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—
- (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~~ certify that the person constitutes a risk or threat ~~threat or risk~~ to security; or
 - (d) for any other reason, the person is unable to leave New Zealand.
- (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; and
 - (c) may include any other supporting evidence.
- (3) The Judge must determine the application under **section 279, 280, or 285**, as appropriate.

Compare: 1987 No 74 s 128(8)

35

279 Decision on application for warrant of commitment

- (1) On an application for a warrant of commitment, the District Court Judge concerned—
- (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: 5
 - (b) may, 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, if satisfied of the matters in **subsection (2)** and having taken into account the matters in **subsections (4), (5), and (6)**; or 10
 - (ii) ~~if the Judge is not satisfied that detention is warranted, order the person's release from custody on conditions under **section 282**:~~ 15
 - (ii) order the person's release from custody on conditions under **section 282**, if the Judge is not satisfied that detention is warranted. 20
- (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: 25
- (a) a craft is likely to be available, within the proposed period of the warrant of commitment, to take the person from New Zealand: 25
 - (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: 30
 - (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: 30
 - (d) the person has not supplied satisfactory evidence of his or her identity. 35
- (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—
- (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** : 5
- (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.
- (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~~ among other things, the need to seek an outcome that maximises compliance with this Act. 10
- (6) Unless there are exceptional circumstances, the Judge must not release the person on conditions if— 15
- (a) the identity of the person is unknown; or
 - (b) the person's identity has not been established to the satisfaction of the ~~C~~ourt; or
 - (c) a direct or indirect reason for the person being unable to leave New Zealand is, or was, some action or inaction 20 by the person occurring after the person was—
 - (i) served with a deportation liability notice; or
 - (ii) arrested and detained for the purpose of deportation or effecting the person's departure under **section 107**; turnaround; or 25
 - (d) the person claimed refugee or protection status only after the person was—
 - (i) served with a deportation liability notice or deportation order; or
 - (ii) arrested and detained for the purposes of deportation or turnaround. 30

Compare: 1987 No 74 s 60

280 **Decision on ~~warrant where~~ application for warrant if threat or risk to security involved**

- (1) This section applies where an immigration officer applies for a warrant of commitment to authorise the detention of a person— 35

- (a) who was arrested and detained under **section 275** on the suspicion of ~~a member of police or an~~ immigration officer or a member of the police that the person constitutes a threat or risk to security; or
- (b) whose deportation has been ordered under **section 152.** 5
- (2) The District Court Judge concerned 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. 10
- (3) Except where **subsection (2)** applies, the Judge must—
- (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 15
- (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 283 282** pending the person's deportation from New Zealand.
- 281 Warrant of commitment** 20
- (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:
- (a) in the case of a person ~~to whom section 105 applies liable for turnaround~~, the person is delivered into the custody of an immigration officer and detained or a member of the police and arrested and detained for the purpose of placing the person on the first available craft to leave New Zealand: 25 30
- (b) in the case of a person liable for deportation, the person is delivered into the custody of an immigration officer and detained or a member of the police and arrested and detained for the purpose of executing the deportation order: 35
- (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:
- (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 the date on which the person is again taken into custody under this Act. 5

Compare: 1987 No 74 s 128

282 Court may instead release person on conditions 10

- (1) Where a District Court Judge orders a person's release on conditions under **section 279(1)(b)(ii), 280(3)(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: 15
 - (a) a condition that the released person must reside at a specified place:
 - (b) a condition that the released person must report to ~~an office of the Department or a police station~~ a specified place at specified periods or times in a specified manner: 20
 - (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~~ refugee and protection officer or hearing with the Tribunal:
 - (d) a condition that the released person provide a guarantor 25
 - who is responsible for—
 - (i) ensuring compliance with any conditions imposed under this section; and
 - (ii) reporting any failure to ~~meet~~ comply with those conditions: 30
 - (e) a condition that the person take a specified action for the purpose of facilitating the person's deportation or departure from New Zealand.
- (2) Where conditions are imposed on a released person under **sub-section (1)**,— 35
 - (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;~~ comply with any condition, the person may be detained under **section 274** or arrested and detained under **section 275**.
- (3) Conditions imposed under this section may be varied at any time— 5
- (a) by a District Court Judge on the application of the person released or an immigration officer under **section 287**:
- (ab) by consent between the released person and an immigration officer, if— 10
- (i) the conditions imposed relate to the matters described in **subsection (1)(a) or (b)**; or
- (ii) the order imposing the conditions allows the variation. 15
- (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 20
- (b) must be ~~reduced to~~ put in writing, and notified to the released person, as soon as practicable.
- (5) A person may be detained under **section 274** or arrested and detained under **section 275**—
- (a) ~~if an immigration officer determines that the person, without reasonable excuse,—~~ 25
- (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~~ 30
- (iii) ~~has failed to adhere to any other conditions imposed under **subsection (1)**; or varied under **subsection (3)**; or~~
- (a) if an immigration officer determines that the person, without reasonable excuse, has failed to comply with any conditions imposed under **subsection (1)** or varied under **subsection (3)**; or 35

- (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
 - (c) to execute a deportation order or place the person on the first available craft leaving New Zealand. 5
- (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. 10
- Compare: 1987 No 74 ss 79, 128AB

283 Special conditions where threat or risk to security involved

Where a District Court Judge determines to order the release of a person to whom **section 280 applies** on conditions under **section 280(3)(b) subsection (3)(b) of that section**, the conditions imposed under **section 282** may involve any or all also include 1 or more of the following: 15

- (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): 20
 - (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— 25
 - (i) ensuring compliance with any conditions imposed; and
 - (ii) reporting any failure to meet those conditions.
- (2) **Section 282(2) to (6)** applies as if conditions imposed under this section were imposed under **section 282**. 30

284 Persons detained under warrant of commitment or released on conditions pending making of deportation order

- (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 an immigration officer or a member of the police that the person constitutes a threat or risk to security and who— 35

- (a) is being detained pursuant to a warrant of commitment issued under **section 279 or 280**; or
- (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.~~ 5
- (2) If the Minister decides not to certify that a person to whom this section applies constitutes a threat or risk to security, or fails to make a certification not later than 14 days after the initial arrest under **section 275**,— 10
 - (a) the person ceases to be liable to arrest and detention under this Part; and
 - (b) in the case of a person being detained under a warrant of commitment, an immigration officer must notify that fact in writing to the manager or other person in charge of the prison or premises identified in the warrant. 15

Compare: 1987 No 74 s 79

285 Decisions on warrants of commitment where detention beyond 6 months 20

- (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— 25
 - (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
 - (ii) the expiry of any period for bringing such an appeal; or 35
 - (c) the conclusion date when a claim for recognition as a refugee or a protected person is finally determined (as described in **section 117A**), if of the claim for recogni-

- tion as a refugee or protected person, where the person is a claimant and the claim was made only after the person—
- (i) ~~the person~~ was served with a deportation liability notice or order; or 5
 - (ii) ~~the person~~ was arrested and detained for the purpose of deportation or for effecting the person's departure under **section 107** turnaround.
- (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. 15
- (2) A further warrant of commitment authorising the detention of a person to whom this section applies must be issued if the District Court Judge concerned is satisfied—
- (a) that the person's ongoing detention is due to some action or inaction of the person after his or her arrest and detention; and 20
 - (b) no exceptional circumstances apply.
- (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~~— 25
- (a) must be supported by evidence under oath by an immigration officer; and
 - (b) must include a statement as to why the further warrant is required; and 30
 - (c) may include any other supporting evidence.
- (5) The Judge may require the immigration officer to attend the hearing to give evidence and be subject to cross-examination.
- (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. 35

- (7) This section does not apply to a person whose deportation has been ordered under **section 152**.
- (8) In **subsection (1)(a) and (b)**, the appeal rights and appeal proceedings referred to mean—
- (a) the rights of appeal the person has or had against liability for deportation; and
 - (b) the refugee and protection appeals associated with any claim made before the person was served with a deportation liability notice or arrested and detained for the purpose of deportation or turnaround.
- (9) To avoid doubt, if a person to whom **subsection (1)(c)** applies makes a subsequent claim, the 6-month period must be treated as if it started when the subsequent claim is finally determined (as described in **section 117A**).
- (10) For the purposes of **subsection (2)**, exceptional circumstances do not include the period of time that the person has already been detained under this Part.

Compare: 1987 No 74 s 60(6)(b)

286 Decisions on warrants of commitment when detention beyond 12 months

- (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—
 - (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—
 - (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**.
- (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—
- (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—
- (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—
 - (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.
- (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.
- (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

- (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

- (b) an order that the person who is detained under the warrant be released ~~under~~ on 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—
 - (a) an order that the person who is released on conditions be detained under a warrant of commitment; or
 - (b) a variation of conditions. 10
- (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~~ on conditions under **section 282**. 15
- (4) Subject to **subsection (5)**, a person released on conditions may apply to a District Court Judge seeking a variation of those conditions.
- (5) An application under **subsection (3) or (4)** must be made with the leave of a District Court Judge, which may be granted 20 only if the Judge is satisfied that new information has become available that—
 - (a) is material to the person's ongoing detention or release on conditions; and
 - (b) was unavailable at the time the warrant of commitment 25 or the decision to release on conditions was made.
- (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 30

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 under **section 278**, or for a review of a warrant or conditions under **section 287**, is made in relation 35

to a person subject to a decision made or proposed to be made ~~using~~ relying on classified information.

- (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 5
 - (b) the District Court Judge must not be provided with access to any classified information.
- (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)**). 10 15
- (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. 20
- ~~(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. 25~~
- (5) If this section applies, the person may continue to be detained— 30
 - (a) without warrant under **section 275**, until a determination is made on the application, as long as the application for a warrant of commitment is made not later than 96 hours after the person's arrest and detention (inclusive of any time during which the person was detained by an immigration officer under **section 274**); or 35
 - (b) under an existing warrant of commitment, until a determination is made on the application, as long as the appli-

cation is made before the expiry of the existing warrant of commitment.

289 Process for High Court to consider application

- (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 and 233 to 239A** apply. 5
- (2) In determining the application,—
 - (a) **sections 279, 280, 282, 283, 285, 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 10
 - (c) the classified information must be treated as accurate.

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**— 15
 - (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
 - (b) to produce the officer's warrant; and 20
 - (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.
- (2) It is the duty of every member of the police when arresting and detaining any person without warrant under **section 275**— 25
 - (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 30
 - (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
 - (c) to inform the person that he or she may contact a lawyer or, if appropriate, a responsible adult; and 35

- (d) to inform the person of the maximum duration of the detention.
- (3) ~~A member of the police or~~ An immigration officer or a member of the police 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 or member of the police~~ 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~~ this Part. 5
- (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 the member of the police~~, or any assistant, of protection from criminal responsibility. 10
Compare: 1987 No 74 s 134
- 291 Additional powers relating to detention by immigration officer** 15
- (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— 20
- (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 25
 - (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— 30
- (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 35
 - (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. 5
- (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)**. 10
- (6) An immigration officer who uses physical force or undertakes a search under this section must, ~~within not later than~~ 3 working days ~~of~~ after the use of the force or the search, give to the chief executive a written report of the use of the force or search, the circumstances in which it was used or conducted, 15 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 20 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.
- (3) Every person so called upon is justified in assisting, and he or she has all the protection and privileges of an immigration officer when giving his or her assistance, unless that person 25 knows that there is no reasonable ground for the arrest.

Compare: 1987 No 74 s 135

Form of custody

30

293 Approval of premises for purpose of immigration detention

The chief executive may approve any premises for the purpose of detention under this Act.

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— 5
 - (i) ~~any~~ 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 10
 - (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~~ parent, guardian, or responsible adult; or 15
- (b) in any other case, in—
 - (i) ~~any~~ premises approved by the chief executive under **section 293**; or
 - (ii) a police station. 20

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,— 25

- (a) in the case of a person under 18 years of age, in a place approved for the purpose by the District Court 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 30
 - (ii) if the person is not married or in a civil union, any other premises agreed to by an immigration 35

- officer and ~~by the person's parent or guardian the~~
~~person's parent, guardian, or responsible adult; or~~
 (iii) premises approved by the chief executive under
section 293; or
 (b) in any other case,— 5
 (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**. 10

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 war- 15
 rant 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 20
 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 re- 25
 spect 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 30
 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.
- (3) Where a person is detained under this Act in a prison, that
 person must be treated in accordance with the Corrections Act 35
 2004 and any regulations made under that Act regulating the
 treatment of prisoners detained in prisons under this Act.

- (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.

Compare: 1987 No 74 s 140

297 Additional provisions relating to custody in approved premises 5

- (1) Without limiting **section 296(4)**, where a person to whom a warrant of commitment is addressed is the a 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, a warrant of commitment or detention under **section 275**, use such physical force as the person has reasonable grounds for believing is reasonably necessary— 10
- (a) to prevent the person to whom the warrant or detention applies (the **detainee**) from harming any person; or 15
 - (b) to prevent the detainee from damaging any property; or
 - (c) to prevent the detainee from escaping or attempting to escape from custody; or
 - (d) to recapture the detainee, if the detainee is fleeing after having escaped from custody. 20
- (2) A person who uses physical force for any of the purposes referred to in **subsection (1)**—
- (a) may use no more physical force than is reasonably necessary in the circumstances; and 25
 - (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— 30
- (a) document the force used and the circumstances surrounding the use of that force; and
 - (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) or (4A)**. 35

- (4) Where a detainee is delivered into the custody of a member of the police under **subsection (3)**, and he or she is subject to a warrant of commitment,—
- (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 5
 - (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). 10
- (4A) If a detainee is delivered into the custody of a member of the police under **subsection (3)** and he or she is detained under **section 275**, an immigration officer must as soon as practicable apply under **section 278** for a warrant of commitment in respect of the person (unless the immigration officer agrees with the person to residence and reporting requirements under **section 277**). 15
- (5) The Judge may also issue a further warrant of commitment; ~~if appropriate, in accordance with the relevant provisions of this Part~~ 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 custody of 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** ~~this Part~~, an immigration officer or a member of the police may request the manager or other person in charge of the prison or other premises in 35

which that person is ~~detained~~ held in custody to deliver the person into the custody of ~~an immigration officer or 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, and the manager or other person must deliver the person accordingly. 5

- (2) Where a person is in prison undergoing imprisonment, an immigration officer or a 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, and the manager or other person must deliver the person accordingly. 10 15

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,— 20 25

- (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: 30
- (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: 35
- (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.

299 Person being deported must be returned to custody or conditions reimposed if craft not available as planned

- (1) This section applies if the following circumstances arise:
- (a) a craft that was to take from New Zealand a person in relation to whom a deportation order is being executed, or whose departure is being effected,— 5
 - (i) ceases to be available for any reason; or
 - (ii) is, or is likely to be, delayed in New Zealand for more than 96 hours; or
 - (b) for any other reason it is not practicable in all the circumstances for the person to leave New Zealand at the expected time. 10
- (2) When this section applies,—
- (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: 15
 - (b) a person who has been subject to residence and reporting conditions under **section 277**, or released on conditions under **section 282**, may once again be released on those conditions: 20
 - (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. 25

Special provision where epidemic management notice in force

300 During epidemic ~~courts~~ District Court 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. 30
- (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. 35

- (3) If the notice applies to only stated parts of New Zealand, **subsection (1)** applies within those parts only.

Compare: 1987 No 74 s 129ZC

301 Modification during epidemic of requirements to bring people before ~~court~~ District Court Judge

5

- (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.

- (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.

10

- (3) If the notice applies to only stated parts of New Zealand, **subsection (2)** applies within those parts only.

15

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.

20

- (2) **Subsection (1)** overrides every provision of this Act to the contrary.

25

- (3) If the notice applies to only stated parts of New Zealand, **subsections (1) and (2)** apply within those parts only.

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~~ a released person may agree in writing to vary a condition imposed under **section 282**—

30

- (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~~ section 285** 5
- (1) ~~In calculating for purposes of **sections 285 and 286**~~ In calculating for the purposes of **section 285** the consecutive period for which a person has been detained under 1 or more warrants of commitment under this Part,— 10
 - (a) no account is to be taken of any periods of detention occurring while an epidemic management notice is in force; but
 - (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 epidemic management notice applies to only stated parts of New Zealand, **subsection (1)** applies within those parts only.

Part 10

20

Offences, penalties, and proceedings

Offences

- 305 Provision of false or misleading information**
- (1) Every person commits an offence against this Act who— 25
 - (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—
 - (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; 30
 - or
 - (ii) any request for variation, waiver, or cancellation of the conditions of a visa; or
 - (iii) any appeal or application in the nature of an appeal to the Minister or the Tribunal; or 35

- (b) ~~without reasonable excuse~~, produces or surrenders any document or supplies any information to an immigration officer or ~~determination officer~~ a refugee and protection officer knowing that it is false or misleading in any material respect; or 5
- (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**. 10
- (2) To avoid doubt, no proceedings under **subsection (1)(b)** may be brought if the documents or information are supplied in the circumstances to which Article 31.1 of the Refugee Convention applies. 15
- Compare: 1987 No 74 ss 126(4), 142(1)(a), (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 unlawfully in New Zealand ~~unlawfully~~ or to breach any condition of a visa granted to the other person; or 20
- (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 unlawfully 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),— 25
- (i) knowing that the other person's entry into New Zealand is or would be unlawful; or 30
- (ii) being reckless as to whether the other person's entry into New Zealand is or would be unlawful; or
- (c) whether ~~with~~ 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 35

assisting knows to be false or misleading in any particular, being a document required for the purposes of—

- (i) **section 91**; or
 - (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
 - (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 unlawfully in New Zealand ~~unlawfully~~ or to 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), (f)

307 Obstruction or failing to meet requirements

Every person commits an offence against this Act who₂—

- (a) without reasonable excuse, refuses or fails to produce or surrender any document, or to supply any information₂ when required to do so by an immigration officer or ~~determination officer~~ a refugee and protection officer in accordance with any of the provisions of this Act; or
- (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
- (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 police₂ refugee and protection officer, or member of the police in the exercise of the powers of that officer or member of the police under this Act; or

- (da) refuses or fails to provide biometric information under section 92, 98, or 110A; or
 (e) refuses or fails to provide biometric information in accordance with an a compulsion order made under section 257.

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Compare: 1987 No 74 s 142(1)(b), (g)

308 **Improper dealings with immigration and identity documents**

Every person commits an offence against this Act who—

- (a) whether ~~within or outside~~ in or outside New Zealand, ~~produces or surrenders~~ produces, 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, an immigration or identity document—~~ 10
- (i) as relating to that person when in fact, to that person's knowledge, it relates to some other person; 15
 or 20
- (ii) knowing it to be forged or to have been obtained fraudulently; or
- (b) whether ~~within or outside~~ in 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)~~ an immigration or identity document relating to the person to any other person (the **receiver**)— 25
- (i) without necessarily knowing which, knowing that the receiver will— 30
- (A) produce it or pass it off as relating to the receiver or some other person; or 35
- (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. 5

(2) In this section, **immigration or identity document** means—

- (a) a passport, a certificate of identity, an endorsement in a passport of a type described in **section 343B**, evidence of a visa, an invitation to apply for a visa, or a certificate of citizenship; or 10
- (b) anything purporting to be a passport, a certificate of identity, an endorsement in a passport, evidence of a visa, an invitation to apply for a visa, or a certificate of citizenship. 15

Compare: 1987 No 74 s 142(1)(d), (e)

309 Impersonation

Every person commits an offence against this Act who, not being an immigration officer or ~~determination officer~~ a refugee and protection officer, personates or pretends to be an immigration officer or ~~determination officer~~ a refugee and protection officer. 20

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. 25 30

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 refugee and protection officer,— 35

- (a) after the person to whom a form ~~required~~ (that is re-
quired to be completed for the purposes of this ~~Act~~
Act) relates has signed it and declared its contents to
be true,—
 - (i) alters information entered on it; or 5
 - (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— 10
 - (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. 15
- Compare: 1987 No 74 s 142(2)

312 Offences relating to carriers and persons in charge of craft

- (1) Every carrier or person in charge of a commercial craft com-
mits an offence who—
 - (a) fails without reasonable excuse to comply with any of 20
~~his or her~~ the carrier's or the person's responsibilities
under **section 86(2)**; or
 - (b) allows a person to travel to New Zealand before a deci-
sion has been made by the chief executive under **sec-**
tion 87(1); or 25
 - (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 30
 - (d) fails without reasonable excuse to provide the chief
executive with information under **section 90(2)**
90(2)(a); or
 - (e) fails without reasonable excuse to ~~provide~~ ensure the
chief executive ~~with~~ has access to information under 35
section 90(2) 90(2)(b).

- (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 5
 - (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)**. 10
- (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.~~ 15
- (5) Proceedings in respect of an offence against **subsection (1), (2), or (3)** may be taken against the person in charge of the craft or the carrier, but not both. 20

Compare: 1987 No 74 ss 125AA(4), 125AC(1), (2), 125AE(1), (2), 125(6)–(8)

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 25
 - (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. 30
- (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 35

- (b) took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to do the work.
- (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. 5
- (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. 10
- (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 ~~with~~ in the preceding 12 months (whether before or after the commencement of this section), the employer has been informed of that fact in writing by an immigration officer. 15
- (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. 20

Compare: 1987 No 74 s 39

314 Exploitation of persons not legally entitled to work 25

- (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 30
 - (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 35

- (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
 - (ii) leaving New Zealand; or 5
 - (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.
- (2) The following are examples of actions of the kinds referred to in **subsection (1)(b)**: 10
 - (a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets:
 - (b) preventing or hindering a person from— 15
 - (i) having access to a telephone; or
 - (ii) using a telephone; or
 - (iii) using a telephone privately; or
 - (iv) leaving premises; or
 - (v) leaving premises unaccompanied: 20
 - (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. 25
- (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 30
 - under the Holidays Act 2003 is serious:
 - (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. 35
- (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:
 - (c) if it comprises a series of instances,—
 - (i) how many instances it comprises:
 - (ii) the period over which they occurred: 5
 - (d) whether or not it was intentional:
 - (e) whether the employer concerned has complied with the record-keeping obligations imposed by the Act concerned:
 - (f) any other relevant matter. 10
- (5A)** The following are examples of actions of the kind 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: 15
 - (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 20
 - (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. 25
- (5B)** **Subsection (5A)** does not limit **subsection (1)(b)**.
- (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~~ section), 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~~ who 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

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- (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. 20
- (4) It is a defence to a charge under **subsection (1)(b)** that the education provider—
- (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
- (4A) Except as provided in **subsection (4)**, it is not a defence to a charge under **subsection (1)(b)** that the education provider did not know that the person was not entitled under this Act to undertake that course of study. 30
- (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. 35
- (6) A person is ~~deemed~~ treated as 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~~ section), the person has been informed of that fact in writing by an immigration officer.

Compare: 1987 No 74 s 40

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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,—
 - (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
 - (c) fails to produce any such paper, document, record, or thing.
- (2) Every person commits an offence who—
 - (a) intentionally ~~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
 - (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
 - (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**.

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,—

- (a) contravenes **section 140(1)**; or
- (b) publishes information released in contravention of **section 140(1)**.

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Compare: 1987 No 74 s 129T(5)

Penalties

318 Penalties: general

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- (1) A person convicted of an offence against **section 305(1)(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.
- (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. 15
- (3) A person convicted of an offence against **section 305(1)(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. 20
- (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.
- (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. 25
- (6) Where any person is convicted of an offence against **section 306(1)(d)** in respect of any person who is or was unlawfully 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. 30 35

(7) For the purposes of ~~subsection (5)~~ **subsection (6)**, the costs incurred or likely to be incurred in deporting a person include—

- (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.

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Compare: 1987 No 74 s 144

319 Penalties: carriers and persons in charge of craft

(1) ~~Except as provided in subsection (2), a~~ A person convicted of an offence against **section 312** (except **section 312(2)(b)**) is liable,—

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- (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.

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(2) A person convicted of an offence against **section 312(2)(b)** is liable,—

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- (a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000;
- (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.

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Compare: 1987 No 74 ss 125AA(4), 125AC(3), 125AE(3), 125(6), (7)

320 Penalties: employers

(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.

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(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.

Compare: 1987 No 74 ss 39(5), 39A(8)

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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.
- (2) A person convicted of an offence against **section 315(1)(b)** is liable to a fine not exceeding \$30,000.

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*Infringement offences for carriers or persons
in charge of craft*

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**.

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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—

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- (a) proceeded against under the Summary Proceedings Act 1957; or
- (b) served with an infringement notice under **section 325**.

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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:

- (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;
- (d) the carrier's legal name;
- (e) the carrier's full postal address.

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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.
- (2) Every infringement notice must be in the prescribed form and must include the following particulars:
- (a) sufficient detail to fairly inform the person of the time, place, and nature of the alleged infringement offence: 5
 - (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: 10
 - (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:
 - (g) a statement of the consequences if the person does not pay the infringement fee and does not request a hearing: 15
 - (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 20
 - (b) by sending it by post to the last known place of residence or business of the carrier or person in charge of the craft.
- (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. 25
- (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. 30

326 Reminder notices

Regulations made under **section 358** may prescribe the form of reminder notices to be used in relation to infringement offences under this Act. 35

327 Infringement fees

- (1) Infringement fees prescribed under this Act may not exceed,—
- (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~~ a Crown Bank Account. 5

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— 10
- (a) the infringement fee is paid; or
 - (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

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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 or a court, a certificate signed by an immigration officer or a refugee and protection 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. 20
- (2) A certificate under this section may, in relation to a person, state that— 25
- (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
 - (c) any visa granted to the person was granted for a specified period or on or until a specified date, or until the occurrence of a specified event, or was granted for an express purpose, or is or was subject to specified conditions; or 30
 - (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 35

- (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
- (ea) the person was or was not, at any material time, granted entry permission; or 5
- (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 10
- (h) an immigration officer or a ~~determination officer~~ refugee and protection 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 15
- (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~~ was or was not applied as the basis for a decision; or 20
- (l) the person ~~has been~~ was served with a deportation liability notice on a specified date, or was deported from New Zealand on a specified date, or that there ~~is or was~~ at any material time, a deportation order in force in respect of that person ~~a deportation order~~; or 25
- (la) the person was, at a specified time or for a specified period, liable for deportation; 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 30 35
- (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 ob-

- tained fraudulently or that contained any evidence of a visa that was forged or so obtained, for the purpose of—
- (i) obtaining a visa; or
 - (ii) obtaining any variation, cancellation, or waiver of the conditions of any visa; or 5
 - (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 10
 - (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 or a refugee and protection officer on a certain date; or 15
 - (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 20
 - (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
 - (u) the person travelled to New Zealand contrary to a decision made by the chief executive under **section 87(1)(b) or (c)**; or 25
 - (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,— 30
 - (i) claimed to be a refugee in New Zealand or elsewhere; or
 - (ii) been recognised as a refugee in New Zealand or elsewhere; or
 - (iii) claimed recognition as a protected person in New Zealand; or 35
 - (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 5
- (x) the person, while in New Zealand, produced or surrendered to an immigration officer or ~~determination officer~~ a refugee and protection officer any passport, certificate of identity, or other document that was forged or obtained fraudulently; or 10
- (y) a matter is or is not before a ~~determination officer~~ refugee and protection officer under **section 132, 132A, 133, 133A, or 133B** or the Tribunal under **section 134**. 15
- (3) A certificate under this section may, in relation to a person, state that— 15
- (a) fingerprints matching the person's fingerprints were obtained under a particular name in a particular country; or
- (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 20
- (c) the person has or has not been recognised as a refugee or a protected person under a particular name in a particular country; or 25
- (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 30
- (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
- (g) the person has or has not been awarded a particular qualification under a particular name in a particular country; or 35

- (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.

Compare: 1987 No 74 s 143(1), (1A)

330 Evidence in proceedings: certificates as to forms, documents, etc 5

For the purposes of any proceedings relating to any matter under this Act, whether before ~~any court or~~ the Tribunal or a court,—

- (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: 10
- (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: 15 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
- (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: 30 35

- (e) a certificate signed by the chief executive stating that a particular place is or was an immigration control area is sufficient evidence of the fact that that place is or was an immigration control area.

Compare: 1987 No 74 s 143(3)–(4B), (6)

5

331 Evidence in respect of matters occurring and documents executed outside New Zealand

- (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 20
- (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. 25

Compare: 1987 No 74 s 143(2), (7)

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. 30

Compare: 1987 No 74 s 143(5)

*Procedural provisions relating to offences***333 Procedural provisions relating to offences**

- (1) An offence against **section 305(1)(b), 306(1)(a), (b), or (c)(i), 308, 311, or 314** is punishable on indictment.
- (2) All other offences against this Act or any regulations made under it are punishable on summary conviction. 5
- (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. 10
- Compare: 1987 No 74 s 145(1)–(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 any other authorised person; or 15
- (b) an information was laid by an immigration officer, a member of the police, or any 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— 20
- (a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an immigration officer; or 25
- (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. 30

Compare: 1987 No 74 s 145(4), (5)

Part 11

Miscellaneous provisions

Matters relating to immigration status of persons born in New Zealand

336 Immigration status of persons born in New Zealand on or after 1 January 2006 5

- (1) This section applies to a person who—
 - (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**:~~ 10
 - (2) From birth, the person is deemed to have the most favourable immigration status of either of his or her parents at the time that he or she was born, as determined under **section 337**, and the provisions of this Act that apply to a person of that immigration status apply to the person accordingly until either— 15
 - (a) the person leaves New Zealand; or
 - (b) the person is accorded a different immigration status under, or by the operation of, this Act. 20
- (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~~ 25
 - (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.~~ 30

Compare: 1987 No 74 s 4A

337 Immigration status of persons whose status depends on immigration status of parent

- (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 A person's 35

immigration status for the purposes of **section 336** is to be determined as follows:

- (a) ~~where~~ if both parents are recorded on the person's original birth record, whichever of the following is applicable: 5
 - (i) ~~where~~ if 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: 10
 - (ii) ~~where~~ if 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:
 - (iii) ~~where~~ if 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: 15
 - (iv) ~~where~~ if 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: 20
 - (v) ~~where~~ if 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: 25
 - (vi) ~~where~~ if 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: 30
 - (vii) ~~where~~ if 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: 35

- (b) ~~where if~~ 1 parent only is recorded on the person's original birth record, whichever of the following is applicable:
- (i) ~~where if~~ 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: 5
 - (ii) ~~where if~~ 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: 10
 - (iii) ~~where if~~ 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:
 - (iv) ~~where if~~ 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. 15
- (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. 20
- Compare: 1987 No 74 s 4A(4)

Minors

- 338 ~~Children~~ Minors to have responsible adult to represent their interests** 25
- (1) In any matters of the kind referred to in **subsection (2)** that relate ~~both to a dependent child person~~ who is under 18 years of age and ~~who is~~ not married or in a civil union (in this section and **sections 339 and 340** referred to as a **minor**) ~~and to + or more of that child's parents,—~~ 30
- (a) the minor's interests are to be represented by ~~any such~~ the minor's parent; and
 - (b) the parent is the responsible adult for the minor for the purposes of this section and **sections 339 and 340**. 35
- (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 rep-

resent 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~~ minor for recognition as a refugee or a protected person: 5
- (c) any appeal or review proceedings 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~~ refugee and protection officer, or a Judge, as the case may require. 10
- (4) A person may be nominated as a responsible adult ~~under sub-section (2)~~ only if—
 - (a) the person is 20 years of age or more; and 15
 - (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 20
 - (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 otherwise 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 25 30
 - (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) 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. 35
- (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~~, a refugee and protection 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. 5

Compare: 1987 No 74 s 141B

339 Role and rights of responsible adult 10

The following provisions apply to any dealings under this Act with a minor who has a responsible adult to represent his or her interests:

- (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:~~ 15
- (a) the responsible adult may, on the minor's behalf—
 - (i) appeal to the Tribunal under **Part 7**; or
 - (ii) appeal to the High Court under **section 219**; or 20
 - (iii) bring review proceedings in the High Court in accordance with this Act:
- (ab) the responsible adult 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: 25
- (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: 30
- (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. 35

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,—

- (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 5
- (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

*Special directions***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
 - (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. 20
- (2) The Minister may ~~from time to time~~ give in writing a special direction—
 - (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)**: 25
 - (b) suspending a visa waiver made ~~by regulations under in accordance with section 57(1), in accordance with under section 57(2)(b)~~: 30
 - (c) classifying persons ~~subject to a~~ to whom a transit visa waiver applies, in accordance with **section 75(3) 75(3)(a)**: 35
 - (d) suspending a transit visa waiver, made in accordance with **section 75(1A)(a)** under **section 75(3)(b)**.
- (3) A special direction comes into force on the day on which it is made, or any later date specified in the direction.

- (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. 5
- (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. 10
- (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. 15

Compare: 1987 No 74 s 130

341A Immigration officer to act in accordance with special direction

Any decision made, or discretion exercised, under this Act by an immigration officer must be made in accordance with any special direction that is— 20

- (a) relevant to the decision; and
- (b) in force at the time the decision is made.

Delegation of Minister's powers

342 Delegation of powers of Minister 25

- (1) The Minister may ~~from time to time~~, in writing, delegate to any immigration officer ~~all or any~~ 1 or more of the powers conferred on the Minister by this Act, except—
 - (a) this power of delegation; and
 - (b) the power to certify immigration instructions under **section 20**; and 30
 - (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)(a) or (b)** in relation to a class of persons; and 35

- (e) the power to make a special direction under **section 75(3)** in relation to transit visas; and
 - (f) the power to ~~make a certification~~ certify under **section 152(1)** that a person constitutes a threat or risk to security; and 5
 - (g) the power to make a decision of a kind referred to in **section 129 or 177(2), 177A** in relation to ~~an appeal against refusal of recognition as a refugee or protected person~~ a protected person who has committed certain crimes or been guilty of certain acts. 10
- (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. 15
- (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. 20
- (6) Until revoked, a delegation continues in force according to its tenor, ~~notwithstanding the fact that even if~~ the Minister by ~~whom it was~~ who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that Minister. 25
- (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. 30

Compare: 1987 No 74 s 131

Matters relating to chief executive

343 Chief executive may approve forms

- (1) The chief executive may ~~from time to time~~ approve and issue ~~all such forms as~~ application forms and any other forms that the chief executive considers necessary for the purposes of 35

this Act, not being forms prescribed or to be prescribed by regulations made under this Act.

- (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~~ chief executive, an immigration officer, or a refugee and protection officer otherwise certifies.

343A Chief executive to designate immigration control areas

- (1) The chief executive may 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 port:
 - (c) any other place that the chief executive considers appropriate for processing people arriving in and departing from New Zealand.
- (2) The chief executive must give written notice of a designation under this section to—
- (a) the operator of the airport or port concerned; or
 - (b) the person otherwise in control of the place (being an owner, occupier, lessee, or sublessee).
- (3) The chief executive must also publicly notify any designation under this section by making available a description of the designated area or place, free of charge, at—
- (a) offices of the Department; and
 - (b) New Zealand Government offices overseas that deal with immigration matters.

Endorsement of New Zealand citizenship in foreign passports

343B Endorsement in foreign passport

- (1) 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 his or her New Zealand citizenship.

- (2) A New Zealand citizen who wishes to obtain an endorsement of the type described in **subsection (1)** must apply to the chief executive in the prescribed manner and include—
- (a) the prescribed evidence to support his or her application; and 5
 - (b) photographic biometric information (for the purposes of complying with border requirements at any future date).
- (3) The chief executive may cancel an endorsement given under **subsection (1)** if the person is deprived of, or renounces, his or her citizenship under the Citizenship Act 1977. 10

*Responsibilities of certain operators of airports
and ports*

343C Certain operators of airports and ports to provide operating areas, accommodation, facilities, etc

- (1) The operator of an airport or a port that is subject to a designation under **section 343A** must provide and maintain the operating areas, accommodation, facilities, buildings, equipment, and storage in the airport or port as the chief executive determines is reasonably necessary and suitable for carrying out immigration functions in relation to people arriving in and departing from New Zealand. 15 20
- (2) The operator of the airport or port may impose a reasonable charge or charges on the Department for providing the operating areas, accommodation, facilities, buildings, equipment, and storage required by the chief executive under **subsection (1)**, but no charge may be imposed on the Department in respect of any operating area used for the processing of persons arriving in or departing from New Zealand (including any area used for the purposes of ensuring that a person is placed on the first available craft leaving New Zealand). 25 30
- (3) **Subsection (2)** applies despite anything to the contrary in the Airport Authorities Act 1966.

Compare: 1996 No 27 s 18(1), (2), (3)(a)

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.

*Notice requirements and addresses for
communications*

- 345 Service of notices, etc Giving notice, service of notice, etc** 5
- (1) ~~Where~~ If 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.
- (2) ~~Where~~ If under this Act any notice or other document is to be served on or supplied to an immigration officer or a refugee and protection officer, it must be delivered personally to an immigration officer or a refugee and protection officer or sent by registered post to an immigration officer or a refugee and protection officer at an office of the Department. 15
- (3) ~~Where~~ If under this Act any person is to be notified of any matter, written notice of that matter must be given to, 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)**. 20
- (3A) A deportation liability notice may be served on a person either—
- (a) by personal service by an immigration officer, or by another person on behalf of an immigration officer; or 25
- (b) by registered post addressed to the person's New Zealand address or an address supplied under **section 47(2)**.
- (4) ~~Where~~ If 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. 30
- (5) ~~Where~~ If under this Act any notice or other document is to be given to, served on, or supplied to the holder of any temporary entry class visa, or any person who is, or is believed to 35

be, ~~unlawfully~~ 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 to, served on, or received by the person 7 days after the date on which it was posted.

- (6) Except in a case to which **subsection (5)** applies, ~~where~~ if under this Act any notice or other document is to be given to, served on, or supplied to any person in New Zealand 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.
- (6A) If a notice or other document is to be given, served on, or supplied to a person by registered post addressed to an address supplied under **section 47(2)**, and that address is outside New Zealand, the person must be treated as having been given, served on, or received by the person 14 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.
- (7) This section applies unless a provision in this Act expressly provides otherwise.

Compare: 1987 No 74 s 146

345A New Zealand address

- (1) In this Act, **New Zealand address**, in relation to a person who holds a visa and is in New Zealand, means the last known of the following addresses:
- (a) the address for the time being nominated by the person under **section 47(2)**:
 - (b) the address for the time being nominated by the person under **section 97** (or under section 37 of the former Act):
 - (c) if applicable, the person's New Zealand address within the meaning of **subsection (2), (3), (4), (5), or (6)**.
- (2) In this Act, **New Zealand address**, in relation to a person who is a claimant under **Part 5**, means the last known of the following addresses:

- (a) the latest address supplied by the person under **section 124(5)** (or under section 129G(4) of the former Act):
- (b) if applicable, the person's New Zealand address within the meaning of **subsection (1), (3), (4), (5), or (6)**.
- (3) In this Act, **New Zealand address**, in relation to a person who has appealed to the Tribunal under **Part 7**, means the last known of the following addresses: 5
- (a) the address supplied to the Tribunal under **section 201(2)(a)(i)**:
- (b) if applicable, the person's New Zealand address within the meaning of **subsection (1), (2), (4), (5), or (6)**. 10
- (4) In this Act, **New Zealand address**, in relation to a person who is subject to any residence or reporting requirement under **section 277 or 282**, means the last known of the following addresses: 15
- (a) the address at which the person has currently agreed or been required to reside under the section concerned:
- (b) if applicable, the person's New Zealand address within the meaning of **subsection (1), (2), (3), or (6)**.
- (5) In this Act, **New Zealand address**, in relation to a person who is in custody under **Part 9** (or pursuant to a warrant of commitment issued under the former Act), means the last known of the following addresses: 20
- (a) the place where the person is held in custody:
- (b) if applicable, the person's New Zealand address within the meaning of **subsection (6)**. 25
- (6) In this Act, **New Zealand address**, in relation to a person under 18 years of age who is named in a deportation liability notice and is not married or in a civil union, means,—
- (a) if the person is named as a dependent child of another person named in the notice, the New Zealand address of the other person: 30
- (b) if a responsible adult has been determined or nominated under **section 338** (or under section 141B of the former Act), to represent the person's interests, the latest address supplied by the responsible adult under **section 338(7)** (or under section 141B of the former Act). 35

*Immigration officers and refugee and protection
officers*

346 Immigration Designation of immigration officers

- (1) The chief executive may ~~from time to time~~ designate as immigration officers— 5
- (a) ~~such persons employed in the Department as the chief executive considers necessary for the purposes of this Act; and~~
 - (a) the persons employed in the Department that the chief executive considers are— 10
 - (i) necessary for the purposes of this Act; and
 - (ii) suitably qualified and trained; and
 - (b) ~~such other agents of or persons in the service of the government, Government of New Zealand, or persons in the service of the government of another country, as the chief executive determines, whether designated individually or by class or position.~~ 15
- (2) The chief executive must specify which functions and powers ~~the an~~ immigration officer is authorised to exercise under this Act: ~~An officer~~, and an officer may not ~~exercise~~ perform any 20 functions or exercise any powers under this Act unless specifically authorised by the chief executive.
- (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 25 functions and powers the person may exercise.
- (3) An immigration officer authorised to exercise 1 or more of the following powers must be issued with a warrant of designation, signed by the chief executive, specifying which of those powers the officer may exercise: 30
- (a) the power to deport a person under **section 166**:
 - (b) the power of entry and inspection under **sections 243, 244, and 245**:
 - (c) the powers under **sections 246, 247, 248, and 255** to require information or documents for the purpose of 35 ensuring compliance with this Act:
 - (d) the powers under **sections 249, 250, 251, and 252** at a border:
 - (e) the power of entry and search under **section 253**:

- (f) the power to obtain certain information pending a person's deportation under **section 254**:
- (g) the power to detain a person under **section 274**.
- (4) A warrant is sufficient evidence of the officer's designation as an immigration officer, and the officer's authorisation to ~~exercise~~ perform the functions and exercise the powers specified in it. 5
- (5) To avoid doubt, the chief executive need not be issued with a warrant of designation, and may perform or exercise all the powers and functions of an immigration officer under this Act. 10
- (6) A person may not at any ~~+~~ one time be designated as an immigration officer and a ~~determination officer~~ refugee and protection officer. 10
- (7) Whenever an immigration officer (including any member of the police exercising the powers of an immigration officer) 15 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,~~ exercising a power described in **subsection (3)**, the officer—
- (a) must produce ~~the officer's~~ his or her warrant of designation; and 20
- (b) if called upon to do so, must state the provision or provisions of this Act under which ~~the officer~~ he or she is entitled to enter the premises, building, or craft or exercise a power of detention. 25
- (8) ~~An~~ Without limiting **subsection (3)**, 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 30 under this Act.
- (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 35 police.

Compare: 1987 No 74 s 133

**347 ~~Specification of immigration~~ Immigration officers'
functions and powers**

- (1) An immigration officer may be authorised to perform or exercise individual functions and powers of a particular class, or functions and powers of 1 or more classes; as set out in sub- 5
section (2).
- (2) ~~Functions~~ Without limiting the way in which function and powers are classified under **subsection (1)**, functions and powers may be classified as follows:
- (a) visa decision-making functions and powers, being the 10
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, be- 15
ing the functions and powers set out in **Part 8**;
 - (d) the power of detention, being the power set out in **sec-**
tion 274.

**348 ~~Determination~~ Designation of refugee and protection
officers**

- (1) The chief executive may ~~from time to time~~ designate as ~~de-~~ 20
~~termination officers~~ such refugee and protection officers the
persons employed in the Department as that the chief execu-
tive considers necessary for the purposes of this Act.
- (2) A person designated as a ~~determination officer~~ may exercise 25
refugee and protection officer may perform all the functions
and exercise all the powers of a ~~determination officer~~ refugee
and protection officer.
- (3) **Subsection (2)** is subject to **section 30(2)(b).**

**349 ~~Designation of officers, etc, by chief executive~~ Revocation
or lapsing of designations**

- (1) Every designation by the chief executive of a person as an im- 30
migration officer or ~~determination officer~~ a refugee and pro-
tection officer, or for any other purpose under this Act, is re-
vocable in writing at will. 35

- (2) Every authorisation of an immigration officer to exercise a power or perform a function is revocable in writing at will.
- (3) Any such designation or authorisation—
- (a) continues in force according to its tenor until it is revoked, ~~notwithstanding that even if~~ the chief executive ~~by whom it was made~~ who made it may have ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive: 5
 - (b) is subject to such restrictions or conditions as the chief executive specifies in writing in the warrant of designation. 10
- (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) A person whose designation has lapsed or been revoked must immediately surrender the warrant of designation to the chief executive. 15

Compare: 1987 No 74 s 133A

*Relationship between this Act and Human
Rights Act 1993*

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350 Relationship between this Act and Human Rights Act 1993

- (1) ~~Subject to subsection (2), the~~ 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— 25
- (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: 30
 - (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. 35
- (2) However, despite anything in the Human Rights Act 1993,—

- (a) no complaint may be made under that Act in respect of—
 - (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**: 5
 - (b) the Human Rights Commission may not, in relation to any matter referred to in **paragraph (a)**,—
 - (i) bring any proceedings of a kind referred to in section 5(2)(i) of the Human Rights Act 1993; or 10
 - (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 appointed as intervener or counsel, or taking part in proceedings in any other way). 15
 - (3) This section recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.
- Compare: 1987 No 74 ss 149C, 149D

Fees, bonds, levies, etc

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351 Fees and how they may be prescribed for purposes of section 358

- (1) Without limiting the generality of the power to prescribe fees set out in **section 358**,—
 - (a) fees may be prescribed under that section in relation to any matter or service under or arising from this Act,— 25
 - (i) whether it be ~~any 1 or more of~~ the acceptance for processing ~~of~~, the processing ~~of~~, or the decision on any application, request, or appeal:
 - (ii) whether or not it relates to a formal process ~~or~~ **not**: 30
 - (iii) whether or not any other fee is payable in respect of some other aspect of the same matter:
 - (iv) whether or not it relates to a visa, special direction, waiver, or other exercise of powers under this Act: 35
 - (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.
- (2) Fees may apply to an individual person or application, or to a group of persons or applications, or otherwise. 5
- (3) Fees may not be imposed on claimants for any matter relating to refugee status or protection status.
- (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. 10
- (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: 15
 - (c) differ for otherwise similar services provided in different ways:
 - (d) differ for otherwise similar services provided to different categories of person: 20
 - (e) differ depending on the amount of service required or the components of the service required for the particular person or class of person:
 - (f) differ depending on whether a group of people (including a family group) ~~are~~ is requesting or obtaining the services in question: 25
 - (g) differ depending on whether an agent is used to deliver or help deliver the service concerned.
- (6) Without limiting the way in which fees may be set, a fee may be set at a level or in a way that— 30
- (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. 35

- (7) A fee is payable at the time prescribed in respect of a particular service, whether that time ~~be is~~ before, during, or after completion of the relevant service.
- (8) In the case of services to be provided outside New Zealand or in respect of a person outside New Zealand,— 5
- (a) a fee may be set in New Zealand dollars or in a foreign currency; and
- (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~~ 10
~~time to time~~ by the chief executive.
- (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~~ a Crown Bank Account. 15
- 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. 20
- (2) Without limiting **subsection (1)**, and for the avoidance of doubt, the Department (or the Ministry of Justice, as the case may be) may— 25
- (a) operate a telephone information service for which each caller pays according to their usage or on some averaged basis:
- (b) charge persons for the cost of mailing or couriering information to them (including transcripts and recordings of hearings), or the cost of moving, at the person's request, the administration of a matter relating to the person from ~~+~~ one office of the Department to another: 30
- (c) charge for the cost of written material, unless that material is required by any Act or by regulations made under 35
this Act to be provided free of charge:

- (ca) charge for the cost of transcripts or recordings of hearings, unless that material is required by any Act to be provided free of charge:
 - (d) charge for access to any ~~website~~ Internet site, or for information or services provided by any ~~website~~ Internet site, operated by the Department: 5
 - (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: 10
 - (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. 15
- (3) All such charges received by the Department must be paid into ~~the~~ a 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. 20
- (5) Nothing in **subsection (2)(f)** affects the ability to recover costs under **section 356**. 25
- Compare: 1987 No 74 s 148C

352A 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. 30

Compare: 1987 No 74 s 149

353 Imposition of bonds

- (1) This section applies in any case where a bond may be imposed under this Act. 35

- (2) The amount of any bond is to be at a level determined or authorised by immigration instructions.
- (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.~~ 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. 10
- (3A) Without limiting the manner in which persons may be categorised, categories of persons may be 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 those regions or countries. 15
- (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 20
 - (b) the situations in which it may be refunded or forfeited, whether in whole or in part. 25
- (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). 30
- (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. 35
- (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.

354 Refund or forfeiture of bond

(1A) The Minister or an immigration officer may cause a bond imposed under this Act to be forfeited. 5

- (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 10
- (c) any explanation given as to the breach of the bond conditions; and
- (d) the estimated cost to the Crown of the breach.

- (2) ~~The~~ A 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. 15

- (3) A bond paid must be held in trust by the Department until refunded or forfeited.

- (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~~ a Crown Bank Account. 20

- (5) In the case of a bond imposed in relation to a temporary ~~or limited entry class~~ 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. 25

- (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.

- (7) If all or any part of a bond is forfeited, the Department must pay the amount forfeited into ~~the~~ a Crown Bank Account. 30

- (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~~ recognition as a refugee or a protected person, and any bond imposed upon a person before that person became ~~such~~ a claimant must be refunded if the person 35

is subsequently ~~determined under Part 5~~ to be recognised as
a refugee or a protected person.

Compare: 1987 No 74 s 148B

355 Exemptions and refunds

- (1) Regulations made under this Act may provide for exemptions 5
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 exemp-
tion from or refund of any prescribed fee or charge in whole
or in part. 10

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 **sec-
tion 318(5) 318(6)**, all costs incurred by the Crown in deport- 15
ing or repatriating any person from New Zealand may be paid
from ~~the~~ a Crown Bank Account.
- (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 20
partner, de facto partner, or dependent child; and
 - (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 25
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~~ a Crown Bank Account 30
to meet all or part of the travelling or other costs that will be
incurred in any such exercise.
- (4) The following costs incurred by the Crown in deporting or
repatriating a person are recoverable as a debt due to the
Crown: 35

- (a) the actual or estimated costs incurred in deporting the person that a deportation order specifies as requiring to be repaid:
 - (b) the actual costs incurred in repatriating a person:
 - (c) any sum fixed by a court on application under **subsection (5)**. 5
- (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~~ a sum that in the opinion of the court represents any reasonable costs 10 incurred or likely to be incurred by the Crown in deporting or repatriating the person, and ~~any sum so fixed~~ the sum is recoverable as a debt due to the Crown by the person.
- (6) For the purposes of this section, the costs incurred or likely to be incurred in deporting or repatriating a person include the 15 following costs pending the person's deportation or repatriation from New Zealand:
 - (a) the costs of locating, detaining, and maintaining the person; and
 - (b) travel costs for the person. 20
- (7) Any costs recovered under this section must be paid into ~~the~~ a Crown Bank Account.
- (8) Nothing in this section or in **section 46, 109, or 318** authorises the Crown to recover any particular cost more than once. 25

Compare: 1987 No 74 s 148

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.
- (2) The purpose of the levy is to fund, or contribute to the funding 30 of,—
 - (a) the provision of programmes intended to assist the successful settlement of migrants or categories of migrants; and
 - (b) the carrying out of research into settlement issues and 35 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:
 - (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: 5
 - (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. 10
- (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,— 15
- (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~~ not later than 15 sitting days after its receipt. 20
- Compare: 1987 No 74 s 149B

Regulations

358 Regulations generally

The Governor-General may ~~from time to time~~, by Order in Council, make regulations for ~~all or any~~ 1 or more of the following purposes: 25

- (a) prescribing the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act:
- (b) prescribing other matters in respect of visas or expressions of interest, including matters provided for in **section 359**: 30
- (c) prescribing requirements and procedures in respect of arrivals in and departures from New Zealand, including matters provided for in **section 360**: 35
- (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**:
- (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 5
under this Act, and providing for exemptions from or refunds of any fees and charges, including matters provided for in **sections 351 and 355 352A**:
 - ~~(g) prescribing matters in respect of the migrant levy referred to in **section 357**:~~ 10
 - (h) prescribing infringement offences against this Act in the case of carriers or persons in charge of craft:
 - (i) setting the infringement fees payable in respect of infringement offences, which fees—
 - (i) may differ for different infringement offences; 15
and
 - (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: 20
 - (j) prescribing forms for the purposes of this Act, including the form of infringement notices and infringement offence reminder notices, but excluding any forms approved and issued by the chief executive under **section 343(1)**: 25
 - (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): 30
 - (l) providing for transitional and related matters, as provided in **section 449 section 428**:
 - (la) exempting classes of persons from the requirement to allow biometric data to be collected from the persons:
 - (m) providing for such other matters as are contemplated by 35
or necessary for giving effect to the provisions of this Act and for its due administration.

359 Regulations relating to ~~visa~~ visas and expressions of interest

Without limiting the generality of **section 358**, regulations made under that section may—

- (a) ~~prescribe the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act:~~ 5
- (a) prescribe the situations under which a visa of a particular class and type is deemed under this Act to be granted to a person: 10
- (b) ~~prescribe conditions in respect of visas or any class or type of visa (including conditions relating to travel to New Zealand):~~
- (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:~~ 15
- (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~~ to whom a transit visa waiver applies for the purposes of **section 75**: 20
- (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)**~~ **section 76(1AA)**: 25
- (g) prescribe the manner in which an expression of interest must be made for the purposes of **section 80(1)**.

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— 30

- (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)**: 35

- (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)**: 5
- (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: 10
- (g) prescribe the manner of application for entry permission, including the provision of any information, documents, or other details (if any) required:
- (ga) prescribe the situations under which entry permission is deemed under this Act to be granted to a person: 15
- (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: 20
- (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)**: 25
- (l) prescribe the place at which a person leaving New Zealand must present himself or herself:
- (m) prescribe the information and documentation required from persons leaving New Zealand. 30

361 Regulations relating to procedures under Part 5 in respect of refugee and protection matters

- Without limiting the generality of **section 358**, regulations made under that section may, in relation to refugee and protection matters ~~any claim for recognition as a refugee or protected person or to any other proceeding under Part 5,—~~ 35
- (a) specify the manner in which any claim, appeal, or ~~other matter~~ application is to be made:

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- (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~~ or other persons concerned:
 - (e) specify the information that must be supplied to claimants ~~and other affected persons~~ or other persons concerned, including information concerning their rights and concerning procedures under ~~this Part~~ **Part 5**: 10
 - (f) make provision for the representation of minors:
 - (g) make provision for representation generally: 15
 - (h) specify the circumstances in which interviews must be held and when they need not be held:
 - (i) specify the periods, or minimum or maximum periods, within which or before or after which certain things must or may not be done: 20
 - (j) specify the obligations of claimants ~~and other affected persons~~ or other persons concerned as to the provision of contact details, information, and documents:
 - (k) specify the manner in which a claim or other matter may be withdrawn: 25
 - (l) provide for any special matters relating to the handling of claims, appeals, or other matters when the claimant or other ~~affected person~~ person concerned is in custody:
 - (m) specify the procedures to be followed in relation to claims, appeals, and other matters not completed before the commencement of this section. 30

Part 12

Repeals, transitional provisions, and other related matters

Subpart 1—Repeals and consequential amendments

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362 Immigration Act 1987 repealed

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.

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(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).

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Subpart 2—Transitional and savings provisions

General

364 Persons unlawfully in New Zealand

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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.

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(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

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eligibility for, or otherwise relate to, the issuing of a residence visa or the granting of a residence permit.

- (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. 5
- (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— 10
 - (a) treating references to visas as references to visas granted offshore;
 - (b) treating references to permits as references to visas granted onshore or in an immigration control area, and entry permission. 15
- (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

- (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. 20
- (2) Any relevant time periods must be calculated including any time before the commencement of this section. 25

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. 30
- (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**

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)**): 5

369 Invitation to apply for residence

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: 10

370 Existing applications for visas and permits

(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: 15

(2) In this section, **equivalent visa** means, in the case of—

- (a) a residence visa; a resident visa:
- (b) a residence permit; a resident visa:
- (c) a temporary visa; a temporary visa: 20
- (d) a temporary permit; a temporary visa:
- (e) a work permit; a temporary visa that allows the holder to undertake work in New Zealand:
- (f) a student permit; a temporary visa that allows the holder to undertake study in New Zealand: 25
- (g) a visitor permit; a temporary visa that does not allow the holder to undertake work or study:
- (h) a limited purpose visa; a limited visa:
- (i) a limited purpose permit; a limited visa:
- (j) a transit visa; a transit visa: 30
- (k) a temporary permit to which section 27A of the former Act applies; a limited visa to which **section 72** applies:
- (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 resi- 35

dence 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.

- (4) This section is subject to any special direction or to regulations or immigration instructions made under **section 449 or 450**: 5

371 Visas issued and permits granted under former Act

- (1) A person who, immediately before the commencement of this section, held a visa or permit of a type described in **column 4 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**: 10
- (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: 15
- (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:
- (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: 20

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: 25
- (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: 30

373 Exemptions under former Act

- (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 35

exemption would otherwise apply under that section; and subject to conditions that allow the purpose for which the exemption applied to be pursued.

- (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. 5

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 10

- (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. 15
- (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. 20

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. 25
- (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. 30

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.
- (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.

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
 - (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.
- (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—
- (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
- (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
- (b) the person had not left New Zealand before the commencement of this section:
- (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.
- (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:
- 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)(e) 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.
- (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.

5

Refugee and protection status

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.

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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:

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(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 476** of this Act.

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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.

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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

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(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.
- (3) Section 129J of the former Act must be read as if references to a refugee status officer were references to a determination officer. 5
- (4) If the subsequent claim is accepted for consideration, **Part 5** of this Act applies accordingly.
- 384 Cessation determinations made by refugee status officers under former Act** 10
- (1) This section applies where—
- (a) before the commencement of this section, a refugee status officer had determined that—
- (i) a person should cease to be recognised as a refugee in terms of section 129L(1)(b) of the former Act; or 15
- (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 20
- (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.
- (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. 25
- (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. 30
- (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. 35

385 Special provision relating to refugee claimants granted temporary permits

- (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
 - (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.
- (2) The person must be treated as a person to whom **section 139** of this Act applies.

Turnaround, revocation of permits, removal, and deportation

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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.
- (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.

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387 Person to whom section 128B of former Act applied

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- (1) This section applies where, immediately before the commencement of this section, section 128B of the former Act applied to a person.
- (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.

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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—~~ 10
- (a) ~~the person has no right to apply to—~~
 - (i) ~~the Tribunal under **section 143** of this Act; or~~
 - (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** 20
- ~~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.~~
- 391 Removal order served under former Act** 25
- (1) ~~This section applies where a removal order has been made under section 54 of the former Act.~~
 - (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.~~ 30
 - (3) ~~A removal order may be cancelled under section 58 of the former Act as if that Act had not been repealed.~~
 - (4) ~~Where, on the date this section comes into force, a removal order has been served on a person, but not yet executed, the~~ 35

person may be deported under **Part 6** as if the person had become liable for deportation under this Act.

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 10

(2) **Subsection (1)** is subject to **sections 449 and 450**.

393 Deportation order under section 73 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 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 20

(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. 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 30

(1) **Subsection 2** applies where—

- (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
 - (c) the person is, after the commencement of this section, still in the immigration control area where the error was made. 5
- (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— 10
 - (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 55(5)**); and 15
 - (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.
- (4) An immigration officer may, under **section 103**, revoke the visa deemed to be held as if it were granted under this Act. 20

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 25
 - (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 30
 - (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. 35

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. 5
- (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: 5
 - (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: 10
 - (c) **section 147** of this Act, whether— 15
 - (i) the conviction for an offence referred to in **section 147(1)(a)**; occurred before or after the commencement of this section; or
 - (ii) the fraud, forgery, false or misleading representation; or concealment of relevant information occurred before or after the commencement of this section; or 20
 - (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 25
 - (iv) the immigration status referred to in **section 147(2)(b)** or citizenship was obtained before or after the commencement of this section; or
 - (d) **section 148** of this Act, whether the conditions were imposed; or the visa was granted; before or after the commencement of this section: 30
 - (e) **section 149** of this Act, whether the new information relates to a matter arising before or after the commencement of this section:
 - (f) **section 150** of this Act, whether the offence was committed before or after the commencement of this section: 35
 - (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
- (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

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

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

- (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.
- (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)**).

- (3) Where **subsection (2)** applies—
- (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 5 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 10 this 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. 15
- (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** 20
- (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. 25
- (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. 30
- (3) When calculating the 42-day period referred to in **subsection (2)** of this section, that period must be calculated including any 35 time before the commencement of this section.

- (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.

402 Appeal before Residence Review Board

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- (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.

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- (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

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- (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.

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- (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.

404 Appeal against decision to decline claim for refugee status

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- (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.

- (2) The claimant may appeal to the Refugee Status Appeals Authority within the time period set out in section 129O of the former Act.

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- (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.

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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.
- (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 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.

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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
- (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.
- (2) Where **subsection (1)(a)** applies,—

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- (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
 - (b) the period of time must be calculated including any time before the commencement of this section. 5
- (3) Subject to **subsection (4)**, the former Act continues to apply in respect of that appeal.
- (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. 10
- 407 Appeals or matters before Refugee Status Appeals Authority relating to cancellation or cessation of refugee status** 15
- (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 20
 - (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 25
 - (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. 30
- (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 35

- (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 (e) 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 249** of this Act or to review proceedings.
- (2) Despite **section 249(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.

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.

- (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.

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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:

- (2) Subject to **subsection (3)**, the former Act continues to apply as if it had not been repealed in respect of the appeal:

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- (3) Section 52 of the former Act must be read as if—

- (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:

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- (b) the reference to section 18A(4) to (7) were a reference to **sections 38 to 43** of this Act.

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:

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- (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:

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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:

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- (2) The former Act continues to apply in respect of the appeal as if it had not been repealed.

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. 5
- (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. 10

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 to the Tribunal were references to the Deportation Review Tribunal. 15 20
- (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.

415 Existing appeal under section 115 or 115A of former Act 25

- (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.
- (2) The former Act continues to apply in relation to the appeal as if it had not been repealed. 30

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.

- (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. 5
- (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. 10

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— 15
- (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. 20
- (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. 25

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. 30
- (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.
- (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: 5
- (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: 10

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: 15
- (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: 20
- (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: 25

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: 30
- (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 35

appeal be heard and determined by the Tribunal in the name of the Deportation Review Tribunal.

- (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)**. 5

422 Appeals or other matters not allocated at commencement date

- (1) This section applies where—
- (a) an appeal or other matter under the former Act had not yet been allocated to a member of an appeals body; or 10
 - (b) the member to whom an appeal or matter was allocated before the commencement of this section becomes unavailable; or
 - (c) **section 421(2)** applies; or 15
 - (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. 20
- (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. 25

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. 30

*Disclosure of immigration information to other
agencies, bodies, or persons*

**424 Disclosure of immigration information for Corrections
purposes**

- (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. 5 10
- (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 15
 - (b) continue in force according to their general tenor, read with any necessary modifications.

**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. 20 25
- (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 30
 - (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
- (b) continue in force according to their general tenor, read with any necessary modifications. 20

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.
- (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. 10
- (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.
- (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.

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433 Application of section 108 of this Act

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.

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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.
- (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.
- (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,—
 - (a) such revocation or cancellation, or the making of an order, must be made as if the former Act had not been repealed; and
 - (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.

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*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 343(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, 30 the employer has been informed in writing by an immigration officer that the employee is not entitled to undertake that employment.

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 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. 5

*Miscellaneous provisions***439 Children to have responsible adult to represent their interests** 10

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. 15

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.
- (2) A special direction saved by **subsection (1)** may be revoked or amended by further special direction given under **section 341** of this Act. 20

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. 25
- (2) A delegation saved by **subsection (1)** may be revoked by the Minister under **section 342(3)** of this Act.

442 Immigration officers

- (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 30

designated under **section 346** of this Act as authorised to exercise visa and entry permission decision-making powers.

- (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 under **section 346** of this Act as authorised to make decisions relating to visas outside New Zealand. 5
- (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. 10
- (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. 15

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. 20 25
- (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. 30

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. 35

445 Refugee status officers

- (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 5
revoked by the chief executive under **section 349** of this Act.

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. 10

447 Bonds imposed under former Act

- (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. 15

448 Sponsorship under former Act

- (1) This section applies where any person has supplied a written undertaking relating to the employment, accommodation, 20
maintenance, or repatriation of an applicant for a visa or permit under the former Act (whether under section 28 of that Act or otherwise).
- (2) Where that undertaking is still in force on the commencement of this section, it must be treated as an undertaking to which 25
section 46 of this Act applies.

Regulations and instructions for transitional purposes

449 Transitional regulations

- (1) The Governor-General may from time to time, by Order in 30
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.

- (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)**:

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 the application of the provisions of this Act and immigration instructions made under it.

Part 12

Repeals, transitional provisions, saving provisions, and related matters

Subpart 1—Repeals and related matters

362 Immigration Act 1987 repealed

The Immigration Act 1987 (1987 No 74) is repealed.

363 Regulations made under Immigration Act 1987 revoked

The following regulations are revoked:

- (a) Immigration (Refugee Processing) Regulations 1999 (SR 1999/285):
- (b) Immigration Regulations 1999 (SR 1999/284):
- (c) Immigration (Special Regularisation) Regulations 2000 (SR 2000/187):
- (d) Immigration (Transit Visas) Regulations 2008 (SR 2008/38).

364 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).

365 Immigration Act 1987 continues in relation to certain matters and for certain purposes

- (1) To avoid doubt, despite the repeal of the former Act by **section 362** of this Act, sections 17, 18, and 19 of the Interpretation Act 1999— 5
- (a) provide that the repeal of the former Act does not affect certain matters; and
- (b) continue the application of the former Act for certain purposes, subject to any provision in **subpart 2 of this Part** that expressly provides otherwise. 10
- (2) Accordingly, but without limiting **subpart 2** of this Part, in relation to an immigration matter, a person who, immediately before the commencement of **section 362** of this Act,— 15
- (a) is unlawfully in New Zealand continues to have an obligation to leave New Zealand; and
- (b) is detained under the former Act continues to be lawfully detained; and
- (c) is subject to a removal order or deportation order continues to be subject to that order. 20

366 Appeals body members not entitled to compensation

Nothing in this Act entitles a member of an appeals body to any compensation in respect of the repeal of the former Act, or for any fees or allowances that would otherwise be payable for the remainder of the term of an appointment affected by the repeal. 25

Subpart 2—Transitional and savings provisions

Government immigration and residence policy 30

367 Government immigration and Government residence policy under sections 13A and 13B of former Act to be treated as immigration instructions

- (1) On and from the commencement of **section 362 of this Act**, Government immigration policy published under section 13A 35

of the former Act that is in force immediately before that commencement must be treated as immigration instructions for the purposes of this Act, and this Act applies accordingly with any necessary modifications.

- (2) On and from the commencement of **section 362** of this Act, Government immigration policy published under section 13A of the former Act and relating to the issue of temporary visas or limited purpose visas, or the granting of temporary permits or limited purpose permits that is in force immediately before that commencement must be treated as temporary entry instructions for the purposes of this Act, and this Act applies accordingly with any necessary modifications. 5 10
- (3) **Subsection (2)** applies regardless of whether the policy would affect eligibility for, or otherwise relate to, the issuing of a residence visa or the granting of a residence permit. 15
- (4) On and from the commencement of **section 362**, Government immigration policy published under section 13A of the former Act and relating to the issue of transit visas that is in force immediately before that commencement must be treated as transit instructions, and this Act applies accordingly with any necessary modifications. 20
- (5) On and from the commencement of **section 362** of this Act, Government residence policy under section 13B of the former Act that is in force immediately before that commencement must be treated as residence instructions for the purposes of this Act, and this Act applies accordingly with any necessary modifications. 25
- (6) Without limiting **subsection (1), (2), (3), (4), or (5)**,—
 - (a) a reference to a visa in Government immigration policy or Government residence policy to which this section applies must be read as a reference to a visa that allows the person to travel to New Zealand; and 30
 - (b) a reference to a permit in Government immigration policy or Government residence policy to which this section applies must be read as a reference— 35
 - (i) to a visa that allows a person to stay in New Zealand; and
 - (ii) to the grant of entry permission in relation to the person.

368 Government policy on lapsing of applications for visas and permits under former Act to be treated as immigration instructions for applications to which section 370 applies

- (1) On and from the commencement of **section 362** of this Act, Government policy published under section 13A(2) of the former Act and relating to rules and criteria for the lapsing of applications (as described in section 13BB of the former Act) that is in force immediately before that commencement must be treated as immigration instructions certified under **section 23** of this Act for the purposes of determining if an application made before the commencement of **section 362** has lapsed, and this Act applies accordingly with any necessary modifications. 5 10
- (2) Without limiting **subsection (1)**, any relevant time periods specified in the immigration instructions must be calculated including any time elapsed before the commencement of **section 362** of this Act. 15

General instructions of chief executive

369 General instructions given under section 13BA of former Act treated as general instructions under section 24(1B) of this Act 20

On and from the commencement of **section 362** of this Act, general instructions given by the chief executive under section 13BA of the former Act that are in force immediately before that commencement— 25

- (a) must be treated for the purposes of this Act as general instructions made by the chief executive under **section 24(1B)** of this Act, and this Act applies accordingly with any necessary modifications; and
- (b) continue in force according to their general tenor, subject to any necessary modifications. 30

Existing applications, expressions of interest, and invitations

370 Existing applications for visas and permits

- (1) An application for a visa or permit that was lodged but not determined before the commencement of **section 362** of this 35

Act must be treated as an application for a visa under this Act of the type set out in the following table:

<u>Application under former Act for:</u>	<u>To be treated as application under this Act for:</u>
<u>Residence visa</u>	<u>Resident visa (but determined in accordance with the government residence policy in force at the time the application was made under the former Act)</u>
<u>Residence permit</u>	<u>Resident visa (but determined in accordance with the government residence policy in force at the time the application was made under the former Act)</u>
<u>Temporary visa</u>	<u>Temporary visa</u>
<u>Work permit</u>	<u>Temporary visa that allows the holder to undertake work in New Zealand (including the territorial sea) or the exclusive economic zone of New Zealand</u>
<u>Student permit</u>	<u>Temporary visa that allows the holder to undertake study in New Zealand</u>
<u>Visitor permit</u>	<u>Temporary visa that does not allow the holder to undertake work in New Zealand (including the territorial sea) or the exclusive economic zone of New Zealand or study unless the conditions of the permit allow work or study</u>
<u>Limited purpose visa</u>	<u>Limited visa</u>
<u>Limited purpose permit</u>	<u>Limited visa</u>
<u>Transit visa</u>	<u>Transit visa</u>
<u>Temporary permit to which section 27A of the former Act applies</u>	<u>Limited visa to which section 72 applies</u>

<u>Application under former Act for:</u>	<u>To be treated as application under this Act for:</u>
<u>Returning resident's visa by person other than New Zealand citizen</u>	<u>Variation of travel conditions of resident visa under section 41</u>
<u>Returning resident's visa by New Zealand citizen</u>	<u>Endorsement under section 343B(2)</u>

- (2) For the purposes of **subsection (1)**, this Act applies accordingly with any necessary modifications, unless—
- (a) expressly stated otherwise in the table; or
 - (b) any special direction directs otherwise; or
 - (c) any regulations made under **section 428** or immigration instructions made under **section 429** require otherwise.

371 Expressions of interest in residence under section 13D of former Act

- (1) An expression of interest submitted under section 13D of the former Act before the commencement of **section 362** of this Act but in relation to which no decision had been made as at the date of that commencement on whether to issue an invitation to apply must be treated as if it were an expression of interest made under **section 80** of this Act for a visa of the appropriate type (as set out in the table in **section 370(1)**), and this Act applies accordingly, with any necessary modifications.
- (2) For the purposes of determining whether an expression of interest to which **subsection (1)** applies is no longer current, the period of time concerned must be calculated including any time elapsed before the commencement of **section 362** of this Act.

372 Invitations to apply for residence under section 13E of former Act

- (1) An invitation to apply under section 13E of the former Act that was made before the commencement of **section 362 of this Act** and is current immediately before that commencement must be treated as if it were an invitation to apply made under **section 82** of this Act for a visa of the appropriate type (as

set out in the table in **section 370(1)**), and this Act applies accordingly, with any necessary modifications.

- (2) For the purposes of determining whether a residence application has been made in the stipulated time frame following the issue of an invitation to apply to which **subsection (1)** applies, the period of time must be calculated including any time elapsed before the commencement of **section 362** of this Act. 5

Existing visas and permits

373 **Holder of visa or permit under former Act deemed to be holder of visa and (if applicable) granted entry permission under this Act** 10

- (1) A person who, immediately before the commencement of **section 362** of this Act, held a visa or permit under the former Act (or was deemed to hold a permit under the former Act) of a type described in the **first column of Schedule 5** is deemed on and from the commencement of **section 362** of this Act to hold a visa under this Act of the corresponding type described in the **second column of Schedule 5** for the duration and subject to the conditions (if any) described in the **second column**, and this Act applies accordingly with any necessary modifications. 15 20

- (2) In addition, a person who, immediately before the commencement of **section 362**,—

- (a) held a permit under the former Act (or was deemed to hold a permit under the former Act) is deemed on and from the commencement of **section 362** of this Act to have been granted entry permission under this Act, and this Act applies accordingly with any necessary modifications: 25
- (b) held a visa (other than a transit visa) and a permit under the former Act is deemed on and from the commencement of **section 362** of this Act to hold under this Act a single visa (as determined under **Schedule 5**) for the duration and subject to the conditions (if any) of the visa and the permit combined, and this Act applies accordingly with any necessary modifications. 30 35

- (3) Without limiting **subsection (1) or (2)**,—

- (a) the period of currency of a visa deemed to be held under this Act by this section must be calculated including any time elapsed before the commencement of **section 362** of this Act:
- (b) the transit period for any person deemed to hold a transit visa under **subsection (1)** must be calculated including any time elapsed in which the person was in New Zealand before the commencement of **section 362** of this Act. 5
- (4) Nothing in this section applies to a person to whom **section 390 or 396** of this Act applies. 10
- 374 Returning resident's visa held by New Zealand citizen under former Act indication of entitlement**
- Despite **section 362** of this Act, an immigration officer may treat a returning resident's visa (within the meaning of section 2(1) of the former Act) held by a New Zealand citizen as an indication that the person is entitled to travel and enter New Zealand as a New Zealand citizen until the expiry of the passport in which the visa is endorsed. 15
- 375 Persons exempt from holding permit under former Act deemed to be holders of temporary visa or resident visa** 20
- (1) A person in New Zealand who immediately before the commencement of **section 362** of this Act was exempt from the requirement to hold a permit under section 11 of the former Act is deemed, on and from the commencement of **section 362** of this Act, to— 25
- (a) hold a temporary visa under this Act—
- (i) that is current for the period for which the exemption would have applied under section 11 of the former Act (calculated including the time before the commencement of **section 362** of this Act); 30
- and
- (ii) subject to conditions that allow the purpose for which the exemption applied to be pursued; and
- (b) have been granted entry permission on the basis of the temporary visa. 35

- (2) A person in New Zealand who immediately before the commencement of **section 362** of this Act was exempt from the requirement to hold a permit by special direction under section 12(2) of the former Act is deemed, on and from the commencement of **section 362** of this Act, to— 5
- (a) hold a temporary visa under this Act for the period (calculated including the time before the commencement of **section 362** of this Act) and subject to the conditions (if any) specified in the special direction; and
- (b) have been granted entry permission on the basis of the temporary visa. 10
- (3) A person in New Zealand who immediately before the commencement of **section 362** of this Act was exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999 is deemed on and from the commencement of **section 362 of this Act** to hold a resident visa under this Act allowing stay in New Zealand only. 15
- (4) For the purposes of this section, this Act applies accordingly with any necessary modifications.

Arrivals and departures

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376 Responsibilities of carrier and person in charge of commercial craft before it departs from another country to travel to New Zealand

- (1) On and from the commencement of **section 362** of this Act, a 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 that is in force immediately before that commencement must be treated for the purposes of this Act as a notification by the chief executive under **section 86(1)** of this Act, and this Act applies accordingly with any necessary modifications. 25 30
- (2) On and from the commencement of **section 362** of this Act, an exemption under section 125AA(3) of the former Act that is in force immediately before that commencement continues in force for the purposes of **section 86(3)** of this Act, according to its tenor, until revoked by the chief executive. 35

- (3) On and from the commencement of **section 362** of this Act, a system approved under section 125AA(5) of the former Act that is in force immediately before that commencement must be treated for the purposes of this Act as an approved system (within the meaning of **section 4(1)** of this Act), and this Act applies accordingly with any necessary modifications. 5

377 Decision by chief executive about person boarding craft for purpose of travelling to New Zealand

- (1) On and from the commencement of **section 362** of this Act, a decision made by the chief executive under section 125AB of the former Act that is in force immediately before that commencement must be treated for the purposes of this Act as a decision made by the chief executive under **section 87(1)** of this Act, and this Act applies accordingly with any necessary modifications. 10 15
- (2) On and from the commencement of **section 362** of this Act, a notification to a carrier or a person in charge of a commercial craft by the chief executive under section 125AB(2) of the former Act, that is in force immediately before that commencement, must be treated for the purposes of this Act as a notification by the chief executive under **section 87(2)** of this Act, and this Act applies accordingly with any necessary modifications. 20

378 Requirement for carrier and person in charge of commercial craft to provide further information if requested, and to provide access to further information 25

- (1) This section applies to a person to whom section 125AA of the former Act applies if, before the commencement of **section 362** of this Act,—
- (a) the chief executive made a request to the person for information under section 125AD of the former Act; and 30
- (b) the 24-hour period referred to in subsection (4) of that section had not expired.
- (2) The obligations under section 125AD(3) and (4) of the former Act continue to apply to the person until the end of the 24-hour 35

period referred to in **subsection (1)(b)** as if those provisions had not been repealed by **section 362** of this Act.

- (3) To avoid doubt, the chief executive may also request information from the person under **section 90** of this Act if the craft in fact arrives after the commencement of this section. 5

379 Reporting obligations of carriers and persons in charge of craft leaving New Zealand

- (1) This section applies in respect of a person if—
- (a) before the commencement of **section 362** of this Act, the person was on board a craft when it arrived in New Zealand; and 10
 - (b) on arrival, the person 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) on or after the commencement of **section 362** of this Act, the person is not aboard the craft when the craft is leaving New Zealand. 15
- (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 person of a class prescribed for the purposes of that section, as the case may be. 20

380 Obligations of carriers of craft leaving New Zealand to provide passage 25

- (1) This section applies to a carrier of a craft if, before the commencement of **section 362** of this Act,—
- (a) a person,—
 - (i) not being the holder of a visa under the former Act, was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand and neither was exempt under that Act from the requirement to hold a permit nor granted a permit or pre-cleared permit on or before arrival in New Zealand; or 30
 - (ii) arrived in New Zealand as a member of the crew of the craft, or any other craft operated by the 35

carrier, and, otherwise than in accordance with the former Act, remained in New Zealand after the departure of that craft; and

(b) the person has not left New Zealand.

- (2) On and from the commencement of **section 362** of this Act, 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 the person as if the person were a person described in **section 109(2)(a)** of this Act. 5 10
- (3) On and from the commencement of **section 362** of this Act, 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)** of this Act, and regardless of whether the Crown incurred the costs before or after the commencement of **section 362** of this Act. 15 20

381 Responsibilities of carrier and person in charge of craft en route to New Zealand

- (1) On and from the commencement of **section 362** of this Act, a demand by an immigration officer under section 125(2)(c) of the former Act for a list giving specified details that has not been complied with as at the date of that commencement must be treated for the purposes of this Act as a demand by an immigration officer for a list under **section 89(2)(a)** of this Act. 25
- (2) On and from the commencement of **section 362** of this Act, information required by an immigration officer under section 125(2)(d) of the former Act that has not been provided as at the date of that commencement must be treated for the purposes of this Act as information required by an immigration officer under **section 89(2)(b)** of this Act. 30 35
- (3) For the purposes of this section, if a craft arrives, or is to arrive, in New Zealand otherwise 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 including any time elapsed between the arrival of the craft and the commencement of **section 362** of this Act.

Refugee and protection status

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382 **Person recognised as refugee under former Act treated as recognised as refugee under this 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, or any person who was recognised as a refugee outside New Zealand and travelled to New Zealand as a mandated refugee, must be treated on and from the commencement of **section 362** of this Act as a person recognised as a refugee in New Zealand under this Act, and this Act applies accordingly with any necessary modifications.

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383 **Existing claim for recognition as refugee to be determined under this Act (other than subsequent claims made under former Act not yet accepted for consideration)**

(1) On and from the commencement of **section 362** of this Act, a claim by a person for recognition as a refugee that was made but not yet determined before the date of that commencement must be treated as if it had been made under **Part 5** of this Act, and this Act applies accordingly, with any necessary modifications.

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(2) **Subsection (3)** applies to a subsequent claim (within the meaning of section 129B of the former Act) for recognition as a refugee—

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(a) made, and accepted for consideration, before the commencement of **section 362** of this Act; but

(b) not determined before the date of that commencement.

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(3) The subsequent claim must be determined as if it were a claim accepted for consideration under **Part 5** of this Act, and this Act applies accordingly, with any necessary modifications.

(4) To avoid doubt, an appeal against a decision to decline recognition as a refugee (or a protected person) by a person to whom

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this section applies must be made under **section 176** of this Act.

- (5) Nothing in this section applies to a subsequent claim (within the meaning of section 129B of the former Act) by a person for recognition as a refugee that was made before the commencement of **section 362** of this Act, if the decision as to whether to consider the claim has not yet been determined. 5

384 Existing subsequent claim for recognition as refugee made under former Act not yet accepted for consideration

- (1) **Subsection (2)** applies to a subsequent claim (within the meaning of section 129B of the former Act) for recognition as a refugee— 10

(a) made before the commencement of **section 362** of this Act; but

(b) in relation to which the decision as to whether to consider the claim has not been made. 15

- (2) Despite **section 362** of this Act, section 129J of the former Act continues to apply to the subsequent claim but,—

(a) references in that section to a refugee status officer must be read as references to a refugee and protection officer; and 20

(b) if the claim is accepted for consideration, it must be determined as if it were a claim accepted for consideration under **Part 5** of this Act, and this Act applies accordingly, with any necessary modifications; and 25

(c) if the claim is not accepted for consideration, the person must appeal in accordance with the provisions of the former Act, but the Tribunal must consider the appeal in accordance with **section 407(4)**.

385 Acts or things done by refugee status officer for purposes of claim (including subsequent claim) under former Act not required to be repeated by refugee and protection officer 30

For the purposes of determining a claim (including a subsequent claim), or determining whether to consider a subsequent claim, to which **section 383 or 384** of this Act applies, a refugee and protection officer— 35

- (a) is not required to repeat any act or thing already done by a refugee status officer in relation to the claim before the commencement of **section 362** of this Act; and
- (b) may rely on any act or thing done by a refugee status officer in relation to the claim before the commencement of **section 362 of this Act**, including any finding of fact, or decision or determination made, by the refugee status officer. 5

386 Certain persons who under section 129L of former Act cease to be recognised as refugee liable for deportation under this Act 10

- (1) This section applies to a person if the person is not a New Zealand citizen and,—
- (a) before the commencement of **section 362** of this Act,— 15
 - (i) a refugee status officer had determined under section 129L(1)(b) of the former Act that the person should cease to be recognised as a refugee and the person did not appeal against that determination within the time set out in section 129O(3) of the former Act (calculated including any time elapsed before the commencement of **section 362** of this Act); or 20
 - (ii) a refugee status officer had determined under section 129L(1)(c) of the former Act that the person should be excluded from the protection of the Refugee Convention and the person did not appeal against that determination within the time set out in section 129O(3) of the former Act (calculated including any time elapsed before the commencement of **section 362** of this Act); or 25
 - (iii) the person's refugee status was cancelled by the Refugee Status Appeals Authority under section 129L(1)(f)(ii) or (iii) of the former Act; or 30
- (b) after the commencement of **section 362** of this Act, the person's refugee status is cancelled by the Tribunal under **section 406(5)**. 35

(2) On and from the commencement of **section 362** of this Act, the person must be treated as being liable for deportation under **section 151** of this Act, and this Act applies accordingly with any necessary modifications.

(3) Despite **subsection (2)**, the Tribunal must not determine whether the person is currently a refugee or a protected person in terms of **sections 119 to 121** of this Act. 5

388 Persons subject to section 129U of former Act

A person who, immediately before the commencement of **section 362** of this Act, was a person to whom section 129U of the former Act applied must, on and from the date of that commencement, be treated as a person to whom **section 139** of this Act applies, and this Act applies accordingly with any necessary modifications. 10

Turnaround, revocation of permits, removal, deportation, and monitoring 15

389 Person subject to section 128 or 128B of former Act

(1) A person who, immediately before the commencement of **section 362** of this Act, was a person to whom section 128 or 128B of the former Act applied must be treated on and from the date of that commencement as a person to whom **section 105** of this Act applies, and this Act applies accordingly with any necessary modifications. 20

(2) Without limiting **subsection (1)**,—

(a) in determining (under **section 106** of this Act) whether **section 105** of this Act ceases to apply to the person, any period of time must be calculated including any time elapsed before the commencement of **section 362 of this Act**: 25

(b) a person must be treated as if he or she were arrested and detained under **Part 9** of this Act if he or she was already detained on the commencement of this section. 30

389A Deportation liability of residence class visa holder convicted of criminal offence

(1) **Subsection (2)** applies to a person if he or she— 35

- (a) was exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999; and
- (b) was outside New Zealand immediately before the commencement of **section 362**; and 5
- (c) on or after the commencement of **section 362** is granted a residence class visa following a continuous period of absence from New Zealand of less than 5 years.
- (2) For the purposes of this section, the person first holds a residence class visa on the date he or she first entered New Zealand and was exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999. 10
- 390** **Revocation of permits, removal orders, and deportation orders** 15
- (1) Despite **section 362** of this Act, the former Act continues to apply in relation to a person—
- (a) whose visa or permit has been revoked by the Minister under the former Act, whether or not notice of the revocation has been served on the person; or 20
- (b) who is subject to a removal order under the former Act; or
- (c) who is subject to a deportation order under the former Act.
- (2) **Subsection (1)** is subject to **subsections (3) to (6)**. 25
- (3) An appeal lodged by a person to whom **subsection (1)** applies must be—
- (a) lodged in accordance with the time frames specified for an appeal of that type under the former Act; and
- (b) determined by the Tribunal in accordance with the relevant provisions of the former Act. 30
- (4) If, on the completion of any appeal by a person to whom **subsection (1)** applies, the person is entitled to be granted any visa or permit under the former Act,—
- (a) the person must be granted the equivalent visa, and entry permission, under this Act as determined in accordance with **section 373** of this Act; and 35

- (b) this Act applies accordingly with any necessary modifications.
- (5) If a person to whom **subsection (1)(b) or (c)** applies does not lodge an appeal, or is unsuccessful on appeal, the person may be removed or deported from New Zealand, and— 5
- (a) the removal or deportation must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and
- (b) he or she is liable for arrest and detention under **Part 9** of this Act pending his or her deportation being executed. 10
- (6) For the purposes of this section, any time periods specified in the former Act must be calculated including any time elapsed before the commencement of **section 362** of this Act. 15
- 391 Permit granted prior to commencement of section 362 as result of administrative error**
- (1) **Subsection (2)** applies if—
- (a) a person has been granted a permit under the former Act; and 20
- (b) an immigration officer determines, whether before or after the commencement of **section 362**, that the permit was granted as a result of an administrative error (within the meaning of section 19 or 32 of the former Act); and 25
- (c) the permit was not revoked in the arrival hall, or office of the Department in which the error was made and discovered, before the commencement of **section 362** of this Act.
- (2) The Minister or an immigration officer may, in his or her absolute discretion, and, instead of determining that the person is liable for deportation under **section 144** of this Act,— 30
- (a) offer the person a visa of a class and type, and subject to the conditions, that the Minister or the immigration officer considers appropriate; and 35
- (b) if the person agrees, grant the visa.
- (3) **Subsection (4)** applies if—

- (a) a person has 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 (within the meaning of section 19 or 32 of the former Act); and 5
- (c) the person to whom the permit was granted is, after the commencement of **section 362**, still in the arrival hall or office of the Department in which the permit was granted.
- (4) An immigration officer may, under **section 55B** of this Act, cancel the permit (being the visa deemed to be held under **section 373** of this Act) as if it were granted under this Act, and this Act applies accordingly with any necessary modifications. 10
- (5) In this section, **arrival hall** means both—
- (a) an arrival hall within the meaning of section 2(1) of the former Act; and 15
- (b) an immigration control area with the meaning of **section 4(1)** of this Act.
- 392** **Liability for deportation in respect of visa deemed to be held under section 373 or 375 of this Act** 20
- (1) A person may become liable for deportation under **Part 6** of this Act in respect of a visa deemed to be held by the person under **section 373 or 375** of this Act whether the reason for the liability arose before or after the person was deemed to hold the visa concerned. 25
- (2) For the purposes of **subsection (1)**, any time periods specified in this Act that relate to liability for deportation must be calculated including any time elapsed before the commencement of **section 362** of this Act that the person held the corresponding permit or visa, or was subject to the corresponding exemption, to which the visa deemed to be held under this Act relates. 30
- 393** **Person released on conditions under former Act**
- (1) This section applies if, immediately before the commencement of **section 362 of this Act**, a person has been released on conditions under the former Act. 35

- (2) The person remains subject to the relevant conditions, and the former Act continues to apply in respect of that person's release, 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 for the person's conditional release from custody expires, or the occurrence of the event upon which it expires. 5
- (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— 10
- (a) detain the person under **section 274** of this Act or cause the person to be arrested and detained under **section 275** of this Act, and this Act then applies accordingly; or 15
 - (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 detained under **section 274** of this Act or arrested and detained under **section 275** of this Act, and this Act then applies accordingly. 20
- (5) To avoid doubt, an immigration officer may apply for a warrant of commitment or a further warrant of commitment under **section 278** of this Act in respect of a person to whom this section applies. 25

394 Person subject to residence and reporting requirements under former Act

- (1) Any residence and reporting requirements imposed on a person under section 98 of the former Act that were in force immediately before the commencement of **section 362** of this Act 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. 30 35
- (2) If section 98(4) of the former Act applies to a person, the person may be detained under **section 274** of this Act or 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, and this Act applies accordingly with any necessary modifications.

- (3) To avoid doubt, an immigration officer may apply for a warrant of commitment or further warrant of commitment under **section 278** of this Act in respect of a person to whom this section applies. 5

395 No deportation liability if deportation prohibited under former Act

Nothing in this Act authorises the deportation of a person if the deportation of the person was prohibited under section 93 of the former Act. 10

Persons subject to Part 4A of former Act

396 Person subject to Part 4A of former Act

- (1) Despite **section 362** of this Act, Part 4A of the former Act continues to apply to a person in relation to whom a security risk certificate has been provided to the Minister under section 114D of the former Act. 15
- (2) If the Minister directs the chief executive to act in reliance on a certificate under section 114K(1) of the former Act, and the direction requires the making of a removal order or deportation order in respect of the person, the order must be made under the former Act. However,— 20
- (a) the removal or deportation of the person must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and 25
- (b) **section 397** of this Act applies pending the person's deportation being executed.
- (3) If the Minister directs the chief executive to act in reliance on a certificate under section 114K(1) of the former Act, and the direction requires the revocation or cancellation of any visa the person holds, the revocation or the cancellation must be made under the former Act. However,— 30
- (a) the removal or deportation of the person must be effected as if it were a deportation being executed under 35

- this Act, and this Act applies accordingly with any necessary modifications; and
- (b) **section 397** of this Act applies pending the person's deportation being executed.
- (4) However, if section 114L of the former Act applies, the re- 5
sumption of the person's immigration process must be under-
taken in accordance with this Act, including in accordance
with any applicable provisions of this Part.
- (5) This section overrides any provision to the contrary in this
Part. 10

Detention and monitoring

397 **Certain persons deemed liable for arrest and detention under Part 9**

- (1) On and from the commencement of **section 362**, the follow- 15
ing persons must be treated as being liable for arrest and de-
tention under this Act:
- (a) a person subject to a removal order under section 58 of
the former Act;
- (b) a person subject to a deportation order under section 72,
73, 91, or 92 of the former Act. 20
- (2) Without limiting **subsection (1)**,—
- (a) a warrant under **Part 9** must be obtained at the appro-
priate time in order to continue to detain a person who—
- (i) immediately before the commencement of **sec-**
tion 362 is detained without warrant; and 25
- (ii) is a person described in **paragraph (a) or (b) of**
subsection (1);
- (b) a warrant under **Part 9** (being a further warrant under
that Part) must be obtained at the appropriate time in
order to continue to detain a person who— 30
- (i) immediately before the commencement of **sec-**
tion 362 is detained under warrant; and
- (ii) is a person described in **paragraph (a) or (b) of**
subsection (1);
- (c) a person described in **paragraph (a) or (b) of sub-** 35
section (1) but not yet detained may be detained under
section 274 or 275 and, if required, a warrant appli-

cation may be made under **section 278** in relation to the person.

(3) This section is subject to **sections 398 to 401**.

398 Detention of person liable for turnaround

Section 108 of this Act applies only in respect of persons to whom **section 105** of this Act first applies after the commencement of **section 362** of this Act.

399 Detention of person beyond 6 months

Section 285 of this Act applies to a person regardless of whether the person was initially detained before or after the commencement of **section 362** of this Act.

400 Detention under former Act without warrant

(1) This section applies to a person who, immediately before the commencement of **section 362** of this Act was being detained without warrant under the former Act.

(2) Despite **section 362** of this Act, 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 (calculated including any time elapsed before the commencement of **section 362** of this Act). However, 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 applies accordingly with any necessary modifications.

401 Detention under former Act with warrant

(1) This section applies to a person who, immediately before the commencement of **section 362** of this Act, was being detained under a warrant of commitment issued under the former Act.

(2) Despite **section 362** of this Act, a warrant of commitment issued under the former Act remains in force for the time period for which it was issued in respect of the person (calculated including any time elapsed before the commencement of **section 362** of this Act). However, any application for a further

warrant of commitment must be made under **section 278 of this Act**, and this Act applies accordingly with any necessary modifications.

Reconsiderations

- 402** **Reconsiderations not determined before former Act repealed** 5
- (1) An application for the reconsideration of a decision to decline an application for a further temporary permit under section 31 of the former Act not determined before the commencement of **section 362** of this Act must be determined in accordance with section 31 of the former Act. 10
- (2) If, after reconsideration, the Minister or an immigration officer grants a visa to the person to whom the application relates, the person must be granted the equivalent visa, and entry permission, under this Act as determined under **section 370** of this Act. 15
- 403** **Persons eligible for reconsideration before former Act repealed**
- (1) **Subsection (2)** applies to a person if—
- (a) the person was, immediately before the commencement of **section 362** of this Act, eligible to apply for reconsideration of a decision to decline his or her application for a further temporary permit under section 31 of the former Act; and 20
- (b) the person is lawfully in New Zealand. 25
- (2) The person may apply for reconsideration of the decision as if the application were an application for reconsideration of a decision to decline a temporary visa under **section 170 of this Act**, and this Act applies accordingly with any necessary modifications. 30

*Appeals and other matters in relation to
appellate bodies*

- 404 Appeals not determined by appeals body (other than Refugee Status Appeals Authority) before former Act repealed** 5
- (1) Despite **section 362** of this Act, an appeal lodged with an appeals body (other than the Refugee Status Appeals Authority) under the former Act but not completed before the commencement of that section must be determined by the Tribunal—
- (a) in accordance with the relevant provisions of the former Act; and 10
- (b) for that purpose the Tribunal, in addition to its powers and functions under this Act, is deemed to have all the necessary powers and functions of the appeals body under the former Act. 15
- (2) If, on completion of the appeal, the person concerned is entitled to be granted any visa or permit under the former Act,—
- (a) the person must be granted the equivalent visa, and entry permission, under this Act as determined in accordance with **section 373** of this Act; and 20
- (b) this Act applies accordingly with any necessary modifications. 25
- (3) If the appeal has already been set down for hearing by the Deportation Review Tribunal, the matter must be completed by its 3 members (and, for this purpose only, the members are deemed to be members of the Tribunal and each have all the powers and functions of a member of the Tribunal that are necessary to determine the appeal). 30
- (4) If the appeal has already been allocated to a member of an appeals body (other than the Deportation Review Tribunal) before the commencement of this section, the matter must be completed by that member (and, for this purpose only, the member is deemed to be a member of the Tribunal and has all the powers and functions of a member of the Tribunal that are necessary to determine the appeal). 35
- (5) If the appeal has not been set down for hearing by the Deportation Review Tribunal or allocated to a member of an appeals body (other than the Deportation Review Tribunal), the appeal must be determined by a member of the Tribunal.

(6) **Subsections (3), (4), and (5)** apply unless the chair of the Tribunal determines otherwise.

(7) This section does not apply if the appeal is in relation to the refugee status of a person.

405 **Persons eligible to appeal to appeals body (other than Refugee Status Appeals Authority) before former Act repealed** 5

(1) **Subsection (2)** applies if, immediately before the commencement of **section 362** of this Act, a person is eligible to appeal to an appeals body under the former Act. 10

(2) Despite **section 362** of this Act, the person's appeal must be—

(a) lodged in accordance with the time frames specified for an appeal of that type under the former Act; and

(b) determined by the Tribunal in accordance with the relevant provisions of the former Act and, for that purpose, the Tribunal, in addition to its powers and functions under this Act, is deemed to have all the necessary powers and functions of the appeals body under the former Act. 15 20

(3) If, on completion of the appeal, the person is entitled to be granted any visa or permit under the former Act,—

(a) the person must be granted the equivalent visa, and entry permission under this Act as determined in accordance with **section 370** of this Act; and 25

(b) this Act applies accordingly with any necessary modifications.

(4) This section does not apply if the appeal is in relation to the refugee status of a person.

406 **Appeals and matters not determined by Refugee Status Appeals Authority before former Act repealed** 30

(1) **Subsection (2)** applies to the completion of an appeal lodged with the Refugee Status Appeals Authority under the former Act but not determined before the commencement of **section 362** of this Act. 35

- (2) The Tribunal must determine the appeal as if it were an appeal to the Tribunal under **section 176(1) or 176A** of this Act, as the case may be.
- (3) **Subsection (2)** applies—
- (a) whether the person concerned is or is not a New Zealand citizen; but 5
- (b) subject to **subsections (7) and (8)**.
- (4) **Subsection (5)** applies to an application by a refugee status officer under section 129L(1)(f) of the former Act to the Refugee Status Appeals Authority made but not determined before the commencement of **section 362** of this Act. 10
- (5) The Tribunal must determine the application as if it were an application to the Tribunal under **section 132A or 133B** of this Act, as the case may be.
- (6) **Subsection (5)** applies— 15
- (a) whether the person concerned is or is not a New Zealand citizen; but
- (b) subject to **subsections (7) and (8)**.
- (7) **Subsection (8)** applies if the appeal is in respect of a decision by a refugee status officer to refuse to consider a subsequent claim (within the meaning of section 129B of the former Act) on the grounds that the circumstances in the person concerned's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim. 20 25
- (8) The Tribunal must determine the appeal in accordance with the relevant provisions of the former Act and, for that purpose, the Tribunal, in addition to its powers and functions under this Act, is deemed to have all the necessary powers and functions of the Refugee Status Appeals Authority. However, if the Tribunal determines that the subsequent claim should be considered, the Tribunal must then determine the matter as if it were an appeal to the Tribunal under **section 176(1)(a)** of this Act. 30
- (9) If an appeal to which this section applies has already been allocated to a member of the Refugee Status Appeals Authority before the commencement of this section, the matter must be completed by that member and, for this purpose only, the member is deemed to be a member of the Tribunal and has all 35

the powers and functions of a member of the Tribunal that are necessary to determine the appeal.

- (10) **Subsection (9)** applies unless the chair of the Tribunal determines otherwise.

407 **Persons eligible to appeal to Refugee Status Appeals Authority before former Act repealed** 5

- (1) **Subsection (2)** applies to a person if,—

- (a) immediately before the commencement of **section 362** of this Act, the person is eligible to appeal to the Refugee Status Appeals Authority under the former Act; and 10
- (b) the person exercises the right on or after the date of that commencement.

- (2) Despite **section 362** of this Act, the person's appeal must be— 15

- (a) lodged in accordance with the time frames specified for an appeal of that type under the former Act; but
- (b) determined by the Tribunal as if it were an appeal to the Tribunal under **section 176(1) or 176A**, as the case may be. 20

- (3) **Subsection (2)** is subject to **subsection (4)**.

- (4) If the person's appeal is in respect of a decision by a refugee status officer to refuse to consider a subsequent claim (within the meaning of section 129B of the former Act) on the grounds that the circumstances in the person's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, the Tribunal must determine the appeal in accordance with the relevant provisions of the former Act and, for that purpose, the Tribunal is, in addition to its powers and functions under this Act, deemed to have all the necessary powers and functions of the Refugee Status Appeals Authority. However, if the Tribunal determines that the subsequent claim should be considered, the Tribunal must then determine the matter as if it were an appeal to the Tribunal under **section 176(1)(a)** of this Act. 25
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408 Appeals not determined by court before former Act repealed

- (1) Despite **section 362** of this Act, an appeal lodged under the former Act with a court but not determined before the commencement of that section must be determined by the court in accordance with the relevant provisions of the former Act. 5
- (2) On completion of the appeal, the court may do 1 or more of the following things:
- (a) reverse, confirm, or amend the decision in respect of which the appeal was brought; 10
 - (b) remit the matter to the Tribunal with the court's opinion together with any directions on how the appeal should be dealt with;
 - (c) make any other order in relation to the matter as it thinks fit. 15
- (3) If the court orders that the person be granted any visa or permit under the former Act,—
- (a) the person must be granted the equivalent visa, and entry permission, under this Act as determined in accordance with **section 373** of this Act; and 20
 - (b) this Act applies accordingly with any necessary modifications.
- (4) If the effect of the court order is that the person may be removed or deported from New Zealand,—
- (a) the removal or deportation must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and 25
 - (b) the person is liable for arrest and detention under **Part 9** of this Act pending his or her deportation being executed. 30
- (5) If the matter is remitted to the Tribunal, the Tribunal must deal with it in the same way as an appeal or matter of the same type is dealt with under this Part.
- (6) For the purposes of this section, any time periods specified in the former Act must be calculated including any time elapsed before the commencement of **section 362 of this Act**. 35

409 Persons eligible to appeal to court before former Act repealed

- (1) Subsection (2) applies if, immediately before the commencement of **section 362** of this Act, a person is eligible to appeal under the former Act to a court. 5
- (2) Despite **section 362** of this Act, the person's appeal must be—
- (a) lodged in accordance with the time frames specified for an appeal of that type under the former Act; and
 - (b) determined by the court in accordance with the relevant provisions of the former Act. 10
- (3) On completion of the appeal the court may do 1 or more of the following things:
- (a) reverse, confirm, or amend the decision in respect of which the appeal was brought; 15
 - (b) remit the matter to the Tribunal with the court's opinion together with any directions on how the appeal should be dealt with;
 - (c) make any other order in relation to the matter as it thinks fit. 20
- (4) If the matter is remitted to the Tribunal, the Tribunal must deal with it in the same way as a matter of the same type is dealt with under this Part.

410 No new appeal rights created

- (1) To avoid doubt, nothing in this Part allows a person who had a right of appeal under the former Act to take a further appeal under this Act in respect of the same matter, whether or not the person did in fact appeal under the former Act. 25
- (2) Subsection (1) is subject to any provision in this subpart that expressly provides otherwise. 30

*Disclosure of immigration information to other agencies, bodies, or persons***411** Arrangements under former Act for disclosure of immigration information

- (1) This section applies if, before the commencement of **section 362** of this Act, the chief executive or the Secretary of Labour 35

has made an arrangement or entered into an agreement with any department, organisation, or other entity or person under any of sections 141AA, 141AC, 141AE, or 141A of the former Act in respect of the disclosure of information, and the arrangement is in force immediately before that commencement. 5

(2) An arrangement described in **subsection (1)**—

- (a) must be treated as an arrangement between the chief executive and the chief executive (or other appropriate person as the case may be) of the department of State, organisation, entity, or person made under the relevant provisions of **sections 261 to 270** of this Act, and this Act applies accordingly with any necessary modifications; and 10
- (b) continues in force according to its general tenor, subject to any necessary modifications. 15

Offences, evidence, and classified information

412 Offences

- (1) A person commits an offence against this Act under **section 306(1)(d)** of this Act whether the condition concerned was— 20
 - (a) imposed (or deemed to be imposed) under this Act; or
 - (b) imposed under the former Act (whether as a requirement or a condition).
- (2) A person commits an offence against **section 307(a)** of this Act whether the document or information was required by an immigration officer— 25
 - (a) under this Act; or
 - (b) under the former Act, if the officer could lawfully require the document or information under that Act.

413 Offences by employers 30

- (1) **Subsection (2)** applies if, before the commencement of **section 362**,—
 - (a) an employer allowed a person to undertake employment in the employer's service; and
 - (b) at the time that the person commenced employment in the employer's service, the employer had a reasonable 35

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.

- (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 after the commencement of **section 362** of this Act during which the employer continues to employ the employee, unless, at any time in the preceding 12 months, the employer has been informed in writing by an immigration officer (under either Act) that the employee is not entitled to undertake that employment.

414 Evidence in proceedings

In any proceedings relating to any matter under this Act, whether before the Tribunal or a court, a certificate signed by an immigration officer and containing a statement in relation to any person to the effect of 1 or more 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.

415 Classified information

A decision may be made relying on classified information in accordance with this Act regardless of whether the application, claim, or other matter concerned arose before or after the commencement of **section 362** of this Act.

Miscellaneous provisions

416AA Appeal or review from Tribunal decision made under this Part or to which this Part applies

An appeal or review proceedings in respect of a decision of the Tribunal made under this Part or to which this Part applies must be lodged in accordance with, and in the time frames of, **Part 7** of this Act.

416 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, and this Act applies accordingly with any necessary modifications.

5

417 Special directions

(1) A special direction made in accordance with section 130 of the former Act and in force immediately before the commencement of **section 362** of this Act remains in force on and from the date of that commencement according to its tenor and with any necessary modifications.

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(2) A special direction saved by **subsection (1)** may be revoked or amended by further special direction given under **section 341** of this Act.

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418 Delegation of powers of Minister

(1) A delegation made by the Minister under section 131 of the former Act and in force immediately before the commencement of **section 362** of this Act remains in force on and from the date of that commencement according to its tenor and with any necessary modifications.

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(2) A delegation saved by **subsection (1)** may be revoked by the Minister under **section 342(3)** of this Act.

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419 Immigration officers

(1) On and from the commencement of **section 362** of this Act, 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.

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- (2) On and from the commencement of **section 362** of this Act, 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 under **section 346** of this Act as authorised to make decisions relating to visas outside New Zealand. 5
- (3) A designation deemed to continue by **subsection (1) or (2)** may be revoked by the chief executive under **section 349** of this Act.
- (4) **Subsections (1) and (2)** are subject to any condition imposed on the designation. 10

420 Immigration officers who may make and cancel removal orders under former Act

- (1) Despite **section 419(1)** of this Act, an immigration officer designated by the chief executive for the purpose of section 54 of the former Act— 15
- (a) may continue to make removal orders under that section, if the making of an order is necessary for the purposes of completing any matter to which this Part applies; and 20
- (b) may continue to cancel removal orders under section 58 of the former Act, if the cancelling of an order is necessary for the purposes of completing any matter to which this Part applies.
- (2) To avoid doubt, this section applies to an immigration officer only if his or her designation is current immediately before the commencement of **section 362** of this Act. 25

421 Acts or things done by immigration officer under former Act not required to be repeated

- For the purposes of completing any matter to which this Part applies, an immigration officer— 30
- (a) is not required to repeat any act or thing already done by an immigration officer in relation to the matter before the commencement of **section 362** of this Act; and
- (b) may rely on any act or thing done by an immigration officer in relation to the matter before the commencement of **section 362** of this Act, including any finding 35

of fact, or decision or determination made, by an immigration officer.

422 Exercise of certain powers by customs officers

- (1) Despite **section 2(2)** of this Act, customs officer undertaking immigration duties may exercise the powers in **sections 250, 251, and 252** of this Act on and from the date **section 2(3)** comes into force until the date those sections are brought into force, and **sections 250, 251, and 252** of this Act apply accordingly, as if references to an immigration officer were references to a customs officer. 5 10
- (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. 15

423 Exercise of certain powers by members of police

Despite **section 2(2)** of this Act, a member of the police may exercise the powers in **sections 245, 250, 251, 252, 253, and 254** of this Act on and from the date **section 2(3)** comes into force, and this Act applies accordingly as if references to an immigration officer were references to a member of the police. 20

424 Refugee status officers

- (1) On and from the commencement of **section 362** of this Act, a person designated as a refugee status officer under section 129E of the former Act must be treated as a refugee and protection officer designated under **section 348** of this Act. 25
- (2) A designation deemed to continue by **subsection (1)** may be revoked by the chief executive under **section 349** of this Act.

425 Forms

On and from the commencement of **section 362** of this Act, a form approved under section 132 of the former Act for which the approval is current immediately before the date of that commencement must be treated as if it had been approved 30

under **section 343** of this Act, and must be read with the necessary modifications.

426 Bonds imposed under former Act

- (1) On and from the commencement of **section 362** of this Act, 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. 5
- (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 elapsed before the commencement of **section 362**. 10

427 Sponsorship under former Act

- (1) This section applies to an undertaking if—
 - (a) a 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); and 15
 - (b) the undertaking is in force immediately before the commencement of **section 362** of this Act. 20
- (2) The undertaking must be treated as an undertaking to which **section 46** of this Act applies, and this Act applies accordingly with any necessary modifications.
- (3) Despite **subsection (2)**, nothing in **subsection (9)(b) of section 46** applies to an undertaking to which this section applies. 25

428 Transitional regulations

- (1) The Governor-General may, by Order in Council, make regulations—
 - (a) providing transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in relation to this Part; 30

- (b) providing that, subject to such conditions as may be specified in the regulations, during a specified transitional period,—
- (i) specified provisions of this Act (including definitions) do not apply: 5
- (ii) specified terms have the meaning given to them by the regulations:
- (iii) specified provisions repealed or amended or revoked by this Act are to continue to apply:
- (c) providing for any other matters necessary for facilitating or ensuring an orderly transition from the provisions of the former Act to the provisions of this Act. 10
- (2) No regulations made under this section may be made, or continue in force, later than 2 years after the date on which this section commences. 15
- 429 Transitional immigration instructions**
- Immigration instructions certified under **section 20** of this Act may make any appropriate or necessary provision for facilitating or ensuring an orderly transition from the application of provisions and Government immigration policy (including Government residence policy) under the former Act to the application of the provisions of this Act and immigration instructions made under it. 20
- Exercise of certain powers and functions before commencement of certain provisions of this Act* 25
- 430 Exercise of certain powers and functions before commencement of certain provisions of this Act**
- (1) Despite **section 2(2)** of this Act, on and from the commencement of this section, the Governor-General may exercise the following powers under the following sections of this Act: 30
- (a) to appoint members, including the chair, to the Tribunal under **section 195(2) and (3)**:
- (b) to make regulations under **sections 358 to 361**:
- (c) to make transitional regulations under **section 428**.

- (2) Despite **section 2(2)** of this Act, on and from the commencement of this section, the Prime Minister may designate an agency under **section 236(1)** of this Act.
- (3) Despite **section 2(2)** of this Act, on and from the commencement of this section, the Minister may exercise or perform the following powers or functions under the following sections of this Act: 5
- (a) to certify immigration instructions under **section 20(1)** and to classify them under **section 21(1)**:
 - (b) to certify transitional immigration instructions under **section 20(1)** and to classify them under **section 21(1)**: 10
 - (c) to delegate his or her powers to immigration officers under **section 342(1)**.
- (4) Despite **section 2(2)** of this Act, on and from the commencement of this section, the chief executive may exercise or perform the following powers or functions under the following sections of this Act: 15
- (a) to make general instructions under **section 24(1B)**:
 - (b) to publish immigration instructions under **section 23A(1)**: 20
 - (c) to make arrangements with the relevant persons for the disclosure or exchange of information under **sections 261 to 270**:
 - (d) to approve premises for the purpose of detention under **section 293**: 25
 - (e) to designate certain places as immigration control areas under **section 343A(1)**:
 - (f) to approve and issue forms under **section 343(1)**:
 - (g) to designate immigration officers under **section 346(1)** and authorise their functions and powers under that section and **section 347**: 30
 - (h) to designate refugee and protection officers under **section 348(1)** and, for each officer, designate whether he or she is an officer for the purposes of making decisions relying on classified information under **section 30(2)(b)**. 35

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- (5) Despite **section 2(2)**, on and from the commencement of this section, the chair of the Tribunal may undertake 1 or more of the matters described in **section 196** of this Act.
- (6) Despite **section 2(2)** of this Act, on and from the commencement of this section, the chair of the Tribunal and the Attorney-General may agree on any general practices and procedures that may be necessary under **section 232(1)(a)** of this Act. 5
- (7) Despite **section 2(2)** of this Act, on and from the commencement of this section, the Chief Justice and the Attorney-General may agree on any general practices and procedures that may be necessary under **section 232(1)(b)** of this Act before that section comes into force or takes effect. 10
- (8) Despite **section 2(2)**, on and from the commencement of this section, an agency designated by the Prime Minister under **section 236(1)** may recognise persons as special advocates. 15
- (9) Despite **section 2(2)**, on and from the commencement of this section, the chief executive of a department of State or other relevant person may make arrangements with the chief executive of the Department for the disclosure or exchange of information under **sections 261 to 270** of this Act. 20
- (10) **Subsections (1) to (9)** apply as if the provision under which the power or function is exercised or performed and any other provision of this Act that relates to the provision that is not in force when the power or function is exercised or performed were in force when the power or function is exercised. 25
- (11) This section does not limit section 11 of the Interpretation Act 1999.
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Schedule 1 **s 117(2)**
Convention Relating to the Status of
Refugees

Done at Geneva on 28 July 1951¹ 5

Entry into force: 22 April 1954, in accordance with Article 43

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

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.

within their power to prevent this problem from becoming a cause of tension between States.

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 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 GENERAL PROVISIONS

10

Article 1 Definition of the term “Refugee”

- A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:
- (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:
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.
- 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.

- 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: 5
- (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 10
- (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. 15
- 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 20
 - (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 25
 - (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; 30

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.

- 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 refugee have ceased to exist, able to return to the country of his former habitual residence; 5
- 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. 10
- 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. 15
- 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. 20
- 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. 25
- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
- (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; 30
 - (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; 35
 - (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

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. 5

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. 10

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. 15

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. 20

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. 25
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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. 5
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 absence of reciprocity, at the date of entry into force of this Convention for that State. 10
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. 15
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. 20

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. 25 30

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 35

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.

Article 10
Continuity of residence

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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. 10
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. 15

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. 20
25

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. 30
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.

5

Article 13

Movable and immovable property

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.

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Article 14

Artistic rights and industrial property

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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.

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Article 15

Right of association

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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

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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. 5

CHAPTER III GAINFUL EMPLOYMENT

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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. 15
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: 20
 - (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; 25
 - (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. 30

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. 5

Article 19
Liberal professions 10

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. 15
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. 20

CHAPTER IV
WELFARE

Article 20
Rationing 25

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.

Article 21
Housing 30

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.

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. 5
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. 10

Article 23 15 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.

Article 24 20 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:
 - (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; 25
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, 30 35

- 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:
- (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition; 5
 - (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. 10
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 15
 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 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. 20 25
 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.

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".

CHAPTER V
ADMINISTRATIVE MEASURES

Article 25

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. 5
10
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.
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. 15
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. 20
5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26

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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. 30

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

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. 5 10
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. 15

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. 20
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. 25

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. 30
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. 35

Article 31

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. 5
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. 15

Article 32

Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. 20
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. 25
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. 30

Article 33
Prohibition of expulsion or return
("refoulement")

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. 5
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. 10

Article 34
Naturalization

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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. 20

CHAPTER VI
EXECUTORY AND TRANSITORY
PROVISIONS

Article 35
Co-operation of the national authorities with the
United Nations

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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. 30
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 ap- 35

propriate form with information and statistical data requested concerning:

- (a) the condition of refugees,
- (b) the implementation of this Convention, and
- (c) laws, regulations and decrees which are, or may here- 5
after be, in force relating to refugees.

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 10
to ensure the application of this Convention.

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 15
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.

CHAPTER VII FINAL CLAUSES

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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 25
be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39

Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 30
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.

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. 5 10
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. 15

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. 20
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. 25
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. 30 35

Article 41 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 5
within the legislative jurisdiction of the federal legislative au-
thority, the obligations of the Federal Government shall to this
extent be the same as those of Parties which are not Federal
States,
- (b) With respect to those Articles of this Convention that come 10
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 15
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 this Convention shall, at the request
of any other Contracting State transmitted through the Secre- 20
tary-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.

Article 42 Reservations 25

- 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.
- 2. Any State making a reservation in accordance with paragraph 30
1 of this article may at any time withdraw the reservation by a
communication to that effect addressed to the Secretary-Gen-
eral 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. 5
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. 10

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. 15
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.
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. 20

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. 25
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request. 30

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: 5

- (a) of declarations and notifications in accordance with Section B of Article 1;
- (b) of signatures, ratifications and accessions in accordance with Article 39; 10
- (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;
- (f) of denunciations and notifications in accordance with Article 44; 15
- (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.

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. 25

III
PROTOCOL RELATING TO THE STATUS
OF REFUGEES OF 31 JANUARY 1967⁴

Entry into force: 4 October 1967, in accordance with Article VIII

Text: United Nations Treaty Series No. 8791, Vol. 606, p. 267

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 30

⁴ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951,

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,

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.
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.
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 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 cooperate 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 par-

⁵ For New Zealand’s declaration, see footnote to Article 1 B (1) of the Convention as it appears in this schedule.

- ticular facilitate its duty of supervising the application of the provisions of the present Protocol.
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:
- (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.

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.

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.

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: 5
- (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; 10 15
- (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. 20 25

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. 30 35

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. 5
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. 10 15

Article VIII

Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession. 20
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. 25

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. 30
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

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. 5

Article XI
Deposit in the archives of the Secretariat of the 10
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 5
not exceeding 5 years as is fixed in the member's warrant of
appointment.
- (2) A member of the Tribunal may be reappointed.
- (3) Any member of the Tribunal who is not a District Court Judge 10
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.
- (4) A member of the Tribunal may at any time resign the office by 15
~~writing addressed~~ notice in writing 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. 20

2 Oath of office

Each member of the Tribunal must, before entering on the ~~ex-~~
~~ercise~~ performance 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 25
as a member of the Tribunal.

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

30

- (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.
- (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, 35

a member designated under **subclause (1)** may act as chair, subject to **subclause (3)**.

- (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~~ Administration, staffing, and other resources

- (1) The ~~administration services and staffing~~ administration services, staffing, and other resources 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 25
- (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 resources~~ 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.

Compare: 1987 No 74 Schedule 3C cl 10

30 35

8 ~~Appeal Proceedings 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 proceedings~~ then in progress ~~does~~ do not abate and ~~is~~ are not affected, but ~~is~~ are to continue and ~~is~~ are to be dealt with by the Tribunal as if no change had taken place. 5
- (2) However, the Tribunal may, in its discretion, require evidence to be reheard where necessary.

Proceedings of Tribunal

10

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. 15
- (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. 20
- (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

25

- (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: 30 35

- (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. 5
- (2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts provided under this ~~section~~ clause 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 may 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. 10 15
- (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. 20 25
- (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. 30
- (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. 35
- (4) This clause is subject to **section 32(3)**.

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. 5

14 Representation of parties

Any party or person involved in ~~an appeal~~ proceedings before the Tribunal, or called upon to appear before the Tribunal, may—

- (a) appear personally; or 10
- (b) be represented—
 - (i) by an agent; or
 - (ii) by a lawyer.

15 Service outside New Zealand

Any document relating to ~~an appeal~~ proceedings before the Tribunal may be served out of New Zealand— 15

- (a) by leave of the Tribunal; and
- (b) in accordance with regulations made under this Act.

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. 20
- (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. 25

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. 30

- (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.

18 Decisions of Tribunal 5

- (1) ~~Where~~ If the Tribunal consists of more than 1 member on an appeal or ~~other~~ matter, the decision on ~~that matter~~ it must be a majority decision.
- (2) If the members are evenly divided, the appeal or matter must be determined in favour of the appellant or ~~other person af-~~ affected affected person. 10
- (3) A decision of the Tribunal must be given in writing, and include reasons both for the decision and for any minority view.
- (3A) An interim oral decision may be given if the Tribunal considers it necessary in the circumstances but the decision must subsequently be put in writing and **subclause 3** applies accordingly. 15
- (4) The Tribunal must notify the appellant or ~~other affected party to the proceedings~~ affected person of its decision, and provide a copy of the decision. 20
- (5) A decision of the Tribunal is final once notified to the appellant or ~~other affected party~~ affected person.

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. 25
- (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.
- (3) ~~Where~~ If an appeal is brought by a claimant, a refugee or a ~~protected person, or a person formerly recognised as a refugee or a protected person,~~ the Tribunal must conduct the hearing in private. 30
- (4) The Tribunal may make an order prohibiting the publication of any evidence received by it, or any report or description of 35

the proceedings or of any part of the proceedings, in respect of any appeal or matter before the Tribunal.

- (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. 5
- ~~(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 as way as to remove the name of the person, and any particulars likely to lead to the identification of the person.~~ 10
- (2) Any publication for research purposes by the Tribunal of a decision made by it in relation to refugee or protection appeals or matters, other than publication to persons described in **subclause (3)**, must be edited in a way so as to remove— 15
- (a) the name of the appellant or affected person; and
- (b) any particulars likely to lead to the identification of the appellant or affected person.
- ~~(3) **Subclause (2)** does not apply to publication to persons involved in the appeal or involved in the administration of **Part 5**.~~ 20
- (3) **Subclause (2)** does not apply to publication—
- (a) to persons involved in the appeal or matter; or
- (b) to persons involved in the administration of this Act; or
- (c) permitted under **section 140**. 25
- (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 30 administration of this Act.
- (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— 35
- (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
- (d) a defect of form. 5
- (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. 10
-

Schedule 3 Enactments amended

s ~~363~~**364**(1)**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**”. 10

Care of Children Act 2004 (2004 No 90)

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)

15

Section 244: repeal and substitute:

“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

Section 26B(1): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Citizenship Act 1977 (1977 No 61)

Section 3(2B)(a) and (b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case. 25

Section 6(1)(b)(ii) and (6)(b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case.

Section 8(2)(a) and (b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case. 30

Citizenship Act 1977 (1977 No 61)—continued

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”.

Section 8(3)(b): omit “requirements” and substitute “conditions”. 5

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**”. 10

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”. 15 20

Section 17(3)(b): repeal and substitute:

“(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**.” 25

Citizenship (Western Samoa) Act 1982 (1982 No 11)

Section 7(1)(b)(ii): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 8(2): omit “section 7 of the Immigration Act 1987” and substitute “**section 9** of the Immigration Act **2007**”. 30

Civil Aviation Act 1990 (1990 No 98)

Section 53A(1)(b): omit “a permanent resident of” and substitute “normally resident in”.

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**”.

Section 66(1) and (2): omit “Immigration Act 1987” and substitute “Immigration Act **2007**” in each case. 5

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 whether~~ a person is liable for deportation or to deport any person.” 10

Section 181(2), (4), and (5): omit “Department of Labour” and substitute “responsible department” in each case. 15

Section 203(a): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980 (1980 No 44)

20

Section 17: omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

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**”. 25

Customs and Excise Act 1996 (1996 No 27)

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. 30

Section 32B(5): omit “Immigration Act 1987” from the definition of **authorised officer** and from paragraphs (a), (b), and (c) of the

Customs and Excise Act 1996 (1996 No 27)—*continued*

definition of **processing** and substitute “Immigration Act **2007**” in each case.

Section 175C(1)(b)(iv): repeal and substitute:

“(iv) **section 305(c) or 308(a)** of the Immigration Act **2007**.”.

5

Section 280(4): repeal and substitute:

“(4) Nothing in subsection (3) applies in respect of persons who are exempted by regulations or a special direction made under the Immigration Act **2007** from, as the case may require, the requirement to—

10

“(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.”

District Courts Act 1947 (1947 No 16)

15

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:

“**domestic student**, at any time, means a person who is then— 20

“(a) a New Zealand citizen; or

“(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”.

25

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— 30

“(a) a New Zealand citizen; or

Education Act 1989 (1989 No 80)—*continued*

- “(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”.

Section 2(4): omit “residence permit under the Immigration Act 1987” and substitute “residence class visa granted under the Immigration Act **2007**”.

Section 60: repeal the definition of **foreign student** and substitute: 10
 “**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 unlawfully in New Zealand ~~unlawfully~~”.

Section 103(1)(e): repeal and substitute: 20

- “(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
- “(iii) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~—”.

Section 159(1): repeal the definition of **domestic student** and substitute: 30

- “**domestic student**, at any time, means a person who is then—
- “(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

Education Act 1989 (1989 No 80)—*continued*

- “(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**”.

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)

10

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

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 unlawfully in New Zealand ~~unlawfully~~.”

20

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—

25

“(a) information concerning—

“(i) any person ~~whom~~ who the chief executive of the responsible department believes is unlawfully in New Zealand ~~unlawfully~~; or

30

“(ii) any person who is lawfully in New Zealand ~~lawfully~~ but only by virtue of being the holder of a temporary entry class visa of whatever type; and

“(b) information that, in relation to any person described in **paragraph (a)(i) or (a)(ii)**, is as follows:

35

“(i) the person’s full name:

Electoral Act 1993 (1993 No 87)—*continued*

“(ii) any aliases known to be used by that person:

“(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**. 5

“(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— 10

“(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:

“(b) verifying that a person registered as an elector is a person ~~whom~~ who the chief executive of the responsible department believes to be either— 15

“(i) a person who is unlawfully in New Zealand ~~unlawfully~~; or

“(ii) a person who is lawfully in New Zealand ~~lawfully~~ but only by virtue of being the holder of a temporary entry class visa of whatever type. 20

“(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. 25

“(4) ~~Where~~ If, 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 be made with any information ~~which~~ that is held by the Chief Registrar and ~~which~~ that relates to that person. 30

“(5) ~~Where~~ If the result of a comparison carried out pursuant to **subsection (4)** indicates that any person on the electoral roll is— 35

Electoral Act 1993 (1993 No 87)—*continued*

“(a) a person ~~whom~~ who the chief executive of the responsible department believes is unlawfully in New Zealand ~~unlawfully~~; or

“(b) a person who is lawfully in New Zealand ~~lawfully~~ but only by virtue of being the holder of a temporary entry class visa of whatever type,—

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.”

Electronic Transactions Act 2002 (2002 No 35)

~~Schedule, Part 4, clause (14):~~ Item (14) in Part 4 of the Schedule: repeal and substitute:

“(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)

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**”.

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

Extradition Act 1999 (1999 No 55)—*continued*

this section as if the person were a person required to hold a visa under that Act to be in New Zealand.”

Section 94(4): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 94(5)(a): omit “permit” and substitute “visa”. 5

Section 96(8): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

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**”. 10

Fisheries Act 1996 (1996 No 88)

Section 57G(1)(e): repeal and substitute:

“(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. 20

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.” 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**”. 30

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**”.

5

Habeas Corpus Act 2001 (2001 No 31)

Section 8(b): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

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 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”.

15

Health Act 1956 (1956 No 65)

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:

“**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~~ a refugee and protection officer deal with an immigration matter

25

“**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—

30

- “(a) applications and potential applications for residence class visas, temporary entry class visas, or transit visas:
“(b) requests and potential requests for special directions:

Immigration Advisers Licensing Act 2007 (2007 No 15)—*continued*

“(c) claims for recognition as a refugee or a protected person, and related appeals:

“(d) immigration sponsorship:

“(e) immigration obligations:

“(f) appeals in relation to immigration matters”. 5

Section 5: repeal the definition of **permit**.

Section 5: insert “protected persons,” after “refugees,” in the definition of **settlement services** (twice).

Section 5: repeal the definition of **visa** and substitute:

“**visa** means a visa granted under the Immigration Act **2007**”. 10

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~~ a refugee and protection officer (within the meaning of the Immigration Act **2007**), or to a list of licensed immigration advisers; or”. 15

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”. 20

Section 15(1)(c) and (d): repeal and substitute:

“(c) has been convicted of an offence against the Immigration Act **2007**, the Immigration Act 1987, or the Immigration Act 1964; or 25

“(d) has been removed or deported from New Zealand under the Immigration Act **2007**, the Immigration Act 1987, or the Immigration Act 1964; or”.

Section 15(2)(b): add: 30

“(c) any immigration officer or ~~determination officer~~ refugee and protection officer (as defined in the Immigration Act **2007**).”

Section 91: omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 35

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**”.

Section NC 8A(1): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 5

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.” 10

Income Tax Act 2007 (2007 No 97)

Paragraph (d) of the definition of **non-resident crew member** in section CW 21(2): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 15

Paragraph (c) of the definition of **New Zealand resident** in section MA 8: repeal and substitute:

- “(c) does not include being lawfully resident in New Zealand only because of holding a temporary entry class visa.” 20

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Section 17(1)(b): repeal and substitute:

- “(b) is in 1 of the following categories: 25
- “(i) a New Zealand citizen: 25
- “(ii) a holder of a residence class visa granted under the Immigration Act **2007**: 25
- “(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 accompanies the person referred to in the subparagraph.” 30

Section 17(5): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 127(2): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 35

**Injury Prevention, Rehabilitation, and Compensation Act 2001
(2001 No 49)—continued**

Section 286(5)(g): repeal and substitute:
“(g) Immigration Act **2007**.”.

**International Crimes and International Criminal Court Act
2000 (2000 No 26)**

Section 150(3): repeal and substitute: 5
“(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 10 to be in New Zealand.”

Section 150(4): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 151(a)(i): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 15

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**”.

International War Crimes Tribunals Act 1995 (1995 No 27) 20

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)

Section 56CA: repeal and substitute:

“**56CA Judicial review of decisions under Immigration Act 2007** 25

The provisions of this Act are to be read subject to **section 222 sections 222, 223, and 234** of the Immigration Act **2007** in relation to any proceedings reviewing a statutory power of decision arising out of or under that Act.” 30

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 a protected person, or decisions to cease to recognise a person as a refugee or a 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 a 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 35

Legal Services Act 2000 (2000 No 42)—*continued*

any appeal to the Residence Appeal Authority under section 18C of the Immigration Act 1987):

- “(g) any appeal to the Immigration and Protection Tribunal against liability for deportation on humanitarian grounds by a person liable for deportation under **section 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—

- “(a) proceedings involving a decision under the Immigration Act **2007** in relation to a person who—

“(i) is unlawfully in New Zealand in terms of that Act; or

“(ii) is lawfully in New Zealand only by being the holder of a temporary entry class visa granted under that Act; or

“(iii) is not in New Zealand and—

“(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 in relation to a person who—

“(i) was unlawfully in New Zealand in terms of that Act; or

“(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.

- “(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

Legal Services Act 2000 (2000 No 42)—*continued*

- “(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:

“**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
- “(c) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~”.

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)

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”.

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—

- “(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

Massey University Act 1963 (1963 No 7)—*continued*

- “(c) treated for the purposes of that Act as being unlawfully 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~~ temporary visa under the Immigration Act **2007**”. 5

Section 42(5): omit “temporary permit under the Immigration Act 1987” and substitute “~~limited~~ temporary visa under the Immigration Act **2007**”.

New Zealand Security Intelligence Service Act 1969 (1969 No 24) 10

Section 2: repeal the definition of **permanent resident** and substitute:

“**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**”. 15

Section 4(1)(bc): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Official Information Act 1982 (1982 No 156)

Section 2: repeal the definition of **permanent resident of New Zealand** and substitute: 20

“**permanent resident of New Zealand** means a person who—

“(a) resides in New Zealand; and

“(b) is not—

“(i) a person to whom **section 9 or 10** of the Immigration Act **2007** applies (except if the person has been granted a visa or entry permission in accordance with **section 11** of that Act; or 25

“(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or 30

“(iii) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~”.

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:

- “(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):”.

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).”

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.”

Parole Act 2002 (2002 No 10)

Section 55(1)(b) and (c): repeal and substitute:

- “(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
 (c) a copy of the order, or a deportation liability notice, has been served on the offender; and”.

Parole Act 2002 (2002 No 10)—*continued*

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.”.

Section 55(1)(d)(iii): repeal and substitute:

- “(iii) any such appeal has been determined and liability for deportation has been upheld.”

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Passports Act 1992 (1992 No 92)

Section 2: repeal the definition of **refugee** and substitute:

“**refugee** means a person who—

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“(a) has been—

- “(i) recognised by a ~~determination officer~~ refugee and protection officer or the Immigration and Protection Tribunal as a refugee within the meaning of the Immigration Act **2007**; or

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- “(ii) recognised ~~offshore~~ outside New Zealand 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

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- “(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

25

- “(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

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- “(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”.

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Pitcairn Trials Act 2002 (2002 No 83)

Section 10: repeal and substitute:

“10 Limited visas under Immigration Act 2007 for certain participants in trials

- “(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**. 5
- “(2) This section applies to a person only if— 10
- “(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 15
 - “(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. 20
- “(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. 25
- “(5) **Subsection (4)** is subject to **subsection (3)** and **section 13**.”

Section 13: repeal and substitute:

“13 Expiry of limited visa and liability for deportation may be effective immediately upon giving or service of notice 30

- “(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 35

Pitcairn Trials Act 2002 (2002 No 83)—*continued*

“(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).

“(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. 5

“(3) In the situation in **subsection (1)(b)**, the deportation liability notice given under **section 445 158** of the Immigration Act **2007** must notify the holder that the holder is immediately liable for deportation.” 10

Section 14(1)(b): repeal and substitute:

“(b) Immigration Act **2007**:”. 15

Section 62(5)(b) and (7): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

Section 66(4) and (5): omit “Immigration Act 1987” in each place where it appears and substitute in each case “Immigration Act **2007**”.

Privacy Act 1993 (1993 No 28) 20

Section 2: repeal the definition of **permanent resident of New Zealand** and substitute:

“**permanent resident of New Zealand** means a person who—

“(a) resides in New Zealand; and

“(b) is not— 25

“(i) a person to whom **section 9 or 10** of the Immigration Act **2007** applies (except if the person has been granted a visa or entry permission in accordance with **section 11** of that Act); or

“(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or 30

“(iii) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~”.

Privacy Act 1993 (1993 No 28)—*continued*

Section 97: repeal paragraph (g) of the definition of **adverse action** and substitute:

- “(g) to make a deportation order in relation to the individual, to serve the individual with a deportation liability notice, or to deport the individual from New Zealand”. 5

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” 10

“(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 15

“(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,— 20

“(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. 25

“(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 Minister or the officer believes, on reasonable grounds, that the holder ~~does~~ is engaged in any of the things listed in **subsection (2)(a) to (c)** of this section. 30

“(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 Immi-

Prostitution Reform Act 2003 (2003 No 28)—*continued*

gration 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) 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.” 5

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. 10

Social Security Act 1964 (1964 No 136)

Section 74A(1): repeal and substitute:

- “(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— 15
- 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 a protected person in New Zealand; or 25
 - “(d) a person who is recognised as a refugee or a protected person in New Zealand; or
 - “(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.” 30

Summary Proceedings Act 1957 (1957 No 87)

Schedule 1, Part 2: omit the item relating to the Immigration Act 1987 and substitute:

Title of Act	Section of Act	Offence
Immigration Act 2007	305(1)(b)	Using false or misleading document or information
	306(1)(a)	Assisting person to be or remain unlawfully in New Zealand unlawfully , or breach visa conditions
	306(1)(b)	Assisting person to unlawfully enter New Zealand unlawfully
	306(1)(c)	Assisting completion of arrival document in false or misleading manner
	308	Improper use of document relating to another person or forged or fraudulently obtained
	311	Modifying form after completion and signing

Tax Administration Act 1994 (1994 No 166)

Section 24I(4): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”. 5

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”.

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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—

- “(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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University of Auckland Act 1961 (1961 No 50)—*continued*

- “(c) treated for the purposes of that Act as being unlawfully 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—
- “(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
 - “(c) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~”.

University of Otago Amendment Act 1961 (1961 No 48)

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
 - “(c) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~”.

University of Waikato Act 1963 (1963 No 8) 25

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—
- “(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

University of Waikato Act 1963 (1963 No 8)—continued

- “(c) treated for the purposes of that Act as being unlawfully in New Zealand ~~unlawfully~~”.

Victims’ Rights Act 2002 (2002 No 39)

Section 39: repeal and substitute:

- “**39 Notice of proposal to cancel or suspend liability for deportation** 5
- “(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— 10
- “(a) ~~a person’s liability for deportation arises out of a conviction for a particular offence in terms of **section 150**~~ of a person is liable for deportation under the Immigration Act **2007** as a result of any criminal offending; and 15
- “(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. 15
- “(2) If **subsection (1)** applies, the chief executive must— 20
- “(a) advise each specified person (as defined in **subsection (4)**) that— 20
- “(i) the Minister is considering suspending or cancelling the liability for deportation of the criminal offender; or
- “(ii) the criminal offender has appealed against his or her liability for deportation to the Immigration and Protection Tribunal; and 25
- “(b) ask the specified person to provide the current address of the victim of the offence to the chief executive if that address— 30
- “(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.

Victims' Rights Act 2002 (2002 No 39)—*continued*

- “(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: 5
- “(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)**,— 10
- “(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
- “(b) if a deportation liability notice has been served and the offender concerned appeals against that liability for deportation on humanitarian grounds 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 give the victim prior notice of the hearing of the appeal. 15 20
- “(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)**.” 25
- 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** 30
- 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 460 161 and 187** of the Immigration Act 2007.”

Victoria University of Wellington Act 1961 (1961 No 51)

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—

- “(a) a person to whom **section 9 or 10** of the Immigration Act **2007** applies; or 5
 - “(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 unlawfully 10
in New Zealand ~~unlawfully~~”.
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Schedule 4**s ~~363~~ 384(2)****Regulations, rules, and orders amended****Corrections Regulations 2005 (SR 2005/53)**

Regulation 70(6): omit “Immigration Act 1987” and substitute “Im- 5
migration Act **2007**”.

Regulation 184: omit “**Immigration Act 1987**” and substitute “**Im-
migration Act 2007**” in the regulation heading.

Regulation 184: omit “Immigration Act 1987” and substitute “Im-
migration Act **2007**”. 10

Regulation 188(2): omit “Immigration Act 1987” and substitute “Im-
migration Act **2007**”.

Regulation 193(1)(c) and (2): omit “Immigration Act 1987” and sub-
stitute “Immigration Act **2007**”.

Customs and Excise Regulations 1996 (SR 1996/232)

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Regulation 2: revoke the definition of **certificate of identity** and sub-
stitute:

“**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)

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Clause 3(1): revoke paragraph (a) of the definition of **New Zealand
national** and substitute:

“(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**. 25

**Diplomatic Privileges (International Criminal Court) Order
2004 (SR 2004/79)**

Clause 3: revoke the definition of **permanent resident** and substi-
tute:

“**permanent resident** means a person who is the holder of a 30
residence class visa under the Immigration Act **2007**”.

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~~ who the Director-General is satisfied is in the process of claiming recognition as a refugee or a protected person in New Zealand; but does not include any other person—

“(a) unlawfully resident or present in New Zealand; or

“(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**”.

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**”.

Regulation 21C(g): revoke.

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)

Regulation 10A: revoke and substitute:

“**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—

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)—*continued*

- “(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 a protected person in New Zealand); or
 - “(b) a person referred to in section 74A(1)(d) of the Act (a person who is recognised as a refugee or a protected person in New Zealand); or
 - “(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). 10
- “(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; 15 and
 - “(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— 20
 - “(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; 25 or
 - “(iii) satisfies the chief executive that he or she is a refugee or a protected person and is entitled under the Immigration Act **2007** to reside indefinitely 30 in New Zealand; and”.

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). 5
- “(3) This regulation operates in addition to the requirements of the Immigration Act **2007** and of any regulations made under that Act.” 10

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). 15
- “(4) This regulation operates in addition to the requirements of the Immigration Act **2007** and of any regulations made under that Act.” 20

United Nations Sanctions (Democratic People’s Republic of Korea) Regulations 2006 (SR 2006/382)

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). 25
- “(4) This regulation operates in addition to the requirements of the Immigration Act **2007** and any regulations made under that Act.” 30

United Nations Sanctions (Liberia) Regulations 2001 (SR 2001/134)

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). 5
- “(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) 10

Regulation 11(4): omit “Immigration Act 1987” and substitute “Immigration Act **2007**”.

United Nations Sanctions (Al-Qaida and Taliban) Regulations 2007 (SR 2007/356) 15

Regulation 13(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 Sec-
retary 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.”
-

Schedule 5

s 374 373

Visas corresponding to visas and permits held under former Act

Visa or permit held under former Act

Residence visa

Residence visa that specifies requirements that are to be imposed under section 18A of the former Act on grant of permit

Returning ~~residence~~ resident's visa of limited duration or allowing limited number of return trips to New Zealand

Returning ~~residence~~ resident's visa of indefinite duration

Temporary visa

Student visa

Work visa

Temporary ~~permit~~ visa granted for the purposes of the Mutual Assistance in Criminal Matters Act 1992

Visa ~~the~~ holder is deemed to hold under this Act

Resident visa permitting travel to New Zealand current for the period or until the date specified in the visa, and effective for a specified number of journeys within that period until that date

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 a specified number of journeys within that period until that date; and
- (b) subject to the conditions specified under section 14B(6) of the former Act

Resident visa permitting travel to New Zealand current for the period or until the date specified in the visa, and effective for a specified number of journeys within that period until that date

Permanent resident visa

Temporary visa current for the period or until the date specified in the visa, and effective for a specified number of journeys within that period until that date

Temporary visa—

- (a) current for the period or until the date specified in the visa; and
- (b) effective for a 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

Temporary visa—

- (a) current for the period or until the date specified in the visa; and
- (b) effective for a specified number of journeys within that period until that date; and
- (c) with the condition that the holder may undertake the specified work

Limited visa granted under **section 72**—

Visa or permit held under former Act**Visa the holder is deemed to hold under this Act**

	(a) current for the period or until the date specified in the visa; and (b) for the purpose specified on the visa
Limited purpose visa	Limited visa— (a) current for the period or until the date specified in the visa, and effective for <u>a</u> specified number of journeys within that period until that date; and (b) for the purpose specified on the visa
Transit visa	Transit visa current for the period or until the date specified in the visa, and effective for <u>a</u> specified number of journeys within that period or until that date
Residence permit subject to requirements imposed under section 18A of <u>the</u> 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 <u>the</u> former Act
Residence permit with no requirements	Resident visa permitting stay in New Zealand only
Temporary permit visa granted for <u>the</u> purposes of <u>the</u> 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
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 <u>the</u> former Act (if any)
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 <u>the</u> former Act (if any)
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

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Visa or permit held under former Act

Visa ~~the~~ holder is deemed to hold under this Act

- (c) subject to conditions that are the same as conditions imposed under section 27 of the former Act (if any)

Limited purpose permit

Limited visa—

- (a) permitting stay in New Zealand only until the date or for the period stated on the permit; and
- (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 the former Act

Legislative history

8 August 2007
16 August 2007

Introduced (Bill 132–1)
First reading and referral to Transport and Industrial Relations Committee
