

Departmental Disclosure Statement

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| Immigration (Mass Arrivals) Amendment Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation, and Employment.

The Ministry of Business, Innovation, and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 November 2022

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Part One: General Policy Statement

This Bill amends the Immigration Act 2009 (the **principal Act**) to enable New Zealand to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and to ensure that in doing so the rights of all involved are protected.

This Bill makes changes to the immigration regime to enable the management of irregular migrants, by -

- providing more time for the District Court to consider an application for a mass arrival warrant of commitment and allowing migrants to be detained until an application is determined. An application will have to be made within 96 hours of initial arrest and detention, and the court must determine the application as soon as is reasonably practicable and within 7 days. If the court considers that it is not reasonably practicable to determine the application within 7 days, the application can be adjourned and must be determined within 28 days of the application; and
- clarifying the responsibilities of members of a mass arrival group to apply for entry permission and a visa.

Extending the time for the District Court to consider an application for a mass arrival warrant of commitment allows more time for members of a mass arrival group to be afforded their rights to natural justice, including obtaining legal representation. It would not be possible for this to happen under the current 96-hour deadline for the court to determine a mass arrival warrant application. Clarifying the entry requirements for members of a mass arrival group enables immigration officers to process them effectively and provides a decision-making process most consistent with refugee rights. Detention would be minimised for each individual. Any detention must be for the least possible time and in the least restrictive facility that is commensurate with achieving the lawful purposes for which people are detained. Choices available to immigration officers will include granting entry permission and a visa, offering accommodation in a low or no security facility, or releasing into the community on conditions (such as reporting conditions) or without conditions. Clarifying the entry requirements also enables an immigration officer to require a person to undertake an interview, provide further information, and undergo a medical examination. The medical examination will mean the migrants can be provided with the medical treatment they may require and any public health risks can be managed.

Finally, an amendment to the definition of passenger will make clear that this excludes any member of a mass arrival group. This will carve out members of a mass arrival group from any provisions in the principal Act or regulations that deem certain passengers to hold entry permission or a visa on arrival in New Zealand.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | NO |
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Relevant international treaties

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| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
| No, but it supports our ability to comply with our obligations under the <ul style="list-style-type: none">• Migrant Smuggling and Human Trafficking Protocols to the United Nations Convention Against Transnational Organized Crime, to investigate and prosecute criminals and protect victims,• Refugee Convention, Convention Against Torture and International Covenant on Civil and Political Rights, to protect people who have a realistic fear of persecution, torture, or other human rights violations, and• Declaration of Universal Human Rights, to not subject people to arbitrary detention. | |

Regulatory impact analysis

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| The Ministry for Business, Innovation and Employment completed a regulatory impact analysis for the Warrant of Commitment proposal. It is available here: https://www.mbie.govt.nz/document-library And here: https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments | |

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| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | NO |
| The Ministry of Business, Innovation and Employment's Regulatory Impact Assessment and Review Panel reviewed the Regulatory Impact Statement and considers that it partially meets the quality assurance criteria necessary for Ministers to make informed decisions on the proposals in the paper. Limited consultation means that it does not fully meet the regulatory impact analysis criteria. | |

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| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | NO |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
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| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | NO |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |
| This proposal ensures that members of a mass arrival will have their rights to natural justice, with regard to legal representation and freedom from arbitrary detention, protected, while also ensuring that the New Zealand community is not at risk of some people who may be determined to be criminals being released without conditions. It does not have quantifiable costs and benefits for the purposes of this analysis. | |

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| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | NO |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | NO |
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Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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| 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations? |
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MBIE consulted with relevant agencies, in particular the Ministry of Foreign Affairs and Trade (MFAT) and the Ministry of Justice and Crown Law in the development of the policy proposals and the draft Bill to ensure they were consistent with New Zealand's international obligations.

Cabinet was advised of the context of New Zealand's international obligations when considering the policy proposal. The Cabinet paper is available here: <https://www.mbie.govt.nz/document-library>

Please note that parts of this paper have been withheld under the Official Information Act 1982, and in particular sections:

6(a) - the making available of the information would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand,

6(c) - the making available of the information would be likely to prejudice the maintenance of the law, including prevention, investigation, and detection of offences, and

9(h) - the withholding of the information is necessary to protect professional legal privilege.

Consistency with the government's Treaty of Waitangi obligations

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| 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi? |
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The Ministry of Business, Innovation and Employment has not identified any implications for the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

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| 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990? | YES |
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We expect the advice to be published on the Ministry of Justice website here: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

Offences, penalties and court jurisdictions

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| 3.4. Does this Bill create, amend, or remove: | |
| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | NO |
| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | NO |
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Privacy issues

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| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | NO |
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External consultation

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| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | NO |
| No external parties were consulted on a draft of the Bill. | |

Other testing of proposals

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| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | NO |
| Policy development and the drafting of the Bill (and the associated Regulations change) has been informed by officials' knowledge about the operation of courts from a practical perspective, and Immigration New Zealand / the Ministry of Business, Innovation and Employment's existing experience with warrant of commitment applications. | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
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Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | NO |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | NO |
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Civil or criminal immunity

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | NO |
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Significant decision-making powers

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| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | NO |
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Powers to make delegated legislation

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| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
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| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | NO |
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Any other unusual provisions or features

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
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