

Departmental Disclosure Statement

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

It identifies:

- the general policy intent of the Amendment Paper and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Amendment Paper;
- the presence of certain significant powers or features in the Amendment Paper 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.

16 April 2024

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Part One: General Policy Statement

This Amendment Paper makes changes to the Immigration (Mass Arrivals) Amendment Bill.

New clauses 8A to 8C are inserted to amend sections 317A to 317C of the Immigration Act 2009 (which set out the processes for obtaining and varying a mass arrival warrant). The amendments add additional safeguards for members of a mass arrival, by:

- requiring the initial application for a warrant to specify how the terms of the warrant ensure that detention is for the least amount of time necessary, and is the least restrictive necessary, to achieve the outcomes of the detention, and to include a statement of how the proposed location meets international obligations and obligations under the Bill of Rights Act 1990 (*new clause 8A*):
- enabling the Judge to vary the place or places of detention named in the application for the warrant (*new clauses 8B and 8C*).

Clause 9, new section 317AB is amended to insert a new subsection that requires an immigration officer to report weekly to the Judge who is considering an application for a mass arrival warrant, as to whether the warrant continues to be necessary.

New clauses 10 and 11 are inserted to amend sections 324A and 330 of the Immigration Act 2009. The amendments:

- enable the Judge, who is considering an application to shorten the period to which a warrant of mass arrival applies, to also vary the place or places of detention named in the warrant (*new clause 10*):
- provide that a members of a mass arrival group may not be detained in a police station or prison during the initial period of detention before an application for a mass arrival warrant is determined by a Judge.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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 Amendment Paper?	YES
<p>Submissions on the Bill that is the subject of this Amendment Paper can be found on the Parliamentary website: https://bills.parliament.nz/v/6/e9936d6e-e4d2-4db9-bd3c-08db2f1a21d8?Tab=sub</p> <p>Specific advice by officials regarding possible amendments can be found in the briefings at https://www.parliament.nz/resource/en-NZ/53SCFD_ADV_e9936d6e-e4d2-4db9-bd3c-08db2f1a21d8_FD2447/03799a1a413c40ea3ef3ebb8b4a650b80e4c8622 and https://www.parliament.nz/resource/en-NZ/53SCFD_ADV_e9936d6e-e4d2-4db9-bd3c-08db2f1a21d8_FD2495/fa28443e4fe6a3528989d2d425740a04e9bc7d9d</p>	

Relevant international treaties

2.2. Does this Amendment Paper seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Amendment Paper?	NO
<p>The Treasury's Regulatory Impact Analysis team determined that the proposed amendments were exempt from the requirement to provide a Regulatory Impact Statement, on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Amendment Paper?	NO
2.5. For the policy to be given effect by this Amendment Paper, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
<p>This proposal implements safeguards to ensure the protection of the human rights (in particular the rights to not be arbitrarily detained and to natural justice) of members of a mass arrival group, while also ensuring that the New Zealand community is not at risk that people may be released without conditions before an appropriate absconding risk or health assessment has been made. It does not have quantifiable costs and benefits for the purposes of this analysis.</p>	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
2.6. For the policy to be given effect by this Amendment Paper, 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

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Amendment Paper is consistent with New Zealand's international obligations?

As this policy engages many of New Zealand's international obligations, those obligations have been of particular importance during its development. MBIE consulted with relevant agencies on the original proposal, in particular the Ministry of Foreign Affairs and Trade, the Ministry of Justice, and Crown Law, to ensure that the proposals were consistent with New Zealand's international obligations. The Cabinet paper outlining New Zealand's international obligations with regard to the original proposal can be found at:

<https://www.mbie.govt.nz/document-library>

With regard to this proposal, New Zealand's international obligations regarding asylum seekers and refugees under the 1951 Convention on the Status of Refugees and the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers 2012 informed the wording of this SOP, in particular *new clause 8A*. That Cabinet paper can be found at: <https://www.mbie.govt.nz/document-library>

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Amendment Paper is consistent with the principles of the Treaty of Waitangi?

It was determined that it is consistent, as there is no significant overlap with the principles of the Treaty of Waitangi, and no breach of its obligations.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Amendment Paper appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Amendment Paper 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

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted during the development of these provisions to ensure that any changes that might amend the considerations a Judge must make in the determination of a group warrant of commitment are consistent with the Ministry of Justice's expectations for such considerations. The Ministry of Justice was also provided with a draft of the Cabinet policy paper prior to lodgement, and was provided with a draft version of the Amendment Paper prior to its introduction to the House.

Privacy issues

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

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
This SOP does not add, remove or amend any privacy-related rights or obligations on affected stakeholders, and therefore consultation was not determined to be necessary.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Amendment Paper, or on a draft of this Amendment Paper?	NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Amendment Paper been otherwise tested or assessed in any way to ensure the SOP's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Amendment Paper contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Amendment Paper create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Amendment Paper affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Amendment Paper:	
(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

Civil or criminal immunity

4.5. Does this Amendment Paper create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Amendment Paper 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

Powers to make delegated legislation

4.7. Does this Amendment Paper 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

4.8. Does this Amendment Paper create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

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