

# BILLS DIGEST

**IMMIGRATION BILL 2007**

**Date of Introduction: 08 August 2007**

**Bills Digest No. 1538**



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**IMMIGRATION BILL 2007**

Date of introduction:	08 August 2007
Portfolio:	Immigration
Select Committee:	As at 16 August, 1st reading not held

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**PURPOSE**

The aim of the Bill is to restate or reform the law of New Zealand in relation to immigration and to modernise and simplify it.

**BACKGROUND**

"Key changes include a new visa system, the ability to use classified information in a wider range of decision making with special safeguards, a more comprehensive international protection system, a single independent appeals tribunal, a more transparent deportation system, flexible compliance and enforcement powers, a more balanced detention and monitoring system, and more appropriate incentives for third parties to comply with their obligations"<sup>1</sup>.

**MAIN PROVISIONS**

*The Bill is a complete reform of the law relating to immigration. This Bills Digest attempts to cover changes to the law and new areas subject to the law..*

**Core provisions and decision making**

The Bill requires all non-citizens to hold a visa to stay in New Zealand and requires persons unlawfully in New Zealand to leave. The role of the Minister of Immigration is continued in individual decision making, but he or she may delegate positive discretion in residence decisions. The Bill provides for automated decision-making using appropriate technology. Classified information may be used in immigration and refugee and protection decision making. Such decisions can be appealed if an appeal is ordinarily available, but the Bill enables the information to remain protected.

Natural justice safeguards in classified information appeals include requiring broad reasons to be given for a decision using classified information, and a non-classified summary of the information to be disclosed where the court considers that possible. Appeals can be heard by a panel of up to three District Court Judges on the Immigration and Protection Tribunal (the Tribunal), and special advocates are able to represent the individual's interests (*Part 2, Clauses 7 - 36; in particular Clauses 7*

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<sup>1</sup> Immigration Bill, 2007 No 132-2, Explanatory note, General policy statement, p. 2.

*("Rights of New Zealand citizens protected"), Clauses 33 - 36 (in relation to classified information); Part 7 Clauses 169 - 239)).*

#### *Comment*

Section 5(2) of the District Court Act 1947 is amended to increase the maximum number of District Court Judges from 140 to 141 (*Schedule 3 of the Bill*).

#### **A new visa system**

The Bill provides that all permissions to travel to, and stay in, New Zealand are called "visa", replacing the current terms of visa, permit, and exemption. A distinct decision on entry permission will be made regarding every non-citizen. Where requirements to hold a visa for travel to New Zealand are waived, non-citizens are granted a visa with "stay" conditions at the border. All non-citizens require a visa to stay in New Zealand. The Bill establishes permanent resident, resident, temporary, interim, limited, and transit visas (*Part 3, Clauses 37 - 83*).

#### **Biometric information**

The Bill enables the collection and use of certain specified biometric information for identity verification purposes. Biometric information includes fingerprints and iris scans, as well as photographs. The Bill enables the limited collection of biometric information from people presenting at the border as New Zealand citizens to ensure they are who they claim to be. The biometric information will not be retained unless the information does not confirm that the person is, in fact, a New Zealand citizen (*Part 2, Clause 29; Part 4, Clause 98; Part 8, Clause 255*).

#### **Arrivals and departures**

The Bill establishes immigration control areas for immigration processing and maintains advanced passenger processing provisions. It clearly sets out obligations on persons arriving in New Zealand and obligations on carriers (*Part 4, Clauses 84 - 112*).

#### **Refugee and international protection determination**

The Bill provides for an international refugee and protection determination procedure which ensures that all claims for international protection are assessed together to provide for a more efficient and fair determination of who is entitled to protection under these obligations (*Part 5, Clauses 113 - 141*).

#### *Comment*

This appears to codify in domestic legislation New Zealand's existing immigration-related obligations under the Refugee Convention, the Convention Against Torture, and the International Covenant on Civil and Political Rights.

#### **Deportation**

The Bill deals in some detail with deportation. Liability to deportation arises from a person staying in New Zealand unlawfully, breaching visa conditions, staying in New Zealand on a visa obtained through fraud or misrepresentation, specified levels of criminal offending, and through risk or threat to security. Notable circumstances described as grounds for deportation are: staying in New Zealand on a visa obtained in a false identity and new information relating to character applicable but not disclosed when the visa was granted. The Bill allows for liability to be cancelled or

suspended at the discretion of the Minister of Immigration or, on appeal, by the Tribunal (*Part 6, Clauses 142 - 168*).

### **Appeals**

The Bill establishes the Tribunal and continues existing appeal rights. The Tribunal is able to consider all grounds for appeal together in a single decision (*Part 7, Clauses 169 - 239*); *Part 2, Clauses 33 - 36 (in relation to classified information)*).

### **Compliance and enforcement**

The Bill provides that powers of entry, inspection, and search may be delegated by Order in Council to certain immigration officials ("determination officers") in addition to "immigration officers" who may be employees of the Department or the police and customs officers acting in an immigration capacity. The Bill also extends current information-sharing powers with public service agencies who require immigration status information to establish eligibility for those services, and with employers to establish entitlement to work (*Part 8, Clauses 240 - 270*; *Part 11, Clauses 346 - 349*).

### **Powers of detention and monitoring**

The Bill brings together all provisions that deal with arrest and detention in relation to immigration matters. The Bill provides greater ability to use reporting conditions and a greater capacity to issue warrants of commitment. Additional safeguards, including legal aid for detainees and tiered restrictions on detention after six and twelve months are introduced. The Bill includes a power for designated officers appointed by Order in Council to detain a person for up to four hours. The Bill extends the maximum period of detention without a warrant of commitment to 96 hours (*Part 9, Clauses 271 - 304*; particularly *Clauses 274 ("Limited powers of detention for up to 4 hours") and 275 ("Initial period of detention for up to 96 hours without warrant")*); see *Schedule 3, amendments to the Legal Services Act 2000 (in respect of legal aid)*).

### **Third parties**

The Bill removes sighting an IR330 tax code declaration as a reasonable excuse for employing a person not entitled to work in New Zealand. It requires employers to take reasonable precautions and due diligence to determine whether a person is entitled to work. It allows for information-sharing to reduce compliance costs for employers. The Bill provides for a more appropriate range of penalties for education providers that enrol non-citizens not entitled to study. It also establishes infringement offences (also known as instant fines) for carriers who fail to meet their immigration obligations (*Part 10, Clauses 305 - 335*).

### **Relationship with the Human Rights Act 1993**

The Bill limits the jurisdiction of the Human Rights Commission in certain respects. The Commission may not bring proceedings under Section 5(2)(i) and (j) of the Human Rights Act 1993 in respect of "the content or application of this Act or any regulations made under this Act" or "the content or application of any immigration instructions ... " issued by the Minister under Clause 20 of this Bill. Section 5(2)(i) enables the Human Rights Commission to appear in or bring proceedings, in accordance with Section 6 of the Human Rights Act ("Powers relating to declaratory judgements") or section 92B (Civil proceedings arising from complaints"), Section 92E of the Human Rights Act (Civil proceedings arising from inquiry of

Commission"), Section 92H of the Human Rights Act ("Right of Commission to appear in civil proceedings") or Section 97 of the Human Rights Act ("Power in respect of exception for genuine occupational qualification or genuine justification").

Section 5(2)(j) of the human Rights Act enables the Human Rights Commission to apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations, if, in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its function to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights (cf. Section 5(2)(a) of the Human Rights Act 1993).

The Bill also provides that "this [clause] recognises that immigration matters inherently involve different treatment on the basis of personal characteristics (*Part 11, Clause 350*).

*Comment*

The jurisdiction of the Human Rights Commission is comprehensively removed from immigration matters by this provision.