

Reprint

as at 1 August 2008

Immigration Act 1987

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Department of Labour

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**An Act generally to reform the law relating to immigration,
and in particular to remove the need for persons who are in**

New Zealand unlawfully to be dealt with by way of criminal prosecution**BE IT ENACTED by the Parliament of New Zealand as follows:****1 Short Title and commencement**

- (1) This Act may be cited as the Immigration Act 1987.
- (2) This Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

This Act was brought into force on 1 November 1987 pursuant to regulation 2 Immigration Act Commencement Order 1987 (SR 1987/300).

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Act of terrorism means—

- (a) Any act that involves the taking of human life, or threatening to take human life, or the wilful or reckless endangering of human life, carried out for the purpose of furthering an ideological aim; or
 - (b) Any act involving any explosive or incendiary device causing or likely to cause the destruction of, or serious damage to, any premises, building, installation, vehicle, or property of a kind referred to in any of sections 298 to 304, except subsection (3) of section 298, of the Crimes Act 1961, carried out for the purpose of furthering an ideological aim; or
 - (c) Any act that constitutes, or that would, if committed in New Zealand, constitute, a crime against section 79 of the Crimes Act 1961, carried out for the purpose of furthering an ideological aim; or
 - (d) Any act that constitutes, or that would, if committed in New Zealand, constitute, an offence against any of the provisions of the Aviation Crimes Act 1972 or the Crimes (Internationally Protected Persons and Hostages) Act 1980 or the Maritime Crimes Act 1999 or against section 7(1) or section 8(1) or (2A) of the Terrorism Suppression Act 2002;—
- and includes the planning of any such act

Act of terrorism: paragraph (d) of this definition was amended, as from 18 October 2002, by section 78 Terrorism Suppression Act 2002 (2002 No 34) by inserting “or the Maritime Crimes Act 1999 or against section 7(1) or section 8(1) of the Terrorism Suppression Act 2002” after “1980”.

act of terrorism: paragraph (d) of this definition was amended, as from 22 June 2005, by section 7 Terrorism Suppression Amendment Act 2005 (2005 No 83) by substituting “section 8(1) or (2A)” for “section 8(1)”.

Allow to undertake, in relation to a course of study or training, includes accept for enrolment in that course

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

Arrival hall: this definition was inserted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Authority means, as the case may require,—

- (a)
- (b) The Removal Review Authority referred to in section 49; or
- (c) The Refugee Status Appeals Authority referred to in section 129N:

Authority: this definition was inserted, as from 18 November 1991, by section 2(1) Immigration Amendment Act 1991 (1991 No 113).

Authority: this definition was substituted, as from 1 October 1999, by section 2(1) Immigration Amendment Act 1999 (1999 No 16).

Authority: paragraph (a) of this definition was repealed, as from 9 September 2003, by section 4(1) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Board means the Residence Review Board referred to in section 18B.

Board: this definition was inserted, as from 9 September 2003, by section 4(2) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Boarding station*[Repealed]*

Boarding station: this definition was substituted, as from 21 March 1993, by section 7(1) Air Facilitation Act 1993 (1993 No 6).

Boarding station: this definition was repealed, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

[Repealed]

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

Certificate of identity 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 purports to establish the identity but not the nationality of that person and that confers on that person the right to enter the country the Government of which has issued the document; and includes any other document in a form approved for the purpose by the Minister; and also includes any travel document issued by any international organisation for the time being specified by the Minister, by notice in the *Gazette*, as an organisation whose travel documents will be accepted for the purposes of this Act as certificates of identity

Chief executive means the chief executive of the Department of Labour

Chief executive: this definition was inserted, as from 1 October 1999, by section 2(2) Immigration Amendment Act 1999 (1999 No 16).

Claim, and claimant, in relation to a claim to be recognised as a refugee, have the meanings given by section 129B

Claim, and claimant: this definition was inserted, as from 1 October 1999, by section 2(2) Immigration Amendment Act 1999 (1999 No 16).

Conditions includes conditions precedent as well as conditions subsequent

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

Contiguous zone: this definition was inserted, as from 18 June 2002, by section 3 Immigration Amendment Act 2002 (2002 No 22).

Course of study or training 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 includes 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,

in relation to any particular person, also includes 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

Course of study or training: this definition was amended, as from 1 January 1990, by section 4(2)(a) Education Amendment Act 1989 (1989 No 156) by substituting “people entitled to free enrolment and education under section 3 of the Education Act 1989” for “children under 15 years of age, or for children entitled to free education under section 85(1) of the Education Act 1964”.

Craft means any form of aircraft, ship, or other vehicle or vessel capable of being used to transport any person to or from New Zealand from or to any country outside New Zealand

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

Customs airport means an aerodrome designated as a Customs airport under section 9 of the Customs and Excise Act 1996

Customs airport: this definition was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Customs controlled area has the meaning given to it by section 2(1) of the Customs and Excise Act 1996

Customs controlled area: this definition was inserted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Customs officer has the meaning given to it by section 2(1) of the Customs and Excise Act 1996

Customs officer: this definition was repealed, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Customs place means a Customs port or Customs airport under section 9 of the Customs and Excise Act 1996

Customs place: this definition was inserted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Customs port means a port of entry designated as a Customs port under section 9 of the Customs and Excise Act 1996

Customs port: this definition was inserted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

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

Departure hall: this definition was inserted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Dependent child, in relation to any person, means a child under 17 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

Dependent child: this definition was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “a child under 17 years of age who is not married or in a civil union and” for “an unmarried child under 17 years of age”.

Deportation order means a deportation order made under section 72 or section 73 or section 91 or section 92 of this Act

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—

- (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 two 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 one other Customs airport in New Zealand before leaving New Zealand:

Domestic passenger: this definition was inserted, as from 1 November 1994, by section 11(1) Air Facilitation (Domestic Passengers and Cargo) Act 1994 (1994 No 100).

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

Domestic sector: this definition was inserted, as from 21 March 1993, by section 7(2) Air Facilitation Act 1993 (1993 No 6).

Employment means any activity undertaken for gain or reward; but does not include—

- (a) Representation on an official trade mission recognised by the Government of New Zealand;
- (b) Employment as a sales representative in New Zealand of an overseas company for a period or periods not

exceeding in the aggregate 3 months in any calendar year:

- (c) Activity in New Zealand as an overseas buyer of New Zealand goods or services for a period or periods not exceeding in the aggregate 3 months in any calendar year:
- (d) Official business in the service of the Government of any country, or of any inter-governmental or international organisation that is for the time being entitled to any privileges and immunities by or under the Diplomatic Privileges and Immunities Act 1968:
- (e) Business consultations or negotiations in New Zealand concerning the establishment, expansion, or winding up of any business enterprise in New Zealand or any matter relating thereto, for a period or periods not exceeding in the aggregate 3 months in any calendar year, by any person engaged in business overseas or by the directors, executives, or other authorised representatives of any overseas company or body with any person engaged in business in New Zealand, or with the directors, executives, or other authorised representatives of any company or body carrying on business in New Zealand, or with the Government of New Zealand or any of its agencies, or with any local authority or other public body:
- (f) Study or training pursuant to a scholarship or other award recognised by the Minister, by notice in the *Gazette*, for the purposes of this Act:

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

epidemic management notice: this definition was inserted, as from 19 December 2006, by section 4 Immigration Amendment Act (No 2) 2006 (2006 No 87).

Examination station*[Repealed]*

Examination station: this definition was substituted, as from 21 March 1993, by section 7(3) Air Facilitation Act 1993 (1993 No 6).

Examination station: this definition was repealed, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

[Repealed]

Exclusive economic zone of New Zealand has the same meaning as in the Territorial Sea and Exclusive Economic Zone Act 1977

Execute,—

- (a) In relation to a removal order, means take the person to whom the order applies into custody and place that person on board a craft for the purpose of effecting that person's removal from New Zealand, in accordance with section 59:
- (b) In relation to a deportation order, means take the person to whom the order applies into custody and place that person on board a craft for the purpose of effecting that person's deportation from New Zealand, in accordance with section 85 or section 86 or section 87 or section 108 or section 109 or section 110 of this Act:

Execute: this definition was amended, as from 1 October 1999, by section 2(3) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression "section 59" for the expression "section 67 or section 68 or section 69 of this Act".

Execute: paragraph (a) of this definition was amended, as from 18 November 1991, by section 2(2) Immigration Amendment Act 1991 (1991 No 113) by substituting "order" for "warrant".

Exemption means an exemption under section 11 or section 12 of this Act from the requirement to hold a permit; and **exempt** has a corresponding meaning

Government residence policy has the meaning ascribed to that term by section 13B of this Act

Government residence policy: this definition was inserted, as from 18 November 1991, by section 2(3) Immigration Amendment Act 1991 (1991 No 113).

Holder, in relation to a visa or permit issued or granted under this Act, means the person in respect of whom the visa or permit is issued or granted for so long as the visa or permit is current; and, in the case of a visa or permit issued or granted in

respect of more than 1 person, includes each of those persons;
and **to hold** has a corresponding meaning

Immigration officer,—

- (a) In every Part of this Act, means the Secretary of Labour and every other officer of the Department of Labour designated by the Secretary as an immigration officer under section 133 of this Act; and
- (b) In Parts 1 and 6 and sections 127, 130, 131, 136, 142, and 143 of this Act, includes any customs officer designated by the Secretary of Labour as an immigration officer, whether individually or by class or position; and
- (c) In Parts 1 and 6 and sections 130, 131, 142, and 143 of this Act, includes any person who—
 - (i) Is in the service of the Government of another country; or
 - (ii) Acts as an agent for the Government of New Zealand for pre-clearance purposes,—and who is designated by the Secretary of Labour as an immigration officer, whether individually or by class or position:

Immigration officer: paragraph (b) of this definition was substituted, as from 18 November 1991, by section 2(4) Immigration Amendment Act 1991 (1991 No 113).

Immigration officer: this definition was substituted, as from 15 September 1993, by section 3(1) Immigration Amendment Act 1993 (1993 No 100).

Imprisonment means any form of detention or custody whereby an offender is deprived of liberty for a continuous period, including detention or custody in a psychiatric institution or hospital, and military custody; but does not include detention or custody under this Act

Internal waters of New Zealand has the same meaning as in the Territorial Sea 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 tickets for an international journey which—

- (a) Began outside New Zealand; or

- (b) Began inside New Zealand and is to continue outside New Zealand:

Internationally ticketed passenger: this definition was inserted, as from 21 March 1993, by section 7(4) Air Facilitation Act 1993 (1993 No 6).

Internationally ticketed passenger: this definition was amended, as from 1 November 1994, by section 11(2) Air Facilitation (Domestic Passengers and Cargo) Act 1994 (1994 No 100) by substituting “tickets” for “ticketing”.

invitation to apply for residence has the meaning and effect described in section 13E(1) and (2).

invitation to apply for residence: this definition was inserted, as from 9 September 2003, by section 4(3) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Leave New Zealand means, except in the circumstances specified in subsection (3) of this section, leave New Zealand for a destination in another country

Minister means the Minister of Immigration, and includes, in relation to the exercise or performance of any power or function of the Minister, any person for the time being authorised in accordance with section 131 of this Act to exercise or perform that power or function

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 16(2)(a), 24(3), 27(3), and 137(2)(a) of this Act, the territorial sea of New Zealand; and
- (d) For the purposes of section 137(2)(aa) of this Act, the area of sea adjacent to New Zealand and bounded by the outer limits of the contiguous zone of New Zealand:

New Zealand: paragraph (c) of this definition was amended, as from 1 August 1996, by section 2 Immigration Amendment Act 1996 (1996 No 75) by inserting the expression “; and”.

New Zealand: paragraph (d) this definition was inserted, as from 1 August 1996, by section 2 Immigration Amendment Act 1996 (1996 No 75).

New Zealand address,—

- (a) In relation to a permit holder, means the last known of the following addresses:
 - (i) The address for the time being nominated by that holder under section 37:

- (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e):
- (b) In relation to a person who is subject to any residence requirement in accordance with section 98, means the last known of the following addresses:
 - (i) The address at which the person has currently agreed to reside under that section:
 - (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e) or paragraph (f):
- (c) In relation to a person who is subject to any residence condition imposed in accordance with section 60(5) (or the previous section 54 or section 57) or section 79 or section 101, means the last known of the following addresses:
 - (i) The current address specified under any of those sections:
 - (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e) or paragraph (f) or paragraph (h):
- (d) In relation to a person who is in custody pursuant to a warrant of commitment issued under this Act, means—
 - (i) The place where that person is held in custody:
 - (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e):
- (e) In relation to a person under 17 years of age who is not married or in a civil union named in a removal order or a deportation order, means—
 - (i) Where that person is named as a dependent child of another person named in the order, the New Zealand address of that other person:
 - (ii) Where a responsible adult has been determined or nominated under section 141B (or the previous section 60) to represent the interests of that person, the latest address supplied by that adult under section 141B(6) (or the previous section 60(6)):

- (f) In relation to a person who has appealed to the Deportation Review Tribunal under section 22 or section 104, means—
 - (i) The address supplied to the Tribunal under section 22(3) or (as the case may be) section 104(3):
 - (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e):
- (g) In relation to a person who has appealed to the Residence Review Board under section 18C, means—
 - (i) The address supplied to the Board under subsection (5) of that section (whether or not that address is in New Zealand):
 - (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e):
- (h) In relation to a person who has appealed to the Removal Review Authority under Part 2, means—
 - (i) The latest address supplied to the Authority under section 48 (or under the previous section 63A or 63B):
 - (ii) Where applicable, that person's New Zealand address within the meaning of paragraph (e):

New Zealand address: this definition was substituted, as from 18 November 1991, by section 2(5) Immigration Amendment Act 1991 (1991 No 113).

New Zealand address: this definition was substituted, as from 1 October 1999, by section 2(4) Immigration Amendment Act 1999 (1999 No 16).

New Zealand address: paragraph (e) of this definition was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting "a person under 17 years of age who is not married or in a civil union" for "an unmarried person under 17 years of age".

New Zealand address: paragraph (g) of this definition was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting "Residence Review Board" for "Residence Appeal Authority".

New Zealand address: paragraph (g)(i) of this definition was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting "Board" for "Authority".

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

Passport means a document that is issued by or on behalf of the Government of any country, being a document that purports to establish the identity and nationality of the holder and that confers on the holder the right to enter the country the Government of which has issued the document

Permit means a permit granted under this Act; and includes a residence permit and any type of temporary permit, pre-cleared permit, or limited purpose permit

Permit: this definition was amended, as from 15 September 1993, by section 3(2) Immigration Amendment Act 1993 (1993 No 100) by inserting “and a pre-cleared permit of whatever type”.

Permit: this definition was substituted, as from 1 October 1999, by section 2(5) Immigration Amendment Act 1999 (1999 No 16).

Person conducting the course of study or training,—

- (a)
- (b) In relation to any institution controlled by a Board of Trustees constituted under Part 9 of the Education Act 1989, means that board:
- (c) In relation to any institution controlled by the chief executive of the Ministry of Education, means the chief executive:
- (d) In relation to any university, or any college of education controlled by a council, means the appropriate university or college of education:
- (e) In any other case, means the institution, body, or person which or who is entitled to the fees payable by or on behalf of the persons undertaking the course, or which or who would be so entitled if any such fees were payable:

Person conducting the course of study or training: paragraph (a) of this definition this definition was repealed, as from 1 January 1990, by section 4(2)(b) Education Amendment Act 1989 (1989 No 156) by repealing paragraph (a).

Person conducting the course of study or training: paragraph (b) of this definition this definition was amended, as from 1 January 1990, by section 4(2)(c) Education Amendment Act 1989 (1989 No 156) by substituting “Board of Trustees constituted under Part 9 of the Education Act 1989” for “board of governors”.

Person conducting the course of study or training: paragraph (c) of this definition this definition was amended, as from 1 January 1990, by section 4(2)(d) Education Amendment Act 1989 (1989 No 156) by substituting “chief executive of the Ministry of Education, means the chief executive” for “Director-General of Education means the Director-General”.

Person conducting the course of study or training: the words “college of education” in paragraph (d) were substituted for “teachers college” pursuant to section 162(1)(b) Education Act 1989 (1989 No 80).

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

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

Port of entry *[Repealed]*

Port of entry: this definition was omitted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

[Repealed]

Pre-clearance means the process relating to the application for and granting of pre-cleared permits and includes all functions and activities incidental thereto, including the revocation of pre-cleared permits

Pre-clearance: this definition was inserted, as from 15 September 1993, by section 3(3) Immigration Amendment Act 1993 (1993 No 100).

Pre-clearance flight means any flight that the Minister designates as a pre-clearance flight under section 35C of this Act

Pre-clearance flight: this definition was inserted, as from 15 September 1993, by section 3(3) Immigration Amendment Act 1993 (1993 No 100).

Pre-cleared permit means a pre-cleared permit within the meaning of section 35B(1) of this Act

Pre-cleared permit: this definition was inserted, as from 15 September 1993, by section 3(3) Immigration Amendment Act 1993 (1993 No 100).

Refugee Convention means the United Nations Convention Relating to the Status of Refugees, done at Geneva on the 28th day of July 1951; and includes the Protocol Relating to the Status of Refugees done at New York on the 31st day of January 1967

Refugee status claimant has the meaning given by section 129B

Refugee status claimant: this definition was inserted, as from 1 October 1999, by section 2(6) Immigration Amendment Act 1999 (1999 No 16).

Refugee status officer has the meaning given by section 129B

Refugee status officer: this definition was inserted, as from 1 October 1999, by section 2(6) Immigration Amendment Act 1999 (1999 No 16).

Registered post includes any service that provides a system of recorded delivery and is similar in nature to the registered post service provided by New Zealand Post

Registered post: this definition was inserted, as from 18 November 1991, by section 2(6) Immigration Amendment Act 1991 (1991 No 113).

Removal order means a removal order made under section 54 and, for the purposes of serving or executing any such order, includes any copy thereof; and also includes a removal warrant issued under this Act whether before or after the commencement of the Immigration Amendment Act 1991

Removal order: this definition was inserted, as from 18 November 1991, by section 2(6) Immigration Amendment Act 1991 (1991 No 113).

Removal order: this definition was amended, as from 1 October 1999, by section 2(7) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression “section 54” for the expression “section 50 of this Act”.

Removal warrant*[Repealed]*

Removal warrant: this definition was repealed, as from 18 November 1991, by section 2(7) Immigration Amendment Act 1991 (1991 No 113).

[Repealed]

Returning resident’s visa means a visa issued for the purposes of section 18 of this Act

Review proceedings means proceedings—

- (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:

Special direction means a direction given by the Minister in accordance with section 130(1) of this Act and relating to any matter for which a special direction is contemplated by any of the provisions of this Act or of any regulations made under this Act

Subsequent claim, for the purposes of Part 6A, has the meaning given by section 129B

Subsequent claim: this definition was inserted, as from 1 October 1999, by section 2(8) Immigration Amendment Act 1999 (1999 No 16).

Territorial sea of New Zealand has the same meaning as in the Territorial Sea and Exclusive Economic Zone Act 1977

Transit passenger means a person who—

- (a) Arrives in New Zealand from another country while in transit to another overseas destination; and
- (b) Throughout the whole period during which the person is in New Zealand, remains on board the craft, or in a Customs controlled area, or in the custody of the Police:

Transit passenger: this definition was inserted, as from 18 November 1991, by section 2(8) Immigration Amendment Act 1991 (1991 No 113).

Transit passenger: this definition was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27), by substituting “Customs controlled area” for “boarding station or examination station”.

Tribunal means the Deportation Review Tribunal referred to in section 103 of this Act

Visa has the meaning and effect described in section 14A of this Act, and includes any visa of a type specified in section 14 of this Act

Visa: this definition was substituted, as from 18 November 1991, by section 2(9) Immigration Amendment Act 1991 (1991 No 113).

Visa officer includes—

- (a) Any immigration officer employed in the Department of Labour:
- (b) Any—
 - (i) Head of mission or head of post (within the meaning of the Foreign Affairs Act 1988); or
 - (ii) Other member of the staff (including locally engaged staff) of a New Zealand overseas mission or New Zealand overseas post who is authorised from time to time by the head of mission or head of post to exercise consular functions; or
 - (iii) Other member of the staff (including locally engaged staff) of an overseas branch office of the Department of Labour,—
who is designated by the Secretary of Labour as a visa officer, whether individually or by class or position:
- (c) Any other person, including a person employed in the service of the Government of another country, who acts as an agent for the Government of New Zealand in the

performance of consular functions, either pursuant to an agreement between the Government of another country and the Government of New Zealand or pursuant to a request by a visa officer employed in the service of the Government of New Zealand.

Visa officer: Paragraph (b) of this definition was substituted, as from 18 November 1991, by section 2(10) Immigration Amendment Act 1991 (1991 No 113).

Visa officer: Paragraph (b)(i) was amended by section 2(3) Foreign Affairs Amendment Act 1993 (1993 No 48) by substituting “Foreign Affairs” for “External Relations”.

Visa officer: paragraph (b)(ii) of this definition was amended by inserting the expression “; or”, and paragraph (b)(iii) was inserted, as from 1 October 1999, by section 2(9) Immigration Amendment Act 1999 (1999 No 16).

- (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, shall be reckoned exclusive of any day, not being a Saturday or a Sunday, that is a public holiday or a Departmental holiday
- (3) For the purposes of this Act a person shall be deemed not to leave New Zealand where that person, not being a person to whom section 128 of this Act applies, departs for another country on any craft 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.
- (4) For the purposes of this Act, but subject to subsection (5) of this section, and, in the case of New Zealand, subject also to subsection (6) of this section, 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 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; and the term **deportation** when used in this Act has a corresponding meaning.
- (5) For the purposes of this Act, no person is deported from any country merely because that person is surrendered to another

country in accordance with a request for the extradition of that person to that other country.

- (6) For the purposes of this Act, no person is deported from New Zealand merely because that person is removed from New Zealand.
- (7) For the purposes of this Act, a person is removed from New Zealand if that person leaves New Zealand (whether or not at the expense of the Government of New Zealand) while a removal order is in force in respect of that person; and the term **removal** when used in this Act has a corresponding meaning.

Subsection (2) was amended, as from 18 November 1991, by section 2(11)(a) Immigration Amendment Act 1991 (1991 No 113) by substituting “Departmental” for “State Services Commission”.

Subsection (7) was amended, as from 18 November 1991, by section 2(11)(b) Immigration Amendment Act 1991 (1991 No 113) by substituting “order” for “warrant”.

3 Rights of New Zealand citizens protected

- (1) For the purposes of this Act, every New Zealand citizen has, by virtue of that citizenship, the right to be in New Zealand at any time.
- (2) Nothing in this Act shall abrogate the right declared in subsection (1) of this section, and no provision of this Act that is inconsistent with that right shall apply to New Zealand citizens.
- (3) Without limiting the generality of subsection (2) of this section, no New Zealand citizen requires a permit under this Act to be in New Zealand, or to undertake employment in New Zealand or within the exclusive economic zone of New Zealand, or to undertake a course of study or training in New Zealand, and no such citizen is liable under this Act to removal or deportation from New Zealand in any circumstances.

Part 1

Exemptions, visas, and permits

Basic rules

4 Requirement to hold permit, or exemption, to be in New Zealand

- (1) A person who is not a New Zealand citizen may be in New Zealand only if that person is—
 - (a) The holder of a permit granted under this Act; or
 - (b) Exempt under this Act from the requirement to hold a permit.
- (2) Any person who is in New Zealand in contravention of subsection (1) of this section is deemed for the purposes of this Act to be in New Zealand unlawfully.
- (3) The fact that an application for a permit has been made by or for any person 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 permit pending determination of the application; or
 - (d) Inhibit removal procedures under this Act.

Subsection (3) was substituted, as from 18 November 1991, by section 3 Immigration Amendment Act 1991 (1991 No 113).

4A Immigration status of persons born in New Zealand on or after 1 January 2006

- (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 subsection (4).
- (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
 - (b) that status continues until either—
 - (i) the person leaves New Zealand; or
 - (ii) the person is accorded a different status under, or by the operation of, this Act.
- (4) For the purposes of subsection (2), the person's immigration status is to be determined as follows:
 - (a) where both parents are recorded on the person's original birth record, whichever of the following is applicable and attaches first in the following order:
 - (i) where both parents were at the time of the birth exempt from the requirement to hold a permit, the person is deemed to be exempt from the requirement to hold a permit on the same basis as, and for the duration of the unexpired period of, the parent with the exemption having the longest unexpired period:
 - (ii) where 1 parent only was exempt from the requirement to hold a permit, the person is deemed to be exempt from the requirement to hold a permit on the same basis as, and for the duration of the unexpired period of, that parent's exemption:
 - (iii) where both parents held any type of temporary permit, the person is deemed to hold a visitor's permit of the duration of the unexpired period of the permit of the parent whose temporary permit has the longest unexpired period:
 - (iv) where 1 parent only held any type of temporary permit, the person is deemed to hold a visitor's permit of the duration of the unexpired period of that parent's temporary permit:
 - (v) where both parents held limited purpose permits, the person is deemed to hold a limited purpose permit of the duration of the unexpired period of the permit of the parent whose limited purpose permit has the longest unexpired period:

- (vi) where 1 parent only held a limited purpose permit, the person is deemed to hold a limited purpose permit of the duration of the unexpired period of that parent's limited purpose permit:
- (vii) where 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:
- (b) where 1 parent only is recorded on the person's original birth record, whichever of the following is applicable:
 - (i) where the parent was at the time of the birth exempt from the requirement to hold a permit, the person is deemed to be exempt from the requirement to hold a permit on the same basis as, and for the duration of the unexpired portion of, the parent's exemption:
 - (ii) where the parent held a temporary permit, the person is deemed to hold a visitor's permit of the duration of the unexpired period of the parent's temporary permit:
 - (iii) where the parent held a limited purpose permit, the person is deemed to hold a limited purpose permit of the duration of the unexpired period of the parent's limited purpose permit:
 - (iv) where 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.

Section 4A was inserted, as from 21 April 2005, by section 16 Citizenship Amendment Act 2005 (2005 No 43).

5 Requirements for undertaking employment in New Zealand

- (1) A person who is not a New Zealand citizen may undertake employment in New Zealand only if that person is—
 - (a) The holder of a residence permit; or

- (b) The holder of a work permit; or
 - (c) The holder of any other type of temporary permit whose conditions have been varied in accordance with this Act to authorise the holder to undertake employment in New Zealand or within the exclusive economic zone of New Zealand; or
 - (ca) The holder of a limited purpose permit granted for purposes of employment; or
 - (d) Exempt under this Act from the requirement to hold a permit.
- (2) For the purposes of this section and of sections 39 and 44(5)(a) of this Act, a person is deemed to be undertaking employment in New Zealand at any time while that person is employed—
- (a) On or in relation to any artificial island, installation, or structure anywhere within the territorial sea of New Zealand; or
 - (b) On or in relation to any artificial island, installation, or structure anywhere within the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand, being an artificial island, installation, or structure—
 - (i) Described in section 7 of the Continental Shelf Act 1960; or
 - (ii) To which any regulations made under section 27(c) of the Territorial Sea and Exclusive Economic Zone Act 1977 apply; or
 - (c) On board any craft that is registered in New Zealand under any Act and is engaged in activities anywhere within the territorial sea of New Zealand or the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand.

Subsection (1)(ca) was inserted, as from 1 October 1999, by section 3 Immigration Amendment Act 1999 (1999 No 16).

6 Requirements for undertaking course of study or training in New Zealand

- (1) A person who is not a New Zealand citizen may undertake a course of study or training in New Zealand only if that person is—
- (a) The holder of a residence permit; or
 - (b) The holder of a student permit; or
 - (c) The holder of any other type of temporary permit whose conditions have been varied in accordance with this Act to authorise the holder to undertake a course of study or training in New Zealand; or
 - (ca) The holder of a limited purpose permit granted for purposes of study or training; or
 - (d) Exempt under this Act from the requirement to hold a permit; or
 - (e)

(2)

Subsection (1)(ca) was inserted, as from 1 October 1999, by section 4 Immigration Amendment Act 1999 (1999 No 16).

Subsections (1)(e) and (2) were repealed, as from 1 January 1990, by section 4(3) Education Amendment Act 1989 (1989 No 156).

7 Certain persons not eligible for exemption or permit

- (1) Subject to subsection (3) of this section, no exemption shall apply, and no permit shall be granted, to any person—
- (a) Who, at any time (whether before or after the commencement of this Act), has been convicted of any offence for which that 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
 - (b) Who, at any time within the preceding 10 years (whether before or after the commencement of this Act), has been convicted of any offence for which that 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
 - (c) Against whom a removal order is in force; or
 - (d) Who has been deported—

- (i) From New Zealand, at any time, under this Act; or
- (ii) From New Zealand at any time, pursuant to an order for deportation made under section 22 of the Immigration Act 1964; or
- (iv) From New Zealand, at any time (whether before or after the commencement of this Act), pursuant to any other enactment, except section 158 of the Shipping and Seamen Act 1952 (as repealed by section 151(1) of this Act); or
- (v) From any other country, at any time (whether before or after the commencement of this Act); or
- (e) Who the Minister has reason to believe—
 - (i) Has engaged in, or claimed responsibility for, an act of terrorism in New Zealand; or
 - (ii) Is a member of or adheres to any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand; or
- (f) Who the Minister has reason to believe—
 - (i) Has engaged in, or claimed responsibility for, an act of terrorism outside New Zealand; or
 - (ii) Is a member of or adheres to any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism outside New Zealand—and whose presence in New Zealand would, for that reason or for any other reason, constitute, in the opinion of the Minister, a threat to public safety; or
- (g) Who the Minister has reason to believe is likely—
 - (i) To engage in, or facilitate the commission of, any act of terrorism; or
 - (ii) To commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975; or
- (h) Who the Minister has reason to believe, in light of any international circumstances, is likely to constitute a danger to the security or public order of New Zealand; or

- (i) Who the Minister has reason to believe is a member of or adheres to any organisation or group of people which has criminal objectives or which has engaged in criminal activities, and whose presence in New Zealand would, for that reason or any other reason, constitute, in the opinion of the Minister, a threat to the public interest or public order.
- (2) Paragraphs (a) and (b) of subsection (1) of this section apply—
 - (a) Whether the sentence is of immediate effect or is deferred or is suspended in whole or in part:
 - (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:
 - (c) Where 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.
- (3) Notwithstanding subsection (1) of this section,—
 - (a) A permit may be granted to any person—
 - (i) Who is entitled to a permit under section 18 of this Act; or
 - (ii) In accordance with a special direction; or
 - (iia) If it is granted for the sole purpose of enabling that person—
 - (A) To be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made pursuant to section 12 of the Mutual Assistance in Criminal Matters Act 1992; or
 - (B) To be transported through New Zealand pursuant to section 42 of that Act; or
 - (iii) If it is granted for the sole purpose of enabling that person to return to New Zealand to face any charge in New Zealand or to serve any sentence imposed on that person in New Zealand; and

- (b) Any exemption under section 11(1)(a) of this Act and any exemption granted in accordance with a special direction shall apply notwithstanding that the person is a person to whom subsection (1) of this section applies.
- (4) Nothing in subsection (3) of this section gives any person a right to apply for any type of permit or for a special direction, and where any person purports to apply for a permit or a special direction under this section—
 - (a) The Minister or appropriate immigration officer is under no obligation to consider the application; and
 - (b) Whether the application is considered or not,—
 - (i) The Minister or officer is not obliged to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 shall not apply in respect of the application.

Subsection (1)(c) was amended, as from 18 November 1991, by section 4(1) Immigration Amendment Act 1991 (1991 No 113) by substituting “order” for “warrant”.

Subsection (1)(d)(ii) was repealed, and subsection (1)(d)(iii) was substituted, as from 1 October 1999, by section 5 Immigration Amendment Act 1999 (1999 No 16).

Subsection (1)(g)(ii) was amended, as from 18 November 1991, by inserting “; or”, and paragraphs (h) and (i) were inserted by section 4(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (3)(a)(iia) was inserted, as from 1 April 1993, by section 2 Immigration Amendment Act 1992 (1992 No 88).

Subsection (4) was inserted, as from 18 November 1991, by section 4(3) Immigration Amendment Act 1991 (1991 No 113).

8 Grant of residence permit a matter of discretion

- (1) Except as provided in sections 18 and 18E and 52 of this Act,—
 - (a) No person is entitled to a residence permit as of right; and
 - (b) Any question whether or not—
 - (i) To grant a residence permit to any person; or

- (ii) To impose any requirement on the holder of a residence permit in accordance with section 18A of this Act,—
is a matter for the discretion of the Minister or, subject to any special direction given under this Act and to section 13C of this Act, of the appropriate immigration officer.
- (2) Subject to section 18C of this Act, no appeal shall lie 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.
- (3) Nothing in subsection (2) of this section limits or affects the right of any person to bring review proceedings.

Sections 8, 9 and 10 were substituted, as from 18 November 1991, by section 5 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was amended, as from 1 October 1999, by section 6 Immigration Amendment Act 1999 (1999 No 16) by inserting the expression “and 52”.

9 Grant of temporary permit a matter of discretion

- (1) Except as provided in section 23(2) or section 52 or section 127(1) of this Act,—
 - (a) No person is entitled as of right to a temporary permit; and
 - (b) Any question whether or not—
 - (i) To grant a temporary permit to any person and (if so) for what period; or
 - (ii) To impose any condition on a temporary permit (other than a condition imposed by section 27(1) of this Act); or
 - (iii) To vary or cancel any condition of a temporary permit; or
 - (iv) To revoke any temporary permit—
is a matter for the discretion of the Minister or, subject to any special direction given under this Act, the appropriate immigration officer.
- (2) No appeal shall lie 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.
- (3) Nothing in subsection (2) of this section limits or affects the right of any person to bring review proceedings.

Sections 8, 9 and 10 were substituted, as from 18 November 1991, by section 5 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was amended, as from 1 October 1999, by section 7 Immigration Amendment Act 1999 (1999 No 16) by substituting the expression “section 52” for the expression “section 63E(c)”.

9A Grant of limited purpose permit a matter of discretion

- (1) No person is entitled as of right to a limited purpose permit, and any question whether or not—
- (a) To grant a limited purpose permit to any person and (if so) for what purpose and for what period; or
 - (b) To impose any condition on a limited purpose permit (other than a condition imposed by section 27(1)); or
 - (c) To vary or cancel any condition of a limited purpose permit; or
 - (d) To revoke any limited purpose permit—
- is a matter for the discretion of the Minister or the appropriate immigration officer, subject to any special direction given under this Act.
- (2) 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.
- (3) Nothing in subsection (2) limits or affects the right of any person to bring review proceedings.

Section 9A was inserted, as from 1 October 1999, by section 8 Immigration Amendment Act 1999 (1999 No 16).

10 Grant of visa a matter of discretion

- (1) Except as provided in section 14C(2) of this Act,—
- (a) No person is entitled to a visa as of right; and
 - (b) The question whether or not to issue a visa to any person is a matter for—
 - (i) The discretion of the Minister; or
 - (ii) Subject to any special direction given under this Act, and also to sections 13C and 18E(1) of this Act in the case of a residence visa and section 14DA(2) in the case of a limited purpose visa, the discretion of the appropriate visa officer.
- (2) Subject to section 18C of this Act, no appeal shall lie against the decision of the Minister or visa officer on any such ques-

tion, whether to any Court or to the Tribunal or to the Minister or otherwise.

- (3) No review proceedings may be brought in any court in respect of—
- (a) any refusal or failure to issue a visa, except a refusal or failure to issue a returning resident's visa on application made under section 14C(1); or
 - (b) any decision by the Residence Review Board in relation to a refusal or failure to issue a visa.

Sections 8, 9 and 10 were substituted, as from 18 November 1991, by section 5 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(b)(ii) was amended, as from 1 October 1999, by section 9 Immigration Amendment Act 1999 (1999 No 16) by inserting “and section 14DA(2) in the case of a limited purpose visa”.

Subsection (3) was substituted, as from 9 September 2003, by section 5 Immigration Amendment Act (No 2) 2003 (2003 No 47).

10A Issue of invitation to apply for residence a matter of discretion

- (1) No person is entitled as of right to an invitation to apply for residence.
- (2) The question 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 visa officer or immigration officer.
- (3) No appeal lies against the decision of the Minister or visa officer or immigration officer on any such question, whether to any court or to the Board or to the Minister or otherwise.
- (4) No review proceedings may be brought in respect of any refusal or failure of the Minister or a visa officer or an immigration officer to issue an invitation to apply for residence or to revoke such an invitation once issued.
- (5) A decision by the Minister or a visa officer or an immigration officer to refuse to issue an invitation to a person to apply for residence, or to revoke an invitation once issued, is not to be treated as a refusal to grant an application for a residence visa or a residence permit for the purposes of section 18C (which relates to appeals to the Residence Review Board).

- (6) To avoid doubt, the discretion referred to in subsection (2) includes—
- (a) use by the Minister or visa officer or immigration officer of an automated electronic system that applies criteria predetermined by Government residence policy; and
 - (b) adoption of any result of that process for issuing or in determining whether or not to issue an invitation to apply for residence.

Section 10A was inserted, as from 9 September 2003, by section 6 Immigration Amendment Act (No 2) 2003 (2003 No 47).

Exemptions

11 Certain persons temporarily exempt from requirement to hold permit

- (1) The following persons are exempt from the requirement to hold a permit:
- (a) 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;
 - (b) a member of a visiting force, a member of its civilian component, or a dependant, or a member of the crew of any craft used to transport them to New Zealand, while—
 - (i) members of that force are in New Zealand at the request or with the consent of the Government of New Zealand; and
 - (ii) that member's presence in New Zealand is in the ordinary course of that member's duty or employment, or that person is in New Zealand as a member of the civilian component or as a dependant of that force.
 - (c) A member of the crew of, or a passenger on, any seagoing craft carrying passengers or cargo or both in the ordinary course of the business of the craft and plying between any foreign place and New Zealand, from the time when the craft arrives at a Customs place in New Zealand until—

- (i) The time when it is given clearance to leave its last Customs place in New Zealand on the same voyage; or
 - (ii) The expiry of the period of 28 days commencing with the day on which it arrives at its first Customs place in New Zealand on that voyage,—whichever first occurs:
 - (d) A member of the crew of, or a passenger on, any foreign fishing craft licensed, or sought to be licensed, under section 15 of the Territorial Sea and Exclusive Economic Zone Act 1977, from the time when the craft first arrives at a Customs place in New Zealand during the currency of, or for the purpose of obtaining, any such licence until,—
 - (i) Where the licence is or has been granted, the expiration of 7 days after the date on which the licence expires:
 - (ii) Where a licence is refused or is not granted, the expiration of 7 days after the date on which the craft first arrived at the Customs place:
 - (e) A member of the crew of any commercial aircraft flying between any foreign place and New Zealand, for the period of 7 days commencing with the day on which the aircraft arrives in New Zealand:
 - (f) A member of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies, while that member or person is in the Ross Dependency.
 - (g) A member of the crew of, or any passenger on, any ship in respect of which the Minister of Transport has, pursuant to section 198(2) of the Maritime Transport Act 1994, authorised the carrying of cargo or passengers, for the period of 28 days commencing with the day on which the ship arrives at its first Customs place in New Zealand.
- (2) Subsection (1)(c) of this section does not apply to any person on board any craft that comes to New Zealand for the purposes

of fishing or research within the exclusive economic zone of New Zealand, or that plies between New Zealand and any off-shore installation within that zone.

- (3) Notwithstanding any other provision of this Act, no person who is for the time being exempt by virtue of subsection (1)(a) of this section is liable under this Act to deportation from New Zealand in any circumstances.
- (4) Terms used in subsection (1)(b) and defined in section 4 of the Visiting Forces Act 2004 have the same meanings as in that section.

Subsection (1)(a) was amended, as from 2 March 2004, by section 7 Diplomatic Privileges and Immunities Amendment Act 2004 (2004 No 1) by inserting “, other than a person referred to in section 10D(2)(d) of that Act,” after “the Diplomatic Privileges and Immunities Act 1968”.

Subsection (1)(b) was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

Subsections (1)(c) and (d) were amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “Customs place” for “port of entry” wherever they appeared.

Subsection (1)(g) was inserted, as from 1 February 1995, by section 203 Maritime Transport Act 1994 (1994 No 104). *See* regulation 2 Maritime Transport Act Commencement Order 1994 (SR 1994/272).

Subsection (1)(g) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “Customs place” for “port of entry”.

Subsection (4) was inserted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

12 Persons may be exempted from requirement to hold permit by regulations or special direction

- (1) Subject to section 7 of this Act, any regulations made under section 150 of this Act may exempt any class of person from the requirement to hold a permit.
- (2) The Minister may from time to time, by special direction, exempt any person (including a person to whom any of the provisions of section 7 of this Act applies) from the requirement to hold a permit.
- (3) The Minister may from time to time, by special direction, direct that any regulations made pursuant to subsection (1) of this section shall not apply to a particular person.

- (4) Nothing in this section gives any person a right to apply for any exemption or special direction, and where any person purports to apply to the Minister under this section,—
- (a) The Minister is under no obligation to consider the application; and
 - (b) Whether the Minister considers the application or not,—
 - (i) The Minister is not obliged to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 shall not apply in respect of the application.

Subsection (4) was inserted, as from 18 November 1991, by section 6 Immigration Amendment Act 1991 (1991 No 113).

13 Person ceasing to be exempt

- (1) Where any person who is exempt under this Act from the requirement to hold a permit ceases while in New Zealand to be so exempt, that person shall thereupon be deemed for the purposes of this Act to be in New Zealand unlawfully, unless a permit is granted to that person on an application made under subsection (2) of this section.
- (2) Any person who is exempt under this Act from the requirement to hold a permit may, in anticipation of ceasing while in New Zealand to be so exempt, apply in the prescribed manner for a permit.
- (3) If a permit is granted on an application under this section, it shall come into force on the day on which the applicant for the permit ceases to be exempt under this Act from the requirement to hold a permit.

Policy

The heading “Policy” was inserted, as from 18 November 1991, by section 7 Immigration Amendment Act 1991 (1991 No 113).

13A Government immigration policy generally

- (1) The Minister shall from time to time publish the policy of the Government relating to the rules and criteria under which eli-

gibility for the issue or grant of visas and permits is to be determined.

- (2) Publication for the purposes of this section shall include, but is not restricted to, the insertion of that policy in the departmental manual of immigration instructions and the making available of that manual to the public, and the Minister shall ensure that copies of the manual are available or readily obtainable for inspection, free of charge, at—
 - (a) Offices of the Department of Labour; and
 - (b) New Zealand government offices overseas—
that deal with immigration matters.
- (3) Nothing in subsection (2) of this section 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.

Section 13A to 13C were inserted, as from 18 November 1991, by section 7 Immigration Amendment Act 1991 (1991 No 113).

13B Government residence policy

- (1) For the purposes of this Act, the term **Government residence policy** means policy of the Government in relation to residence visas and residence permits that—
 - (a) Is of a kind referred to in subsection (3) of this section; and
 - (b) Has been reduced to writing and certified by the Minister as Government residence policy in that written form,—
and any such policy shall take effect from such date as may be specified in that behalf in the certified policy (which date may not be earlier than the date on which the Minister certifies the policy).
- (1A) To avoid doubt, any policy of the Government that relates 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 is not Government residence policy, regardless of whether the issuing of the visa or the granting of the permit may affect eligibility for or otherwise relate to the issuing of a residence visa or the granting of a residence permit.

- (2) Where the Minister has certified any policy as Government residence policy, that policy shall be inserted forthwith in the departmental manual of immigration instructions, whether by way of amendment to the existing manual or by way of separate circular.
- (3) The kinds of policy that may constitute Government residence policy for the purposes of this Act are as follows:
 - (a) any general or specific objectives of Government residence policy:
 - (b) any rules or criteria for determining the eligibility of a person for the issue of a residence visa or the grant of a residence permit, being rules or criteria relating to the circumstances of that person:
 - (ba) any indicators, attributes, or other relevant information or matters that may or must be taken into account in assessing a person's eligibility:
 - (c) Any statement of, or rules or criteria for determining, the number or categories or ranking of persons or classes of persons whose applications for residence visas or residence permits may be granted at any particular time or over any particular period:
 - (d) Any matters relevant to balancing individual eligibility against the overall objectives or requirements of Government residence policy:
 - (e) Any requirements relating to documentation or other evidence or information required to assess a person's eligibility:
 - (f) Any statement of the requirements or types of requirements that may be imposed under section 18A(2) of this Act upon a person to whom a residence permit is granted, and the circumstances in which or classes of persons upon whom such requirements may be imposed.
- (3A) Any rules or criteria under subsection (3)(b) may, in respect of any 1 or more specified classes or categories of person who wish to apply for a residence visa or a residence permit,—
 - (a) include a requirement that persons of that class or category may so apply only if invited to do so by the Minister or a visa officer or an immigration officer:

- (b) set or indicate rules, criteria, or other relevant matters of the kinds specified in subsection (3)(a) to (e) that will or may apply for the purpose of determining whether or not an invitation to apply for residence should be issued to any such person:
 - (c) stipulate any period for which an expression of interest will remain current:
 - (d) 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 residence.
- (4) Any requirements referred to in subsection (3)(f) of this section—
 - (a) Shall be only such requirements as may be appropriate to ensure that the aims of Government residence policy are not prejudiced or nullified by subsequent actions or omissions of residence permit holders; and
 - (b) Shall specify the maximum period for which they may be imposed, which maximum period shall in no case exceed 5 years.
- (5) For the purposes of this Act, no person who is a person to whom section 7(1) of this Act applies shall be treated as entitled to or eligible for the issue or grant of a residence visa or residence permit in terms of Government residence policy.

Section 13A to 13C were inserted, as from 18 November 1991, by section 7 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1A) was inserted, as from 2 July 2003, by section 3 Immigration Amendment Act 2003 (2003 No 30). *See* Part 2 of that Act as to the validation of processing, and lapsing, of applications.

Subsection (3)(a) and (3)(b) was substituted, as from 9 September 2003, by section 7(1) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsection (3)(ba) was inserted, as from 9 September 2003, by section 7(1) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsection (3A) was inserted, as from 9 September 2003, by section 7(2) Immigration Amendment Act (No 2) 2003 (2003 No 47).

13BA Chief executive may give general instructions as to order and manner of processing applications for visas and permits

- (1) The order and manner of processing any application for a visa or permit is a matter for the discretion of a visa officer or immigration officer.
- (2) The chief executive may, from time to time, give general instructions to visa officers and immigration officers as to the order and manner of processing any application for a visa or permit.
- (3) In giving any such general instructions, the chief executive may have regard to such matters as the chief executive thinks fit.
- (4) Unless otherwise expressed by the chief executive, any general instructions as to the order and manner of processing applications, as given by the chief executive from time to time under this section, may apply to any or all applications for visas or permits regardless of the fact that—
 - (a) the general instructions may be different from those existing at the time that the applications were made; or
 - (b) the general instructions may result in applications being processed in a different order or manner than would, otherwise have occurred; or
 - (c) any application may have been made before the commencement of the Immigration Amendment Act 2003.
- (5) The general instructions, as given by the chief executive from time to time, are matters of departmental rules and practice, and do not form part of Government immigration policy under section 13A or Government residence policy under section 13B.
- (6) Nothing in this Act, or in any other law or enactment, requires a visa officer or an immigration officer to process an application for a visa or permit in any particular order or manner, whether or not consistent with any general instructions given by the chief executive from time to time.
- (7) The question whether or not an application is processed in an order and manner consistent with any general instructions

given by the chief executive from time to time is a matter for the discretion of a visa officer or immigration officer, and

- (a) no appeal lies against the decision of the officer concerned, whether to an Authority, the Board, the Tribunal, the Minister, any 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
 - (ii) the application of any such general instructions; or
 - (iii) any failure by the Minister or a visa officer or immigration officer to process or to continue to process an application for a visa or a permit; or
 - (iv) any decision by the Minister or a visa officer or 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 for a visa or permit.

Section 13BA was inserted, as from 2 July 2003, by section 4 Immigration Amendment Act 2003 (2003 No 30). *See* Part 2 of that Act as to the validation of processing, and lapsing, of applications.

Subsection (7)(a) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board,” after “an Authority,”.

13BB Lapsing of applications for visas and permits

- (1) The Minister must, from time to time, publish in accordance with section 13A(2) the policy of the Government (if any) in relation to rules or criteria for the lapsing of applications in respect of which no decision to issue a visa or grant a permit has been made, or is likely to be made,—
 - (a) within any stipulated period or by any stipulated date; or
 - (b) by the date on which any relevant quota or limit set under Government immigration policy or Government residence policy 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.

- (2) Rules and criteria published 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.
- (3) The question whether or not an application meets any rules or criteria for lapsing published under this section is a matter for the discretion of an immigration officer or a visa officer, and—
 - (a) no appeal lies against the decision of the officer concerned, or the lapsing of the application, whether to the Board, an Authority, the Tribunal, the Minister, any court, or otherwise; and
 - (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 published under this section; or
 - (ii) the lapsing of an expression of interest in obtaining an invitation to apply for residence.
- (4) Any decision to lapse an application for a residence visa or a residence permit must be made in accordance with the rules and criteria applicable at the time the application was made.
- (5) The effect of lapsing an application is that no further processing or decision in respect of that application is required.
- (6) Where any application is lapsed in accordance with rules and criteria published 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.
- (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 visa officer or immigration officer any costs associated with the application, other than the application fee refundable under subsection (6).
- (8) Subsection (4) overrides section 13C.
- (9) In this section (except subsection (6)), application includes an expression of interest under section 13D in obtaining an invitation to apply for residence.

Section 13BB was inserted, as from 9 September 2003, by section 8 Immigration Amendment Act (No 2) 2003 (2003 No 47).

13C Immigration officers to comply with Government residence policy

- (1) Where a visa officer or an immigration officer or, subject to subsection (2) of this section, the Minister makes any decision in relation to an application for a residence visa or a residence permit under this Act, that decision shall be made in terms of the Government residence policy that was applicable at the time the application was made and any discretion exercised shall be in terms of that policy.
- (2) Nothing in subsection (1) of this section prevents the Minister from making any decision to issue a residence visa or grant a residence permit as an exception to Government residence policy in any particular case.

Section 13A to 13C were inserted, as from 18 November 1991, by section 7 Immigration Amendment Act 1991 (1991 No 113).

Residence by invitation

The heading “Residence by invitation” was inserted, as from 9 September 2003, by section 9 Immigration Amendment Act (No 2) 2003 (2003 No 47).

13D Expressions of interest in residence

- (1) A person who, by virtue of rules or criteria set under section 13B(3A), is of a class or category of person that may apply for a residence visa or residence permit only if invited to do so by the Minister or a visa officer or an immigration officer may notify his or her interest in obtaining such an invitation in the prescribed manner.
- (2) 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, and the Minister or visa officer 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 residence on the basis of the information, evidence, and submissions provided.
- (3) Nothing in subsection (2) prevents the Minister or visa officer 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.

Sections 13D and 13E were inserted, as from 9 September 2003, by section 9 Immigration Amendment Act (No 2) 2003 (2003 No 47).

13E Invitation to apply for residence

- (1) An invitation to apply for residence is a statement by or on behalf of the Minister or a visa officer 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 residence visa or a residence permit (whichever is appropriate).
- (2) No person may apply for a residence visa or residence permit without such an invitation if the person is of a class or category of person that, by virtue of rules or criteria set under section 13B(3A), may apply for such a visa or permit only if invited to apply for residence.
- (3) If such an invitation is required by Government residence policy for the person to be able to apply for the residence visa or residence permit, the statement of the invitation is sufficient authority for the making of the application (unless the invitation is subsequently revoked).
- (4) Despite anything in this section or in any rules or criteria or other matters of a kind referred to in section 13B(3A), the Minister may, by special direction, issue an invitation to apply for residence to a person whether or not the person has expressed his or her interest in the manner required by section 13D.
- (5) In ranking expressions of interest, and in issuing or in determining whether or not to issue an invitation to apply for residence, the Minister or a visa officer or immigration officer may—

- (a) use an automated electronic system that applies criteria predetermined in accordance with Government residence policy; and
 - (b) apply any result of that process as an adequate basis for decision.
- (6) An invitation to apply for residence may at any time be revoked by the Minister or a visa officer or an immigration officer. A revocation takes immediate effect.
- (7) Section 13C does not apply in relation to a decision as to whether or not to issue an invitation to apply for residence, and such a decision may be made having regard to Government residence policy applicable at the time of the decision, even if that differs from Government residence policy applicable at the time of notification of the relevant expression of interest.
- (8) In a case where Government residence policy relating to residence by invitation changes between the date of issue of an invitation to apply for residence and the date on which a person's application for a residence visa or a residence permit is made in response to that invitation, the decision on that application must be made in terms of the Government residence policy applicable at the time the application was made (and not at the time the invitation was issued), and any discretion exercised must be in terms of that policy.

Sections 13D and 13E were inserted, as from 9 September 2003, by section 9 Immigration Amendment Act (No 2) 2003 (2003 No 47).

Visas

14 Types of visa

The following types of visa may be issued under this Act:

- (a) Residence visas:
- (b) Returning residents' visas:
- (c) Temporary visas (including visitors' visas, work visas, and student visas):
- (ca) Limited purpose visas:
- (d) Transit visas.

Section 14 was substituted, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(ca) was inserted, as from 1 October 1999, by section 10 Immigration Amendment Act 1999 (1999 No 16).

14A Meaning and effect of visa

- (1) For the purposes of this Act, a visa is an endorsement by a visa officer in a passport or certificate of identity, or, in the case of a visa issued electronically, an entry made and retained in the records of the Department of Labour in accordance with section 35AB, and indicates that the visa officer, at the time of issuing the visa, knows of no reason why the holder of the passport or certificate of identity should not—
 - (a) Be granted a residence permit, where the visa is a residence visa; or
 - (b) Be entitled to the grant of another residence permit, where the visa is a returning resident's visa; or
 - (c) Be granted a temporary permit, where the visa is a temporary visa; or
 - (ca) Be granted a limited purpose permit, where the visa is a limited purpose visa; or
 - (d) Be allowed to come to New Zealand as a transit passenger for a period of up to 24 hours, where the visa is a transit visa.
- (2) A visa is not, nor does it have the effect of, a permit.
- (3) Except in the case of a returning resident's visa issued for the purposes of section 18 of this Act, a visa—
 - (a) Does not entitle the holder to a permit as of right; and
 - (b) Does not fetter in any way any discretion conferred on the Minister or any immigration officer by any of the provisions of this Act.
- (4) Notwithstanding anything in subsection (1) of this section, where a visa is not granted electronically in accordance with section 35AB and a visa officer is satisfied that it would be unreasonable to insist on the production of the passport or certificate of identity, or that for any other reason it would be appropriate to issue a separate visa, the officer may issue a separate visa; but in such a case, whenever the visa is to be presented, it shall be presented together with the passport or certificate of identity.

Sections 14A to 14E were inserted, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was amended, as from 1 October 1999, by section 11(1) Immigration Amendment Act 1999 (1999 No 16) by inserting “or, in the case of a visa issued electronically, an entry made and retained in the records of the Department of Labour in accordance with section 35AB,”.

Subsection (1)(ca) was inserted, as from 1 October 1999, by section 11(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (4) was amended, as from 1 October 1999, by section 11(3) Immigration Amendment Act 1999 (1999 No 16) by inserting “a visa is not granted electronically in accordance with section 35AB and”.

14B Residence visas

- (1) Every person who—
- (a) Is outside New Zealand; and
 - (b) Wishes to come to New Zealand and be granted a residence permit; and
 - (c) Will not be exempt under this Act from the requirement to hold a permit,—
- shall, before proceeding to New Zealand, apply in the prescribed manner for, and obtain, a residence visa, unless the person is exempt from this requirement by virtue of any regulations or any special direction made under this Act.
- (1A) Despite subsection (1),—
- (a) no person who is of a class or category of person that, by virtue of rules or criteria set under section 13B(3A), may apply for a residence visa or residence permit only if invited to apply for residence, may apply for a residence visa without such an invitation; and
 - (b) no person may apply for a residence visa in response to an invitation to apply for residence if the application is not made within any relevant time frame stipulated by or under rules or criteria set under section 13B(3A)(d).
- (2) No application for a residence visa that is received by a visa officer shall be referred to the Minister for decision at first instance unless the Minister gives a special direction to that effect.
- (3) It is the responsibility of the applicant 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 visa 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.
- (4) Nothing in subsection (3) of this section prevents the Minister or visa officer from taking into account when determining the application any information, evidence, or submissions provided by the applicant at any time before the decision on the application is made.
- (5) Every residence visa issued shall be 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 within that period or before that date.
- (6) A residence visa may specify any requirements that are to be imposed under section 18A of this Act on the holder of the visa when a residence permit is granted to the holder.
- (7) A person who holds a residence visa and who arrives in New Zealand during the currency of that visa may apply under section 17(1) of this Act for a residence permit.

Sections 14A to 14E were inserted, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1A) was inserted, as from 9 September 2003, by section 10 Immigration Amendment Act (No 2) 2003 (2003 No 47).

14C Returning residents' visas

- (1) The holder of a residence permit who intends to leave New Zealand temporarily may, before leaving, apply in the prescribed manner for a returning resident's visa.
- (2) A visa officer shall, on being satisfied that an applicant under subsection (1) of this section is the holder of a residence permit, issue to that person a returning resident's visa.
- (3) Every returning resident's visa shall be 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 within that period or before that date.
- (4) A person who holds a returning resident's visa and who returns to New Zealand during the currency of that visa is entitled,

upon application under section 18 of this Act, to the grant of a further residence permit.

- (5) If, during the currency of a returning resident's visa, the holder's residence permit is revoked, or the holder is deported from New Zealand, the visa shall be deemed to be cancelled, and an immigration officer or visa officer may endorse it accordingly.
- (6) Nothing in this section prevents a visa officer from issuing a returning resident's visa to any person in any other circumstances.

Sections 14A to 14E were inserted, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113).

14D Temporary visas

- (1) Every person who—
 - (a) Is outside New Zealand; and
 - (b) Wishes to come to New Zealand for any purpose for which a temporary permit may be granted; and
 - (c) Will not be exempt under this Act from the requirement to hold a permit,—shall, before proceeding to New Zealand, apply in the prescribed manner for, and obtain, a temporary visa, unless that person is exempt from this requirement by virtue of any special direction or any regulations made under this Act.
- (2) Every temporary visa issued shall be 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 within that period or before that date.
- (3) A person who holds a temporary visa and who arrives in New Zealand during the currency of that visa may apply under section 25 of this Act for a temporary permit.
- (4) Nothing in this section—
 - (a) Requires a person to apply for a temporary visa if that person instead applies for a limited purpose visa;
 - (b) Prevents a visa officer from issuing a limited purpose visa, to a person who has applied for a temporary visa, if the circumstances specified in section 14DA(2) apply.
- (5) It may be a precondition to the issue of a temporary visa that a bond be paid in accordance with section 148B.

- (6) In the case of a bond of a kind that is intended to manage the risk of an applicant remaining in New Zealand beyond the expiry of his or her permit, the relevant visa officer or immigration officer may impose such a bond if, and only if,—
- (a) The officer identifies such a risk in the particular case; and
 - (b) The officer considers that the imposition of the bond is necessary in the particular case to manage that risk.

Sections 14A to 14E were inserted, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113).

Subsections (4) to (6) were inserted, as from 1 October 1999, by section 12 Immigration Amendment Act 1999 (1999 No 16).

14DA Limited purpose visas

- (1) If a person who is outside New Zealand applies in the prescribed manner for a limited purpose visa, a visa officer may issue a limited purpose visa if the person—
- (a) Wishes to come to New Zealand for an express purpose; and
 - (b) Will not be exempt from the requirement to hold a permit to be in New Zealand.
- (2) If a person who is outside New Zealand applies in the prescribed manner for a temporary visa (rather than a limited purpose visa), a visa officer may issue a limited purpose visa rather than the temporary visa applied for if, and only if,—
- (a) The person is of a kind described by subsection (1)(a) and (b): and
 - (b) The visa officer identifies a risk in the particular case that the person will remain in New Zealand beyond the expiry of his or her permit; and
 - (c) The visa officer considers that the issue of a limited purpose visa rather than a temporary visa is necessary in the particular case to manage that risk.
- (3) A holder of a limited purpose visa who arrives in New Zealand during the currency of that visa may on arrival apply only for a limited purpose permit.
- (4) It may be a precondition to the issue of a limited purpose visa that a bond be paid in accordance with section 148B, being a bond imposed for purposes other than the management of the

risk that the person concerned may remain in New Zealand beyond the expiry of the permit granted on the basis of the visa.

Section 14DA was inserted, as from 1 October 1999, by section 13 Immigration Amendment Act 1999 (1999 No 16).

14E Transit visas

- (1) Subject to any special direction, any person outside New Zealand who—
 - (a) Is classified by regulations made under this Act, or by a special direction of the Minister made in accordance with this section, as a person of a type who requires a transit visa; and
 - (b) Is seeking to be in New Zealand only as a transit passenger for a period not exceeding 24 hours,—
shall, before proceeding to New Zealand, apply in the prescribed manner for, and obtain, a transit visa.
- (2) Any regulations classifying persons as persons who require transit visas for the purposes of this section—
 - (a) May, without limiting the generality of the manner in which persons may be classified, classify persons by reference to—
 - (i) Their nationality; or
 - (ii) The country or place from which they are travelling (whether it be their original or an intermediate point of departure); or
 - (iii) Their immediate or ultimate destination after transiting through New Zealand; or
 - (iv) Whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued; or
 - (v) Any combination of the above factors:
 - (b) Expire at the expiry of 3 calendar years from the date on which they were made, unless sooner revoked.
- (2A) Nothing in subsection (2) prevents regulations being made under subsection (1) that replicate in whole or in part regulations that have expired.
- (2B) Any special direction classifying persons as persons who require transit visas for the purpose of this section—

- (a) Must be published in the *Gazette*, and notified in writing to the appropriate diplomatic or consular representative of any country concerned:
 - (b) Expires at the end of the period of 3 months following the day on which the special direction was made, unless sooner cancelled by the Minister by a further special direction, or by regulations:
 - (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.
- (2C) Subsection (2)(a) applies to any special direction under this section as if it were a regulation.
- (2D) A special direction under this section may not be effectively continued in force by the making of a further special direction to the same or similar effect.
- (3) Every transit visa issued shall be 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 within that period or before that date.
- (4) Nothing in this Act requires the holder of a transit visa to apply for or hold a permit if the person remains on the craft, or in a Customs controlled area, or in the custody of the Police, throughout the whole period during which the person is in New Zealand, unless that period exceeds 24 hours.
- (5) The holder of a transit visa is not entitled to apply under this Act for any type of permit, and where any such person purports to apply for a permit that application may be refused and section 128 of this Act shall apply to the person accordingly.

Sections 14A to 14E were inserted, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(a) was substituted, as from 1 October 1999, by section 14(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (2)(b) was substituted, as from 1 October 1999, by section 14(2) Immigration Amendment Act 1999 (1999 No 16).

Subsections (2A) to (2D) were inserted, as from 1 October 1999, by section 14(3) Immigration Amendment Act 1999 (1999 No 16).

Subsection (4) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “a Customs controlled area” for “the boarding station or examination station”.

15 Issue and currency of visas*[Repealed]*

Section 15 was repealed, as from 18 November 1991, by section 8 Immigration Amendment Act 1991 (1991 No 113)

*Residence permits***16 Effect of residence permit**

- (1) A residence permit entitles the holder of the permit to be in New Zealand indefinitely.
- (2) The holder of a residence permit may, without further authority than that permit,—
 - (a) Undertake employment in New Zealand or within the exclusive economic zone of New Zealand;
 - (b) Undertake any course of study or training in New Zealand.

17 Persons who may apply for residence permits

- (1) The following persons may apply for a residence permit:
 - (a) Any person who is the holder of a residence visa and who arrives in New Zealand during the currency of that visa;
 - (b) Any person in New Zealand who is the holder of a temporary permit, other than—
 - (i) The holder of a pre-cleared temporary permit while that person is still in the arrival hall at the customs airport at which the person arrives in New Zealand; or
 - (ii) The holder of a temporary permit that is subject to the condition specified in section 27A(2) of this Act;
 - (c) In the case of a pre-cleared residence permit, any person specified in section 35D(2) of this Act.
- (1A) Despite subsection (1),—
 - (a) no person who is of a class or category of person that, by virtue of rules or criteria set under section 13B(3A), may apply for a residence visa or residence permit only if invited to apply for residence, may apply for a residence permit without such an invitation; and

- (b) no person may apply for a residence permit in response to an invitation to apply for residence if the application is not made within any relevant time frame stipulated by or under rules or criteria set under section 13B(3A)(d).
- (2) No person who is unlawfully in New Zealand may apply for a residence permit and, where any such person purports to apply for a residence permit,—
 - (a) The Minister or appropriate immigration officer is under no obligation to consider that application; and
 - (b) Whether the application is considered or not,—
 - (i) The Minister or immigration officer is not obliged to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 shall not apply in respect of the application.

Sections 17 and 18 were substituted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(b) was substituted, and subsection (1)(c) was inserted, as from 15 September 1993, by section 4(1) Immigration Amendment Act 1993 (1993 No 100).

Subsection (1)(b)(i) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “examination station”.

Subsection (1A) was inserted, as from 9 September 2003, by section 11 Immigration Amendment Act (No 2) 2003 (2003 No 47).

17A Applications for residence permits

- (1) A person applying for a residence permit under section 17 of this Act shall do so in the prescribed manner.
- (2) No application for a residence permit that is received by an immigration officer shall be referred to the Minister for decision at first instance unless the Minister gives a special direction to that effect.
- (3) It is the responsibility of the applicant 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—

- (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.
- (4) Nothing in subsection (3) of this section prevents the Minister or immigration officer from taking into account when determining the application any information, evidence, or submissions provided by the applicant at any time before the decision on the application is made.

Section 17A was inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

18 Residence permit holders temporarily absent from New Zealand

The following persons are entitled, on application in the prescribed manner, to be granted a further residence permit:

- (a) The holder of a returning resident's visa who returns to New Zealand during the currency of that visa:
- (b)
- (c) In the case of a pre-cleared residence permit, any person specified in section 35D(3) of this Act.

Sections 17 and 18 were substituted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

Paragraph (b) was repealed, as from 2 July 2004, by section 3 Immigration Amendment Act 2004 (2004 No 56).

Paragraph (c) was inserted, as from 15 September 1993, by section 5 Immigration Amendment Act 1993 (1993 No 100).

18A Requirements may be imposed on grant of residence permit

- (1) The Minister or an immigration officer may, on granting a residence permit, impose requirements on the holder of the permit in accordance with this section.
- (2) Except as provided in subsection (3) of this section, requirements may be imposed under this section on the holder of a residence permit only where—
 - (a) Those requirements are specified in, or are of a kind authorised under, the Government residence policy applicable at the time the application for the permit was made; and

- (b) The permit holder is a person of a class upon whom those requirements can, in terms of that Government residence policy, be imposed.
- (3) Where the Minister grants a residence permit to a person as an exception to the Government residence policy applying at the time the application for the permit was made, the Minister may impose such requirements as the Minister thinks fit to impose in all the circumstances having regard to—
 - (a) The reasons why the holder of the permit was not eligible in terms of the applicable Government residence policy; or
 - (b) The reasons why the grant of the permit was made as an exception to Government residence policy.
- (3A) Requirements imposed under this section may include the posting of a bond that is refundable in whole or in part if other requirements under this section are met, and section 148B applies in relation to any such bond.
- (3B) The fact that a bond has been forfeited in whole or in part does not affect other action taken, or that may be taken, in respect of a failure to meet requirements imposed under this section, including revocation of a residence permit or returning resident's visa under section 20 or section 20A.
- (4) Where any requirements are imposed under this section, the holder of the permit shall be notified in writing—
 - (a) Of all requirements imposed; and
 - (b) That any failure to comply with the requirements may result in revocation of the permit pursuant to section 20(1)(d) of this Act.
- (5) The Minister may at any time, by special direction,—
 - (a) Cancel any requirement imposed under this section, whether on the application of the holder of the residence permit or of the Minister's own motion; or
 - (b) With the agreement of the residence permit holder, vary any requirement imposed under this section or impose any new requirement (whether or not the variation or new requirement is specified in or specifically authorised under Government residence policy).

- (6) Where the Minister cancels or varies any requirement or imposes any new requirement under subsection (5) of this section,—
- (a) The Minister shall cause the holder of the permit to be notified accordingly; and
 - (b) The cancellation, variation, or new requirement shall take effect from the date specified in the notice.
- (7) Where any requirement is imposed on the holder of a residence permit under this section, that requirement shall continue to apply to that person according to its tenor both—
- (a) During the currency of any returning resident's visa that is issued to the person in reliance on the fact that the person is or was the holder of that permit; and
 - (b) During the currency of any residence permit then granted to the person by virtue of an entitlement under section 14C(4) of this Act.

Sections 18A to 18F were inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

Subsections (3A) and (3B) were inserted, as from 1 October 1999, by section 15 Immigration Amendment Act 1999 (1999 No 16).

*Appeal against refusal to grant residence visa
or residence permit*

18B Residence Review Board

- (1) For the purposes of this Act there is a board called the Residence Review Board. The Board is the same body as the Residence Appeal Authority that existed immediately before the commencement of the Immigration Amendment Act (No 2) 2003.
- (2) The function of the Board is to hear appeals brought under section 18C against the refusal of a visa officer or an immigration officer to grant an application for a residence visa or a residence permit.
- (3) The Board consists of such number of members as the Governor-General determines from time to time on the advice of the Minister.
- (4) The members are appointed by the Governor-General on the recommendation of the Minister.

- (5) No immigration officer, and no person who has at any time within the previous 5 years been an immigration officer, may be appointed as a member of the Board.
- (6) For the purposes of any matter within its jurisdiction the Board consists of 1 member.
- (7) The provisions set out in Schedule 3A apply in relation to the Board.

Sections 18A to 18F were inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

Section 18B was substituted, as from 9 September 2003, by section 12(1) Immigration Amendment Act (No 2) 2003 (2003 No 47).

18C Appeals to Board against refusal of residence visa or permit

- (1) Where a visa officer or immigration officer has refused to grant any application for a residence visa or a residence permit, being an application lodged on or after the date of commencement of the Immigration Amendment Act 1991, the applicant may appeal against that refusal to the Residence Review Board on the grounds that—
 - (a) The refusal was not correct in terms of the Government residence policy applicable at the time the application for the visa or the permit was made; or
 - (b) The special circumstances of the appellant are such that an exception to that Government residence policy should be considered.
- (2) No appeal shall lie under this section in respect of any refusal by the Minister to issue a residence visa or grant a residence permit.
- (2A) No appeal lies under this section in respect of—
 - (a) any refusal or failure of the Minister or a visa officer or an immigration officer to issue an invitation to apply for residence; or
 - (b) any refusal or failure of the Minister or a visa officer or an immigration officer to issue a residence visa or grant a residence permit to a person who has been invited to apply for residence if a ground for the refusal or failure is that the Minister or officer is satisfied that the person,—

- (i) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for residence submitted false or misleading information, or withheld relevant information that was potentially prejudicial to the person; or
 - (ii) did not ensure that a visa officer or 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 permit; or
- (c) any lapse of an application for residence or of an expression of interest in obtaining an invitation to apply for residence; or
- (d) any revocation of an invitation to apply for residence.
- (3) The Board shall not consider an appeal under this section unless the appeal—
 - (a) Is made in the prescribed manner; and
 - (b) Is accompanied by the prescribed fee (if any); and
 - (c) Is brought within 42 days after the date the appellant was notified of the refusal to issue the residence visa or, as the case may be, grant the residence permit.
- (4) For the purposes of subsection (3)(c) of this section, any written notice of a refusal to issue a residence visa or grant a residence permit that is sent by post to an address supplied by the applicant for the visa or permit in that behalf shall be deemed to have been notified to the applicant—
 - (a) Seven days after the date on which the notice was posted, where the address is in New Zealand; or
 - (b) Fourteen days after the date on which the notice was posted, where the address is outside New Zealand,—unless the applicant proves that, otherwise than through fault on the applicant's part, the applicant was not so notified.
- (5) The appellant shall supply to the Board an address at which any communication relating to the appeal may be notified to the appellant.
- (6) The provisions of section 18F of this Act shall apply in relation to any appeal under this section.

- (7) An appeal under this section may at any time be withdrawn by notice in writing to the Board.

Sections 18A to 18F were inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

The heading to section 18C was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority”.

Subsection (1) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

Subsection (2A) was inserted, as from 9 September 2003, by section 13 Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsections (3), (5), and (7) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority”.

18D Determination of appeal by Board

- (1) In determining an appeal under section 18C of this Act the Board shall do one of the following things:

- (a) Confirm the decision to refuse the visa or permit as having been correct in terms of the Government residence policy that was applicable at the time the application for the visa or permit was made by the appellant; or
- (b) Reverse the decision as having been incorrect in terms of the Government residence policy that was applicable at the time the application for the visa or permit was made by the appellant; or
- (c) Note the correctness of the original decision in terms of the Government residence policy that was applicable at the time the application was made on the basis of the information provided to the immigration officer or visa officer before the time of the decision, but reverse that decision on the basis of any information properly made available to the Board in accordance with section 18F of this Act that reveals that the issue of the visa or the grant of the permit would have been correct in terms of the applicable Government residence policy; or
- (d) Note the correctness of the original decision in terms of the Government residence policy that was applicable at the time the application was made on the basis of the information provided to the immigration officer or visa

- officer before the time of the decision, but determine the appeal by cancelling the decision and referring the application back to the Secretary of Labour for consideration under that policy as if a new application had been made which included any additional information properly provided to the Board; or
- (e) Where the Board—
- (i) Considers that the decision to refuse the visa or permit was made on the basis of an incorrect assessment in terms of the Government residence policy that was 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 immediate grant of a visa or permit,—
- determine the appeal by cancelling the decision and referring the application back to the Secretary of Labour for correct assessment in terms of that applicable Government residence policy; or
- (f) Confirm the decision as having been correct in terms of the Government residence policy that was applicable at the time the 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 that Government residence policy.
- (2) Where the Board determines to reverse a decision to refuse a visa or permit under paragraph (b) or paragraph (c) of subsection (1) of this section, the Board shall—
- (a) Consider whether or not it is appropriate that requirements should be imposed on the appellant in accordance with section 18A(2) of this Act, when a residence permit is granted to the appellant; and
 - (b) If it considers that the imposition of requirements is appropriate, in its decision specify any such requirements with such degree of generality or particularity as the Board thinks fit.
- (3) Where the Board refers an application back to the Secretary of Labour under subsection (1)(e) of this section, the Board may

give the Secretary such directions as it thinks fit as to how a correct assessment of the application should be carried out.

- (4) The Board shall, as soon as practicable, notify the appellant in writing of its decision on the appeal and the reasons for that decision.
- (5) Subject to section 115 of this Act, the decision of the Board on an appeal under section 18C of this Act shall be final, and, except where a Court otherwise directs, the Board shall have no jurisdiction to reconsider the appeal after the appellant has been notified of the decision.

Sections 18A to 18F were inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

The heading to section 18D was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority”.

Subsections (1) to (5) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it occurs.

18E Procedure where appeal successful or Board makes recommendation

- (1) Subject to subsection (2) of this section, where the Board reverses a decision under paragraph (b) or paragraph (c) of section 18D(1) of this Act, the Minister or the visa officer or an immigration officer shall, as the case may require, issue a residence visa or grant a residence permit to the appellant.
- (2) Nothing in subsection (1) of this section requires a residence visa or a residence permit to be issued or granted to any person—
 - (a) Until the normal requirements for furnishing any certificates or other material that is required before a visa or permit can be issued or granted have been complied with, where those certificates or other material—
 - (i) Were not supplied to the appropriate officer before the date on which the decision to decline the application for the residence visa or residence permit was made; or
 - (ii) By reason of effluxion of time, are no longer current for the purposes of issuing a visa or granting a permit under this Act; or

- (b) Where, since the date on which the application for the residence visa or residence permit was declined, any matter has arisen or any information has become available in respect of the person that would disqualify that person from being issued with a residence visa or granted a residence permit, as the case may be, in terms of both—
 - (i) The Government residence policy that was applicable at the time of the application for the visa or permit; and
 - (ii) The Government residence policy currently applicable.
- (3) Where, in reliance on subsection (2)(a) of this section, a residence permit is not immediately granted to a person who is already in New Zealand, the Minister or an immigration officer shall grant a temporary permit to the person, being a permit that is current for a period of not less than 6 months.
- (4) Where any residence permit is granted to a person under subsection (1) of this section, or a residence permit is subsequently granted to a person by reason of a residence visa having been issued under that subsection, no requirements may be imposed on the person under section 18A(2) of this Act unless those requirements are specified in, or of a kind authorised by, the decision of the Board under section 18D(2)(b) of this Act.
- (5) Where the Board makes a recommendation under section 18D(1)(f) of this Act, the Minister—
 - (a) Shall consider whether or not a residence visa should be issued or a residence permit granted as an exception to Government policy; and
 - (b) May, if the Minister grants a residence permit to the appellant, impose requirements on the appellant in accordance with section 18A(2) of this Act.
- (6) The Minister is not obliged to give reasons in relation to any decision made as a result of any consideration under subsection (5) of this section, and neither section 36 of this Act nor section 23 of the Official Information Act 1982 shall apply in respect of any such decision.

Sections 18A to 18F were inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

The heading to section 18E was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority”.

Subsections (1), (4), and (5) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority”.

18F Provisions applying to appeals

- (1) The Board shall determine any appeal under section 18C of this Act on the papers, and with all reasonable speed.
- (2) On any such appeal—
 - (a) It is the responsibility of the appellant to ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are received by the Board within the period of 42 days prescribed by section 18C(3) of this Act; and
 - (b) The Board is not obliged to consider any material supplied by the appellant after that period, other than—
 - (i) Information requested by the Board and supplied by the appellant within such time as the Board may specify; or
 - (ii) Information provided by way of rebuttal or comment pursuant to subsection (7) of this section.
- (3) Where an appeal is lodged under section 18C of this Act,—
 - (a) The Board shall give to the Secretary of Labour a copy of the notice of appeal and any information, evidence, or submissions lodged by the appellant; and
 - (b) The Secretary of Labour shall, within the time allowed by the Board for the purpose, lodge with the Board any file relating to the appellant that is held by the Secretary, and may also lodge such other information, evidence, or submissions in relation to the matter under appeal as the Secretary thinks fit.
- (4) Subject to subsections (4A) to (7), the Board, in determining the appeal,—
 - (a) May seek and receive such information as it thinks fit, and consider information from any source; but
 - (b) May not consider any information or evidence adduced by the appellant that was not provided to the visa officer or immigration officer before the time at which that

officer made the decision on the application for the residence visa or residence permit that is the subject of the appeal.

(4A) The Board may consider information or evidence not provided by the appellant to the relevant officer before the time of the relevant decision if—

(a) The Board is satisfied that—

(i) The information or evidence existed at the time the decision to refuse the visa or permit 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 visa officer or immigration officer at the time at which 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 Board 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 18D(1)(f).

(5) Where—

(a) The Board 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 Board considers that further written evidence or submissions will not assist to confirm or test those results,—

the Board may require the Secretary of Labour 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 Board, but in any such case the interview shall not be conducted by any visa

officer or immigration officer who has previously interviewed that person.

(6) Where—

- (a) It comes to the attention of the Board that any particular event has occurred after the time at which the visa officer or immigration officer made the decision on the appellant's application for the residence visa or residence permit; and
- (b) The Board is satisfied that the event materially affects the applicant's eligibility under Government residence policy,—

the Board may, if it considers it fair in all the circumstances to do so, determine the appeal in the manner set out in section 18D(1)(d) of this Act.

(7) Subject to subsection (8) of this section, where—

- (a) The Secretary lodges any material with the Board under subsection (3) of this section, or the Board obtains information from any other source; and
- (b) That material or information is or may be prejudicial to the appellant; and
- (c) The appellant has not previously been afforded an opportunity to comment on the material or information; and
- (d) The Board proposes to take that material or information into account in determining the appeal,—

the Board shall disclose that material or information to the appellant by notifying it to the appellant as soon as practicable after it is lodged with or received by the Board, and shall give the appellant an opportunity to rebut or comment on the material or information within such reasonable time as is specified by the Board.

- (8) Nothing in subsection (7) of this section requires the Board to disclose to the appellant or to any other person any information the disclosure of which would be likely to endanger the safety of any person.
- (9) Where the Board does not disclose certain information in reliance on subsection (8) of this section, the Board shall notify the appellant of the fact of non-disclosure.

Sections 18A to 18F were inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

Subsections (1) to (3) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it occurs.

Subsection (4) was substituted, as from 1 October 1999, by section 16 Immigration Amendment Act 1999 (1999 No 16).

Subsection (4) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority”.

Subsection (4A) was inserted, as from 1 October 1999, by section 16 Immigration Amendment Act 1999 (1999 No 16).

Subsections (4A) to (9) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it occurs.

Revocation of residence permits and returning residents’ visas

The heading “Revocation of residence permits and returning residents’ visas” was inserted, as from 18 November 1991, by section 9 Immigration Amendment Act 1991 (1991 No 113).

19 Revocation of residence permit by immigration officer

- (1) Where an immigration officer (acting under delegated authority from the Minister) grants a residence permit to any person as a result of administrative error, or is satisfied on reasonable grounds that any other immigration officer has granted such a permit to any person as a result of such an error, the officer may revoke the permit at any time before the person takes the permit from the arrival hall or office of the Department of Labour in which the error is made and discovered, and every such revocation shall take effect immediately.
- (2) Where a permit is revoked under subsection (1) of this section, and the person is still within the arrival hall in which the error was made and discovered, then, unless some other permit is granted to that person or that person is a New Zealand citizen or is exempt under this Act from the requirement to hold a permit, the provisions of section 128 of this Act shall apply as if that person’s application for a permit had been refused.
- (3) A revocation under this section shall be made by endorsement in a form approved by the Minister.

- (4) For the purposes of this section, a residence permit is granted as a result of administrative error if—
- (a) It is granted to a New Zealand citizen or a person who is exempt under this Act from the requirement to hold a permit; or
 - (b) It is granted to a person to whom section 7 of this act applies; or
 - (c) The person granting it intended to grant a temporary permit of some type rather than the residence permit that was actually granted; or
 - (d) It is granted in contravention of—
 - (i) Any special direction; or
 - (ii) Any instruction of a kind referred to in section 130(5) of this Act; or
 - (iii) The Government residence policy applicable at the relevant time; or
 - (e) It is granted on the basis of an administrative error (of any of the types referred to in this subsection) in determining an earlier application for a visa or permit.

Subsection (1) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “boarding station or examination station”.

Subsection (2) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “boarding station or examination station”.

Subsection 4(d) was substituted, as from 18 November 1991, by section 10 Immigration Amendment Act 1991 (1991 No 113).

Subsection (4)(d)(iii) was amended, as from 1 October 1999, by section 17 Immigration Amendment Act 1999 (1999 No 16) by inserting the expression “; or”.

Subsection (4)(e) was inserted, as from 1 October 1999, by section 17 Immigration Amendment Act 1999 (1999 No 16).

20 Revocation of residence permit by Minister

- (1) The Minister may at any time revoke a residence permit on any of the following grounds, but no other:
- (a) That the permit was granted as a result of administrative error;
 - (b) That the permit (including any permit deemed by section 44(2) of this Act to be a residence permit) was pro-

- cured by fraud, forgery, false or misleading representation, or concealment of relevant information:
- (c) That the permit (including any permit deemed by section 44(2) of this Act to be a residence permit) was granted to a person who had been a holder of a visa or another permit procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
 - (ca) That the permit (including any permit deemed by section 44(2) to be a residence permit) was granted to a person who was, but is no longer, recognised as a refugee in New Zealand, that earlier recognition having been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
 - (d) That any requirement imposed on the permit holder under section 18A of this Act has not been met.
- (2) Written notice of the revocation of a residence permit under this section shall be served on the holder by personal service only, and the revocation shall, except where the holder appeals against the revocation to the High Court or the Tribunal under section 21 or section 22 of this Act (in which case the provisions of section 23 of this Act shall apply), become effective on the date 21 days after the date of such service.
- (3) Every notice under subsection (2) of this section shall specify the grounds on which the revocation is made.
- (4) Except where the revocation of the permit is made on the ground that the holder is a New Zealand citizen or is exempt under this Act from the requirement to hold a permit, every notice under subsection (2) of this section shall also inform the holder of the permit of—
- (a) The right to appeal to the High Court under section 21 of this Act against the revocation of the residence permit, and the date by which or period within which that appeal must be brought; and
 - (b) The right to appeal to the Deportation Review Tribunal under section 22 of this Act against the revocation of the residence permit, and the date by which or period within which that appeal must be brought; and

- (c) The right to apply under section 25(1)(d) of this Act for a temporary permit.
- (5) For the purposes of this section, a residence permit is granted as a result of an administrative error if it is granted in any of the circumstances specified in section 19(4) of this Act.

Subsection (1) was amended, as from 15 September 1993, by section 6 Immigration Amendment Act 1993 (1993 No 100) by substituting “on any of” for “on either of”.

Subsection (1)(b) was amended, as from 18 November 1991, by section 11(1) Immigration Amendment Act 1991 (1991 No 113) by inserting “forgery”.

Subsection (1)(c) and (d) were inserted, as from 18 November 1991, by section 11(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(ca) was inserted, as from 1 October 1999, by section 18 Immigration Amendment Act 1999 (1999 No 16).

Subsection (4)(c) was amended, as from 18 November 1991, by section 11(3) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “25(1)(d)” for the expression “25(4)”.

20A Revocation of returning resident’s visa by Minister

- (1) The Minister may at any time revoke a returning resident’s visa on any of the following grounds, but no other:
 - (a) That the visa was granted as a result of administrative error (being the kinds of circumstances specified in section 19(4) of this Act in relation to permits):
 - (b) That the visa was procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
 - (c) That the visa was granted to a person who had been a holder of a permit or another visa procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
 - (ca) That the visa was granted to a person who was, but is no longer, recognised as a refugee in New Zealand, that earlier recognition having been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
 - (d) That any requirement imposed on the visa holder under section 18A of this Act in relation to the residence permit held or previously held by that person has not been met.

- (2) Subject to subsection (3) of this section, subsections (2) to (5) of section 20 of this Act, and the provisions of sections 21 to 23 of this Act (other than section 22(7) and (8) and section 23(2) and (3)), shall, with any necessary modifications, apply in relation to the revocation of a returning resident's visa under this section as if—
- (a) References in those provisions to the permit that is the subject of revocation were references to the returning resident's visa; and
 - (b) References in those provisions to section 20(1) of this Act, and the paragraphs within that provision, were references to subsection (1) of this section, and to the corresponding paragraphs within that subsection.
- (3) No appeal shall lie under section 21 or section 22 of this Act in respect of any revocation of a returning resident's visa under this section where—
- (a) The Minister has within the previous 21 days also revoked the visa holder's residence permit; or
 - (b) Within 21 days after the revocation of the visa the Minister revokes the visa holder's residence permit,—
- but, in any such case, the High Court may, in its determination of any appeal in respect of the revocation of the person's residence permit, make such orders as it thinks fit in relation to the revocation of the returning resident's visa.

Section 20A was inserted, as from 18 November 1991, by section 12 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(ca) was inserted, as from 1 October 1999, by section 19 Immigration Amendment Act 1999 (1999 No 16).

21 Appeal to High Court against revocation of residence permit on ground that decision erroneous

- (1) Subject to subsection (2) of this section, any person whose residence permit is revoked under section 20(1) of this Act may appeal to the High Court against the revocation of the permit.
- (2) Where a residence permit has been revoked under paragraph (b) or paragraph (c) of section 20(1) of this Act, no appeal shall lie under this section where—

- (a) The person whose residence permit is revoked has been convicted of an offence against paragraph (a) or paragraph (c) or paragraph (d) of section 142 of this Act or a crime against section 111 of the Crimes Act 1961 in respect of anything done for the purpose of procuring the granting of the permit or of any visa or other permit that had been held by the person; and
 - (b) The Minister certifies that the Minister revoked the permit in reliance on that conviction.
- (3) Every appeal under this section shall be brought within 21 days after the date on which notice of the revocation was served on the appellant, and the appellant shall set out in the notice of appeal the ground on which the appeal is made.
- (4) On any appeal under this section, the High Court may quash the revocation if, but only if, it is satisfied that—
 - (a) In the case of a revocation under paragraph (a) of subsection (1) of section 20 of this Act, the permit was not granted as a result of administrative error (within the meaning of that section); or
 - (b) In the case of a revocation under paragraph (b) of that subsection, the permit was not procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - (c) In the case of a revocation under paragraph (c) of that subsection, the visa or other permit concerned was not procured by fraud, forgery, false or misleading information, or concealment of relevant information; or
 - (d) In the case of a revocation under paragraph (d) of that subsection, the requirements imposed on the person were met,—and if it is not so satisfied it shall confirm the revocation.
- (5) On any appeal under this section the High Court may in its discretion accept as evidence any statement, document, or information tendered by the appellant or the Minister, whether or not the same would be otherwise admissible in a Court of law.
- (6)
- (7) The decision of the High Court on any appeal under this section shall be final and conclusive.

- (8) Except as expressly provided in this section or in regulations made under this Act, the High Court may regulate its procedure on any appeal under this section in such manner as it thinks fit.

Subsection (1) was amended, as from 18 November 1991, by section 13(1)(a) Immigration Amendment Act 1991 (1991 No 113) by omitting “paragraph (a) or paragraph (b) of”.

Subsection (2) was amended, as from 18 November 1991, by section 13(1)(b) and (c) Immigration Amendment Act 1991 (1991 No 113) by inserting “or paragraph (c)” and the words “or of any visa or other permit that had been held by the person”, respectively.

Subsection (4)(b) was amended, as from 18 November 1991, by section 13(2) and (3) Immigration Amendment Act 1991 (1991 No 113) by inserting “forgery,” and the word “; or”.

Subsection (4)(c) and (d) was inserted, as from 18 November 1991, by section 13(3) Immigration Amendment Act 1991 (1991 No 113).

Subsection (6) was repealed, as from 15 August 1991, by section 3(4) Judicature Amendment Act 1991 (1991 No 60).

22 Appeal on humanitarian grounds to Tribunal against revocation of residence permit

- (1) Any person whose residence permit is revoked under section 20 of this Act may appeal to the Tribunal against the revocation of the residence permit.
- (2) Every appeal under this section shall be brought within 21 days after the date on which notice of the revocation was served on the appellant.
- (3) A person who appeals under this section shall supply to the Tribunal an address in New Zealand at which any communication relating to the appeal may be served on or supplied to that person.
- (4) Subject to subsection (5) of this section, on any appeal under this section the Tribunal may confirm or quash the revocation of the residence permit, as it thinks fit.
- (5) The Tribunal shall not confirm the revocation of a residence permit under this section if it is satisfied that it would be unjust or unduly harsh for the appellant to lose the right to be in New Zealand indefinitely.
- (6) In determining any appeal under this section, the Tribunal shall have regard to the following matters:
- (a) The appellant’s age:

- (b) The length of time during which the appellant has been in New Zealand lawfully:
 - (c) The appellant's personal and domestic circumstances:
 - (d) The appellant's work record:
 - (e) The grounds on which the permit was revoked:
 - (f) The interests of the appellant's family:
 - (g) Such other matters as the Tribunal considers relevant.
- (7) In any case where the Tribunal confirms the revocation of a residence permit, it may, if it considers in all the circumstances that it should do so, direct that a temporary permit be granted to the appellant to enable the appellant to remain in New Zealand for such period, commencing with the date of the Tribunal's decision and not exceeding 12 months, as the Tribunal may specify.
- (8) Where the Tribunal gives any such direction, it shall notify the appellant, in writing, of—
 - (a) The terms of the direction; and
 - (b) The right of the appellant to the grant of a temporary permit to enable the appellant to remain in New Zealand for the period specified by the Tribunal or such longer period as the Minister may determine, on production to an immigration officer of the appellant's passport or certificate of identity within 21 days after the date on which the appellant is notified of the Tribunal's decision; and
 - (c) The consequences of failing to produce the passport or certificate of identity within the required time, as provided in section 23(3) of this Act.
- (9) Subject to section 117 of this Act, the decision of the Tribunal on any appeal under this section shall be final and conclusive.
- (10) Where a person has appealed under this section and the Tribunal confirms the revocation of the permit,—
 - (a) The person has no right to appeal to the Removal Review Authority under section 47; and
 - (b) Unless the Tribunal directs that a temporary permit be granted under subsection (7), the person is liable to removal from New Zealand in accordance with the other provisions of Part 2.

- (11) If the Tribunal has directed that a temporary permit be granted under subsection (7) to an unsuccessful appellant, and the person is subsequently in New Zealand unlawfully,—
- (a) The person has no right to appeal to the Removal Review Authority under section 47; and
 - (b) The person is liable to removal from New Zealand in accordance with the other provisions of Part 2 at any time after the expiry of the period of 7 days from when the person became unlawfully in New Zealand.

Subsections (10) and (11) were inserted, as from 1 October 1999, by section 20 Immigration Amendment Act 1999 (1999 No 16).

23 Procedure following bringing or determination of appeal

- (1) Where the Court or the Tribunal quashes the revocation of a residence permit, the residence permit shall remain in full force and effect.
- (2) Where the Tribunal gives a direction under section 22(7) of this Act, an immigration officer shall, on production (which shall be within 21 days after the date of notification to the appellant of the Tribunal's decision) of the appellant's passport or certificate of identity, grant to the appellant a temporary permit enabling the appellant to remain in New Zealand for the period specified by the Tribunal in the direction, or for such longer period as the Minister may determine.
- (3) If the appellant fails without reasonable excuse to produce the appellant's passport or certificate of identity to an immigration officer within 21 days after the date of the notification to the appellant of the Tribunal's decision, the direction of the Tribunal shall be of no further effect.
- (4) Where the Court or the Tribunal confirms the revocation of the residence permit, or the appeal is withdrawn, and no other appeal against the revocation has been successful or is still pending, the revocation shall become effective on the date 21 days after the date of the notification to the appellant of the decision of the Court or the Tribunal, or of the withdrawal of the appeal, as the case may be.

Temporary permits

24 Types of temporary permits

- (1) The following types of temporary permits may be granted in accordance with this Act:
 - (a) Visitors' permits:
 - (b) Work permits:
 - (c) Student permits
- (2) A visitor's permit entitles the holder of the permit to be in New Zealand during the currency of the permit for any lawful purpose (such as holidaying, sightseeing, family and social visits, amateur sport, business consultations, or undergoing medical treatment) other than—
 - (a) Undertaking employment; or
 - (b) Undertaking a course of study or training
- (3) A work permit entitles the holder of the permit to be in New Zealand or within the exclusive economic zone of New Zealand during the currency of the permit for the purpose of undertaking employment.
- (4) A student permit entitles the holder of the permit to be in New Zealand during the currency of the permit for the purpose of undertaking a course of study or training.

25 Applications for temporary permits

- (1) The following persons may apply for a temporary permit:
 - (a) Any holder of a temporary visa who arrives in New Zealand during the currency of that visa:
 - (b) Any person arriving in New Zealand who is exempt from the requirement to apply for and hold a visa to travel to New Zealand:
 - (c) Any person who is in New Zealand and is the holder of a current temporary permit (other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act):
 - (d) Any person whose residence permit is revoked under section 20 of this Act and who has not appealed against that revocation, where the application for a temporary permit is made before the date on which the revocation is due to become effective.

- (e) In the case of a pre-cleared temporary permit, any person specified in section 35D(1) of this Act.
- (2) An application for a temporary permit shall be made in the prescribed manner.
- (3) No person who is unlawfully in New Zealand may apply for a temporary permit, and where any such person purports to apply for a temporary permit—
 - (a) The Minister or appropriate immigration officer is under no obligation to consider the application; and
 - (b) Whether the application is considered or not,—
 - (i) The Minister or immigration officer is not obliged to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 shall not apply in respect of the application.

Section 25 was substituted, as from 18 November 1991, by section 14 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(c) was amended, as from 1 April 1993, by section 3(3) Immigration Amendment Act 1992 (1992 No 88) by inserting “(other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act)”.

Subsection (1)(e) was inserted, as from 15 September 1993, by section 7 Immigration Amendment Act 1993 (1993 No 100).

26 Currency of temporary permits

- (1) Subject to a special direction to the contrary, a temporary permit may be granted for any period not exceeding the period prescribed in respect of temporary permits of that type or class by regulations made under this Act.
- (2) Every temporary permit which is not a pre-cleared permit shall be endorsed with—
 - (a) The date on which it comes, or is deemed to have come, into force; and
 - (b) Either—
 - (i) The date on which it will expire; or
 - (ii) The period for which it is granted.
- (3) Every pre-cleared temporary permit shall specify the matters required by section 35E(2)(c) and (d) of this Act.

Subsection (2) was amended, as from 15 September 1993, by section 8(1) Immigration Amendment Act 1993 (1993 No 100) by inserting “which is not a pre-cleared permit”.

Subsection (3) was inserted, as from 15 September 1993, by section 8(2) Immigration Amendment Act 1993 (1993 No 100).

27 Temporary permits to be subject to conditions

- (1) Every temporary permit shall be subject to such conditions as may be—
- (a) Prescribed by regulations made under this Act at any time before the grant of the permit; or
 - (b) Imposed by special direction given at any time before, on, or after the grant of the permit; or
 - (c) stipulated in Government immigration policy published under section 13A, being the policy applicable at the time the decision is made to grant the relevant permit.
- (1A) It may be a precondition to the grant of a temporary permit that a bond be paid in accordance with section 148B.
- (1B) In the case of a bond of a kind that is intended to manage the risk of an applicant remaining in New Zealand beyond the expiry of his or her permit, the relevant visa officer or immigration officer may impose such a bond if, and only if,—
- (a) The officer identifies such a risk in the particular case; and
 - (b) The officer considers that the imposition of the bond is necessary in the particular case to manage that risk.
- (1C) The fact that a bond has been forfeited in whole or in part does not affect other action taken, or that may be taken, in respect of a failure to comply with a condition imposed under this section, including revocation of a permit under section 32 or section 33.
- (2) No condition imposed under subsection (1)(b) of this section after the grant of the permit shall have any retrospective effect.
- (3) Subject to subsection (7) of this section, it shall be a condition of every temporary permit other than a work permit that the holder shall not undertake employment in New Zealand or within the exclusive economic zone of New Zealand.
- (4) Subject to subsection (7) of this section, and except as may be permitted by or under regulations made under this Act, it shall

be a condition of every temporary permit other than a student permit that the holder shall not undertake a course of study or training in New Zealand.

- (5) The Minister may, by special direction given in respect of any temporary permit, impose a condition that the holder shall undertake employment only in such area, or in such industry, trade, occupation, or profession, or with such employer, or a condition relating to any 2 or more of those matters, as the Minister thinks fit.
- (6) The Minister may, by special direction given in respect of any temporary permit, impose a condition that the holder shall undertake a course of study or training only of such type, or at such place, or with or under such person conducting the course of study or training, or a condition relating to any 2 or more of those matters, as the Minister thinks fit.
- (7) The Minister, either on the application of the holder of a temporary permit or of the Minister's own motion, may at any time, by special direction, vary or cancel any condition of the permit (including a condition prescribed by subsection (3) or subsection (4) of this section, but not including the condition specified in section 27A(2) of this Act).
- (8) Where the Minister cancels or varies any condition or imposes any new condition under this section, the Minister shall cause the holder of the permit to be notified accordingly, and that cancellation, variation, or new condition shall take effect from the date specified in the notice.

Subsections (1A) to (1C) were inserted, as from 1 October 1999, by section 21 Immigration Amendment Act 1999 (1999 No 16).

Subsection (1)(b) was amended, as from 9 September 2003, by section 14 Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting the expression “, or”.

Subsection (1)(c) was inserted, as from 9 September 2003, by section 14 Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsection (7) was amended, as from 1 April 1993, by section 3(4) Immigration Amendment Act 1992 (1992 No 88) by inserting “, but not including the condition specified in section 27A(2) of this Act”.

27A Temporary permits granted for purposes of Mutual Assistance in Criminal Matters Act 1992

- (1) This section applies to—

- (a) A temporary permit that is granted pursuant to section 7(3)(a)(iia) of this Act:
- (b) A temporary permit—
 - (i) That is granted to a person who, but for the fact that a certificate has been issued under section 13 or section 42(5) of the Mutual Assistance in Criminal Matters Act 1992 in respect of that person, would not have been eligible, under the policy of the Government relating to the granting of temporary permits, for the grant of a temporary permit; and
 - (ii) That is granted for the sole purpose of enabling that person—
 - (A) To be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made pursuant to section 12 of the Mutual Assistance in Criminal Matters Act 1992; or
 - (B) To be transported through New Zealand pursuant to section 42 of that Act.
- (2) A temporary permit to which this section applies may be granted subject to the condition that the holder of the permit has no right to apply for another temporary permit (of whatever type) or a residence permit.

Section 27A was inserted, as from 1 April 1993, by section 3(1) Immigration Amendment Act 1992 (1992 No 88).

28 Minister may require applicant for temporary permit to have sponsor

- (1) Without limiting the Minister's discretion under section 27 of this Act, the Minister may, before granting a temporary permit, require the applicant to supply a written undertaking, in a form approved by the Minister, by any person acceptable to the Minister (in subsection (2) of this section called the sponsor) who is a New Zealand citizen or the holder of a residence permit or is exempt under section 12(1) of this Act from the requirement to hold a permit, relating to the employment, accommodation, maintenance (including the costs of any social services of a kind for which benefits are provided by the State),

or repatriation of the applicant and any dependants of the applicant in New Zealand, or to any 2 or more of those matters, or to any other matter or matters specified by the Minister, and otherwise upon such conditions as the Minister may require.

- (2) In the event of the sponsor failing to comply with the whole or any part of the undertaking, the sponsor shall be liable to pay to the Crown all costs and expenses reasonably incurred by the Crown in respect of that failure.

Subsection (1) was amended, as from 18 November 1991, by section 15 Immigration Amendment Act 1991 (1991 No 113) by inserting “(including the costs of any social services of a kind for which benefits are provided by the State)”.

29 Change of temporary permit

- (1) Any person who is the holder of a temporary permit (other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act) may, at any time before the date on which the permit will expire, apply in the prescribed manner for a temporary permit of another type.
- (2) If a temporary permit of another type is granted on an application made under this section, the current temporary permit shall be deemed to be cancelled as from the date on which the new one comes into force.

Subsection (1) was amended, as from 1 April 1993, by section 3(5) Immigration Amendment Act 1992 (1992 No 88) by inserting “(other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act)”.

30 Further temporary permit

- (1) Any person who is the holder of a temporary permit (of whatever type, other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act) may, at any time before the date on which the permit will expire, apply in the prescribed manner for a further temporary permit of the same type.
- (2) On an application under this section, the Minister may, with the consent of the applicant, grant a temporary permit of a different type instead of a further temporary permit of the same type.
- (3) If a further temporary permit is granted on an application made under this section, it comes into force on the earlier of—

- (a) The date of the expiry of the current permit (whether before or after the date of the grant of the new permit); or
- (b) A date specified by the Minister.

Subsection (1) was amended, as from 1 April 1993, by section 3(6) Immigration Amendment Act 1992 (1992 No 88) by substituting “(of whatever type, other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act)” for “(of whatever type)”.

Subsection (3) was substituted, as from 1 October 1999, by section 22 Immigration Amendment Act 1999 (1999 No 16).

31 Reconsideration where application for another temporary permit is declined

- (1) Where an application for another temporary permit under section 29 or section 30 of this Act is declined, the applicant may, at any time while the applicant is the holder of a current temporary permit, apply in the prescribed manner for a reconsideration of the decision.
- (2) The fact that an application for reconsideration has been made under this section shall not of itself entitle the applicant to remain in New Zealand after the date of expiry of the applicant's current temporary permit, but, until any such application for reconsideration has been determined,—
 - (a) No removal order shall be made or (if already made) served in respect of that person; and
 - (b) That person is not liable to be removed under Part 2.
- (3) If the decision to decline the original application was made by the Minister personally, it shall be reconsidered by the Minister personally.
- (4) In any other case, the decision to decline the original application shall be reconsidered by an 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 original application is confirmed and no permit is granted following reconsideration under this section, an immigration officer must inform the applicant, in writing, of—
 - (a) The decision; and

- (b) In the case of a person who still holds a permit, the date on which the person will have an obligation to leave New Zealand; and
 - (c) In the case of a person who no longer holds a permit, the fact that the person is already obliged to leave New Zealand; and
 - (d) The period within which the applicant may bring an appeal under section 47 against the obligation to leave New Zealand, and the date from which the period runs.
- (6) The result of any reconsideration under this section of a decision to decline an application for another temporary permit shall be final and conclusive, and no further application for reconsideration of that decision shall be made or entertained.

Subsection (2)(a) was substituted, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (2)(b) was substituted, as from 1 October 1999, by section 23(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (5) was substituted, as from 1 October 1999, by section 23(2) Immigration Amendment Act 1999 (1999 No 16).

32 Revocation of temporary permit by immigration officer

- (1) Where an immigration officer (acting under delegated authority from the Minister) grants a temporary permit to any person as a result of administrative error, that permit may be revoked at any time before the person takes the permit from the arrival hall or office of the Department of Labour in which the error is made and discovered, and every such revocation shall take effect immediately.
- (2) Where a permit is revoked under subsection (1) of this section and the person is still within the arrival hall in which the error was made and discovered, then, unless some other permit is granted to that person or that person is a New Zealand citizen or is exempt under this Act from the requirement to hold a permit, the provisions of section 128 (or, if appropriate, section 128B) of this Act shall apply as if that person's application for a permit had been refused.
- (3) A revocation under this section shall be made by endorsement in a form approved by the Minister.

- (4) For the purposes of this section, a temporary permit is granted as a result of administrative error if—
- (a) It is granted to a New Zealand citizen or a person who is exempt under this Act from the requirement to hold a permit; or
 - (b) It is granted to a person to whom section 7 of this Act applies; or
 - (c) The person granting it intended to grant a permit of some type other than the one that was actually granted; or
 - (d) It is granted in contravention of any special direction, or any instruction of a kind referred to in section 130(5) of this Act; or
 - (da) It is granted contrary to Government policy (in terms of section 13A(1)) that is applicable at the relevant time; or
 - (e) It is granted for a period exceeding the period prescribed for permits of that type by regulations made under this Act; or
 - (f) It is granted on the basis of an administrative error (of any of the types referred to in this subsection) in determining an earlier application for a visa or permit.

Subsection (1) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “boarding station or examination station”.

Subsection (2) was amended, as from 18 November 1993, by section 16 Immigration Amendment Act 1991 (1991 No 113) by inserting “(or, if appropriate, section 128B)”.

Subsection (2) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “boarding station or examination station”.

Subsection (4)(da) was inserted, as from 1 October 1999, by section 24(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (4)(e) was amended by inserting the expression “; or”, and subsection (4)(f) was inserted, as from 1 October 1999, by section 24(2) Immigration Amendment Act 1999 (1999 No 16).

33 Revocation of temporary permit by Minister

- (1) The Minister may at any time, by notice in writing served on the holder of any temporary permit either by personal service

or by registered post addressed to the holder's New Zealand address, revoke the permit.

- (2) A notice given under subsection (1) of this section shall—
 - (a) Give the reasons for the revocation of the permit; and
 - (b) In the case of a person to whom subsection (4) of this section applies, notify the person that the revocation is effective immediately upon service of the notice; and
 - (c) In any other case, specify a date by which, unless the holder can show good cause why the permit should not be revoked, the holder is required to leave New Zealand.
- (3) Any date required to be specified by paragraph (c) of subsection (2) of this section shall not be earlier than 14 days after the date on which the notice is served on the holder of the permit and, unless the holder sooner shows good reason why the permit should not be revoked, the revocation shall become effective on that date.
- (4) Where the holder of a temporary permit is a person to whom any of paragraphs (a) to (d) of section 7(1) of this Act applies, any revocation under subsection (1) of this section shall become effective immediately on service of the notice under that subsection.

33A Revocation of temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992

- (1) Where, pursuant to section 13(2) or section 42(6) of the Mutual Assistance in Criminal Matters Act 1992, the Attorney-General cancels a certificate issued under section 13(1) or section 42(5) of that Act in respect of a person who is the holder of a temporary permit to which section 27A of this Act applies, the Attorney-General shall forthwith notify the Minister of the cancellation of that certificate.
- (2) Where the Minister receives notification, under subsection (1) of this section, in respect of any person who is the holder of a temporary permit, the Minister may, by notice in writing served on the holder of that permit, revoke that permit.
- (3) Any notice given under subsection (2) of this section shall be served by personal service only.
- (4) A notice given under subsection (2) of this section shall—

- (a) Give the reasons for the revocation of the permit; and
 - (b) Specify a date by which the holder of the permit is required to leave New Zealand.
- (5) The date required to be specified by subsection (4) of this section shall not be earlier than 7 days after the date on which the notice is served on the holder of the permit, and the revocation shall become effective on the date so specified.
- (6) Nothing in this section shall apply in respect of any permit that is deemed, by section 41 of this Act, to have expired.

Section 33A was inserted, as from 1 April 1993, by section 4 Immigration Amendment Act 1992 (1992 No 88).

34 Holder of temporary permit not to remain in New Zealand after expiry of permit

Every person to whom a temporary permit is granted and who is in New Zealand after the expiry of the permit shall be deemed for the purposes of this Act to be in New Zealand unlawfully, unless that person is the holder of another permit or is exempt under this Act from the requirement to hold a permit.

Limited purpose permits

The heading “Limited purpose permits” was inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

34A Limited purpose permits

A limited purpose permit is a permit granted to allow its holder to be in New Zealand for an express purpose only.

Sections 34A to 34F were inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

34B Applications for limited purpose permits

- (1) The following persons may apply for a limited purpose permit:
 - (a) A holder of a limited purpose visa who arrives in New Zealand during the currency of that visa:
 - (b) A person in New Zealand who is the holder of a current limited purpose permit, if further time is required to achieve the purpose for which that permit was granted.

- (2) An application for a limited purpose permit must be made in the prescribed manner.
- (3) No person who is unlawfully in New Zealand, and no person who is lawfully in New Zealand otherwise than pursuant to a limited purpose permit, may apply for a limited purpose permit. If such a person purports to apply for a limited purpose permit—
 - (a) The Minister or appropriate immigration officer is under no obligation to consider the application; and
 - (b) Whether the application is considered or not,—
 - (i) The Minister or immigration officer is not obliged to give reasons for any decisions relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 do not apply in respect of the application.

Sections 34A to 34F were inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

34C Currency of limited purpose permit

- (1) Subject to a special direction to the contrary, a limited purpose permit may be granted for such period as—
 - (a) Is appropriate to achieve the express purpose for which the permit is granted; and
 - (b) Does not exceed the period (if any) prescribed in respect of limited purpose permits of that category by regulations made under this Act.
- (2) Every limited purpose permit must state the latest date on which it will expire.
- (3) If the express purpose for which a limited purpose permit 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 permit holder,—
 - (a) An immigration officer may give the holder of the permit a notice specifying an earlier expiry date for the permit (which date may in no case be sooner than 14 days after that notice is given to the holder); and

- (b) The permit then expires on that new expiry date.
- (4) The holder of a limited purpose permit who applies for a further limited purpose permit may be granted the further permit only if further time is required to achieve the express purpose for which the original permit was granted.

Sections 34A to 34F were inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

34D Limitations and conditions on holders of limited purpose permits

- (1) The holder of a limited purpose permit must leave New Zealand no later than the day that the permit expires.
- (2) The holder of a limited purpose permit may not, whether before or after the expiry of the permit,—
 - (a) Apply for a permit of a different type while in New Zealand; or
 - (b) While in New Zealand, request a special direction, or a permit under section 35A; or
 - (c) Bring any appeal under this Act, whether to the Removal Review Authority, the Residence Review Board, the Tribunal, or the High Court.
- (3) Every limited purpose permit is to be granted subject to conditions relating to its purpose, and section 27 applies in respect of limited purpose permits, with any necessary modifications, as if—
 - (a) References in that section to temporary permits were references to limited purpose permits; and
 - (b) A limited purpose permit granted for the purpose of employment were a work permit; and
 - (c) A limited purpose permit granted for the purpose of study or training were a student permit.

Sections 34A to 34F were inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

Subsection (2)(c) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

34E Application of certain temporary permit provisions to limited purpose permits

The following provisions apply in respect of limited purpose permits, with any necessary modifications, as if references in those provisions to temporary permits were references to limited purpose permits:

- (a) Sections 32 and 33 (which relate to revocation of permits):
- (b) Section 34 (persons not to remain in New Zealand after expiry of permit):
- (c) Section 35 (grant of permits):
- (d) Section 37(2) (applicant to supply address for communications):
- (e) Section 38 (evidence of permit to be retained):
- (f) Section 41 (permit deemed to have expired on departure from New Zealand).

Sections 34A to 34F were inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

34F Consequences of remaining in New Zealand after expiry of limited purpose permit

A person who is in New Zealand unlawfully following the expiry of a limited purpose permit—

- (a) May not appeal to the Removal Review Authority under section 47; and
- (b) Is immediately liable to removal under Part 2.

Sections 34A to 34F were inserted, as from 1 October 1999, by section 25 Immigration Amendment Act 1999 (1999 No 16).

*General provisions***34G Obligation to inform all relevant facts, including changed circumstances**

- (1) Every person who applies for any type of visa, permit, or exemption under this Act has the obligation to inform an immigration officer of any relevant fact, including any material change in circumstances that occurs after the application is made, if that fact or change in circumstances—
 - (a) May affect the decision on the application; or

- (b) May affect a decision to grant a permit in reliance on the visa for which the application is made.
- (1A) Every person expressing an interest in obtaining an invitation to apply for residence under section 13E has the obligation to inform a visa officer or an immigration officer 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—
 - (a) may affect the decision to issue an invitation to apply for residence; or
 - (b) may affect a decision to issue a residence visa or grant a residence permit as a consequence of the invitation to apply for residence.
- (2) Without limiting the scope of the expression **material change in circumstances** in subsections (1) and (1A), such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to the applicable policy.
- (3) Failure to comply with the obligation set out in subsection (1) or subsection (1A)—
 - (a) Amounts to **concealment of relevant information** for the purposes of sections 20(1)(b) and (c) and 20A(1)(b) and (c); and
 - (b) Renders any visa or permit granted subject to cancellation or revocation.
- (4) It is sufficient ground for the Minister or a visa officer or immigration officer to decline to issue a visa or grant a permit to a person if the Minister or officer is satisfied that the person,—
 - (a) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for residence submitted false or misleading information, or withheld relevant information that was potentially prejudicial to the issue of the invitation; or
 - (b) did not ensure that a visa officer or 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 permit; or

- (c) whether personally or through an agent, in applying for the visa or permit submitted false or misleading information or withheld relevant information that was potentially prejudicial to the issue of the visa or the grant of the permit; or
- (d) did not ensure that a visa officer or immigration officer was informed of any material change in circumstances between the time of making the application and the time of a decision on the application.

Section 34G was inserted, as from 1 October 1999, by section 26 Immigration Amendment Act 1999 (1999 No 16).

Subsection (1A) was inserted, as from 9 September 2003, by section 15(1) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsection (2) was amended, as from 9 September 2003, by section 15(2)(a) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting the expression “subsections (1) and (1A)” for the expression “subsection (1)”.

Subsection (3) was amended, as from 9 September 2003, by section 15(2)(b) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting the expression “or subsection (1A)” after the expression “Subsection (1)”.

Subsection (4) was inserted, as from 9 September 2003, by section 15(3) Immigration Amendment Act (No 2) 2003 (2003 No 47).

35 Grant of permits

- (1) Subject to the provisions of this Act, on an application for a permit made in the prescribed manner, the Minister may grant or refuse to grant a permit, as the Minister thinks fit, and may grant such type of permit as the Minister thinks fit regardless of the type for which the application is made.
- (1A) Despite subsection (1), a limited purpose permit may not be granted to a refugee status claimant or a refugee unless that person is at the time the holder of a limited purpose visa or a current limited purpose permit.
- (2) Where an application for a permit is made by or for a person under 17 years of age who is not married or in a civil union, the Minister may decline the application if the Minister believes on reasonable grounds that any parent or guardian of the person does not consent to the making of the application.
- (3) Every permit granted under this Act shall—
 - (a) Be in a form approved by the Minister either generally or in any particular case; and

- (b) Except in the case of a pre-cleared permit or a permit granted electronically, be endorsed on the applicant's passport or certificate of identity or, if that is not practicable, given to the applicant in such other manner as the Minister may determine; and
- (c) In the case of a pre-cleared permit, be entered and retained in the records of the Department of Labour in accordance with section 35E of this Act; and
- (d) In the case of a permit granted electronically, be entered and retained in the records of the Department of Labour in accordance with section 35AB.

(4)

Subsection (1A) was inserted, as from 1 October 1999, by section 27(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (2) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting "a person under 17 years of age who is not married or in a civil union" for "an unmarried person who is under 17 years of age".

Subsection (3)(b) was amended, as from 15 September 1993, by section 9(1) Immigration Amendment Act 1993 (1993 No 100) by inserting "Except in the case of a pre-cleared permit," and by inserting the expression "; and".

Subsection (3)(b) was amended, as from 1 October 1999, by section 27(2) Immigration Amendment Act 1999 (1999 No 16) by inserting "or a permit granted electronically".

Subsection (3)(c) was inserted, as from 15 September 1993, by section 9(2) Immigration Amendment Act 1993 (1993 No 100).

Subsection (3)(c) was amended by inserting the expression "; and", and subsection (3)(d) was inserted, as from 1 October 1999, by section 27(3) Immigration Amendment Act 1999 (1999 No 16).

Subsection (4) was repealed, as from 15 September 1993, by section 17(1) Immigration Amendment Act 1993 (1993 No 100).

Subsection (4)(b) was repealed, as from 19 December 1989, by section 2 Immigration Amendment Act (No 2) 1989 (1989 No 144).

35A Grant of permit in special case

- (1) The Minister may at any time, of the Minister's own volition, grant a permit of any type to a person who—
 - (a) Is in New Zealand; and
 - (b) Is required under this Act to hold a permit to be in New Zealand; and
 - (ba) Does not hold a permit to be in New Zealand; and

- (c) Is not a person in respect of whom a deportation order is in force; and
 - (d) Is not a person in respect of whom a removal order is in force.
- (2) Nothing in subsection (1) of this section confers on any person the right to apply to the Minister for a permit, and where any person purports to apply for a permit under this section,—
- (a) The Minister is under no obligation to consider the application; and
 - (b) Whether the Minister considers the application or not,—
 - (i) The Minister is not obliged to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 shall not apply in respect of the application.

Section 35A was inserted, as from 18 November 1991, by section 18 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(ba) was inserted, as from 1 October 1999, by section 28 Immigration Amendment Act 1999 (1999 No 16).

35AB Visas and permits may be issued or granted electronically

- (1) Any type of visa or permit may be issued or granted by being electronically entered and retained in the records of the Department of Labour.
- (2) Every such entry must specify the following information:
 - (a) The name of the visa or permit holder:
 - (b) The passport number of the visa or permit holder or, where the holder is accepted without a passport, the holder's date of birth and nationality (if known):
 - (c) The date on which the visa or permit is issued or granted:
 - (d) Either the date on which the visa or permit will expire, or the period for which it is granted:
 - (e) Such other matters, including conditions, as may apply in respect of the visa or permit.
- (3) Where a visa or permit is issued or granted in the manner set out in subsection (1), then in the absence of evidence to the

contrary the information so entered and retained in the records of the Department of Labour is to be presumed to be correct for the purposes of this Act, notwithstanding any differences between that information and any information contained in any copy of the permit later given to the permit holder.

- (4) A person who holds a permit granted electronically may request a copy of the permit in the prescribed manner, and is entitled on such a request made in New Zealand to receive a copy of the permit in an approved form.
- (5) A person is not entitled to be given a copy of a permit under subsection (4) at any time before the person has left the arrival hall at the Customs place at which the person arrives in New Zealand.
- (6) A permit that is granted electronically may be revoked in the same manner as a pre-cleared permit, and section 35F applies accordingly as if references in that section to pre-cleared permits included references to permits granted electronically.

Section 35AB was inserted, as from 1 October 1999, by section 29 Immigration Amendment Act 1999 (1999 No 16).

35AC Deemed extension of certain permits expiring during epidemic

- (1) This section applies to a temporary permit, a limited purposes permit, or an exemption from the requirement to hold a permit, if—
 - (a) it was in force immediately before the commencement of an epidemic management notice; and
 - (b) but for this section, it would expire before the day 14 days after the day on which the notice expires.
- (2) A temporary permit, limited purposes permit, or exemption to which this section applies must for all purposes be treated as if it continues to be a valid temporary permit, limited purposes permit, or exemption (as the case may be) until the earlier of the following events:
 - (a) its revocation or cessation;
 - (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 permit or exemption; or
- (b) the issue of a document extending a permit or exemption; or
- (c) the issue of a new permit or exemption.

Section 35AC was inserted, as from 19 December 2006, by section 5 Immigration Amendment Act (No 2) 2006 (2006 No 87).

Special provisions applying to pre-cleared permits

The heading “Special provisions applying to pre-cleared permits” was inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

35B Pre-cleared permits

- (1) A pre-cleared permit is a temporary permit or a residence permit or a limited purpose permit applied for and granted in another country in accordance with this Act to a person intending to travel to New Zealand on a flight designated by the Minister as a pre-clearance flight under section 35C of this Act.
- (2) Except as specifically provided in this Act, the provisions of this section and sections 35C to 35I of this Act apply in relation to pre-cleared permits in addition to and not in derogation from the provisions of sections 16 to 35A or sections 6 to 41 or any other provision of this Act.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

Subsection (1) was amended, as from 1 October 1999, by section 30 Immigration Amendment Act 1999 (1999 No 16) by inserting “or a limited purpose permit”.

35C Minister may designate pre-clearance flights

The Minister may from time to time, and in such manner as the Minister considers appropriate, designate as pre-clearance flights any—

- (a) Individual flight to New Zealand from another country; or
 - (b) Any class of such flights,—
- and any person intending to travel on any such flight may, subject to this Act, apply for and be granted a pre-cleared permit.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

35D Applications for pre-cleared permits

- (1) The following persons may apply under section 25 of this Act for a pre-cleared temporary permit:
 - (a) Any person intending to travel on a pre-clearance flight who holds a current student visa, work visa, or visitor's visa and who wishes to be granted a pre-cleared student permit, pre-cleared work permit, or pre-cleared visitor's permit, as the case may be:
 - (b) Any person intending to travel on a pre-clearance flight who is exempt from the requirement to apply for and hold a visa to travel to New Zealand and who wishes to be granted a pre-cleared temporary permit.
- (2) The following persons may apply under section 17 of this Act for a pre-cleared residence permit:
 - (a) Any person intending to travel on a pre-clearance flight who is the holder of a current residence visa and who wishes to be granted a pre-cleared residence permit:
 - (b) Any person intending to travel on a pre-clearance flight who is exempt from the requirement to apply for and hold a residence visa and who wishes to be granted a pre-cleared residence permit.
- (3) The following persons are entitled to be granted a pre-cleared residence permit under section 18 of the Act:
 - (a) Any person intending to travel on a pre-clearance flight who—
 - (i) Holds a returning resident's visa; and
 - (ii) Applies in the prescribed manner for a pre-cleared resident permit during the currency of that visa:
 - (b) Any person intending to travel on a pre-clearance flight who—
 - (i) Being the holder of a residence permit is granted by the Government of New Zealand a refugee travel document in accordance with the Refugee Convention for the purpose of travel outside New Zealand; and

- (ii) Applies in the prescribed manner for a pre-cleared residence permit during the period of validity of that document.
- (4) An application for a pre-cleared permit shall be made in the prescribed manner.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

35E Grant of pre-cleared permit

- (1) A pre-cleared permit shall be granted by being entered and retained (either electronically or otherwise) in the records of the Department of Labour.
- (2) Every pre-cleared permit shall specify—
 - (a) The name of the permit holder:
 - (b) The passport number of the permit holder or, where the person is accepted for travel without a passport, the permit holder's date of birth and nationality (if known):
 - (c) The date on which the permit is granted (being that date in the country in which it is granted):
 - (d) Either—
 - (i) The date on which it will expire; or
 - (ii) The period for which it is granted.
- (3) Where a pre-cleared temporary permit specifies the period for which it is granted, rather than the date on which it will expire, that period shall commence to run on and from the date specified in the permit under subsection (2)(c) of this section as if the permit had been granted on that specified date in New Zealand, notwithstanding any date or time differences between New Zealand and the country in which the permit was granted.
- (4) A person who holds a pre-cleared permit may request a copy of the permit in the prescribed manner and, subject to subsection (5) of this section, is entitled on such request made in New Zealand to receive forthwith, in an approved form, a copy of the permit.
- (5) No person who is the holder of a pre-cleared permit is entitled to be given a copy of that permit in the country in which the permit is granted, or while in transit, or at any time before the person has left the arrival hall at the customs airport at which the person arrives in New Zealand.

- (6) Where any pre-cleared permit is granted in the manner set out in subsection (1) of this section, the information so entered and retained in the records of the Department of Labour shall, in the absence of evidence to the contrary, be deemed to be correct for the purposes of this Act, notwithstanding any differences between that information and any information contained in any copy of the permit given to the holder of the permit.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

Subsection (5) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “examination station”.

35F Revocation of pre-cleared permit by immigration officer

- (1) Where any immigration officer is satisfied on reasonable grounds that—

- (a) A pre-cleared residence permit has been granted to any person as a result of administrative error within the meaning of section 19 of this Act; or
- (b) A pre-cleared temporary permit or a pre-cleared limited purpose permit has been granted to any person as a result of administrative error within the meaning of section 32 of this Act,—

the immigration officer may revoke the permit at any time before the person leaves the arrival hall at the customs airport at which the person arrives in New Zealand, and any such revocation shall take effect immediately.

- (2) Where a pre-cleared permit is revoked under this section, then, unless some other permit is granted to the person, or the person is exempt under this Act from the requirement to hold a permit, the provisions of section 128 of this Act shall apply as if the person’s application for a permit had been refused.
- (3) A revocation under this section shall be made in a manner approved by the Minister.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

Subsection (1) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “examination station”.

Subsection (1)(b) was amended, as from 1 October 1999, by section 31 Immigration Amendment Act 1999 (1999 No 16) by inserting “or a pre-cleared limited purpose permit”.

35G Expiry of pre-cleared permit in certain circumstances

Where the holder of a pre-cleared permit—

- (a) Fails for any reason to travel on the pre-clearance flight in respect of which the permit was granted; or
- (b) Embarks on the pre-clearance flight but, before arriving in New Zealand, is forced to return to the country of embarkation, or land in any country other than New Zealand, whether by reason of any emergency affecting the craft or otherwise,—

the pre-cleared permit shall be deemed to expire with effect from—

- (c) The time at which the pre-clearance flight commenced, where the person fails to travel on the pre-clearance flight; or
- (d) The time at which the pre-clearance flight returns to the country of embarkation, or lands in the country other than New Zealand, in any other case.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

35H Responsibilities of carrier in relation to pre-clearance flights

For the purposes of this Act, the carrier and the person in charge of any craft on a pre-clearance flight shall ensure that all persons boarding the craft at the beginning of the pre-clearance flight—

- (a) Hold a pre-cleared permit; or
- (b) Are exempt under this Act from the requirement to hold a permit; or
- (c) Are persons to whom section 129(1) of this Act will apply.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

35I Pre-cleared permit holders not required to undergo immigration procedures on arrival in New Zealand

The holder of a pre-cleared permit who arrives in New Zealand on a pre-clearance flight is exempt from the requirement to undergo the immigration procedures specified in section 126(1)(a) of this Act.

Sections 35B to 35I were inserted, as from 15 November 1993, by section 2 Immigration Amendment Act 1993 (1993 No 100).

36 Reasons for refusal to grant permit to be given in writing where requested

Except as otherwise provided in this Act, where an applicant so requests, an immigration officer (or, where the decision is the Minister's, the Minister) shall give the reasons in writing for any decision to—

- (a) Refuse to grant a permit to the applicant; or
- (b) Refuse to grant to that applicant a permit of a particular type.

Section 36 was amended, as from 18 November 1991, by section 19 Immigration Amendment Act 1991 (1991 No 113) by inserting "Except as otherwise provided in this Act,".

37 Applicant for permit to specify address for service

- (1) Every applicant for a residence permit shall specify in the application an address in New Zealand at which any communication relating to the application, or to any requirements that may be imposed on the person under section 18A of this Act if a residence permit is granted pursuant to the application, may be served on that person by registered post.
- (2) Every applicant for a temporary permit shall specify in the application an address in New Zealand at which any communication relating to the application, or to any permit that may be granted pursuant to the application, may be served on that person by registered post in accordance with any of the provisions of this Act.
- (3) The applicant for or the holder of a permit may at any time, by written notice to an immigration officer, substitute a different address for that specified in accordance with subsection (1) or subsection (2) of this section.

Subsection (1) was amended, as from 18 November 1991, by section 20(1) Immigration Amendment Act 1991 (1991 No 113), by inserting “, or to any requirements that may be imposed on the person under section 18A of this Act if a residence permit is granted pursuant to the application,”.

Subsection (2) was amended, as from 18 November 1991, by section 20(2) Immigration Amendment Act 1991 (1991 No 113) by omitting “temporary”.

38 Evidence of permit or exemption to be retained

- (1) Subject to subsection (3) of this section, every holder of a permit, other than a pre-cleared permit or a permit granted electronically in accordance with section 35AB, shall retain in that person's possession or under that person's control the passport or certificate of identity on which the permit is endorsed, or any other document evidencing or constituting the permit.
- (2) Subject to subsection (3) of this section, every person who is exempt under this Act from the requirement to hold a permit shall retain in that person's possession or under that person's control, while the exemption remains in force, evidence of that person's entitlement to that exemption.
- (3) Subsections (1) and (2) of this section shall not apply in respect of any document or evidence that any person would otherwise be required by this section to retain in that person's possession or under that person's control, where that person has surrendered the document or evidence to any other person in accordance with any lawful requirement and that document or evidence has not yet been returned.
- (4) Where the Minister is satisfied that any passport, certificate of identity, or other document evidencing or constituting a current permit is lost or destroyed, the Minister shall authorise the grant, in such manner and form as the Minister considers appropriate, of a replacement permit.

Subsection (1) was amended, as from 15 September 1993, by section 10 Immigration Amendment Act 1993 (1993 No 100) by inserting “, other than a pre-cleared permit,”.

Subsection (1) was amended, as from 1 October 1999, by section 32 Immigration Amendment Act 1999 (1999 No 16) by inserting “or a permit granted electronically in accordance with section 35AB”.

39 Responsibility of employers

- (1) Every employer commits an offence against this Act who allows or continues to allow any person to undertake employ-

ment in that employer's service knowing that the person is not entitled under this Act to undertake that employment.

- (1A) Every employer commits an offence against this Act who, without reasonable excuse, allows a person who is not entitled under this Act to undertake employment in the employer's service to undertake that employment.
- (1B) For the purposes of subsection (1A), it is a reasonable excuse for allowing a person who is not entitled under this Act to undertake employment in an employer's service to undertake that employment that the employer concerned did not know that the person was not entitled to undertake that employment, and holds a tax code declaration—
 - (a) that states that the person is entitled under the Immigration Act 1987 to undertake employment in the employer's service; and
 - (b) that was signed by the person before or when that employment began.
- (1C) Except as provided in subsection (1B), for the purposes of subsection (1A), it is not a reasonable excuse for allowing a person who is not entitled under this Act to undertake employment in an employer's service that the employer did not know that the person was not entitled under this Act to undertake that employment.
- (2) An information alleging an offence against this section may specify any day on which it is alleged the person was in the employment of the employer, and it shall not be necessary to state the day on which that employment is alleged to have commenced.
- (3) An employer shall be deemed for the purposes of this section to know that an employee is not entitled under this Act to undertake any particular employment if, at any time within the preceding 12 months, the employer has been informed of that fact in writing by an immigration officer.
- (4) No employer is liable for an offence against subsection (1) or subsection (1A) 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.

- (5) A person who commits an offence against this section is liable,—
- (a) in the case of an offence against subsection (1), to a fine not exceeding \$50,000;
 - (b) in the case of an offence against subsection (1A), to a fine not exceeding \$10,000.

Subsections (1A) to (1C) were inserted, as from 17 June 2003, by section 4(1) Immigration Amendment Act 2002 (2002 No 22).

Subsection (2) was amended, as from 17 June 2003, by section 4(2) Immigration Amendment Act 2002 (2002 No 22) by omitting “subsection (1) of”.

Subsection (4) was substituted, as from 18 November 1991, by section 21 Immigration Amendment Act 1991 (1991 No 113).

Subsection (4) was substituted, as from 2 October 2000 by section 240 Employment Relations Act 2000 (2000 No 24).

Subsection (4) was amended, as from 17 June 2003, by section 4(3) Immigration Amendment Act 2002 (2002 No 22) by inserting “or subsection (1A)” after “subsection (1)”.

Subsection (5) was inserted, as from 17 June 2003, by section 4(4) Immigration Amendment Act 2002 (2002 No 22).

39A Exploitation of people not legally entitled to work

- (1) Every employer commits an offence against this Act who,—
- (a) while allowing an unlawful employee to undertake employment 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
 - (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
 - (b) while allowing an unlawful employee to undertake employment in the employer’s service, takes an action with the intention of preventing or hindering the employee from—
 - (i) leaving that employment; or
 - (ii) leaving New Zealand; or

- (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 employment by the employer.
- (2) The following are examples of actions of the kinds 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:
 - (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
 - (v) leaving premises unaccompanied; or
 - (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.
- (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 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.
- (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:

- (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.
- (6) An information alleging an offence against subsection (1) may specify any day on which it is alleged the person was in the employment of the employer, and it is not necessary to state the day on which that employment is alleged to have commenced.
- (7) For the purposes of this section, an employer must be treated as knowing that an employee is not entitled under this Act to undertake any particular employment if, at any time within the preceding 12 months, the employer has been informed of that fact in writing by an immigration officer.
- (8) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both.
- (9) In this section, **unlawful employee**, in relation to an employer, means a person whom the employer knows is not entitled under this Act to undertake employment in the employer's service.

Section 39A was inserted, as from 18 June 2002, by section 5 Immigration Amendment Act 2002 (2002 No 22).

Subsection (1)(a)(i) was amended, as from 1 April 2004, by section 91(2) Holidays Act 2003 (2003 No 129) by substituting "Holidays Act 2003" for "Holidays Act 1981".

Subsection (4)(a) was amended, as from 1 April 2004, by section 91(2) Holidays Act 2003 (2003 No 129) by substituting "Holidays Act 2003" for "Holidays Act 1981".

40 Responsibility of persons conducting courses of study or training

- (1) Every person conducting any course of study or training commits an offence against this Act who allows or continues to allow any other person to undertake the course knowing that that other person is not entitled under this Act to undertake that course.
- (2) An information alleging an offence against subsection (1) of this section may specify any day on which it is alleged the student or trainee was undertaking the course of study or training,

and it shall not be necessary to state the day on which it is alleged that the student or trainee commenced to undertake the course.

- (3) A person shall be deemed for the purposes of this section to know that a student or trainee is not entitled under this Act to undertake a course of study or training in New Zealand if, at any time within the preceding 12 months, that person has been informed of that fact in writing by an immigration officer.

Subsection (1) was amended, as from 1 January 1990, by section 4(4) Education Amendment Act 1989 (1989 No 156) by omitting “(not being a child under 15 years of age or a child undertaking secondary education who, under section 85(1) of the Education Act 1964, is entitled to undertake free secondary education)”.

41 Permit or exemption deemed to have expired on departure from New Zealand

- (1) When the holder of a permit leaves New Zealand, the permit shall be deemed to have expired.
- (2) When a person who is exempt under this Act from the requirement to hold a permit leaves New Zealand, the exemption shall be deemed to have expired.

Transitional provisions

42 Certain persons in New Zealand at commencement of this Act may apply for permit

[Repealed]

Sections 42 and 43 were repealed, as from 1 October 1999, by section 33 Immigration Amendment Act 1999 (1999 No 16).

43 Applications for certain permits pending at commencement of this Act

[Repealed]

Sections 42 and 43 were repealed, as from 1 October 1999, by section 33 Immigration Amendment Act 1999 (1999 No 16).

44 General transitional provisions

- (1) Every person who—
- (a) Arrived in New Zealand lawfully for the purpose of permanent residence at any time before the 2nd day of

- April 1974 otherwise than pursuant to a permit granted under the Immigration Act 1964 or any former corresponding Act; and
- (b) Has been in New Zealand continuously from that date, apart from any period or periods spent in—
 - (i) The Cook Islands, Niue, or Tokelau; or
 - (ii) Australia, where during any such period the person was a Commonwealth citizen or a citizen of the Republic of Ireland and was able to reside in either New Zealand or Australia without restriction; and
 - (c) Was in New Zealand immediately before the commencement of this Act; and
 - (d) Is not exempt under this Act from the requirement to hold a permit,—
- shall be deemed for the purposes of this Act to be the holder of a residence permit granted under this Act, and on application in the prescribed manner an immigration officer shall endorse that person's passport or certificate of identity accordingly.
- (2) Every permit granted for the purpose of permanent residence at any time before the commencement of this Act under the Immigration Act 1964 or any former corresponding enactment to any person who—
 - (a) Has been in New Zealand continuously from the date on which that permit was granted until the commencement of this Act, apart from any period or periods spent in—
 - (i) The Cook Islands, Niue, or Tokelau; or
 - (ii) Australia, where during any such period the person was a Commonwealth citizen or a citizen of the Republic of Ireland, and was able to reside in either New Zealand or Australia without restriction; and
 - (b) Was in New Zealand immediately before the commencement of this Act, and was at that time resident in New Zealand by virtue of that permit,—
- shall be deemed for the purposes of this Act to be a residence permit granted under this Act.
- (3) Where, at any time before the commencement of this Act, any person acting on behalf of the Government of New Zealand

has endorsed any other person's passport or certificate of identity to the effect that that other person would be authorised, at any time within a specified period, to enter New Zealand for the purpose of permanent residence, that endorsement shall be deemed for the purposes of section 17 of this Act to be a residence visa.

- (4) Where, at any time before the commencement of this Act, any person acting on behalf of the Government of New Zealand has endorsed any other person's passport or certificate of identity to the effect that that other person would be authorised, at any time within a specified period, to enter New Zealand temporarily, that endorsement shall be deemed for the purposes of section 25 of this Act to be a temporary visa.
- (5) Every permit granted otherwise than for the purpose of permanent residence under section 14 or section 14B or section 15 of the Immigration Act 1964 and still current immediately before the commencement of this Act shall be deemed for the purposes of this Act,—
 - (a) In the case of a permit under which employment in New Zealand was permitted, to be a work permit granted under this Act; or
 - (b) In the case of a permit granted to authorise the holder to enter New Zealand for the purpose of undertaking any course of study or training, to be a student permit granted under this Act; or
 - (c) In the case of any other permit, to be a visitor's permit granted under this Act.
- (6) Notwithstanding anything in section 26 of this Act, every permit and every endorsement to which any of subsections (3) to (5) of this section applies shall expire on the date on which it would have expired had this Act not been passed, and, until its expiry, shall, subject to section 27 of this Act, continue to be subject to the same conditions as it was subject to immediately before the commencement of this Act.

Part 2
Persons in New Zealand unlawfully
*Obligation of persons unlawfully in New
Zealand to leave*

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

**45 Obligation of persons unlawfully in New Zealand to leave
New Zealand**

- (1) From the moment that a person is in New Zealand unlawfully until that person leaves New Zealand, he or she has an obligation to leave New Zealand unless subsequently granted a permit.
- (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 revocation of a permit, their entry into New Zealand without a permit or exemption, ceasing to be exempt from the requirement to hold a permit, their loss of New Zealand citizenship, or otherwise.
- (3) The obligation to leave created by 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 removal or other action under this Part, is not affected by any failure or alleged failure of the chief executive to communicate the obligation and related implications under section 46 (or section 70(4)); 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 removal of any person.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

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

- (1) The chief executive of the Department of Labour must communicate to persons who are seeking visas to come to New Zealand or permits to be in New Zealand—
 - (a) The obligation to leave New Zealand created by section 45(1); and
 - (b) The implications for persons who fail to meet that obligation.
- (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 or permits are issued or granted, by way of notices that can be readily seen by persons to whom it is likely to be of relevance;
 - (b) On application forms for temporary visas and permits and limited purpose visas and permits;
 - (c) In arrival halls at Customs places, by way of notices that can be readily seen by all arriving temporary entrants;
 - (d) On informational material provided by the Department to persons who are interested in coming to New Zealand temporarily;
 - (e) On any notice revoking a permit.
- (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.
- (4) Any temporary visa or permit or limited purpose visa or permit issued or granted to any person after the commencement of this Part (other than a visa or permit granted electronically) must contain the following words, or words to similar effect:
“You must leave New Zealand before expiry of your permit, or face removal”

Subsection (5)(b) and (c) were substituted, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

*Appeal against requirement to leave, etc***47 Appeal against requirement to leave New Zealand**

- (1) A person who is unlawfully in New Zealand may appeal to the Removal Review Authority against the requirement for that person to leave New Zealand.
- (2) The appeal must be brought within 42 days after the later of—
 - (a) The day on which the person became unlawfully within New Zealand; or
 - (b) The day on which the person received notification under section 31 of the confirmation of the decision to decline to issue a permit, in the case of a person who, while still lawfully in New Zealand, had lodged an application under section 31 for reconsideration of a decision to decline another temporary permit.
- (3) An appeal may be brought only on the grounds that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be removed from New Zealand, and that it would not in all the circumstances be contrary to the public interest to allow the person to remain in New Zealand.
- (4) For the purposes of subsection (3), the mere fact that a person's circumstances are such that the person would meet any applicable Government residence policy requirements for the grant of a residence permit does not in itself constitute exceptional circumstances of a humanitarian nature.
- (5) The following persons may not appeal under this section:
 - (a) A person who is unlawfully in New Zealand by reason of having returned to New Zealand while a removal order is in force in respect of the person:
 - (b) A person who is unlawfully in New Zealand by reason of the expiry of a limited purpose permit:
 - (c) A person who is unlawfully in New Zealand following the revocation of their residence permit being confirmed by the Deportation Review Tribunal:
 - (d) A person unlawfully in New Zealand to whom section 63 applies (which section relates to persons granted temporary permits for the purposes of the Mutual Assistance in Criminal Matters Act 1992); or

- (e) A person unlawfully in New Zealand to whom section 114K(4)(b) applies (which provision relates to a person in respect of whom a security risk certificate has been confirmed).

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “a removal order” for “an application for a removal warrant”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

48 How to appeal

- (1) An appeal under section 47 must—
 - (a) Be made in the prescribed manner; and
 - (b) Be brought within the 42-day period referred to in section 47(2); and
 - (c) Be accompanied by the prescribed fee (if any).
- (2) In the notice of appeal the appellant must—
 - (a) Set out all the grounds and the full circumstances on which the appeal is based; and
 - (b) Include an address in New Zealand at which any communication relating to the appeal may be notified to the appellant; and
 - (c) Include the address in New Zealand at which the appellant is physically residing.
- (3) If an address included in the notice of appeal changes, the appellant must immediately notify the Authority in writing of the change of address. The Authority may rely on the latest address provided for the purpose of communications under this Part.
- (4) The Authority must not consider an appeal under section 47 unless it has been made in the prescribed manner, been brought within the 42-day period referred to in section 47(2), and been accompanied by the prescribed fee (if any).
- (5) An appeal under section 47 may at any time be withdrawn by notice in writing to the Authority.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “removal order, is in New Zealand while that order” for “removal warrant, is in New Zealand while that warrant”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

49 Removal Review Authority

- (1) For the purposes of this Act there continues to be a Removal Review Authority.
- (2) The function of the Authority is solely to determine appeals brought under section 47 against the requirement to leave New Zealand.
- (3) The Authority consists of such number of members, being barristers or solicitors of the High Court who have held practising certificates for at least 5 years, as the Governor-General determines from time to time on the advice of the Minister.
- (4) The members are appointed by the Governor-General on the advice of the Minister.
- (5) For the purposes of any appeal before it, the Authority consists of 1 member.
- (6) The provisions set out in Schedule 3B apply in relation to the Authority.
- (7) The persons who are members of the Authority immediately before the commencement of this section continue to be members of the Authority.

Subsection (1) was substituted, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (2) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “removal order has been served” for “application for a removal warrant has been made”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

50 Procedure in appeals

- (1) An appeal to the Authority under section 47 is to be determined by the Authority on the papers and with all reasonable speed.
- (2) On any such appeal—
 - (a) It is the responsibility of the appellant to ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal

- are received by the Authority within the 42-day period for bringing the appeal; and
 - (b) The Authority is not obliged to consider any information supplied by the appellant after that period, other than information provided by way of rebuttal or comment under subsection (6); and
 - (c) The Authority may treat the material provided by the appellant as constituting the full appeal, and is not obliged to give the appellant an opportunity to develop the appeal further.
- (3) On the lodging of an appeal under section 47,—
- (a) The Authority must give to the chief executive a copy of the notice of appeal and any information, evidence, or submissions lodged by the appellant; and
 - (b) The Authority must allow the chief executive a specified time to—
 - (i) Lodge with the Authority any file relating to the appellant that is held by the chief executive; and
 - (ii) Lodge such other information, evidence, and submissions in relation to the matter under appeal as the chief executive thinks fit.
- (4) In determining the appeal, the Authority—
- (a) May seek and receive such information as it thinks fit, and consider information from any source; but
 - (b) May not consider any information which relates to matters arising after the date the appeal was lodged unless it is satisfied that there are exceptional circumstances that justify the consideration of such matters.
- (5) The Authority must disclose to the appellant any material or information that the Authority proposes to take into account in determining the appeal if that material or information—
- (a) Is or may be prejudicial to the appellant; and
 - (b) Is material lodged with the Authority by the chief executive, or is information obtained by the Authority from a source other than the appellant.
- (6) The Authority must give the appellant an opportunity to rebut or comment on any material or information disclosed under subsection (5) within such reasonable time as the Authority specifies.

- (7) Subsections (5) and (6) do not require the Authority to disclose to the appellant any material or information whose disclosure would be likely to endanger the safety of any person, but the Authority must notify the appellant of the fact of any such non-disclosure.

Sections 50 to 52 and heading were substituted, as from 18 November 1991, and section 52A inserted, as from 18 November 1991, by section 23(1) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

51 Decision on appeal

- (1) As soon as practicable after coming to a decision on an appeal, the Authority must notify both the appellant and the chief executive in writing of its decision and the reasons for that decision.
- (2) Except as provided in section 115A (which allows an appeal on a question of law), the decision of the Authority on an appeal is final.
- (3) Unless a court otherwise directs, the Authority has no jurisdiction to reconsider an appeal after the appellant has been notified of its decision.

Sections 50 to 52 and heading were substituted, as from 18 November 1991, and section 52A inserted, as from 18 November 1991, by section 23(1) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

52 Where appeal allowed

- (1) Where the Authority decides that an appeal should be allowed, it may direct an immigration officer to take such steps as it considers necessary to give effect to its decision.
- (2) Without limiting subsection (1), the Authority may direct an immigration officer to grant the successful appellant—
- (a) A residence permit subject to such requirements (if any) as the Authority may determine; or
 - (b) A temporary permit for such period and subject to such conditions (if any) as the Authority may determine.

- (3) For the avoidance of doubt, the Authority may direct an immigration officer to grant the successful applicant a permit, and an immigration officer must accordingly grant the permit, even though the applicant is a person who would normally be prohibited from being granted a permit under section 7(1).
- (4) The Authority may direct the imposition of any requirement on the grant of a residence permit 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 requirement is of a kind authorised under Government residence policy at the time.
- (5) Section 18A(4) to (7) applies to any requirement imposed under this section as if it were imposed under that section.
- (6) The chief executive must ensure that the terms of a direction given under this section are complied with.

Sections 50 to 52 and heading were substituted, as from 18 November 1991, and section 52A inserted, as from 18 November 1991, by section 23(1) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

52A Cancellation of removal order by immigration officer *[Repealed]*

Sections 50 to 52 and heading were substituted, as from 18 November 1991, and section 52A inserted, as from 18 November 1991, by section 23(1) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Liability for removal

53 Liability for removal

- (1) A person unlawfully in New Zealand may be the subject of a removal order, and is liable to be removed from New Zealand under this Part, if—

- (a) The person (not being a person who has an appeal pending under section 47 or section 115A) has been unlawfully in New Zealand—
 - (i) For a period of 42 consecutive days; or
 - (ii) In the case of a person who, while still lawfully in New Zealand, had lodged an application under section 31 for reconsideration of a decision to decline another temporary permit, for a period of 42 consecutive days following the day on which the person received notification under section 31 of the confirmation of the decision to decline to grant another temporary permit, if that day was later than the day on which the person became unlawfully in New Zealand; or
 - (b) An appeal under section 47 (including a further appeal, if any, to the High Court under section 115A or the Court of Appeal under section 116) has been determined against the person, and the person is still unlawfully in New Zealand 7 days after the decision has been notified to the person (or, if appropriate, 7 days after becoming unlawfully in New Zealand following the expiry or cancellation of any temporary permit directed to be granted under section 22(7)); or
 - (c) The person is unlawfully in New Zealand by reason of the expiry of a limited purpose permit; or
 - (d) The person is in New Zealand while a previously executed removal order is still in force in respect of the person; or
 - (e) The person is a person to whom section 63 applies (which section relates to persons granted temporary permits for the purposes of the Mutual Assistance in Criminal Matters Act 1992); or
 - (f) The person is a person to whom section 114K(4)(b) applies (which provision relates to a person in respect of whom a security risk certificate has been confirmed).
- (2) This section is subject to—
- (a) Section 70 (which relates to persons unlawfully in New Zealand immediately before 1 October 1999); and

- (b) Section 129X (which relates to refugee status claimants).
- (3) Nothing in this Part is to be construed as preventing voluntary departure from New Zealand at any time before a removal order is made and served.

Subsection (1) was amended, as from 18 November 1991, by section 24(1)(a) Immigration Amendment Act 1991 (1991 No 113) by substituting “removal order has been served under section 50” for “removal warrant has been served under section 52”.

Subsection (1)(a) and (b) were amended, as from 18 November 1991, by section 24(1)(b) and (c) Immigration Amendment Act 1991 (1991 No 113) by substituting “order” for “warrant”.

Subsection (3) was amended, as from 18 November 1991, by section 24(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “removal order” in two places for “warrant”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

54 Making of removal orders

- (1) The chief executive, or any immigration officer designated by the chief executive for the purposes of this section who is not disqualified under subsection (2), may make a removal order in the prescribed form in respect of any person if the chief executive or immigration officer is satisfied that section 53(1) or section 70(3) applies to that person.
- (2) An immigration officer may not make a removal order in respect of a person if the officer has at any previous time been involved in determining an application by that person for a permit.
- (3) A removal order in the name of any person may also name any dependent child of that person if the chief executive or immigration officer is satisfied that section 53 or section 70(8) also applies to that dependent child. In any such case sections 141B to 141D apply.
- (4) An immigration officer who was designated for the purposes of section 50 (as in force immediately before the commencement of this section) is to be treated as having been designated by the chief executive for the purposes of this section.

Subsection (1) was amended, as from 18 November 1991, by section 25 Immigration Amendment Act 1991 (1991 No 113) by substituting “after a removal warrant has been served” for “on or after the issue of a removal warrant”.

Subsections (1), (2), and (3) were amended, as from 18 November 1991, by section 25 Immigration Amendment Act 1991 (1991 No 113) by substituting “order” for “warrant”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

54A Removal orders where temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992

[Repealed]

Section 54A was inserted, as from 1 April 1993, by section 5 Immigration Amendment Act 1992 (1992 No 88).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

55 Content and effect of removal order

- (1) A removal order authorises any member of the Police to take into custody the person named in the order and to proceed to execute the order in accordance with section 59.
- (2) A removal order must—
 - (a) Give notice to the person named in the order that he or she is in New Zealand unlawfully and is subject to removal under this Part; and
 - (b) Inform the person that, since he or she has not responded voluntarily to the obligation to leave New Zealand, removal will be effected by the State; and
 - (c) Inform the person that he or she may contact a solicitor or counsel or responsible adult designated or nominated under section 141B.

Subsection (1) was amended, as from 18 November 1991, by section 26(1) Immigration Amendment Act 1991 (1991 No 113) by substituting “making of a removal order, or, where a removal order has been served” for “completion of proceedings for the issue of a removal warrant, or, where a removal warrant has been issued”.

Subsection (2)(a) and (b) were substituted, as from 18 November 1991, by section 26(2) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

56 Service of removal order

- (1) Except where section 141C(d) applies, a removal order may be served by an immigration officer or member of the Police on the person named in the order by personal service only.
- (2) A removal order may be served at any reasonable time by day or night.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “section 52A(2)(b) or section 63E or section 65” for “section 50(5)(b) or section 63 or section 65”.

Subsection (4)(a) and (b) were substituted, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

57 Currency of removal order once served

- (1) A removal order is in force from the time at which it is served, and remains in force until the expiry of 5 years after the date the person named in it is removed from New Zealand, unless it is cancelled before then under section 58.
- (2) Despite subsection (1), a removal order made in respect of a person who is under 17 years of age at the date the order is made remains in force in respect of that person only until the person is removed from New Zealand.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

58 Cancellation of removal order

- (1) An immigration officer who has been designated by the chief executive for the purpose of making removal orders under section 54 may, at any time while the person named in the removal order is still in New Zealand, cancel a removal order that has been served by endorsing a copy of the order accordingly, and personally serving that copy on the person named in the order.

- (2) The cancellation endorsement serves as a direction to any person who may be detaining the person in custody in reliance on the order to release the person from custody immediately.
- (3) An immigration officer who cancels a removal order must ensure that any person who is detaining the person named in the order in reliance on this Part releases the person immediately.
- (4) In the case of a person who has already been removed from or has left New Zealand, an immigration officer of the type referred to in subsection (1) may cancel a removal order by sending the person named in it a notice to that effect in the prescribed form.
- (5) Nothing in this section gives any person a right to apply to an immigration officer for the cancellation of a removal order, and where any person purports to so apply—
 - (a) The immigration officer is under no obligation to consider the application; and
 - (b) Whether the application is considered or not,—
 - (i) The immigration officer is under no obligation to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 23 of the Official Information Act 1982 does not apply in respect of the application.

Subsections (1)(a)(i) and (2)(a)(i) were amended, as from 1 November 1989, by section 449 Children, Young Persons, and Their Families Act 1989 (1989 No 24) by substituting “section 2(1) of the Children, Young Persons, and Their Families Act 1989” for “section 2 of the Children and Young Persons Act 1974”.

Subsection (2)(b) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “on whom a removal order has not been served” for “in respect of whom a removal warrant has not been issued”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

59 Execution of removal order

- (1) Any member of the Police may arrest without warrant a person on whom a removal order has been served and detain that person in accordance with this section.

- (2) The purpose of arrest and detention under this section is to execute the removal order by placing the person on a craft that is leaving New Zealand.
- (3) A person arrested and detained under this section may be detained for up to 72 hours without further authority than this section pending their placement on a craft that is leaving New Zealand.
- (4) Once the person has been placed on a craft that is leaving New Zealand, a member of the Police may make appropriate arrangements to ensure that the person does not leave the craft before it leaves New Zealand, and may continue to detain the person on board the craft for that purpose.
- (5) Where a person under 17 years of age who is not married or in a civil union is to be removed from New Zealand otherwise than in the company of a parent or guardian, an immigration officer must make all reasonable efforts to contact a parent or guardian of the person and to agree on suitable travelling arrangements for the person.
- (6) If no such agreement is arrived at, in making the travelling arrangements for the person the immigration officer must consult with and have regard to the advice of—
 - (a) The responsible adult nominated in respect of that person in accordance with section 141B; or
 - (b) If that is not possible or practicable, the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.

Section 59 was substituted, as from 18 November 1991, by section 27 Immigration Amendment 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Subsection (5) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “a person under 17 years of age who is not married or in a civil union” for “an unmarried person who is under 17 years of age”.

Subsection (6)(b) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989” for “Director-General of Social Welfare”.

60 Release or extended detention if craft unavailable, etc, within 72-hour period

- (1) Where a person is arrested and detained under section 59 and it becomes apparent that—
 - (a) No craft will be available within the 72-hour period specified in that section; or
 - (b) A craft that was available is no longer available; or
 - (c) It is not practicable for the person to be placed on a craft within the 72-hour period; or
 - (d) For some other reason the person is unable to leave New Zealand within the 72-hour period,—then, unless the person is released, an immigration officer must arrange for the person to be brought before a District Court Judge for the purpose of obtaining a warrant of commitment.
- (2) Subject to any extension of it under subsection (4) or subsection (6A), a warrant of commitment issued under this section authorises the detention of the person named in it for a period of 7 days or such shorter period as the Judge thinks necessary to enable the execution of the removal order.
- (3) 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 removal order and that any of the following applies:
 - (a) A craft is likely to be available, within the proposed period of the warrant of commitment, to take the person from New Zealand:
 - (b) The practical difficulties that meant that the person could not be placed on an available craft within 72 hours are continuing and are likely to continue, but not for an unreasonable period:
 - (c) The other reasons the person was not able to leave New Zealand within the 72-hour period are still in existence and are likely to remain in existence, but not for an unreasonable period:
 - (d) In all the circumstances it is in the public interest to make a warrant of commitment.
- (4) If at the expiry of a warrant of commitment made under this section the person has still not left New Zealand, then, unless released, the person must be again brought before a Judge

- for an extension of the warrant of commitment, in which case subsections (2) and (3) (and, if appropriate, subsection (6A)) apply.
- (5) If a person is brought before a Judge under subsection (4) for a second or subsequent time the Judge may, where it seems likely that the detention may need to be extended a number of times, and where satisfied that the person is unlikely to abscond otherwise than by leaving New Zealand, instead of extending the warrant of commitment for a further period of up to 7 days, order that the person be released subject to—
- (a) Such conditions as to the person's place of residence or as to reporting at specified intervals to an office of the Department of Labour or a Police station as the Judge think fits; and
 - (b) Such other conditions as the Judge may think fit to impose for the purpose of ensuring compliance with the residence and reporting conditions.
- (6) Unless the Judge considers that there are exceptional circumstances that justify the person's release, a Judge may not order the release of a person under subsection (5) if—
- (a) the person is currently a refugee status claimant who claimed refugee status only after the removal order was served; or
 - (b) a direct or indirect reason for the person being unable to leave New Zealand is or was some action or inaction by the person occurring after the removal order was served.
- (6A) Where a Judge determines not to order the release of a person to whom subsection (6) applies, the Judge may—
- (a) extend the warrant of commitment for a further period of up to 30 days, in which case—
 - (i) the warrant authorises the detention of the person named in it for the period specified in the extension of the warrant; and
 - (ii) subsections (3) to (6) and this subsection apply at the expiry of the extension of the warrant; and
 - (b) make any orders and give any directions that the Judge thinks fit.
- (7) No person may be detained under 1 or more warrants of commitment under this Part for a consecutive period of more than

3 months, unless the person is a person to whom subsection (6) applies.

- (8) In making any decision under this section a Judge is to seek to achieve an outcome that ensures a high level of compliance with immigration laws.
- (9) No release of a person under this section in any way affects their liability for later detention and removal.

Subsection (1) was substituted, as from 18 November 1991, by section 28(1) Immigration Amendment 1991 (1991 No 113).

Subsections (4) and (5) were substituted, as from 18 November 1991, by section 28(2) Immigration Amendment 1991 (1991 No 113).

Subsection (6) was amended, as from 18 November 1991, by section 28(3) Immigration Amendment 1991 (1991 No 113) by substituting “be notified to that adult” for “be served on that adult by registered post”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Subsection (2) was amended, as from 9 September 2003, by section 16(1) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Subject to any extension of it under subsection (4) or subsection (6A), a warrant” for “A warrant”. *See* section 16(4) of that Act for the savings provision.

Subsection (4) was amended, as from 9 September 2003, by section 16(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “(and, if appropriate, subsection (6A))” after “subsections (2) and (3)”. *See* section 16(4) of that Act for the savings provision.

Subsection (6) was substituted, as from 9 September 2003, by section 16(3) Immigration Amendment Act (No 2) 2003 (2003 No 47). *See* section 16(4) of that Act for the savings provision.

Subsection (6A) was inserted, as from 9 September 2003, by section 16(3) Immigration Amendment Act (No 2) 2003 (2003 No 47). *See* section 16(4) of that Act for the savings provision.

Subsection (7) was substituted, as from 9 September 2003, by section 16(3) Immigration Amendment Act (No 2) 2003 (2003 No 47). *See* section 16(4) of that Act for the savings provision.

61 Release from prison into immigration detention

If a person who has been served with a removal order—

- (a) Is held in a prison undergoing imprisonment; and
- (b) Is due to be released from that imprisonment,—

then, on the request of any member of the Police who indicates an intention to execute the removal order under section 59, the person responsible for the person’s detention must, at the time

the release is due, release the person into the custody of the member of the Police, and section 59 then applies.

Section 61 was amended, as from 18 November 1991, by section 29(1) Immigration Amendment 1991 (1991 No 113) by substituting “a removal order” for “an application for a removal warrant, or in a removal warrant”, and the word “order” for “application or warrant”.

Paragraphs (e) and (f) were substituted, and paragraph (g) was inserted, as from 18 November 1991, by section 29(2) Immigration Amendment 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Paragraph (a) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

62 Form of custody

- (1) Every person who is placed in custody under section 59 and is to be detained overnight is to be detained—
 - (a) In the case of a person under 17 years of age who is not married or in a civil union, in—
 - (i) Any 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
 - (ii) Any other premises agreed to by an immigration officer and by the parent or guardian of the person, or the adult nominated under section 141B to represent the interests of the person; or
 - (b) In any other case, in—
 - (i) Premises approved by the chief executive; or
 - (ii) A Police station.
- (2) Every person who is to be detained in custody pursuant to a warrant of commitment made under section 60 is to be detained—
 - (a) In a prison; or
 - (b) In any other premises approved for the purpose by the Judge before whom the person is brought.

(3)

Subsection (1) was amended, as from 18 November 1991, by section 30(1) Immigration Amendment 1991 (1991 No 113) by substituting “removal order” for “removal warrant or in any application for a removal warrant”, and the words “removal procedures” for “proceedings”.

Subsection (2) was amended, as from 18 November 1991, by section 30(2) Immigration Amendment 1991 (1991 No 113) by substituting “notified to that adult” for “received by that adult by registered post”.

Subsection (3)(b), (c), and (d) were inserted, as from 18 November 1991, by section 30(3) Immigration Amendment 1991 (1991 No 113).

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Subsection (1)(a) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “a person under 17 years of age who is not married or in a civil union” for “an unmarried person who is under 17 years of age”.

Subsection (1)(a)(i) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989” for “Director-General of Social Welfare”.

Subsection (2)(a) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was repealed, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50). See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

63 Removal where temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992

- (1) This section applies to a person who is in New Zealand unlawfully by reason of the expiry of a temporary permit that was granted to the person subject to the condition under section 27A(2) that the holder has no right to apply for another temporary permit or a residence permit.
- (2) Such a person cannot appeal to the Removal Review Authority under section 47 against the requirement to leave New Zealand.
- (3) Unless a person to whom this section applies leaves New Zealand voluntarily within 7 days of becoming unlawfully in New Zealand, a removal order may be made, served, and executed in respect of that person at any time following the expiry of that 7-day period.

Section 63 was substituted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

63A Appeal to Removal Review Authority on facts

[Repealed]

Sections 63A to 63E were inserted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

63B Appeal to Removal Review Authority on humanitarian grounds

[Repealed]

Sections 63A to 63E were inserted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

63C Procedure in appeals on facts

[Repealed]

Sections 63A to 63E were inserted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

63D Procedure in appeals on humanitarian grounds

[Repealed]

Sections 63A to 63E were inserted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

63E Cancellation of removal order*[Repealed]*

Sections 63A to 63E were inserted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

*Powers of immigration officers in relation to
persons suspected of being in New Zealand
unlawfully*

**64 Power to require production of certain information by
departments of State and other bodies**

- (1) Where an immigration officer has good cause to suspect that—
 - (a) A particular person is in New Zealand unlawfully; or
 - (b) Particular premises are being occupied or have been occupied (whether for residential purposes or otherwise) by a person who is in New Zealand unlawfully,—the officer may prepare a certificate in the prescribed form to that effect.
- (2) A certificate prepared under subsection (1)(a) may, where the immigration officer believes that the person concerned may be using 1 or more aliases, include any such alias.
- (3) On production by an immigration officer of a certificate prepared under subsection (1), an officer or employee of any department of State or other body specified in the first column of Schedule 1 must produce for inspection by the immigration officer, and allow the immigration officer to copy, any record or other information held by and reasonably available to that department or other body that tends 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.

- (4) Where, in respect of any department of State or other body specified in the first column of Schedule 1, the class of records or information to which an immigration officer may have access is specified in the second column of that schedule, nothing in subsection (3) applies to any other class of records or information held by that department of State or other body.
- (5) Subsection (3) applies notwithstanding 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.

Sections 64 to 66 were substituted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

65 Power to require surrender of documents from suspected person
[Repealed]

Sections 64 to 66 were substituted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Section 65 was repealed, as from 18 June 2002, by section 13(2) Immigration Amendment Act 2002 (2002 No 22).

66 Power to require surrender of documents from third party

- (1) Where a person has refused or failed to surrender a passport or certificate of identity under section 65, or has under that section given the immigration officer details of where such a document can be found, an immigration officer may, if the officer has good cause to suspect that the person holds the document, and without further authority than this section, in the prescribed manner request any third party who holds such a document to surrender it to the officer.

- (2) A person who fails without reasonable excuse to comply with a request made under subsection (1) commits an offence against this Act
- (3) If the third party surrenders any document under this section then no action against that person lies in any court in respect of that surrender, notwithstanding anything in any other Act or rule of law.

Sections 64 to 66 were substituted, as from 18 November 1991, by section 31 Immigration Amendment Act 1991 (1991 No 113). *See* section 32 of that Act for the transitional provisions.

A new Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

67 Use and return of surrendered material

- (1) Any document or other material surrendered to an immigration officer under section 65 or section 66 is to be used only for the following purposes:
 - (a) Confirming the identity of the suspected person:
 - (b) Confirming the immigration status of the suspected person:
 - (c) Effecting the removal of the suspected person from New Zealand if a removal order is made and served:
 - (d) Proceedings before an Authority, the Board, the Tribunal, or a court.
- (2) The document or other material must be returned to the suspected person or the person who surrendered it—
 - (a) If the immigration officer becomes satisfied that the suspected person is not unlawfully in New Zealand; or
 - (b) The purpose for which it was surrendered has been served; or
 - (c) On the removal of the person from New Zealand, to the extent that it has not been used in effecting that removal and is still available to be returned,—

unless the document or other material is known to be the property of some third party, in which case the document or material may be provided to that third party.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113), by substituting “removal order” for “removal warrant”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Subsection (1)(d) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board,” after “an Authority,”.

Transitional provisions

68 Matters may be completed under former Part 2

The repeal of the former Part 2 by section 34 of the Immigration Amendment Act 1999, and its replacement by this Part, does not affect the validity of anything done under the former Part 2, and anything done under it that is only partially completed as at 1 October 1999 may be completed in accordance with section 69.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment 1991 (1991 No 113) by substituting “removal order” for “removal warrant”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

69 Existing removal orders

- (1) Where a removal order has been served on a person at any time before 1 October 1999,—
 - (a) The person may exercise any rights of appeal conferred on that person by sections 63A and 63B (as in force before that date) within the time limits specified in those sections; and
 - (b) Those sections, and any other relevant sections as in force before that date, continue to apply to any such appeal as if they were still in force.
- (2) Where a removal order has been served on a person at any time before 1 October 1999, and either—
 - (a) That person has not exercised or does not exercise any right of appeal conferred on that person by section 63A or section 63B (as in force before that date) within the time limits specified in those sections; or
 - (b) That person has unsuccessfully exhausted any appeal rights under those sections,—

the person is then liable to be removed from New Zealand under this Part (as enacted by section 34 of the Immigration Amendment Act 1999) as if that removal order had been made under this Part, but as if section 47 did not apply.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment 1991 (1991 No 113) by substituting “removal order” for “removal warrant”.

Subsection (2) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment 1991 (1991 No 113) by omitting “(other than the removal warrant)”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

70 Persons unlawfully in New Zealand as at 1 October 1999

- (1) This section applies to any person who is in New Zealand unlawfully immediately before 1 October 1999 and in respect of whom a removal order is not in force at that time.
- (2) This section ceases to apply to a person once the person leaves New Zealand.
- (3) The provisions of this Part (as substituted by section 34 of the Immigration Amendment Act 1999) apply to a person to whom this section applies subject to the following modifications:
 - (a) The person may appeal to the Removal Review Authority under section 47 at any time before 1 October 2000, despite having been in New Zealand unlawfully for more than 42 days, unless earlier required to appeal by virtue of a notice served under paragraph (b); and the provisions of this Part then apply accordingly with any necessary modifications:
 - (b) If before 19 August 2000 an immigration officer serves a notice in the prescribed form on the person that the person is obliged to leave New Zealand or appeal to the Removal Review Authority under section 47 within 42 days, then—
 - (i) The person may appeal under section 47 within 42 days of being served with the notice, despite having been unlawfully in New Zealand for more than 42 days; and

- (ii) If the person fails to appeal within 42 days after being served with the notice (or if any appeal made is unsuccessful, and section 53(1)(b) applies), the person may be the subject of a removal order, and is liable to be removed from New Zealand under this Part, at the end of that period;—
and the provisions of this Part apply accordingly with any necessary modifications:
- (c) At any time on or after 1 October 2000, the person may be the subject of a removal order, and is liable to be removed from New Zealand under this Part, unless—
 - (i) The person has at the time an appeal pending under section 47 (including any appeal to the High Court or Court of Appeal in respect of such an appeal); or
 - (ii) The person is at the time no longer unlawfully in New Zealand.
- (4) The chief executive of the Department of Labour must communicate the obligation on persons to whom this section applies to leave New Zealand, and the implications for persons who do not meet the obligation, in such a way that a reasonable opportunity is created for all persons to whom this section applies to know about the obligation and its implications.
- (5) Any notice given under subsection (3)(b) must inform the person of the implications of not leaving New Zealand or not appealing under section 47 within 42 days.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment 1991 (1991 No 113) by substituting “removal order” for “removal warrant”.

Subsection (2) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment 1991 (1991 No 113) by omitting “(other than the removal warrant)”.

Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

71 Transitional provisions*[Repealed]*

A new Part 2 (comprising sections 45 to 70) was substituted for the old Part 2 (comprising sections 45 to 71), as from 1 October 1999, by section 34 Immigration Amendment Act 1999 (1999 No 16).

Part 3**Deportation of persons threatening
national security, and suspected terrorists****72 Persons threatening national security**

Where the Minister certifies that the continued presence in New Zealand of any person named in the certificate constitutes a threat to national security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.

73 Suspected terrorists

- (1) The Minister may, by order signed by the Minister, order the deportation from New Zealand of any person where the Minister has reason to believe—
- (a) That the person is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand; or
 - (b) That the person has engaged in, or claimed responsibility for, an act of terrorism in New Zealand; or
 - (c) That the person—
 - (i) Is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism outside New Zealand; or
 - (ii) Has engaged in, or claimed responsibility for, an act of terrorism outside New Zealand—and that, by reason thereof, or for any other reason, that person's continued presence in New Zealand constitutes a threat to public safety; or
 - (d) That the person will, if permitted to remain in New Zealand, engage in, or facilitate the commission of, any act of terrorism.

- (2) The Minister may at any time revoke a deportation order made under this section.

74 Certain matters to be specified in deportation order

- (1) Every deportation order made under section 72 of this Act shall state that it is made pursuant to that section.
- (2) Every deportation order made under section 73 of this Act—
 - (a) Shall state the provision pursuant to which it is made; and
 - (b) Shall state the ground or grounds on which it is made; and
 - (c) Shall include notice of the right of appeal conferred by section 81 of this Act and the manner in which that right is to be exercised.

75 Suspect may be arrested pending making of deportation order

- (1) Where a member of the Police believes on reasonable grounds that a person (in this section referred to as the suspected person) is a person to whom any of paragraphs (a) to (d) of sub-section (1) of section 73 of this Act applies, the member of the Police may arrest the suspected person without warrant and place the suspected person in custody, and shall then refer the case as soon as possible to the Minister to determine whether or not to make a deportation order in respect of that person under that section.
- (2) Every person who is arrested under this section shall be brought before a District Court Judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court Judge issues a warrant of commitment under section 79 of this Act for the detention of that person in custody.
- (3) If, in respect of any person who is placed in custody under this section and in respect of whom no warrant of commitment has been issued, the Minister decides not to make a deportation order, the person shall be released from custody forthwith.

76 Currency of deportation order

Every deportation order made under section 72 or section 73 of this Act shall be in force from the date on which it is served in accordance with section 77 of this Act, and shall, unless it is quashed or revoked in accordance with any of the provisions of this Act, remain in force until the person named in the order leaves New Zealand.

77 Service of deportation order

- (1) A deportation order made under section 72 or section 73 of this Act shall be served on the person named in the order by personal service only.
- (2) At any time after a deportation order has been served on any person under subsection (1) of this section, an immigration officer may do all or any of the following things:
 - (a) Require the person on whom the order is served to produce for inspection by the immigration officer that person's passport or certificate of identity:
 - (b) Where possession of any document referred to in paragraph (a) of this subsection is required by the immigration officer for any travel booking or otherwise for the purpose of effecting the person's deportation from New Zealand, require the person on whom the order is served to surrender to the immigration officer, or to give to the officer written authority to uplift from any other person, any such document:
 - (c) Require the person to surrender to the immigration officer, or to give to the officer written authority to uplift from any other person, any travel tickets, or cash or security in lieu of travel tickets, held by or on behalf of that person.
- (3) On producing a written authority given under paragraph (b) or paragraph (c) of subsection (2) of this section, an immigration officer may require any person named in the authority to surrender the document, or the travel tickets or cash or security in lieu of travel tickets, to which the authority relates, and that person shall surrender the document or the tickets or cash or security accordingly notwithstanding anything in any other Act or any rule of law.

- (4) Any travel tickets or cash or security in lieu of travel tickets surrendered to an immigration officer under subsection (2)(c) or subsection (3) of this section may be used by the Crown in or towards effecting the deportation of the person from New Zealand, and, to the extent that they are not so used, shall be returned to the person on that person's departure from New Zealand, or, where appropriate, on the revocation or quashing of the deportation order.

78 Arrest of person subject to deportation order

- (1) Any person in respect of whom a deportation order has been made under section 72 or section 73 of this Act may be arrested at any time by any member of the Police without warrant and placed in custody.
- (2) Where any person is arrested under subsection (1) of this section before the deportation order has been served on that person, the deportation order shall be served on that person as soon as possible.
- (3) Every person who is arrested under this section shall be brought before a District Court Judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court Judge issues a warrant of commitment under section 79 of this Act for the detention of that person in custody.

79 Powers of District Court Judge in relation to persons in custody

- (1) Every person who is taken into custody under section 75 or section 78 of this Act shall be brought before a District Court Judge as soon as possible (and in no case later than 48 hours after the person was taken into custody).
- (2) Where any person is brought before a District Court Judge under subsection (1) of this section, the following provisions shall apply:
 - (a) The Judge shall, if satisfied on the balance of probabilities that the person is not the person named in the deportation order, order that the person be released from custody forthwith:

- (b) Except in a case to which paragraph (a) of this subsection applies, the Judge shall—
 - (i) Issue a warrant of commitment in the prescribed form for the detention of the person; or
 - (ii) If satisfied that the release of the person would not be contrary to the public interest, order that the person be released on conditions in accordance with subsection (4) of this section, pending the person's deportation from New Zealand or an order of the High Court under section 84 of this Act.
- (3) Every warrant of commitment issued under this section shall authorise the person to whom it is addressed to detain the person named in it until—
 - (a) Required by a member of the Police to deliver up that person in accordance with section 85 of this Act; or
 - (b) Ordered by a District Court Judge under subsection (9)(a) of this section to release that person; or
 - (c) Ordered by the High Court or a Judge of the High Court to release that person.
- (4) Any order for the release of any person under subsection (2)(b) of this section shall be conditional upon the person residing at a specified address and reporting to a Police station, at intervals of not more than 7 days, on such days and at such times and in such manner as the Judge may specify, and may be subject to such other conditions as the Judge may think fit to impose.
- (5) Any condition imposed under subsection (4) of this section may be varied at any time by a District Court Judge on the application of a member of the Police or the person released, after hearing both parties or having allowed such opportunity for both parties to be heard as seems reasonable in all the circumstances, and any such condition shall take effect as so varied.
- (6) Any conditions imposed on a person under subsection (4) of this section, and any variation of such conditions under subsection (5) of this section, shall be notified in writing to the person on that person's release or, as the case may require, as

soon as possible after the variation is made, and the written notice shall—

- (a) Specify the address at which the person is to reside; and
 - (b) Set out any reporting or other conditions imposed; and
 - (c) Include a warning that, if the person fails to reside at the specified address or breaches any reporting or other condition, the person is liable to be arrested without warrant and placed in custody.
- (7) A breach of any condition imposed under subsection (4) of this section, or varied under subsection (5) of this section, shall nullify the order for release, and thereafter the person is liable to be arrested by any member of the Police without warrant and placed in custody.
- (8) Every person who is arrested under subsection (7) of this section shall be brought before a District Court Judge as soon as possible (and in no case later than 48 hours after the person was arrested), and the Judge shall, if satisfied of the breach, issue a warrant of commitment in the prescribed form for the detention of that person in custody pending that person's deportation from New Zealand.
- (9) Where, in respect of any person arrested under section 75 of this Act and subsequently detained pursuant to a warrant of commitment or released on conditions under this section, the Minister decides not to make a deportation order, or fails to make a deportation order within 14 days after the day of the arrest, an immigration officer shall forthwith inform the Registrar of a District Court, and the following provisions shall apply:
- (a) If the person is in custody, a District Court Judge (or, where no Judge is available, the Registrar) shall order that person's release from custody forthwith:
 - (b) If the person was released on conditions, the Judge (or Registrar) shall order that the person shall cease to be bound by those conditions, and the Registrar shall forthwith notify the person accordingly.
- (10) Any conditions imposed on any person in accordance with this section shall lapse, and the person shall cease to be bound by them, when the person leaves New Zealand.

80 Form of custody

- (1) Every person who is placed in custody under section 75 or section 78 or section 79(7) of this Act shall be held in a Police station until that person is brought before a District Court Judge in accordance with section 79(1) of this Act.
- (2) Every person who is to be detained in custody pursuant to a warrant of commitment issued under section 79 of this Act shall be held in a prison.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

81 Appeal to High Court against deportation order

- (1) Any person in respect of whom a deportation order made under section 73 of this Act is in force may appeal to the High Court against the making of the order.
- (2) Every such appeal shall be brought within 21 days after the day on which the order is served on the person named in it.
- (3) On any appeal under this section, the High Court may confirm or quash the deportation order, as it thinks fit.
- (4)
- (5) The decision of the High Court on any appeal under this section shall be final and conclusive.
- (6) Except as expressly provided in this section or in regulations made under this Act, the High Court may regulate its procedure on any appeal under this section in such manner as it thinks fit.

Subsection (4) was repealed, as from 15 August 1991, by section 3(4) Judicature Amendment Act 1991 (1991 No 60).

82 Powers of Judge to protect security

- (1) Without limiting the generality of subsection (6) of section 81 of this Act, in respect of any appeal under that section, a Judge of the High Court may, if the Judge is satisfied that it is in the interests of security to do so, make any one or more of the following orders:
 - (a) An order forbidding publication of any report or account of the whole or any part of—
 - (i) The evidence adduced; or

- (ii) The submissions made:
 - (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) An order excluding all or any persons other than the appellant, the respondent, any barrister or solicitor engaged in the proceedings, and any officer of the Court from the whole or any part of the proceedings.
- (2) For the purposes of subsection (1) of this section, **security** means the protection of New Zealand, or any person, property, or thing within New Zealand, from acts of terrorism.
- (3) Any order made under paragraph (a) or paragraph (b) of subsection (1) of this section—
 - (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; and
 - (c) If it is made permanently, may be reviewed by the Court at any time.
- (4) The breach of any order made under subsection (1) of this section, or any evasion or attempted evasion of it, may be dealt with as contempt of Court.
- (5) Nothing in this section shall limit—
 - (a) Any other power of the Court to hear proceedings in private or to exclude any person from the Court or to punish any contempt of Court; or
 - (b) The provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings.

83 Deportation order not to be executed pending appeal, etc

- (1) No deportation order made under section 73 of this Act shall be executed—
 - (a) Except at the request of the person named in the order,—
 - (i) Within 21 days after it is served on the person to whom it applies; or
 - (ii) While any appeal under section 81 of this Act is pending; or
 - (b) Subject to section 55 of the Parole Act 2002, while the person is undergoing imprisonment in a prison.

- (2) For the purposes of subsection (1) of this section, an appeal is pending from the time when it is lodged until the time when the decision on the appeal is notified to the appellant, or (where appropriate) the time when the appellant withdraws the appeal.

Subsection (1)(b) was amended, as from 1 September 1993, by section 52 Criminal Justice Amendment Act 1993 (1993 No 43) by substituting the expression “section 96” for the expression “section 92”.

Subsection (1)(b) was amended, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10), by substituting “section 55 of the Parole Act 2002” for “section 96 of the Criminal Justice Act 1985”. *See* clause 2 Parole Act Commencement Order 2002 (2002/177).

Subsection (1)(b) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

84 Procedure where appeal successful

In any case where, on an appeal under section 81 of this Act, the High Court quashes the deportation order, the Court shall order the immediate release of the appellant from custody or (as the case may require) from any conditions imposed under section 79 of this Act.

85 Execution of deportation order where deportee in custody pursuant to warrant of commitment

- (1) This section applies to any person in respect of whom a deportation order made under section 72 or section 73 of this Act is in force and who is held in custody pursuant to a warrant of commitment issued under section 79 of this Act pending that person’s deportation from New Zealand.
- (2) Subject to section 83 of this Act, when a craft becomes available to take any person to whom this section applies from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, the manager or other officer in charge of the prison in which that person is detained in custody shall, on being required in writing to do so by a member of the Police, deliver the person to whom the warrant applies into the custody of the member of the Police, who shall escort the person, or arrange for the person to be escorted, to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.

- (3) If, for any reason, that craft ceases to be available to take that person from New Zealand or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall be returned to the custody of the manager or other person to whom the warrant of commitment was addressed, and for that purpose that warrant shall be deemed still to be of full force and effect.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (2) and (3) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

86 Execution of deportation order where deportee serving sentence in prison

- (1) This section applies to any person in respect of whom a deportation order made under section 72 or section 73 of this Act is in force, and who is in a prison undergoing imprisonment.
- (2) Subject to section 83 of this Act, on the date of the proposed release of a person to whom this section applies the manager or other officer in charge of the prison shall, if called upon by any member of the Police to do so, instead of releasing that person, deliver the person into the custody of the member of the Police, who shall—
- (a) If a craft is available within 24 hours to take the person from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, escort the person, or arrange for the person to be escorted, to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand; or
- (b) If no craft is available within 24 hours to take the person from New Zealand, or if the craft that was so available ceases to be so available or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, bring the person before a District Court Judge, in which case the provisions of section

79 of this Act, with any necessary modifications, shall apply.

The heading to section 86 was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (1) and (2) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

87 Execution of deportation order where deportee not in custody

- (1) This section applies to any person in respect of whom a deportation order made under section 72 or section 73 of this Act is in force and who is not in custody.
- (2) Subject to section 83 of this Act, when a craft becomes available to take any person to whom this section applies from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, any member of the Police may, not earlier than 72 hours before the time at which the craft is due to leave New Zealand, arrest that person without warrant, detain that person in custody until it is time to escort that person, or arrange for that person to be escorted, to the seaport or airport, and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.
- (3) If, for any reason, the craft ceases to be available to take the person from New Zealand within the period of 72 hours or the craft is, or is likely to be, delayed beyond that period, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall either be released from custody or be brought before a District Court Judge, in which latter case the provisions of section 79 of this Act shall apply with any necessary modifications.
- (4) Any person who is released under subsection (3) of this section, or has been released on conditions in accordance with section 79 of this Act, shall remain subject to any conditions imposed on that person under that section and liable to be dealt

with in accordance with the foregoing provisions of this section, and any person who is ordered to be detained under that section shall thereafter be liable to be dealt with in accordance with the provisions of section 85 of this Act.

88 Permit deemed cancelled where holder deported

Where the holder of any permit is deported under this Part of this Act, the permit, and any returning resident's visa held by the holder of the permit, shall be deemed to be cancelled.

Transitional provisions

89 Deportation orders made by Minister under previous Act

- (1) This section applies to every order signed by the Minister, at any time before the commencement of this Act, under section 22(3) of the Immigration Act 1964 in respect of any person who has not left New Zealand in accordance with the order, being an order that was still in force immediately before that commencement.
- (2) Every order to which this section applies shall be deemed for the purposes of this Act and section 55 of the Parole Act 2002 to be a deportation order made under this Part of this Act, and, subject to the succeeding provisions of this section, the provisions of this Part of this Act shall apply accordingly with any necessary modifications.
- (3) If any order to which this section applies, or a copy of any such order, or written notice of the making of any such order, was served before the commencement of this Act on the person in respect of whom the order was made, the following provisions shall apply:
 - (a) The order shall be deemed to have been served under and in accordance with section 77 of this Act:
 - (b) Where any appeal under section 22G of the Immigration Act 1964 was properly brought but not determined before the commencement of this Act, it shall be deemed to have been brought under section 81 of this Act and shall be determined accordingly:
 - (c) Where the order, copy, or notice was served more than 28 days before the commencement of this Act and no

appeal was brought under section 22G of the Immigration Act 1964, no appeal against the order shall lie under section 81 of this Act:

- (d) Where the order, copy, or notice was served less than 28 days before the commencement of this Act and no appeal was brought under section 22G of the Immigration Act 1964 before that commencement, an appeal may be brought under section 81 of this Act at any time within 28 days after the date of that service.

Subsection (2) was amended, as from 1 September 1993, by section 52 Criminal Justice Amendment Act 1993 (1993 No 43) by substituting the expression “section 96” for the expression “section 92”.

Subsection (2) was amended, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10), by substituting “section 55 of the Parole Act 2002” for “section 96 of the Criminal Justice Act 1985”. See clause 2 Parole Act Commencement Order 2002 (2002/177).

90 Persons ordered to leave New Zealand pursuant to Order in Council under previous Act

- (1) This section applies to every Order in Council made at any time before the commencement of this Act under section 22(2) of the Immigration Act 1964 in respect of any person who has not left New Zealand in accordance with the Order in Council, being an order that was still in force immediately before the commencement of this Act.
- (2) Every Order in Council to which this section applies shall be deemed for the purposes of this Act and section 55 of the Parole Act 2002 to be an Order in Council made under section 72 of this Act and, subject to subsection (3) of this section, the provisions of this Part of this Act shall apply accordingly with any necessary modifications.
- (3) If any order to which this section applies, or a copy of any such order, or written notice of the making of any such order, was served before the commencement of this Act on the person in respect of whom the order was made, the order shall be deemed to have been served under and in accordance with section 77 of this Act.

Subsection (2) was amended, as from 1 September 1993, by section 52 Criminal Justice Amendment Act 1993 (1993 No 43) by substituting the expression “section 96” for the expression “section 92”.

Subsection (2) was amended, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10), by substituting “section 55 of the Parole Act 2002” for “section 96 of the Criminal Justice Act 1985”. See clause 2 Parole Act Commencement Order 2002 (2002/177).

Part 4

Deportation of criminal offenders

91 Deportation of holders of residence permits following conviction

- (1) Subject to sections 93, 93A, and 112, the Minister may, by order signed by the Minister, order the deportation from New Zealand of any holder of a residence permit who—
- (a) Is convicted (whether in New Zealand or not) of an offence committed at any time when that person was in New Zealand unlawfully or was the holder of a temporary permit or was exempt under this Act from the requirement to hold a permit, or within 2 years after that person is first granted a residence permit, being an offence for which the Court has power to impose imprisonment for a term of 3 months or more; or
 - (b) Is convicted (whether in New Zealand or not) of 2 offences committed within 5 years after that person is first granted a residence permit, each of those offences being an offence for which the Court has power to impose imprisonment for a term of 12 months or more; or
 - (c) Is convicted (whether in New Zealand or not) of an offence committed within 5 years after that person is first granted a residence permit and is 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
 - (ca) is convicted of an offence against section 39(1) or section 39A(1) of this Act committed within 10 years after the person is first granted a residence permit; or
 - (d) Is convicted (whether in New Zealand or not) of an offence committed within 10 years after that person is first granted a residence permit and is sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more.

- (2) For the purposes of this section, 93A, and 112, a person is first granted a residence permit—
 - (a) On the first occasion on which that person is granted such a permit; or
 - (b) If that person is granted such a permit on any subsequent occasion following a continuous period of absence from New Zealand of at least 5 years, on the last such subsequent occasion.
- (3) For the purposes of this section and section 112(1) of this Act, a person who is deemed by subsection (1) of section 44 of this Act to be the holder of a residence permit, and a person who is the holder of a permit that is deemed by subsection (2) of that section to be a residence permit, shall be deemed to have been first granted a residence permit—
 - (a) On the first occasion on which that person entered New Zealand lawfully for the purpose of permanent residence; or
 - (b) If that person entered New Zealand lawfully for that purpose on any subsequent occasion following a continuous period of absence from New Zealand of at least 5 years, on the last such subsequent occasion.
- (4) The periods of 2 years prescribed by paragraph (a) of subsection (1) of this section, 5 years prescribed by paragraphs (b) and (c) of that subsection, and 10 years prescribed by paragraph (d) of that subsection shall be reckoned, in relation to any person, exclusive of any time spent by that person in prison following conviction for any offence.
- (5) The provisions of this section shall apply, in relation to the holder of a residence permit,—
 - (a) Whether that person is first granted a permit after the commencement of this Act or was first granted a permit before that commencement; and
 - (b) Whether any relevant offence was committed by that person before or after the commencement of this Act, and whether that person was convicted of such an offence before or after the commencement of this Act.
- (6) Paragraphs (c) and (d) of subsection (1) of this section apply—
 - (a) Whether the sentence is of immediate effect or is deferred or is suspended in whole or in part:

- (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:
 - (c) Where 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.
- (7) The Minister may at any time revoke a deportation order made under this section.

Subsection (1) was amended, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39) by substituting the expression “, 93A, and 112” for “and 112 of this Act”.

Subsection (1)(ca) was inserted, as from 18 June 2002, by section 6 Immigration Amendment Act 2002 (2002 No 22).

Subsection (2) was amended, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39) by substituting the expression “, 93A, and 112” for “and 112 of this Act”.

92 Deportation of exempt persons following conviction

- (1) In this section, **exempt person** means a person who is exempt under this Act from the requirement to hold a permit—
- (a) By virtue of any of the provisions of paragraphs (b) to (e) of section 11(1) of this Act; or
 - (b) By virtue of an exemption under section 12 of this Act.
- (2) Subject to section 93, 93A, and 112, the Minister may, by order signed by the Minister, order the deportation from New Zealand of any exempt person who—
- (a) Is convicted (whether in New Zealand or not) of an offence committed within 2 years after that person first arrives in New Zealand, being an offence for which the Court has power to impose imprisonment for a term of 3 months or more; or
 - (b) Is convicted (whether in New Zealand or not) of 2 offences committed within 5 years after that person first arrives in New Zealand, each of those offences being an offence for which the Court has power to impose imprisonment for a term of 12 months or more; or

- (c) Is convicted (whether in New Zealand or not) of an offence committed within 5 years after that person first arrives in New Zealand and is 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
 - (ca) is convicted of an offence against section 39(1) or section 39A(1) of this Act committed within 10 years after the person first arrives in New Zealand; or
 - (d) Is convicted (whether in New Zealand or not) of an offence committed within 10 years after that person first arrives in New Zealand and is sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more.
- (3) For the purposes of this section and section 112(2) of this Act, a person first arrives in New Zealand—
 - (a) On the first occasion on which that person arrives in New Zealand; or
 - (b) If that person arrives in New Zealand on any subsequent occasion following a continuous period of absence from New Zealand of at least 5 years, on the last such subsequent occasion.
- (4) The periods of 2 years prescribed by paragraph (a) of subsection (2) of this section, 5 years prescribed by paragraphs (b) and (c) of that subsection, and 10 years prescribed by paragraph (d) of that subsection shall be reckoned, in relation to any exempt person, exclusive of any time spent by that person in prison following conviction for any offence.
- (5) The provisions of this section shall apply, in relation to an exempt person,—
 - (a) Whether that person first arrives in New Zealand after the commencement of this Act or first arrived in New Zealand before that commencement, and whether or not that person was, at the time of arrival, an exempt person; and
 - (b) Whether any relevant offence was committed by that person before or after the commencement of this Act, and whether that person was convicted of such an offence before or after the commencement of this Act.
- (6) Paragraphs (c) and (d) of subsection (2) of this section apply—

- (a) Whether the sentence is of immediate effect or is deferred or is suspended in whole or in part:
 - (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:
 - (c) Where 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.
- (7) The Minister may at any time revoke a deportation order made under this section.

Subsection (2) was amended, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39) by substituting the expression “, 93A, and 112” for “and 112 of this Act”.

Subsection (2)(ca) was inserted, as from 18 June 2002, by section 7 Immigration Amendment Act 2002 (2002 No 22).

93 No deportation order after certain lapse of time

- (1) Subject to subsection (2) of this section, no deportation order may be made under section 91 or section 92 of this Act in respect of any person after the expiry of 6 months from the following date:
- (a) Where the person is sentenced to imprisonment for a single offence that renders the person liable to deportation, the date on which the person is released from imprisonment; or
 - (b) Where the person is not so sentenced, the date on which the person is convicted of the offence that renders the person liable to deportation; or
 - (c) Where the person is convicted of 2 offences that together render that person liable to deportation, the latest of the following dates:
 - (i) The date on which the person is convicted of the earlier offence:
 - (ii) The date on which the person is convicted of the later offence:

- (iii) The date on which the person is released from imprisonment in respect of the earlier offence:
 - (iv) The date on which the person is released from imprisonment in respect of the later offence.
- (2) Where, before the expiry of the period of 6 months referred to in subsection (1) of this section, the person is sentenced to imprisonment in respect of any further offence or offences, subsection (1) of this section shall apply as if the further offence or offences were the offence or offences that rendered the person liable to deportation.

93A Right of victims to make submissions on making of deportation order

- (1) In determining whether to make a deportation order under section 91 or section 92, the Minister must have regard to any written submissions made by a victim of an offence or offences of which the person who would be the subject of the order has been convicted and from which his or her liability to deportation arises.
- (2) The Minister must, on a request for the purpose, make available to a solicitor or counsel who is acting for a person who would be the subject of the order (if any) a copy of all written submissions made by the victim.
- (3) The Minister, or a solicitor or counsel 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 keep a copy of any of those submissions.
- (4) Despite subsections (2) and (3), the Minister may withhold from the person and every solicitor or counsel acting for the person (if any) any part of the victim's written submissions if, in the Minister's opinion, that withholding of the part is necessary to protect the physical safety or security of the victim concerned.
- (5) Despite subsection (1), the Minister must not have regard to any part of the victim's submissions that is withheld under subsection (4).
- (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.

Section 93A was inserted, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39).

94 Certain matters to be specified in deportation order

Every deportation order made under section 91 or section 92 of this Act—

- (a) Shall state the provision pursuant to which it is made; and
- (b) Shall state the ground or grounds on which it is made; and
- (c) Shall include notice of the right of appeal conferred by section 104 of this Act and the manner in which that right is to be exercised.

95 Currency of deportation order

Every deportation order made under section 91 or section 92 of this Act shall be in force from the date on which it is served in accordance with section 96 of this Act, and shall, unless it is quashed or revoked in accordance with any of the provisions of this Act, remain in force until the person named in the order leaves New Zealand.

96 Service of deportation order

- (1) A deportation order made under section 91 or section 92 of this Act shall be served on the person named in the order by personal service only.
- (2) At any time after a deportation order has been served under subsection (1) of this section, an immigration officer may do all or any of the following things:
 - (a) Require the person on whom the order is served to produce for inspection by the immigration officer that person's passport or certificate of identity:
 - (b) Where possession of any document referred to in paragraph (a) of this subsection is required by the immigration officer for any travel booking or otherwise for the purpose of effecting that person's deportation from New Zealand, require the person on whom the order is served to surrender to the immigration officer, or to give to the

officer written authority to uplift from any other person, any such document:

- (c) Require that person to surrender to the immigration officer, or to give to the officer written authority to uplift from any other person, any travel tickets, or cash or security in lieu of travel tickets, held by or on behalf of that person.
- (3) On producing a written authority given under paragraph (b) or paragraph (c) of subsection (2) of this section, an immigration officer may require any person named in the authority to surrender the document, or the travel tickets or cash or security in lieu of travel tickets, to which the authority relates, and that person shall surrender the document or the tickets or cash or security accordingly notwithstanding anything in any other Act or any rule of law.
- (4) Any travel tickets or cash or security in lieu of travel tickets surrendered to an immigration officer under subsection (2)(c) or subsection (3) of this section may be used by the Crown in or towards effecting the deportation of the person from New Zealand, and, to the extent that they are not so used, shall be returned to the person on the person's departure from New Zealand, or, where appropriate, on the revocation or quashing of the deportation order.

97 Arrest of person subject to deportation order

- (1) Any person in respect of whom a deportation order has been made under section 91 or section 92 of this Act may be arrested at any time by any member of the Police without warrant and placed in custody.
- (2) Where any person is arrested under subsection (1) of this section before the deportation order has been served on that person, the deportation order shall be served on that person as soon as possible.
- (3) Every person who is arrested under this section shall be brought before a District Court Judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court Judge issues a warrant of commitment under section 99 of this Act for the detention of that person in custody.

98 Person not in custody may be subject to residence and reporting requirements pending deportation

- (1) Without limiting section 97 of this Act, any member of the Police may, in respect of any person (in this section referred to as the deportee) on whom any deportation order made under section 91 or section 92 of this Act has been served and who is not in custody, require the deportee to—
 - (a) Specify a place at which the deportee agrees to reside pending deportation from New Zealand;
 - (b) Report to a Police station on such days and at such times and in such manner as the member of the Police may specify.
- (2) A member of the Police may at any time vary any residence or reporting requirements under subsection (1) of this section—
 - (a) At the request of the deportee, by altering the place at which the deportee has agreed to reside; or
 - (b) By altering or cancelling any requirement to report to a Police station.
- (3) The imposition or variation of any residence or reporting requirements under this section shall be by written notice to the deportee, which notice shall—
 - (a) Specify the address of the place at which the deportee has agreed to reside; and
 - (b) List any reporting requirements made under subsection (1)(b) or subsection (2)(b) of this section; and
 - (c) Include a warning that, if the deportee fails to reside at the specified place or breaches any reporting requirement, the deportee is liable to be arrested without warrant and placed in custody.
- (4) If the deportee—
 - (a) Fails, when required by a member of the Police under subsection (1) of this section, to specify a place at which the deportee agrees to reside; or
 - (b) When so required, specifies a place that, on reasonable grounds, is unacceptable to the member of the Police; or
 - (c) Without reasonable excuse, fails to reside at the place specified in a written notice given under subsection

- (3) of this section, or to comply with any reporting requirement set out in such a notice,—
the deportee is liable to be arrested by any member of the Police without warrant and placed in custody.
- (5) Every person who is arrested under subsection (4) of this section shall be brought before a District Court Judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court Judge issues a warrant of commitment under section 99 of this Act for the detention of the person in custody.
- (6) Where a deportee who is subject to residence or reporting requirements under this section leaves New Zealand, those requirements shall lapse and the deportee shall cease to be bound by them.

99 Powers of District Court Judge in relation to deportee in custody

- (1) Every person who is arrested under section 97 or section 98 or section 101 of this Act shall be brought before a District Court Judge as soon as possible (and in no case later than 48 hours after the person was arrested) to determine whether that person should be detained in custody, or released from custody, pending that person's deportation from New Zealand.
- (2) Where any person is brought before a District Court Judge under subsection (1) of this section, the following provisions shall apply:
- (a) If satisfied on the balance of probabilities that the person is not the person named in the deportation order, the Judge shall order that the person be released from custody forthwith:
 - (b) Except in a case to which paragraph (a) of this subsection applies, the Judge may issue a warrant of commitment in the prescribed form for the detention in custody of that person if, and only if, the Judge is satisfied on the balance of probabilities that the person is likely to abscond otherwise than by leaving New Zealand:
 - (c) If the Judge does not release the person under paragraph (a) of this subsection, or issue a warrant of commitment under paragraph (b) of this subsection, the Judge shall

order that the person be released on conditions in accordance with section 101 of this Act.

100 Persons detained pursuant to warrant of commitment

- (1) Every warrant of commitment issued under section 99(2)(b) of this Act shall authorise the person to whom it is addressed to detain the person named in it until required by a member of the Police to deliver up that person in accordance with section 108 of this Act or until ordered by the Tribunal under section 107(a) of this Act, or by the High Court or a Judge thereof, to release the person.
- (2) Where a person—
 - (a) Is detained in custody pursuant to a warrant of commitment issued under section 99 of this Act; and
 - (b) Is not deported from New Zealand within 28 days after the date on which the warrant of commitment was issued,—the person shall again be brought before a District Court Judge, who shall consider the question of that person's continued custody or release.
- (3) Thereafter, while the person remains in custody, the person shall be brought before a District Court Judge at intervals of not more than 7 days for further consideration of that question.
- (4) If, in any case to which subsection (2) or subsection (3) of this section applies, the Judge considers that—
 - (a) There appears likely to be further delay in completing any proceedings then pending in respect of the deportation order or (as the case may require) in executing the order; and
 - (b) Such delay is in no way attributable to any default by the person to whom the deportation order applies or to any other person acting on that person's behalf; and
 - (c) That person is unlikely to abscond otherwise than by leaving New Zealand,—the Judge may order that the person be released on conditions in accordance with section 101 of this Act.

101 Persons not detained pursuant to warrant of commitment to be released on conditions pending deportation

- (1) Any order for the release of a person under section 99(2)(c) or section 100(4) of this Act shall be conditional upon the person residing at a specified address, and reporting to a Police station at intervals of not more than 7 days on such days and at such times and in such manner as the Judge may specify, and may be subject to such other conditions as the Judge may think fit to impose for the purpose of ensuring compliance with the residence and reporting conditions.
- (2) Any condition imposed under subsection (1) of this section may be varied at any time by a District Court Judge on the application of a member of the Police or the person released, after hearing both parties or having allowed such opportunity for both parties to be heard as seems reasonable in all the circumstances, and any such condition shall take effect as so varied.
- (3) Any conditions imposed on a person under subsection (1) of this section, and any variation of such conditions under subsection (2) of this section, shall be notified in writing to the person on that person's release or, as the case may require, as soon as possible after the variation is made, and the written notice shall—
 - (a) Specify the address at which the person is to reside; and
 - (b) Set out any reporting or other conditions imposed; and
 - (c) Include a warning that, if the person fails to reside at the specified address or breaches any reporting or other condition, the person is liable to be arrested without warrant and placed in custody.
- (4) A breach of any condition imposed under subsection (1) of this section or varied under subsection (2) of this section shall nullify the order for release, and thereafter the person is liable to be arrested by any member of the Police without warrant and placed in custody.
- (5) Every person who is arrested under subsection (4) of this section shall be brought before a District Court Judge as soon as possible, and shall in no case be detained for more than 48 hours unless, within that period, a District Court Judge issues

a warrant of commitment under section 99 of this Act for the detention of that person in custody.

- (6) Any conditions imposed on any person in accordance with this section shall lapse, and the person shall cease to be bound by them, when the person leaves New Zealand.

102 Form of custody

- (1) Every person who is arrested under section 97 or section 98 or section 101(4) of this Act shall be held in a Police station until the person is brought before a District Court Judge in accordance with section 99 of this Act.
- (2) Every person who is to be detained in custody pursuant to a warrant of commitment issued under section 99 of this Act shall be held in a prison.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “a prison” for “a penal institution, and shall be treated for the purposes of the Penal Institution Act 1954 as if that person were an inmate awaiting trial”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

103 Deportation Review Tribunal

- (1) For the purposes of this Act, there shall continue to be a tribunal called the Deportation Review Tribunal.
- (2) The Tribunal shall consist of—
- (a) One member, being a barrister or solicitor of the High Court who has held a practising certificate as such for not less than 5 years, who shall be appointed as the presiding member of the Tribunal;
 - (b) Two other members.
- (3) Every member of the Tribunal shall be appointed by the Governor-General on the recommendation of the Minister of Justice.
- (4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of being a member of the Tribunal.
- (5) The chief executive of the Department for Courts shall furnish such secretarial, recording, and other services as may be

necessary to enable the Tribunal to exercise its functions and powers.

- (6) The provisions of Schedule 2 to this Act shall have effect as to the constitution and proceedings of the Tribunal and other matters relating to the Tribunal.

Subsection (2)(a) was substituted, as from 16 December 1988, by section 2 Immigration Amendment 1988 (1988 No 191).

The reference to the “State Sector Act 1988” in subsection (4) was substituted, as from 1 April 1988, for a reference to the “State Services Act 1962” pursuant to section 88(1) State Sector Act 1988 (1988 No 20).

Subsection (5) was amended, as from 1 July 1995, by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting “chief executive of the Department for Courts” for “Secretary for Justice”.

104 Appeals to Tribunal against deportation orders

- (1) Any person in respect of whom a deportation order is made under section 91 or section 92 of this Act may appeal to the Tribunal for an order quashing the deportation order.
- (2) Every such appeal shall be brought within 21 days after the day on which the order is served in accordance with section 96 of this Act.
- (3) A person who appeals under this section shall supply to the Tribunal an address in New Zealand at which any communication relating to the appeal may be served on or supplied to that person.
- (4) The provisions of Schedule 3 to this Act shall have effect with respect to the procedure to be followed on appeals under this section.
- (5) An appellant may at any time withdraw an appeal under this section by filing written notice of the withdrawal in the office of the Tribunals Division of the Department for Courts in Wellington, whereupon an officer of the Tribunals Division shall notify the Minister accordingly.

Subsection (5) was amended, as from 1 July 1995, by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting “Department for Courts” for “Department of Justice”.

105 Tribunal may quash deportation order

- (1) On an appeal under section 104 of this Act, the Tribunal may, by order, quash the deportation order if it is satisfied that it

would be unjust or unduly harsh to deport the appellant from New Zealand, and that it would not be contrary to the public interest to allow the appellant to remain in New Zealand.

- (1A) Without limiting subsection (2), in deciding whether it would be unjust or unduly harsh to deport the appellant from New Zealand, and whether it would not 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, in accordance with section 105A.
- (2) In deciding whether or not it would be unjust or unduly harsh to deport the appellant from New Zealand, the Tribunal shall have regard to the following matters:
- (a) The appellant's age:
 - (b) The length of the period during which the appellant has been in New Zealand lawfully:
 - (c) The appellant's personal and domestic circumstances:
 - (d) The appellant's work record:
 - (e) The nature of the offence or offences of which the appellant has been convicted and from which the liability for deportation arose:
 - (f) The nature of any other offences of which the appellant has been convicted:
 - (g) The interests of the appellant's family:
 - (h) Such other matters as the Tribunal considers relevant.

Subsection (1A) was inserted, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39).

105A Right of victims to make submissions on appeal

- (1) In determining an appeal under section 104, 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 deportation order arose; and
 - (b) any relevant written submissions made by a victim to the Minister under section 93A.
- (2) In addition to, or instead of, making written submissions under this section, the victim may, with leave of the Tribunal, make oral submissions to the Tribunal on the appeal at the hearing of it.

- (3) The Tribunal must make available to a solicitor or counsel acting for the appellant, on a request for the purpose, a copy of all written submissions made by the victim under section 93A or this section.
- (4) The Tribunal, or a solicitor or counsel 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 93A or this section. However, the appellant is not entitled to keep a copy of any of those submissions.
- (5) Despite subsections (3) and (4), the Tribunal may withhold from the appellant and every solicitor or counsel 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:
 - (a) any part of the victim's written submissions under section 93A, whether or not that part was withheld by the Minister under section 93A(4):
 - (b) any part of the victim's written submissions under this section.
- (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.

Section 105A was inserted, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39).

106 Deportation order not to be executed pending appeal, etc

- (1) No deportation order made under section 91 or section 92 of this Act shall be executed,—
 - (a) Except at the request of the person named in the order,—
 - (i) Within 21 days after it is served on the person named in it; or
 - (ii) While any appeal under section 104 of this Act is pending; or
 - (iii) Within 28 days after any such appeal is dismissed; or
 - (iv) While any appeal under section 117 of this Act is pending; or

- (b) Subject to section 55 of the Parole Act 2002, while that person is undergoing imprisonment in a prison.
- (2) For the purposes of subsection (1) of this section, an appeal is pending from the time when it is lodged until the time when the decision on the appeal is notified to the appellant, or (where appropriate) the time when the appellant withdraws the appeal.

Subsection (1)(b) was amended, as from 1 September 1993, by section 52 Criminal Justice Amendment Act 1993 (1993 No 43) by substituting the expression “section 96” for the expression “section 92”.

Subsection (1)(b) was amended, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10), by substituting “section 55 of the Parole Act 2002” for “section 96 of the Criminal Justice Act 1985”. See clause 2 Parole Act Commencement Order 2002 (2002/177).

Subsection (1)(b) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

107 Procedure where appeal successful

In any case where, on an appeal under section 104 of this Act, the Tribunal quashes the deportation order, the following provisions shall apply:

- (a) If the appellant is in custody pursuant to a warrant of commitment issued under section 99 of this Act, the Tribunal shall order the release of the appellant from custody forthwith:
- (b) If the appellant has been released on conditions in accordance with section 101 of this Act, the appellant shall cease to be bound by those conditions, and the Tribunal shall forthwith notify the person accordingly:
- (c) If the appellant is in custody under this Part of this Act otherwise than pursuant to a warrant of commitment, the person shall be released from custody forthwith:
- (d) If the appellant is subject to residence or reporting requirements under section 98 of this Act, the appellant shall cease to be bound by those requirements, and an immigration officer shall forthwith notify the person, and the Police, accordingly.

108 Execution of deportation order where deportee in custody pursuant to warrant of commitment

- (1) This section applies to any person in respect of whom a deportation order made under section 91 or section 92 of this Act is in force and who is held in custody pursuant to a warrant of commitment issued under section 99 of this Act pending that person's deportation from New Zealand.
- (2) Subject to section 106 of this Act, when a craft becomes available to take any person to whom this section applies from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, the manager or other officer in charge of the prison in which that person is detained in custody shall, on being requested in writing to do so by any member of the Police, deliver the person to whom the warrant applies into the custody of the member of the Police, who shall escort the person, or arrange for the person to be escorted, to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.
- (3) If, for any reason, the craft ceases to be available to take the person from New Zealand or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall be returned to the custody of the person to whom the warrant of commitment was addressed, and for that purpose that warrant shall be deemed still to be of full force and effect.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting "manager" for "superintendent". See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting "prison" for "penal institution". See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

109 Execution of deportation order where deportee serving sentence in prison

- (1) This section applies to any person in respect of whom a deportation order made under section 91 or section 92 of this Act is in force and who is in a prison undergoing imprisonment.
- (2) Subject to section 106 of this Act, on the date of the proposed release of a person to whom this section applies the manager

or other officer in charge of the prison shall, if called upon by a member of the Police to do so, instead of releasing that person, deliver the person into the custody of the member of the Police, who shall,—

- (a) If a craft is available within 24 hours to take the person from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, escort the person, or arrange for the person to be escorted, to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand; or
- (b) If no craft is available within 24 hours to take the person from New Zealand, or if the craft that was so available ceases to be so available or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, bring the person before a District Court Judge, in which case the provisions of section 99 of this Act, with any necessary modifications, shall apply.

The heading to section 109 were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (1) and (2) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

110 Execution of deportation order where deportee not in custody

- (1) This section applies to any person in respect of whom a deportation order made under section 91 or section 92 of this Act is in force and who is not in custody.
- (2) Subject to section 106 of this Act, when a craft becomes available to take any person to whom this section applies from New Zealand, and it is practicable in all the circumstances for the person to leave on that craft, any member of the Police may, not earlier than 72 hours before the time at which the craft is

due to leave New Zealand, arrest that person without warrant, detain that person in custody until it is time to escort that person, or arrange for that person to be escorted, to the seaport or airport, and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.

- (3) If, for any reason, the craft ceases to be available to take the person from New Zealand within the period of 72 hours or the craft is, or is likely to be, delayed beyond that period, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall either be released from custody or be brought before a District Court Judge, in which latter case the provisions of section 99 of this Act shall apply with any necessary modifications.
- (4) Any person who is released under subsection (3) of this section, or has been released on conditions in accordance with section 101 of this Act, shall remain subject to any requirements or conditions imposed on the person in accordance with section 98 or section 101 of this Act and liable to be dealt with in accordance with the foregoing provisions of this section, and any person who is ordered to be detained under section 99 of this Act shall thereafter be liable to be dealt with in accordance with the provisions of section 108 of this Act.

111 Permit deemed cancelled where holder deported

Where the holder of any residence permit is deported under this Part of this Act, the permit, and any returning resident's visa held by the holder of the permit, shall be deemed to be cancelled.

Transitional provisions

112 Deportation order not to be made in certain cases

- (1) No deportation order shall be made under section 91(1)(d) of this Act in respect of any person who was first granted a residence permit before the commencement of this Act.
- (2) No deportation order shall be made under section 92(2)(d) of this Act in respect of any person who first arrived in New Zealand before the commencement of this Act.

113 Deportation orders made under previous Act

- (1) This section applies to every order signed by the Minister, at any time before the commencement of this Act, under section 22(1) of the Immigration Act 1964 in respect of any person who has not left New Zealand in accordance with the order, being an order that was still in force immediately before that commencement, and applies to any such order whether or not the person named in the order is a person in respect of whom a deportation order could be made under section 91 or section 92 of this Act.
- (2) Every order to which this section applies shall be deemed for the purposes of this Act and section 55 of the Parole Act 2002 to be a deportation order made under this Part of this Act, and, subject to the succeeding provisions of this section, the provisions of this Part of this Act shall apply accordingly with any necessary modifications.
- (3) If any order to which this section applies, or a copy of any such order, or written notice of the making of any such order, was served before the commencement of this Act on the person in respect of whom the order was made, the following provisions shall apply:
 - (a) The order shall be deemed to have been served under and in accordance with section 96 of this Act:
 - (b) Where any appeal under section 22C of the Immigration Act 1964 was properly brought but not determined before the commencement of this Act, it shall be deemed to have been brought under section 104 of this Act and shall be determined accordingly:
 - (c) Where the order, copy, or notice was served more than 28 days before the commencement of this Act and no appeal was brought under section 22C of the Immigration Act 1964, no appeal against the order shall lie under section 104 of this Act:
 - (d) Where the order, copy, or notice was served less than 28 days before the commencement of this Act and no appeal was brought under section 22C of the Immigration Act 1964 before that commencement, an appeal may be brought under section 104 of this Act at any time within 28 days after the date of that service:

- (e) Where any appeal under section 22F of the Immigration Act 1964 was properly brought but not determined before the commencement of this Act, it shall be deemed to have been brought under section 117 of this Act and shall be determined accordingly:
- (f) Where any appeal under section 22C of the Immigration Act 1964 was determined less than 14 days before the commencement of this Act and no appeal was brought under section 22F of that Act before that commencement, an appeal may be brought under section 117 of this Act at any time within 28 days after the date of that determination.

Subsection (2) was amended, as from 1 September 1993, by section 52 Criminal Justice Amendment Act 1993 (1993 No 43) by substituting the expression “section 96” for the expression “section 92”.

Subsection (2) was amended, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10), by substituting “section 55 of the Parole Act 2002” for “section 96 of the Criminal Justice Act 1985”. *See* clause 2 Parole Act Commencement Order 2002 (2002/177).

114 Members of Deportation Review Tribunal

- (1) The person holding office immediately before the commencement of this Act as the Chairman of the Deportation Review Tribunal established under section 22B of the Immigration Act 1964 shall continue in office as if, at the time of that person’s appointment, that person had been appointed as the presiding member of the Tribunal under this Act.
- (2) The persons holding office immediately before the commencement of this Act as members of the Deportation Review Tribunal established under section 22B of the Immigration Act 1964 shall continue in office as if, at the time of their appointment, they had been appointed as members of the Tribunal under this Act.

Part 4A

Special procedures in cases involving security concerns

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114A Object of Part

The object of this Part is to—

- (a) Recognise that the New Zealand Security Intelligence Service holds classified security information that is relevant to the administration of this Act; and
- (b) Recognise that such classified security information should continue to be protected in any use of it under this Act or in any proceedings which relate to such use; and
- (c) Recognise that the public interest requires nevertheless that such information be used for the purposes of this Act, but equally that fairness requires some protection for the rights of any individual affected by it; and
- (d) Establish that the balance between the public interest and the individual's rights is best achieved by allowing an independent person of high judicial standing to consider the information and approve its proposed use; and
- (e) Recognise that the significance of the information in question in a security sense is such that its approved use should mean that no further avenues are available to the individual under this Act and that removal or deportation, as the case may require, can normally proceed immediately; and thus
- (f) Ensure that persons covered by this Act who pose a security risk can where necessary be effectively and quickly detained and removed or deported from New Zealand.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114B Definitions

- (1) In this Part, unless the context otherwise requires—

Certificate, or **security risk certificate**, means a certificate made under section 114D

Classified security information means information about the threat to security, public order, or public interest posed by an identifiable individual which is held by the New Zealand Security Intelligence Service, being information which, in the

opinion of the Director, cannot be divulged to the individual in question or to other persons because both—

- (a) The information—
 - (i) Might lead to the identification of, 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 New Zealand Security Intelligence Service; or
 - (ii) 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 Service or of another intelligence and security agency (as defined in section 2 of the Intelligence and Security Committee Act 1996); or
 - (iii) Has been provided to the New Zealand Security Intelligence Service by the government of any other country or by an agency of such a government, and is information that cannot be disclosed by the Service because the government or agency by which that information has been provided will not consent to the disclosure; and
- (b) Disclosure of the information would be likely—
 - (i) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (ii) 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
 - (iii) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
 - (iv) To endanger the safety of any person:

Director, or **Director of Security**, means the Director of Security within the meaning of the New Zealand Security Intelligence Service Act 1969

Inspector-General means the Inspector-General of Intelligence and Security established and appointed under the Inspector-General of Intelligence and Security Act 1996, and, in any case where the Inspector-General is not available, within a time that will ensure that any review is completed with all reasonable speed, to review a decision of the Director of Security, includes a person appointed under subsection (2) to act as Inspector-General

Relevant security criterion, or **security criterion**, has the meaning given by section 114C.

- (2) The Governor-General, on the recommendation of the Prime Minister following consultation with the Leader of the Opposition, may appoint a person who has previously held office as a Judge of the High Court of New Zealand to act as Inspector-General in any case where the Inspector-General is not available, within a time that will ensure that any review is completed with all reasonable speed, to review a decision of the Director of Security under this Part.
- (3) The fact that a person appointed under subsection (2) exercises or performs any function or power of the Inspector-General under this Part is conclusive evidence of the authority of the person to do so, and no person may in any proceedings question whether the occasion requiring or authorising the person to exercise or perform the function or power has arisen or has ceased.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114C Relevant security criteria

- (1) For the purposes of this Part, **relevant security criterion** means any of the following, as the case may require:
 - (a) A relevant entry security criterion within the meaning of subsection (2), where a decision is to be taken as to whether—
 - (i) A temporary visa or permit should be issued or granted to any person; or
 - (ii) A limited purpose visa or permit should be issued or granted to any person; or

- (iii) A residence visa or permit should be issued or granted to any person; or
 - (iv) An exemption should apply to any person:
- (b) A relevant removal security criterion within the meaning of subsection (3), where a decision is to be taken as to whether—
 - (i) A temporary permit should be revoked and a removal order served; or
 - (ii) A limited purpose permit should be revoked and a removal order served; or
 - (iii) A person unlawfully in New Zealand should be served with a removal order:
- (c) A relevant deportation security criterion within the meaning of subsection (4), where a decision is to be taken as to whether—
 - (i) The holder of a temporary permit or a limited purpose permit or a residence permit should be deported; or
 - (ii) A person who is exempt under this Act from the requirement to hold a permit should be deported; or
 - (iii) A person unlawfully in New Zealand should be deported:
- (d) A relevant refugee removal security criterion within the meaning of subsection (5), where a decision is to be taken as to whether a person in New Zealand who is a refugee status claimant or refugee—
 - (i) Who holds a temporary permit should have that permit revoked and a removal order served; or
 - (ii) Who holds a limited purpose permit should have that permit revoked and a removal order served; or
 - (iii) Who is in New Zealand unlawfully should be served with a removal order:
- (e) A relevant refugee deportation security criterion within the meaning of subsection (6), where a decision is to be taken as to whether a person in New Zealand who is a refugee status claimant or refugee—

- (i) Who holds a temporary permit or a limited purpose permit or a residence permit should be deported; or
 - (ii) Who is exempt under this Act from the requirement to hold a permit should be deported; or
 - (iii) Who is in New Zealand unlawfully should be deported.
- (2) The relevant entry security criteria are as follows:
 - (a) Any of the criteria set out in section 7(1)(e), (f), (g)(i), and (h) (which relate to terrorism and danger to security or public order):
 - (b) That the person constitutes a threat to national security in terms of section 72:
 - (c) Any of the criteria set out in section 73(1) (which relates to suspected terrorists).
- (3) The relevant removal security criteria are any of the criteria set out in section 7(1)(e), (f), (g)(i), and (h) (which relate to terrorism and danger to security or public order).
- (4) The relevant deportation security criteria are as follows:
 - (a) That the person constitutes a threat to national security in terms of section 72:
 - (b) Any of the criteria set out in section 73(1) (which relates to suspected terrorists).
- (5) The relevant refugee removal security criteria are a combination of any 1 or more of the criteria listed in subsection (3) as relevant removal security criteria, taken together with either or both of the following criteria:
 - (a) That there are reasonable grounds for regarding the person as a danger to the security of New Zealand, in terms of Article 33.2 of the Refugee Convention:
 - (b) That the person is a danger to the community of New Zealand, having been convicted by a final judgment of a particularly serious crime, in terms of Article 33.2 of the Refugee Convention.
- (6) The relevant refugee deportation security criteria are a combination of any 1 or more of the criteria listed in subsection (4) as relevant deportation security criteria, taken together with either or both of the following criteria:

- (a) That there are reasonable grounds for regarding the person as a danger to the security of New Zealand, in terms of Article 33.2 of the Refugee Convention:
 - (b) That the person is a danger to the community of New Zealand, having been convicted by a final judgment of a particularly serious crime, in terms of Article 33.2 of the Refugee Convention.
- (7) More than 1 relevant security criterion may be applicable at the same time to a particular person, but nothing in this section requires more than 1 relevant security criterion to be applied under this Part in any particular case (except to the extent that subsections (5) and (6) require a combination of criteria in relation to refugees and refugee status claimants).

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114D Director of Security may provide Minister with security risk certificate

- (1) If the Director of Security holds classified security information that the Director is satisfied—
 - (a) Relates to an identifiable individual who is not a New Zealand citizen and about whom decisions are to be, or can be, made under this Act; and
 - (b) Is credible, having regard to the source or sources of the information and its nature, and is relevant to the relevant security criterion; and
 - (c) Would mean, when applying a relevant security criterion to the situation of that person in light of that information, that the person meets the criterion,—the Director may provide a security risk certificate to the Minister to that effect.
- (2) A certificate must be in writing and must clearly identify the relevant security criterion or criteria that it relates to.
- (3) In making a decision under subsection (1) the Director may take into account any relevant information that does not itself meet the definition of classified security information.
- (4) For the purposes of applying this section and this Part, any reference to the belief or opinion of the Minister in the wording

of a particular security criterion is to be read as including an alternative reference to the belief or opinion of the Director.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114E Minister may require oral briefing from Director on contents of certificate

- (1) On receipt of a security risk certificate the Minister may call for an oral briefing from the Director on the contents of the certificate.
- (2) The content of the oral briefing is to be determined by the Director, and may not be recorded by the Minister or on the Minister's behalf.
- (3) The Minister must not divulge the contents of the briefing to any other person, and may not be called to give evidence in any court or tribunal in relation to anything coming to the Minister's knowledge as a result of the briefing.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114F Effect of certificate

- (1) The existence of a security risk certificate is evidence of sufficient grounds for the conclusion or matter certified, subject only to a decision of the Inspector-General on a review conducted under section 114I, and the Minister may rely on the certificate when making a decision under this Part whether or not the Minister receives an oral briefing under section 114E.
- (2) Where the Minister does rely on a certificate,—
 - (a) The Minister is not obliged to give reasons for any decision made in reliance on the certificate, and section 23 of the Official Information Act 1982 does not apply; and
 - (b) The Minister may not be compelled in any proceedings to provide those reasons or any information relating to them or to any briefing under section 114E, other than the information contained in the certificate itself.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114G Effect where Minister makes preliminary decision to rely on certificate

- (1) If the Minister makes a preliminary decision to rely on a security risk certificate in relation to an individual, the Minister must give a notice to that effect to the chief executive of the Department of Labour.
- (2) The effect of the giving of a notice under subsection (1) in the case of a person who is not in New Zealand is—
 - (a) To require the processing of any application or other matter in relation to the named individual by a visa officer or immigration officer that is currently under way to be suspended, despite any other requirement of this Act; and
 - (b) To require the chief executive to immediately ensure that the processing is in fact stopped; and
 - (c) To require any matter under this Act in relation to the named individual that is proceeding in an Authority, the Board, the Tribunal, the District Court, or the High Court to be suspended, notwithstanding anything in this Act or any other enactment or rule of law; and
 - (d) To require the chief executive to send to the person a copy of the notice and to notify the person of the matters specified in subparagraphs (i) to (v) of subsection (4)(d).
- (3) The effect of the giving of a notice under subsection (1) in the case of a person who is in New Zealand is—
 - (a) To require the processing of any application or other matter in relation to the named individual by an immigration officer that is currently underway to be suspended, notwithstanding any other requirement of this Act; and
 - (b) To require any matter under this Act in relation to the named individual that is proceeding in an Authority (other than the Refugee Status Appeals Authority), the Board, the Tribunal, the District Court, or the High Court to be suspended, notwithstanding anything in this Act or any other enactment or rule of law; and
 - (c) To require the detention of the named individual by a member of the Police under subsection (5).

- (4) On receipt of a notice under subsection (1) in respect of a person who is in New Zealand, the chief executive must—
 - (a) Immediately ensure that the processing of any application or other matter in relation to the named individual by an immigration officer that is currently under way is stopped; and
 - (b) Not accept for processing any application or other matter in relation to the named individual (other than applications or matters relating to refugee status); and
 - (c) If appropriate, immediately advise an Authority, the Board, the Tribunal, the District Court, or the High Court, in the prescribed manner, that any proceedings or matter under this Act in relation to the named individual are to be stopped in accordance with subsection (2); and
 - (d) Arrange for a member of the Police to as soon as is practicable personally serve on the person concerned a copy of the notice, along with written information stating—
 - (i) That the Director of Security has made a security risk certificate in relation to the person; and
 - (ii) That the Minister has made a preliminary decision to rely on the certificate; and
 - (iii) The relevant security criterion or criteria that the certificate relates to; and
 - (iv) The potential effect of the certificate; and
 - (v) The rights of the person under section 114H (including the right to be heard by the Inspector-General under section 19(4) of the Inspector-General of Intelligence and Security Act 1996), and the time within which the right to a review must be exercised.
- (5) Where a member of the Police serves a notice on a person under subsection (4), that member or any other member of the Police must arrest the person without warrant and place the person in custody.
- (6) A person arrested under subsection (5) must be brought before a District Court Judge as soon as possible, and may in no case be detained for more than 48 hours unless, within that period, a

Judge issues a warrant of commitment under section 114O for the continued detention of the person in custody.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

Subsections (2)(c), (3)(b), and (4)(c) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board,” before “the Tribunal”.

114H Rights of person in respect of whom security risk certificate given and relied on

- (1) A person on whom a Ministerial notice is served under section 114G(4)(d) or who receives notification under section 114G(2)(d) may, under section 114I, seek a review by the Inspector-General of Intelligence and Security of the decision of the Director of Security to make the security risk certificate.
- (2) A person who seeks a review under section 114I may—
 - (a) Be represented, whether by counsel or otherwise, in his or her dealings with the Inspector-General; and
 - (b) Have access, to the extent provided by the Privacy Act 1993, to any information about the person other than the classified security information; and
 - (c) Make written submissions to the Inspector-General about the matter, whether or not the person also wishes to be heard under section 19(4) of the Inspector-General of Intelligence and Security Act 1996 (as applied by section 114I(6) of this Act).
- (3) No action may be taken to remove or deport the person on whom a notice served under section 114G(4)(d) remains in force unless and until section 114K applies in respect of the person.
- (4) No review proceedings may be brought in any court in respect of the certificate or the Director’s decision to make the certificate.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114I Review of certificate

- (1) A person on whom a Ministerial notice is served under section 114G(4)(d) may, within 5 days of its service, apply in the

- prescribed manner for a review of the decision to make the security risk certificate upon which the notice is based.
- (2) A person to whom a Ministerial notice is notified under section 114G(2)(d) may, within 28 days of the notification, apply in the prescribed manner for a review of the decision to make the security risk certificate upon which the notice is based.
 - (3) The review is to be conducted by the Inspector-General of Intelligence and Security with all reasonable speed and diligence.
 - (4) The function of the Inspector-General on a review is to determine whether—
 - (a) The information that led to the making of the certificate included information that was properly regarded as classified security information; and
 - (b) That information is credible, having regard to the source or sources of the information and its nature, and is relevant to any security criterion; and
 - (c) When a relevant security criterion is applied to the person in light of that information, the person in question is properly covered by that criterion—and thus whether the certificate was properly made or not.
 - (5) In carrying out a review, the Inspector-General may take into account any relevant information that does not itself meet the definition of classified security information.
 - (6) For the purposes of a review under this section—
 - (a) The Inspector-General has all the powers conferred on him or her by the Inspector-General of Intelligence and Security Act 1996; and
 - (b) Sections 13, 19 (except subsections (1)(b) and (2)), 20, 21, 22, 23, 24, 26, 28, and 29 of that Act, with any necessary modifications, apply to the review; and
 - (c) The chief executive of the Department of Labour must provide the Inspector-General with any file relating to the appellant, and any other relevant information, that is held by the chief executive.
 - (7) For the purposes of a review under this section, the chief executive of the Department of Labour must, as soon as practicable after finding out that the review is lodged, notify to the

Inspector-General the name and contact details of an officer of the Department of Labour who may accept service on behalf of the chief executive of notices and matters relating to the review.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114J Result of review

- (1) If on a review under section 114I the Inspector-General decides that the security risk certificate was properly made, the consequences set out in section 114K apply following notification of the decision to the person who sought the review.
- (2) If the Inspector-General decides that the certificate was not properly made, the person who sought the review must be released from custody immediately, and normal immigration processes must resume in accordance with section 114L following notification of the decision to the person who sought the review.
- (3) As soon as possible after reaching a decision on the review, the Inspector-General must notify the decision—
 - (a) To the person who sought the review, by way of personal service in the case of a person in New Zealand; and
 - (b) To the Minister; and
 - (c) By personal service to the chief executive of the Department of Labour or to such other officer of the Department of Labour as the chief executive has notified to the Director-General under section 114I(7) as a person who can accept service on behalf of the chief executive; and
 - (d) To the Director of Security.
- (4) The decision of the Inspector-General must be accompanied by reasons, except to the extent that the giving of reasons would itself be likely to prejudice the interests that this Part seeks to protect in relation to the classified security information.
- (5) The Inspector-General may make recommendations in relation to the payment of costs or expenses of the person who has sought the review.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114K Effect of confirmation of certificate, or failure to seek review

- (1) Where—
 - (a) A security risk certificate has been confirmed under section 114J(1); or
 - (b) The certificate is confirmed to the extent that no review has been applied for under section 114I within 5 days (or 28 days, in the case of a person who is not in New Zealand) after the serving of a Ministerial notice under section 114G(2)(d) or (4)(d),—

the Minister must make a final decision within 3 working days whether to rely on the confirmed certificate and accordingly to direct the chief executive in writing to act in reliance on the certificate under subsection (3).
- (2) In making a final decision under subsection (1) the Minister may seek information from other sources and may consider matters other than the contents of the certificate.
- (3) On receipt of a direction from the Minister under subsection (1) to rely on the confirmed certificate, the chief executive must ensure that—
 - (a) Where the person's case was before the Tribunal, an Authority, the Board, the District Court, or High Court before the certificate was made, the relevant body is immediately notified in the prescribed manner of the Inspector-General's determination or the failure to seek review, so that it can dismiss the matter in reliance on this section; or
 - (b) In any other case, an appropriate decision is made in reliance on the relevant security criterion as soon as practicable.
- (4) In either event, the chief executive must ensure that—
 - (a) Any visa or permit that the person still holds is cancelled or revoked, without further authority than this section, and in such case the cancellation or revocation takes effect immediately and without any right of appeal or review; and

- (b) If a removal order or deportation order is not already in existence, an appropriate person who may make such an order makes the relevant order immediately without further authority than this section, and the person is removed or deported, unless protected from removal or deportation under section 114Q or section 129X; and
 - (c) In the case of a person who is protected from removal or deportation by section 129X, the person is released from custody and is given an appropriate temporary permit.
- (5) On receipt of the appropriate notification under subsection (3)(a) by the Tribunal, Authority, Board, District Court, or High Court considering the matter, the proceedings in question immediately lapse, and are to be treated as having been dismissed.
- (6) Where this section applies, the person who is the subject of the certificate has no further right of appeal or review under this Act.
- (7) The Minister is not obliged to give reasons for his or her decision to give a direction under this section, and section 23 of the Official Information Act 1982 does not apply in respect of the decision.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

Subsections (3)(a) and (5) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board,” after the expression “Authority,”.

114L Resumption of normal immigration processes where certificate not confirmed on review, or certificate or Ministerial notice withdrawn

- (1) This section applies in respect of a person named in a Ministerial notice given under section 114G if—
- (a) The Inspector-General has given notice under section 114J that the certificate was not properly made; or
 - (b) The certificate is withdrawn under section 114M; or
 - (c) The Ministerial notice is withdrawn under section 114N, or the Minister decides under that section that the relevant security criterion should not be applied to the person in question, or decides under section 114N to

- revoke his or her decision to rely on the confirmed certificate; or
- (d) The Minister fails to make a final decision in respect of the certificate within the period of 3 working days referred to in section 114K(1).
- (2) Where this section applies, the chief executive must ensure that—
- (a) The person is released from custody immediately; and
 - (b) Any immigration processing or appeal that was stopped in reliance on section 114G immediately recommences; and
 - (c) The person is advised, if any application or other matter had not been accepted for processing in reliance on section 114G(4)(b), that the application or matter will now be accepted for processing; and
 - (d) Where the person's case was before the Tribunal, an Authority, the Board, the District Court, or High Court before the certificate was made, the relevant body is immediately notified in the prescribed manner of the failure to confirm the certificate or the withdrawal of the certificate or Ministerial notice or other relevant Ministerial decision, so that it can resume consideration of the matter that was before it.
- (3) Where any proceedings have lapsed under section 114K(5) by reason of notification under section 114K(3)(a) of the Minister's decision to rely on a confirmed security risk certificate,—
- (a) Those proceedings will nevertheless be treated as not having lapsed if notification of a revocation of that decision is received by the relevant Tribunal, Authority, the Board, or Court under subsection (2)(d) of this section; and
 - (b) Those proceedings continue accordingly from the time of notification of the revocation, with any time limits relating to the proceedings extended by the period of any lapse under section 114K(5).
- (4) Where any immigration processing or appeal recommences under subsection (2)(b), or commences as a result of advice given under subsection (2)(c), the officer or body concerned is

not to take into account the fact that the provisions of this Part had been applied to the person.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

Subsections (2)(d) and (3)(a) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board,” after the expression “Authority,”.

114M Withdrawal of security risk certificate by Director

- (1) Nothing in this Part prevents the Director from withdrawing a certificate in relation to any person at any time by notifying the Minister accordingly.
- (2) If the Minister has already relied on the certificate, the Minister must immediately inform the chief executive of the Department of Labour of the withdrawal.
- (3) If the Director withdraws a certificate, section 114L then applies.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114N Minister may withdraw notice, or decline to use certificate

- (1) Nothing in this Part prevents the Minister from—
 - (a) Withdrawing a notice given under section 114G at any time by notifying the chief executive of the Department of Labour accordingly; or
 - (b) Where a security risk certificate has been confirmed by the Inspector-General, deciding nevertheless that the relevant security criterion should not be applied to the person in question, and notifying the chief executive accordingly; or
 - (c) Revoking a decision under section 114K to rely on the confirmed certificate, and notifying the chief executive accordingly.
- (2) On any notification to the chief executive under subsection (1), section 114L then applies.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114O Warrant of commitment in security cases

- (1) Where a person detained under section 114G(5) is brought before a District Court Judge to seek a warrant of commitment, the following provisions apply:
 - (a) If satisfied on the balance of probabilities that the person is not the person named in the notice under section 114G, the Judge must order that the person be released from custody immediately;
 - (b) Except in a case to which paragraph (a) applies, the Judge must issue a warrant of commitment in the prescribed form for the detention of the person.
- (2) Every warrant of commitment issued under this section authorises the person to whom it is addressed to detain the person named in it until—
 - (a) Required by a member of the Police to deliver up the person in accordance with the provisions of this Act relating to the execution of a removal order or a deportation order; or
 - (b) Notified under subsection (3) that the person should be released; or
 - (c) Ordered by the High Court or a Judge of the High Court, on an application for a writ of habeas corpus, to release the person.
- (3) If a person who is subject to a warrant of commitment under this section is successful in a review by the Inspector-General under section 114I, or if for any other reason the person is to be released, an immigration officer or a member of the Police must immediately notify in writing the manager of the prison or person in charge of the other premises in which the person is detained that the person should be released.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “Superintendent”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

114P Appeal on point of law from decision of Inspector-General

- (1) If the person named in a security risk certificate that is confirmed by the Inspector-General under section 114J is dissatisfied with the decision of the Inspector-General as being er-

roneous in point of law, the person may, with the leave of the Court of Appeal, appeal to the Court of Appeal.

- (2) Any such appeal must be brought—
 - (a) In the case of a person who is in New Zealand at the time of notification, within 3 working days of being notified of the Inspector-General's decision under section 114J(3)(a):
 - (b) In the case of a person who is not in New Zealand at the time of notification, within 28 days of being notified of the Inspector-General's decision.
- (3) The Court of Appeal may, at any time on or before determining the appeal, or determining whether or not to grant leave to appeal, give such directions and make such orders as it thinks appropriate in the circumstances of the case.
- (4) Subject to this section and this Part, section 66 of the Judicature Act 1908, and any rules of Court, apply with any necessary modifications to an appeal under this section as if it were an appeal from a determination of the High Court.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114Q Prohibition on removal or deportation of refugee status claimant

Despite anything in this Part, no person who is a refugee status claimant may be removed or deported from New Zealand until the refugee status of that person has been finally determined under Part 6A.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

114R Minister to report annually on cases under this Part

- (1) The Minister must prepare in respect of each calendar year a report (including, if appropriate, a nil report) setting out—
 - (a) The number of cases in which the Minister makes a preliminary decision under section 114G to rely on a security risk certificate, and the relevant security criteria applicable to each such case; and
 - (b) The number of cases where a review of a security risk certificate is sought, and the number of cases in which

- a certificate is confirmed and the number of cases in which the Inspector-General finds that the certificate was not properly made; and
- (c) The number of cases in which a security risk certificate is finally relied on and directions given under section 114K; and
 - (d) The number of cases in which section 114L applies, and the reasons in each case; and
 - (e) The number of people removed or deported from New Zealand in reliance on a security risk certificate.
- (2) The Minister must present a copy of the report to the House of Representatives not later than 20 sitting days after the end of the calendar year to which the report relates.

Part 4A (comprising sections 114A to 114R) was inserted, as from 1 April 1999, by section 35 Immigration Amendment Act 1999 (1999 No 16).

Part 5

Appeals

From the Residence Review Board and the Removal Review Authority

The heading “From the Residence Appeal Authority and the Removal Review Authority” was substituted, as from 18 November 1991, by section 35 Immigration Amendment 1991 (1991 No 113).

The heading “From the Residence Appeal Authority and the Removal Review Authority” was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

115 Appeal against decision of Residence Review Board on question of law

- (1) Where any party to any appeal to the Residence Review Board under this Act (being either the person who appealed to the Board or the Secretary of Labour) is dissatisfied with any determination of the Board in the appeal proceedings as being erroneous in point of law, that party may appeal to the High Court on that question of law.
- (2) Every appeal under this section shall be brought within 28 days after the date on which the decision of the Board to which the appeal relates was notified to the party appealing, or within

such further time as the High Court may allow on application made before the expiry of that 28-day period.

- (3) On any such appeal the High Court shall determine the question or questions of law arising in the proceedings, and shall thereupon do any one or more of the following things:
 - (a) Confirm the decision in respect of which the appeal has been brought:
 - (b) Remit the matter to the Residence Review Board with the opinion of the High Court thereon, together with any directions as to how the matter should be dealt with:
 - (c) Make such other orders in relation to the matter as it thinks fit.
- (4) Subject to subsections (2) and (3) of this section, every appeal under this section shall be dealt with in accordance with rules of Court.

Section 115 was substituted, as from 18 November 1991, by section 35 Immigration Amendment 1991 (1991 No 113).

The heading to section 115 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

Subsection (1) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

Subsections (1) and (2) were amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “the Board” for “the Authority” wherever they occur.

Subsection (3)(b) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

115A Appeal against decision of Removal Review Authority on question of law

- (1) Where any party to any appeal to the Removal Review Authority under this Act (being the person who appealed to the Authority or the Secretary of Labour) is dissatisfied with any determination of the Authority in the appeal proceedings as being erroneous in point of law, that party may appeal to the High Court on that question of law.
- (2) Every appeal under this section shall be brought within 28 days after the date on which the decision of the Authority to which the appeal relates was notified to the party appealing, or within

such further time as the High Court may allow on application made before the expiry of that 28-day period.

- (3) On any such appeal the High Court is to determine the question or questions of law and do any 1 or more of the following things:
 - (a) Confirm the decision in respect of which the appeal has been brought:
 - (b) Remit the matter to the Removal Review Authority with the opinion of the High Court on it, together with any directions as to how the matter should be dealt with:
 - (c) Make such other orders in relation to the matter as it thinks fit.
- (4)
- (5) Subject to subsections (2) to (4) of this section, every appeal under this section shall be dealt with in accordance with rules of Court.

Sections 115, 116 and heading “From the Residence Appeal Authority and the Removal Review Authority” were substituted, and section 115A inserted, as from 18 November 1991, by section 35 Immigration Amendment 1991 (1991 No 113).

Subsection (3) was substituted, as from 1 October 1999, by section 36(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (4) was repealed, as from 1 October 1999, by section 36(2) Immigration Amendment Act 1999 (1999 No 16).

116 Appeal to Court of Appeal by leave

- (1) Any party to an appeal under section 115 or section 115A of this Act 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; and section 66 of the Judicature Act 1908 shall apply to any such appeal.
- (2) In determining whether to grant leave to appeal under this section, the Court to which the application for leave is made shall 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.

- (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) The decision of the Court of Appeal on any appeal under this section shall be final.

Sections 115, 116 and heading “From the Residence Appeal Authority and the Removal Review Authority” were substituted, and section 115A inserted, as from 18 November 1991, by section 35 Immigration Amendment 1991 (1991 No 113).

From the Tribunal

117 Right of appeal

- (1) Where the appellant in any proceedings before the Tribunal under this Act, or the Minister, is dissatisfied with any determination of the Tribunal in the proceedings as being erroneous in point of law, the appellant or the Minister may appeal to the High Court on that question of law.
- (2) Subject to sections 118 to 124 of this Act, every appeal under this section shall be dealt with in accordance with the rules of Court.
- (3)
- (4) On any such appeal, the High Court shall hear and determine the question or questions of law arising in the proceedings, and shall thereupon do any one or more of the following things:
 - (a) Reverse, confirm, or amend the decision in respect of which the appeal has been brought:
 - (b) Remit the matter to the Tribunal with the opinion of the High Court thereon:
 - (c) Make such other order in relation to the matter as it thinks fit.
- (5) Where the High Court reverses a decision of the Tribunal not to quash a deportation order, the following provisions shall apply:
 - (a) If the person to whom the deportation order applied is in custody pursuant to a warrant of commitment issued under section 99 of this Act, the High Court shall order that person’s release from custody forthwith:
 - (b) If that person has been released on conditions in accordance with section 101 of this Act, the High Court shall

order that the person shall cease to be bound by those conditions, and the Registrar shall forthwith notify the person accordingly:

- (c) If the person is in custody under Part 4 of this Act otherwise than pursuant to a warrant of commitment, the person shall be released from custody forthwith:
 - (d) If the person is subject to residence or reporting requirements under section 98 of this Act, the person shall cease to be bound by those requirements, and an immigration officer shall forthwith notify the person accordingly.
- (6) The decision of the High Court on any such appeal shall be final.

Subsection (3) was repealed, as from 15 August 1991, by section 3(4) Judicature Amendment Act 1991 (1991 No 60).

Subsection (6) was inserted, as from 15 August 1991, by section 3(4) Judicature Amendment Act 1991 (1991 No 60).

118 Notice of appeal

- (1) Every appeal under section 117 of this Act shall be instituted by the appellant lodging a notice of appeal within 28 days after the date of the determination with—
- (a) The Registrar of the High Court in Wellington; and
 - (b) The Secretary of the Tribunal.
- (2) Either before or immediately after the lodging of the notice of appeal, the appellant shall serve a copy of the notice of appeal, either by personal service or by registered post, on the other party to the proceedings before the Tribunal.
- (3) Every notice of appeal shall specify—
- (a) The determination or the part of the determination appealed from; and
 - (b) The error of law alleged by the appellant; and
 - (c) The question of law to be resolved; and
 - (d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other party of the issues involved.

- (4) Where the Minister is the appellant, the Minister shall endorse on or attach to the copy of the notice of appeal to be served on the respondent, a statement of—
 - (a) The right of the respondent under section 119 of this Act to appear and be heard on the hearing of the appeal; and
 - (b) The date by which the respondent must give notice under that section of the respondent's intention to appear and be heard.
- (5) The Secretary of the Tribunal shall, as soon as practicable after receiving a copy of the notice of appeal, send a copy of the whole of the determination appealed from to the Registrar of the High Court in Wellington.

119 Right to appear and be heard on appeals

- (1) If the other party to the proceedings before the Tribunal (hereafter in this Part of this Act called the respondent) wishes to appear and be heard on the hearing of the appeal, the respondent shall, within 10 days after the date of the service on the respondent of a copy of the notice of appeal, lodge with the Registrar of the High Court in Wellington a notice of the respondent's intention to appear and be heard.
- (2) If the respondent gives a notice of intention to appear and be heard, the respondent and the appellant shall be parties to the appeal and shall be entitled—
 - (a) To be served with every document thereafter filed or lodged with the Registrar relating to the appeal; and
 - (b) To receive notice of the date set down for the hearing of the appeal.

120 Orders relating to determination of appeals

- (1) Subject to subsections (2) and (3) of this section, the High Court may, of its own motion or on the application of either party to the appeal, make all or any of the following orders:
 - (a) An order directing the Tribunal to lodge with the Registrar of the High Court in Wellington any document or other written material or any exhibit in the possession or custody of the Tribunal;
 - (b) An order directing the Tribunal to lodge with the Registrar a report recording, in respect of any matter or issue

that the Court may specify, any of the findings of fact of the Tribunal that are not set out or fully set out in its determination:

- (c) An order directing the Tribunal to lodge with the Registrar a report setting out, in respect of any matter or issue that the Court may specify, any reasons or considerations of the Tribunal to which the Tribunal had regard but that are not set out in its determination.
- (2) An application under subsection (1) of this section shall,—
- (a) In the case of the appellant, be made within 28 days of the date of the lodging of the notice of appeal; or
 - (b) In the case of the respondent, within 28 days after—
 - (i) The date of the service on the respondent of a copy of the notice of appeal; or
 - (ii) The date of the lodging of the notice of the appeal,—whichever is the later.
- (3) The High Court may make an order under subsection (1) of this section only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made subject to such conditions as the High Court thinks fit.

121 Dismissal of appeal

The High Court may dismiss any appeal under section 117 of this Act—

- (a) If the appellant does not appear at the time appointed for the hearing of the appeal; or
- (b) If the appellant does not prosecute the appeal with all due diligence and the respondent applies to the Court for the dismissal of the appeal.

122 Appeal in respect of additional points of law

- (1) Where the respondent wishes to contend at the hearing of the appeal that the determination appealed from is erroneous on a point of law other than those set out in the notice of appeal, the respondent shall, within 28 days after the date of the service on the respondent of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the High Court in Wellington.

- (2) The provisions of section 117, subsections (2) to (5) of section 118, and sections 120, 121, 123, and 124 of this Act shall apply, with such modifications as may be necessary, to any notice lodged under this section as if it were a notice of appeal.

123 Extension of time

The High Court or a Judge thereof may, on the application of the appellant, or intending appellant, or the respondent, extend any time prescribed or allowed under any of the provisions of sections 118 to 122 of this Act for the lodging of any notice, application, or other document.

124 Date of hearing

When either party to the appeal notifies the Registrar of the High Court in Wellington—

- (a) That the notice of appeal has been served on the respondent; and
- (b) Either—
- (i) That no application has been lodged under section 120 of this Act and that no order has been made under that section; or
 - (ii) That any application lodged under section 120 of this Act has been heard and that any order under that section has been complied with,—

the appeal shall be, in all respects, ready for hearing, and the Registrar shall arrange a date for the hearing as soon as is practicable.

Part 6

Arrivals and departures

125AA 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—
- (a) he or she is notified by the chief executive that—
- (i) he or she 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 is the carrier or the person in charge departs from another country to travel to New Zealand; or
 - (ii) the craft in relation to which he or she is the carrier or the person in charge is a craft of a kind in relation to which he or she must comply with the responsibilities specified in subsection (2) before the craft departs from another country to travel to New Zealand; and
 - (b) it is proposed that the craft travel to New Zealand from another country (including in the course of a scheduled international service).
- (2) A person to whom this section applies must do the following things before the craft in relation to which he or she is the carrier or the person in charge departs from another country to travel to New Zealand:—
 - (a) obtain the following information from every person who intends to board the craft for the purpose of travelling to New Zealand:—
 - (i) name:
 - (ii) date of birth:
 - (iii) nationality:
 - (iv) sex:
 - (v) passport, or certificate of identity, number (if any):
 - (vi) passport, or certificate of identity, expiry date (if any):
 - (vii) the issuer of the certificate of identity, if it is not the person's country of nationality (if any):
 - (viii) the person's status as a traveller (including, but not limited to, whether the person is a member of the crew of the craft, a passenger whose destination is New Zealand, or a passenger whose destination is other than New Zealand):
 - (b) provide the following information to the chief executive by means of an approved system:—
 - (i) the information obtained under paragraph (a); and

- (ii) if the person to whom this section applies intends to board the craft himself or herself for the purpose of travelling to New Zealand, information about himself or herself of the kind specified in paragraph (a); and
 - (iii) information identifying the craft and its intended movements; and
 - (iv) in relation to a person referred to in paragraph (a), the location of information about that person of the kind specified in section 125AD(5) (including, if applicable, the electronic address for the information).
- (3) The chief executive may, in writing, exempt a person to whom this section applies from complying with some or all of his or her responsibilities under this section in all or any specified circumstances.
- (4) Every carrier, or person in charge, of a commercial craft who fails, without reasonable excuse, to comply with any of his or her responsibilities under this section commits an offence and is liable on conviction,—
 - (a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or
 - (b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.
- (5) In this section and sections 125AB to 125AD,—
 - 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 this section; or
 - (b) notifying a person to whom this section applies of a decision of the chief executive under section 125AB(1)
 - commercial craft** means a craft that travels for a commercial purpose or as part of a commercial operation
 - scheduled international service** means a series of flights or voyages 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 that are operated in a manner where each flight or voyage is open to use by members of the public

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

Sections 125AA to 125AE were inserted, as from 2 July 2004, by section 4 Immigration Amendment Act 2004 (2004 No 56).

**125AB Chief executive may make decision about person
boarding craft for purpose of travelling to New Zealand**

- (1) The chief executive may decide that a person in relation to whom information has been received under section 125AA—
 - (a) may board a craft for the purpose of travelling to New 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 specified by the chief executive.
- (2) The chief executive—
 - (a) must notify a person to whom section 125AA applies of a decision made under subsection (1); and
 - (b) may do so in any form he or she thinks appropriate, including, but not limited to, by means of an approved system, which may contain code that represents the outcome 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 response to a decision made under subsection (1).
- (3) The chief executive—
 - (a) may make any 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 exempt from the requirement to apply for and hold a visa to travel in New Zealand; or

- (iii) is exempt from the requirement to hold a permit to be in New Zealand; but
- (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 holds a New Zealand passport; or
 - (ii) a person who holds a returning resident's visa in a passport or certificate of identity, or who has a returning resident's visa electronically entered and retained in the records of the Department of Labour under section 35AB, and who intends to travel to New Zealand during the currency of that visa; or
 - (iii) a person who—
 - (A) has been granted a pre-cleared permit that is entered and retained (either electronically or otherwise) in the records of the Department of Labour under section 35E; and
 - (B) intends to enter New Zealand during the currency of that pre-cleared permit on a flight designated by the Minister as a pre-clearance flight under section 35C.
- (4) To avoid doubt, section 141AA does not apply to the chief executive when he or she is notifying a person to whom section 125AA applies of a decision made under subsection (1).
- (5) To avoid doubt, the chief executive may make a decision under subsection (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.
- (6) 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.
- (7) Despite subsection (6)(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.

- (8) The chief executive is not obliged to give reasons for a decision made under subsection (1) other than that subsection (1) applies.
- (9) Section 23 of the Official Information Act 1982 does not apply in respect of a decision made under subsection (1).

Sections 125AA to 125AE were inserted, as from 2 July 2004, by section 4 Immigration Amendment Act 2004 (2004 No 56).

125AC Offences relating to non-compliance with decision made by chief executive under section 125AB

- (1) Every carrier, or person in charge, of a commercial craft commits an offence who allows a person to travel to New Zealand before a decision has been made by the chief executive under section 125AB(1).
- (2) Every carrier, or person in charge, of a commercial craft commits an offence who—
 - (a) is notified under section 125AB(2) of a decision made by the chief executive under section 125AB(1)(b) or (c); and
 - (b) without reasonable excuse, fails to ensure that the decision is complied with by the person to whom the decision relates.
- (3) Every carrier, or person in charge, of a commercial craft who commits an offence against subsection (1) or subsection (2) is liable on conviction,—
 - (a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or
 - (b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.

Sections 125AA to 125AE were inserted, as from 2 July 2004, by section 4 Immigration Amendment Act 2004 (2004 No 56).

125AD Person to whom section 125AA applies must provide further information if requested, and must provide access to further information

- (1) If the circumstances in subsection (2) exist, a person to whom section 125AA applies must provide the chief executive with information of the kind specified in subsection (5) 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 125AB(1)).
- (2) The circumstances are that the chief executive has made the request for the information within 24 hours of 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.
- (3) A person to whom section 125AA applies must ensure that the chief executive has access to information of the kind specified in subsection (5) 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 125AB(1)).
- (4) A person to whom subsection (3) applies must ensure that the chief executive has access to the information—
 - (a) in an approved form and manner; and
 - (b) for 24 hours 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.
- (5) The information referred to in subsections (1) and (3) is information held by a person to whom section 125AA applies, or to which a person to whom section 125AA applies has access, about the following matters:—
 - (a) where the person booked the intended travel:
 - (b) on what date the person booked the intended travel:
 - (c) with whom, if anyone, the person intended to travel:
 - (d) with whom a person has previously travelled:
 - (e) whether or not the person paid for his or her own intended travel, and the manner of payment:

- (f) the person's travel movements before the intended travel:
 - (g) whether the route of the person's previous travel has changed from the way that he or she originally booked the travel and, if so, in what way:
 - (h) whether the person failed to undertake intended travel on a previous occasion:—
 - (i) whether the person has checked baggage.
- (6) Information collected or accessed by the chief executive under subsections (1) and (3) may only be retained by the chief executive if any of the following circumstances apply:
- (a) the chief executive decided under section 125AB(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 permit or exemption to be in New Zealand:
 - (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 a risk to border security exists.
- (7) 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 (3).

Sections 125AA to 125AE were inserted, as from 2 July 2004, by section 4 Immigration Amendment Act 2004 (2004 No 56).

125AE Offence relating to failure to provide information, or failure to provide access to information, under section 125AD

- (1) Every carrier, or person in charge, of a commercial craft commits an offence who fails, without reasonable excuse, to provide the chief executive with information the chief executive requested under section 125AD(1).
- (2) Every carrier, or person in charge, of a commercial craft commits an offence who fails, without reasonable excuse, to pro-

vide the chief executive with access to information under section 125AD(3).

- (3) Every carrier, or person in charge, of a commercial craft who commits an offence under subsection (1) or subsection (2) is liable on conviction,—
- (a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or
 - (b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.

Sections 125AA to 125AE were inserted, as from 2 July 2004, by section 4 Immigration Amendment Act 2004 (2004 No 56).

125 Responsibilities of carrier and person in charge of any craft en route to New Zealand

- (1) The person in charge of any craft that is en route to New Zealand from another country shall, for the purpose of ensuring or facilitating compliance with this Act, from the time when the craft enters the territorial limits of New Zealand be 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 responsibilities specified in section 126(1) of this Act.
- (2) For the purposes of this Act, the carrier and the person in charge of any craft that berths, lands, or otherwise arrives in New Zealand from another country, or that is to so berth, land, or arrive, shall have the following responsibilities:
- (a) To ensure that all persons boarding the craft in that other country have appropriate documentation for immigration purposes, including a passport or certificate of identity, a visa (where required), evidence of onward travel arrangements and of sufficient funds (where required), and any other documentation (if any) specified in regulations made under this Act:
 - (aa) In the case of a pre-clearance flight, to comply with section 35H of this Act:
 - (b) On arrival of the craft at a Customs place,—

- (i) To produce for inspection such tickets for onward travel, or funds, as an immigration officer may specify; and
 - (ii) To prevent, with such reasonable force as may be necessary, the disembarkation of any person from the craft otherwise than into a Customs controlled area:
 - (c) In the case of a craft that is not a commercial passenger aircraft on a regularly scheduled flight, to supply on demand by any 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:
 - (d) In the case of a commercial passenger aircraft on a regularly scheduled flight, to supply such available information as may be required by any immigration officer relating to any person who may have been on board the craft since its last place of call:
 - (e) Subject to the provisions of section 25 of the Customs and Excise Act 1996, where the craft arrives, or is to arrive, in New Zealand elsewhere than at a Customs place because of weather conditions or other unforeseen circumstances, to make appropriate arrangements for all persons on board the craft to report to an immigration officer at a Customs place within 72 hours after arriving in New Zealand:
 - (f) If a stowaway has been found on the craft, to report that fact to an immigration officer as soon as practicable.
- (3) The carrier and the person in charge of a craft leaving New Zealand shall have the following responsibilities:
- (a) To report to an immigration officer immediately before the departure of the craft details of any person who—
 - (i) Was on board the craft when it arrived in New Zealand; and
 - (ii) Was exempt by virtue of paragraph (c) or paragraph (d) or paragraph (e) of section 11(1) of this Act from the requirement to hold a permit to be in New Zealand; and
 - (iii) Is not then on board the craft:

- (b) Subject always to the safety of the craft and of the other persons on board the craft, to allow on board for passage from New Zealand (subject to the payment of the fare) any person in respect of whom a removal warrant or a deportation order is in force and who presents himself or herself to the craft, or is delivered by a member of the Police to the craft, for that purpose:
 - (c) In respect of any such person who is delivered to the craft by a member of the Police, 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.
- (4) The carrier of a craft leaving New Zealand shall have 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—
 - (i) Who 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 issued under this Act, and who is neither exempt under this 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) 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, otherwise than in accordance with this Act, remained in New Zealand after the departure of that craft:
 - (b) In respect of any person for whom the carrier is obliged to provide passage or the cost of passage under paragraph (a) of this subsection, to pay all costs (if any) incurred by the Crown in detaining and maintaining that person pending the person's departure from New Zealand.
- (5) The foregoing provisions of this section shall be read subject to any applicable special direction or to any regulations made under section 150 of this Act.

- (6) Where any carrier or person in charge of a craft fails without reasonable excuse to comply with any of the requirements of subsection (1) or subsection (2) or subsection (3) of this section, that carrier or that person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding,—
- (a) In the case of the person in charge of the craft, \$10,000;
- (b) In the case of the carrier, \$20,000.
- (7) Every carrier who fails to comply with any of the requirements of subsection (4) of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000.
- (8) If proceedings in respect of an offence against subsection (6) of this section are taken against the person in charge of any craft, proceedings in respect of that offence shall 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 shall not be taken against the person in charge of the craft.
- (9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section is not guilty of an offence and is not liable to any civil proceedings in respect of those measures.

The heading to section 125 was amended, as from 2 July 2004, by section 5 Immigration Amendment Act 2004 (2004 No 56) by inserting “**en route to New Zealand**”.

Subsection (2)(aa) was inserted, as from 15 September 1993, by section 11(1) Immigration Amendment Act 1993 (1993 No 100).

Subsection (2)(b) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “Customs place” for “port of entry or Customs airport”.

Subsection (2)(b)(ii) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “Customs controlled area” for “boarding station or examination stations”.

Subsection (2)(e) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Subsection (4)(a)(i) was amended, as from 15 September 1993, by section 11(2) Immigration Amendment Act 1993 (1993 No 100) by substituting “a permit or pre-cleared permit on or before arrival in New Zealand” for “a permit on arrival in New Zealand”.

Subsection (6)(a) was amended, as from 18 November 1991, by section 36(a) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “\$10,00” for the expression “\$5,000”.

Subsection (6)(b) was amended, as from 18 November 1991, by section 36(b) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “\$20,000” for the expression “\$10,000”.

Subsection (7) was amended, as from 18 November 1991, by section 36(c) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “\$20,000” for the expression “\$10,000”.

126 Responsibilities of persons arriving in or leaving New Zealand

- (1) Except as provided in regulations made under section 150 of this Act, or in any special direction, every person who arrives in New Zealand from another country shall have the following responsibilities:
 - (a) Except where the person is the holder of a pre-cleared permit, to present himself or herself to an immigration officer at the the Customs place and surrender to that officer a duly completed arrival card in a form approved by the Minister:
 - (b) To produce for inspection on demand by an immigration officer that person’s passport or certificate of identity to enable the officer to determine whether or not the person is entitled to be in New Zealand with or without a permit under this Act:
 - (c) Subject to the provisions of section 25 of the Customs and Excise Act 1996, where the person arrives in New Zealand elsewhere than at a Customs place, to report to an immigration officer at a Customs place forthwith after arriving in New Zealand, and thereafter to comply with the responsibilities specified in paragraphs (a) and (b) of this subsection.
- (2) Except as provided in regulations made under section 150 of this Act, or in any special direction, every person who is leaving New Zealand shall have the following responsibilities:
 - (a) To present himself or herself to an immigration officer at a Customs place and surrender to that officer a duly completed departure card in a form approved by the Minister:

- (b) To produce for inspection on demand by an immigration officer that person's passport or certificate of identity.
- (3) Where any person to whom subsection (1) or subsection (2) of this section applies is, by reason of age or disability, incapable of complying with the requirements of the relevant subsection, it shall be 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.
- (4) Every person commits an offence against this Act who completes any arrival card or departure card in a manner that the person knows to be false or misleading in any particular or fails to comply with any of the foregoing provisions of this section.
- (5) Every passport or certificate of identity produced by a person to an immigration officer under subsection (1)(b) of this section—
 - (a) Shall, if the person is a New Zealand citizen or is granted a permit or is exempt under this Act from the requirement to hold a permit, be returned to that person before that person leaves the arrival hall; or
 - (b) If the person is refused a permit, may be retained by the immigration officer, but shall be returned to that person on that person's departure from New Zealand.
- (6) A member of the police may arrest a person, and present him or her to an immigration officer, 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 a Customs place, and did not forthwith report to an immigration officer at a Customs place; or
 - (b) the person recently arrived in New Zealand from another country elsewhere than at a Customs place, and will not forthwith report to an immigration officer at a Customs place.

Subsection (1)(a) was amended, as from 15 September 1993, by section 12 Immigration Amendment Act 1993 (1993 No 100) by inserting "Except where the person is the holder of a pre-cleared permit," ..

Subsection (1)(a) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting "the Customs place" for "the port of entry or customs airport".

Subsection (1)(c) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27)

Subsection (1)(c) was amended, as from 18 June 2002 by section 8(1) Immigration Amendment Act 2002 (2002 No 22), by substituting “forthwith” for “within 72 hours”.

Subsection (2)(a) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “a Customs place” for “the port of entry or customs airport”.

Subsection (5)(a) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “arrival hall” for “boarding station or examination station”.

Subsection (6) was inserted, as from 18 June 2002, by section 8(2) Immigration Amendment Act 2002 (2002 No 22).

126A 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 shall apply to that passenger from the time at which that passenger enters the departure hall at the commencement of the domestic sector until the time at which the passenger leaves the arrival hall at the end of the domestic sector.
- (2) Every person to whom this section applies shall produce for inspection on demand by an immigration officer that person’s passport or certificate of identity and that person’s boarding pass or 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 permit under this Act.
- (3) Every person commits an offence against this Act who fails to produce on demand that person’s passport or certificate of identity in accordance with subsection (2) of this section.
- (4) Every passport or certificate of identity or boarding pass or tickets produced by a person to an immigration officer under subsection (2) of this section—
 - (a) Shall, if the person is a New Zealand citizen or holds a permit or is exempt under this Act from the requirement to hold a permit, be inspected immediately and returned to that person as soon as the inspection has concluded; or
 - (b) May, if the person does not hold a permit, and the officer does not grant that person a permit, be retained by the immigration officer, but after any such retention shall be

returned to that person on that person's departure from New Zealand.

This section was inserted, as from 21 March 1993, by section 8 Air Facilitation Act 1993 (1993 No 6).

Subsection (1) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Subsections (2) and (4) were amended, as from 1 November 1994, by section 12 Air Facilitation (Domestic Passengers and Cargo) Act 1994 (1994 No 100) by substituting "tickets" for "ticketing".

Subsection (4)(a) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

126B Responsibilities of domestic passengers travelling by air within New Zealand

- (1) Where any domestic passenger is using air travel for a domestic sector, this section shall apply to that passenger from the time at which that passenger enters the departure hall at the commencement of the domestic sector until the time at which the passenger leaves the arrival hall at the end of the domestic sector.
- (2) Every person to whom this section applies shall, on demand made by an immigration officer,—
 - (a) Produce for inspection such of the following documents as the officer may specify:
 - (i) That person's boarding pass:
 - (ii) That person's tickets:
 - (iii) If carried by that person, that person's passport or certificate of identity:
 - (iv) Such other document or documents as may from time to time be prescribed; or
 - (b) If the person is unable to produce the specified document or the specified documents, complete a form approved and issued for the purpose by the Minister under section 132 of this Act.
- (3) A demand under subsection (2) of this section may be made of a person only for the purpose of enabling the immigration officer to establish that person's identity or that person's entitlement to air travel for a domestic sector or both.
- (4) Every boarding pass or passport or certificate of identity or other documents or tickets produced by a person to an immi-

gration officer under subsection (2) of this section shall be either—

- (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 that 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 or passport or certificate of identity or other documents or tickets.
- (5) Nothing in this section shall limit the exercise by an immigration officer of any power contained in any other provision of this Act.

This section was inserted, as from 1 November 1994, by section 13 Air Facilitation (Domestic Passengers and Cargo) Act 1994 (1994 No 100).

Subsection (1) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

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

- (1) Where the holder of a temporary permit 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
 - (b) The person's permit 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,—
- an immigration officer shall, on application by that person, grant a temporary permit to that person current until a date not earlier than the 14th day following that return.
- (2) Where a person who is exempt under this Act from the requirement to hold a permit 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

- (b) The exemption 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,—

that person shall be deemed to be exempt under this Act from the requirement to hold a permit for a period of 14 days following the day of that return.

128 Detention and departure of persons refused permits, etc

- (1) This section applies to every person (other than a person to whom section 128B or section 129 of this Act applies) who—
 - (a) Arrives in New Zealand from another country; and
 - (b) Is not exempt under this Act from the requirement to hold a permit; and
 - (c) Either—
 - (i) Fails to apply in the prescribed manner for a permit; or
 - (ii) Is refused a permit; or
 - (iii) Is a stowaway; or
 - (iv) Is a person whose pre-cleared permit has been revoked by an immigration officer pursuant to section 35F of this Act.
- (2) For the purposes of this section, a stowaway shall be 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, and, subject to subsections (3), (13) and (14) of this section, this section shall apply to the stowaway while the stowaway remains within those limits.
- (3) This section shall cease to apply to any person (including any stowaway), on the expiration of 72 hours after the time when that person first reports or presents to an immigration officer after arriving in New Zealand from another country, unless that person is sooner detained under this section.
- (4) Any person to whom this section applies shall be deemed for the purposes of this Act to be in New Zealand unlawfully, but, for so long as this section applies to that person, that person

shall not be liable to be dealt with under any of the provisions of Part 2 of this Act.

- (5) Subject to subsection (7), on the request of an immigration officer to a member of the police, any person to whom this section applies must be detained by a member of the police and placed in custody pending that person's departure from New Zealand on the first available craft.
- (6) Every person who is placed in custody under subsection (5) of this section and is to be detained overnight shall be detained,—
 - (a) In the case of a person under 17 years of age who is not married or in a civil union, in—
 - (i) Any residence (within the meaning of section 2 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
 - (ii) Any other premises agreed to by the parent or guardian of that person and an immigration officer; or
 - (b) In any other case, in—
 - (i) Any premises approved by the chief executive of the Department of Labour; or
 - (ii) A Police station.
- (7) Where a person to whom this section applies is to be detained for more than 48 hours after the time of that person's detention by a member of the Police under subsection (5) of this section, an immigration officer or a member of the Police shall apply to the Registrar (or, in the Registrar's absence, the Deputy Registrar) of a District Court for a warrant of commitment in the prescribed form authorising the detention for a period not exceeding 28 days of that person in a prison or some other premises approved for the purpose by the Registrar (or Deputy Registrar), and the Registrar (or Deputy Registrar) shall issue such a warrant accordingly.
- (8) Every application under subsection (7) of this section shall be made on oath, and shall include a statement of the reasons why the person is a person to whom this section applies.

- (9) Every such warrant of commitment shall authorise the manager of the prison or the person in charge of the other premises to detain the person named in it until—
- (a) Required by a member of the Police to deliver up that person in accordance with subsection (11) of this section; or
 - (b) The release of the person in accordance with subsection (14)(a); or
 - (c) the expiry of the period for which detention is then authorised by the warrant (as determined having regard to any extension or further extension of the warrant granted under subsection (13B) of this section, and to subsection (16) of this section, and, where appropriate, to—
 - (i) section 128AA(12); and
 - (ii) subsections (2)(a) and (12) of section 128A),—whichever first occurs.
- (10)
- (11) When a craft becomes available to take from New Zealand any person to whom this section applies who is in custody pursuant to a warrant of commitment issued under subsection (7) of this section, and it is practicable in all the circumstances for the person to leave on that craft, the manager of the prison or the person in charge of the other premises shall, on being required in writing by a member of the Police to do so, deliver the person into the custody of the member of the Police, who shall escort the person or arrange for the person to be escorted to the seaport or airport and ensure that the person is placed upon the craft and detained there until the craft leaves New Zealand.
- (12) If, for any reason, the craft ceases to be available to take the person from New Zealand or is, or is likely to be, delayed in New Zealand for more than 24 hours, or if for any other reason the person is unable to leave New Zealand at the expected time, the person shall be returned to the custody from which the person was taken, and for that purpose the warrant of commitment shall be deemed still to be of full force and effect.
- (13) Where it becomes apparent to an immigration officer that a person detained in custody under a warrant of commitment is—

sued under subsection (7) is, or is likely to be, unable to leave New Zealand before the expiry of the period for which detention is then authorised by the warrant (as determined having regard to the matters referred to in subsection (9)(c)), the immigration officer may either—

- (a) Apply to a District Court Judge for an extension, or further extension, of the warrant; or
- (b) Notify in writing the manager of the prison or person in charge of the other premises in which the person is detained that the person should be released.

(13A) An application for extension or further extension of a warrant under subsection (13)(a) must—

- (a) Be made on oath; and
- (b) Include a statement of the reasons why the extension or further extension is requested.

(13B) On an application for the extension or further extension of a warrant of commitment under subsection (13)(a), the Judge may, if satisfied that the person is still a person to whom this section applies, extend or further extend the warrant—

- (a) For a further period not exceeding 7 days; or
- (b) For such longer period as the Judge thinks necessary in the circumstances to allow all the persons in the group concerned to be properly dealt with, in any case where the person detained under the warrant is a member of a group of people—
 - (i) Who arrived in New Zealand on the same ship or aircraft; and
 - (ii) All or most of whom are persons to whom this section applies.

(14) The manager of the prison or person in charge of the other premises in which a person is detained under a warrant of commitment must release the person from custody—

- (a) On receiving written notification from an immigration officer under subsection (13)(b) that the person should be released; or
- (b) If not earlier released, on the expiry of the period for which detention is authorised under the warrant (as determined having regard to section 128A(2)(a) and (12),

where appropriate, and to any extension or further extension of the warrant granted under subsection (13B)).

- (14A) On the release of a person under subsection (14),—
- (a) Part 2 applies in respect of the person; and
 - (b) This section ceases to apply in respect of the person.
- (15) A person who is detained under this section must not be granted bail, but may be released under section 128AA or section 128A.
- (16) The period for which detention is authorised by a warrant of commitment issued under subsection (7) must be reckoned exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 72 hours after the date on which the person is again taken into custody under this Act.

Subsection (1) was amended, as from 18 November 1991, by section 37(1) Immigration Amendment Act 1991 (1991 No 113) by inserting “section 128B or”.

Subsection (1)(c)(iii) was substituted, as from 15 September 1993, by section 13 Immigration Amendment Act 1993 (1993 No 100).

Subsection (1)(c)(iv) was inserted, as from 15 September 1993, by section 13 Immigration Amendment Act 1993 (1993 No 100).

Subsection (3) was amended, as from 18 June 2002, by section 9(1) Immigration Amendment Act 2002 (2002 No. 22), by substituting “that person first reports or presents to an immigration officer after arriving in New Zealand from another country” for “the craft on which that person was travelling berths, lands, or otherwise arrives in New Zealand”.

Subsection (5) was substituted, as from 18 June 2002, by section 9(2) Immigration Amendment Act 2002 (2002 No 22).

The first reference to the “Children, Young Persons, and Their Families Act 1989” in subsection (6)(a)(i) was substituted, as from 1 November 1989, for a reference to the “Children and Young Persons Act 1974” pursuant to section 456(1) Children, Young Persons, and Their Families Act 1989 (1989 No 24).

The words “chief executive of the Department of Labour” in subsection (6)(b)(i) were substituted, as from 16 October 1989, for “the Secretary of Labour” pursuant to section 2(8)(a) Labour Department Act Repeal Act 1989 (1989 No 82).

Subsection (6)(a) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “a person under 17 years of age who is not married or in a civil union” for “an unmarried person who is under 17 years of age”.

Subsection (6)(a)(i) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989” for “Director-General of Social Welfare”.

Subsection (7) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (9) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (9)(c) was amended, as from 18 November 1991, by section 37(2) Immigration Amendment Act 1991 (1991 No 113) by inserting “Subject to subsections (2)(a) and (12) of section 128A of this Act”.

Subsection (9)(b) and (c) were substituted, as from 16 June 1999, by section 37(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (9)(c) was substituted, as from 18 June 2002, by section 9(3) Immigration Amendment Act 2002 (2002 No 22).

Subsection (10) was repealed, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50). *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (11) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (13) was amended, as from 18 November 1991, by section 37(3) Immigration Amendment Act 1991 (1991 No 113) by inserting “or such longer period as may ... of section 128A of this Act”.

Subsection (13) was substituted, as from 16 June 1999, by section 37(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (13) was amended, as from 18 June 2002, by section 9(4) Immigration Amendment Act 2002 (2002 No 22), by substituting “then authorised by the warrant (as determined having regard to the matters referred to in subsection (9)(c))” for “authorised by the warrant under subsection (9)(c)”.

Subsection (13)(b) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “Superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (13A) and (13B) were inserted, as from 16 June 1999, by section 37(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (14) was amended, as from 18 November 1991, by section 37(3) Immigration Amendment Act 1991 (1991 No 113) by inserting “or such longer period as may ... of section 128A of this Act”.

Subsection (14) was substituted, as from 16 June 1999, by section 37(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (14) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “Superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (14A) was inserted, as from 16 June 1999, by section 37(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (15) was inserted, as from 18 November 1991, by section 37(4) Immigration Amendment Act 1991 (1991 No 113).

Subsection (15) was substituted, as from 18 June 2002, by section 9(5) Immigration Amendment Act 2002 (2002 No 22).

Subsection (16) was inserted, as from 18 June 2002, by section 9(5) Immigration Amendment Act 2002 (2002 No 22).

128AA Detained person may be conditionally released from detention in certain cases

- (1) This subsection applies to a person who is not a refugee status claimant (within the meaning of section 129B(1)) and—
 - (a) is placed in custody under section 128(5); or
 - (b) is the subject of a warrant of commitment issued under section 128(7).
- (2) This subsection applies to—
 - (a) a refugee status claimant (within the meaning of section 129B(1)) who—
 - (i) is placed in custody under section 128(5); or
 - (ii) is the subject of a warrant of commitment issued under section 128(7);
 - (b) a person who is the subject of an application under section 128(13)(a) for the extension or further extension of a warrant of commitment issued under section 128(7).
- (3) An immigration officer may apply to a District Court Judge for an order that a person to whom subsection (1) applies be conditionally released from custody.
- (4) An immigration officer or the person concerned may apply to a District Court Judge for an order that a person to whom subsection (2) applies be conditionally released from custody.
- (5) An application under subsection (3) or subsection (4) must be made on oath, and state why section 128 applies to the person to whom it relates.
- (6) On an application under subsection (3) or subsection (4), the Judge may make an order for the person's conditional release.
- (7) The order must state—
 - (a) either a day on which it expires or an event upon the occurrence of which it expires; and
 - (b) a location at which the person to whom it relates must give himself or herself up when it expires.
- (8) If the Judge does not make an order for the person's conditional release,—

- (a) in the case of an application made in respect of a person who is not already subject to a warrant of commitment issued under section 128(7), the Judge must issue a warrant of commitment authorising the person's detention for a period not exceeding 28 days in a prison or some other premises approved for the purpose by the Judge:
- (b) in the case of an application made in respect of a person who is the subject of an application under section 128(13)(a) for the extension or further extension of a warrant of commitment issued under section 128(7), the Judge may extend or further extend the warrant of commitment concerned—
 - (i) for any period the Judge thinks necessary in the circumstances to allow all the persons in the group concerned to be properly dealt with, if the person detained under the warrant is a member of a group of people—
 - (A) all of whom arrived in New Zealand on the same ship or aircraft; and
 - (B) all or most of whom are people to whom section 128 applies; and
 - (ii) for a further period not exceeding 7 days if the person detained under the warrant is not a member of such a group.
- (9) A warrant of commitment issued under subsection (8)(a) must be treated as a warrant of commitment issued under section 128(7).
- (10) On the day or (as the case may be) the occurrence of the event stated in it, an order under subsection (6) for a person's conditional release expires, and the person must deliver himself or herself up to an immigration officer at the location stated in it.
- (11) If a person delivers himself or herself up to an immigration officer under subsection (10),—
 - (a) in the case of a person to whom subsection (1) or subsection (2) applied by virtue of his or her being placed in custody under section 128(5), if not released,—
 - (i) the person must be treated as a person to whom section 128(5) continues to apply; and

- (ii) if the person is to be detained for more than 48 hours after delivering himself or herself up, an application must be made in accordance with section 128(7):
 - (b) in any other case, if not released, the person must again be taken into custody, and may be detained in custody under section 128 pending the person's departure from New Zealand on the first available craft.
- (12) The period for which detention is authorised by a warrant of commitment issued under section 128(7) must be reckoned exclusive of any period commencing on the date on which the person to whom the warrant relates is released pursuant to an order under subsection (6), and ending on the earlier of the following:
 - (a) the expiration of 72 hours after the date on which the person is again taken into custody under this Act:
 - (b) the extension or further extension of the warrant under section 128(13B).
- (13) If a permit is granted under this Act to a person to whom an order under subsection (6) relates,—
 - (a) the order is cancelled; and
 - (b) Part 2 applies to the person; and
 - (c) section 128 and this section cease to apply to the person.

Sections 128AA to 128AD were inserted, as from 18 June 2002, by section 10 Immigration Amendment Act 2002 (2002 No 22).

Subsection (8)(a) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting "prison" for "penal institution".
See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

128AB Conditions

- (1) An order under section 128AA(6)—
 - (a) must be made subject to the condition that the released person—
 - (i) must reside at a specified address; and
 - (ii) must report to an office of the Department of Labour or to a police station at specified times and intervals, and in a specified manner:
 - (b) if the released person is a refugee status claimant under Part VIA, must be made subject to a condition relating to attendance at any interview under that Part by a

- refugee status officer or the Refugee Status Appeal Authority:
- (c) may be made subject to any other conditions the Judge thinks fit to impose in the circumstances.
- (2) The conditions imposed on a released person under subsection (1)—
- (a) must be notified in writing to the person before his or her release; and
 - (b) take effect on his or her release.
- (3) An immigration officer and the released person—
- (a) may agree to vary a condition imposed under paragraph (a) or paragraph (b) of subsection (1); and
 - (b) if the order containing it so provides, or with the consent of a District Court Judge, may agree to vary a condition imposed under subsection (1)(c).
- (4) A variation of a condition—
- (a) takes effect immediately; but
 - (b) must be reduced to writing, and notified to the released person, as soon as practicable.

Sections 128AA to 128AD were inserted, as from 18 June 2002, by section 10 Immigration Amendment Act 2002 (2002 No 22).

128AC Breach of condition or failure to deliver oneself up to immigration officer

- (1) This subsection applies to a person who has been released under section 128AA—
- (a) after the person breaches a condition imposed under section 128AB;
 - (b) at any time between the time the person fails to deliver himself or herself up to an immigration officer as required by section 128AA(10) and the time (if any) when the person is granted a permit under this Act.
- (2) If subsection (1) applies, the person is liable to be arrested by any member of the police, without warrant, and placed in custody.
- (3) If arrested and placed in custody, the person must as soon as possible be brought again before a District Court Judge; and subject to subsection (4),—

- (a) in the case of a person to whom subsection (1) or subsection (2) of section 128AA applied by virtue of his or her being placed in custody under section 128(5), the Judge must decide whether to issue a warrant of commitment authorising his or her detention for a period not exceeding 28 days in a prison or some other premises approved for the purpose by the Judge, or again make an order for the person's conditional release under section 128AA;
 - (b) in any other case, the Judge must decide whether to order that the person must again be taken into custody, or again make an order for the person's conditional release under section 128AA.
- (4) If a person brought before a District Court Judge under subsection (3) has breached a condition imposed under paragraph (a) or paragraph (b) of section 128AB(1), the Judge must (as the case may be) issue a warrant of commitment or make an order that the person must again be taken into custody, unless the Judge is satisfied that the person had a reasonable excuse for breaching the condition.
- (5) A warrant under subsection (3)(a) must be treated as if it has been issued pursuant to section 128(7).
- (6) If an order is made under subsection (3)(b) that a person must again be taken into custody, the person may be detained in custody under section 128 pending the person's departure from New Zealand on the first available craft.
- (7) If a person is released under section 128AA, whether or not he or she breaches a condition imposed under section 128AB or fails to deliver himself or herself up to an immigration officer as required by section 128AA(10),—
 - (a) the person must continue to be treated as a person to whom section 128 applies who is being detained under that section; and
 - (b) nothing in Part II applies to the person.

Sections 128AA to 128AD were inserted, as from 18 June 2002, by section 10 Immigration Amendment Act 2002 (2002 No 22).

Subsection (3)(a) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting "prison" for "penal institution". See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

128AD Cancellation of order for conditional release

- (1) An immigration officer may make an application to a District Court Judge for an order cancelling an order under section 128AA(6).
- (2) An application under subsection (1) must be made on oath, and state why the person to whom the order for release relates should no longer be released on conditions.
- (3) The District Court Judge may make or refuse to make an order, as he or she thinks fit.
- (4) If the District Court Judge makes an order,—
 - (a) the person is liable to be arrested by any member of the police, without warrant, and placed in custody; and
 - (b) if the person is arrested and placed in custody,—
 - (i) in the case of a person to whom subsection (1) or subsection (2) of section 128AA applied by virtue of his or her being placed in custody under section 128(5),—
 - (A) the person must be treated as a person to whom section 128(5) continues to apply; and
 - (B) if that person is to be detained for more than 48 hours after delivering himself or herself up, an application must be made in accordance with section 128(7):
 - (ii) in any other case, the person must again be taken into custody, and may be detained in custody under section 128 pending the person's departure from New Zealand on the first available craft.

Sections 128AA to 128AD were inserted, as from 18 June 2002, by section 10 Immigration Amendment Act 2002 (2002 No 22).

128A Procedure under section 128 if review proceedings, etc, brought

- (1) For the purposes of this section, the term **review proceedings** includes any proceedings on an application for a writ of *habeas corpus*.
- (2) If review proceedings are brought by a person detained under section 128 of this Act in respect of that detention or any decision made under that section,—

- (a) The period for which detention is authorised under the warrant (as extended or further extended under section 128(13B), where appropriate) is to be reckoned exclusive of—
 - (i) Any period during which the review proceedings are in existence (which period includes both the date of commencement and the date of completion of the proceedings); and
 - (ii) Any period for which the person, having failed to deliver himself or herself up in accordance with subsection (5) of this section, is at large following the completion of the review proceedings; and
- (b) Where the person is neither delivered up to a member of the Police under section 128(11) nor released under section 128(13)(a) before the expiry of the period for which detention is authorised by the warrant of commitment (as extended or further extended under section 128(13B), where appropriate),—
 - (i) The person shall be brought before a District Court Judge by an immigration officer or a member of the Police, and the Judge shall consider the question of that person's continued custody under the warrant; and
 - (ii) Thereafter, while the person remains in custody, the person shall be brought before a District Court Judge at intervals of not more than 7 days for further consideration of that question.
- (3) Where the person is brought before a District Court Judge under subsection (2)(b) of this section, the Judge shall, subject to subsection (4) of this section, extend the warrant of commitment for—
 - (a) A period of 7 days; or
 - (b) Where the final duration of the review proceedings is known, such shorter period as will ensure that the person is not detained under the warrant for a period which exceeds in total the sum of—
 - (i) 28 days; and

- (ii) Any further number of days for which the warrant was extended or further extended under section 128(13B); and
 - (iii) The period of duration of the review proceedings.
- (4) Notwithstanding subsection (3) of this section, the District Court Judge may, if—
 - (a) The review proceedings have not been completed at the time the person is brought before the Judge; and
 - (b) The Judge is satisfied that the review proceedings are not likely to be completed within the next 7 days; and
 - (c) The person detained under the warrant satisfies the Judge that he or she is not likely to abscond, or to breach any condition imposed under subsection (6) of this section,—order the release of the person upon the conditions specified in subsection (6) of this section.
- (5) Any such order for release shall expire on the date on which the review proceedings are completed, and the person shall on that date deliver himself or herself up to an immigration officer at such location as is specified for that purpose in the order, whereupon, depending on the result of the review proceedings, either—
 - (a) The person shall again be taken into custody and may be detained in custody under section 128(5) of this Act pending the person's departure from New Zealand on the first available craft; or
 - (b) The person shall be released.
- (6) Any order for release made under subsection (4) of this section shall be subject to the following terms and conditions:
 - (a) The person shall reside at such address as is specified in the order, or such other address as may be agreed between an immigration officer and the person under subsection (7) of this section:
 - (b) The person shall report daily to an office of the Department of Labour or a Police station at such time and in such manner as the Judge may specify, or at such other intervals or times or in such other manner as may be agreed between an immigration officer and the person under subsection (7) of this section:

- (c) The person shall comply with such other conditions as the Judge thinks fit to impose.
- (7) Any condition imposed—
 - (a) By paragraph (a) or paragraph (b) of subsection (6) of this section; or
 - (b) By the Judge under paragraph (c) of that subsection, if the Judge authorises the variation of any such condition by consent between an immigration officer and the person released,—
may be varied by consent between an immigration officer and the person released, and the condition shall take effect as so varied.
- (8) Any conditions imposed on a person released under subsection (4) of this section shall be notified in writing to the person upon the person's release and shall take effect immediately.
- (9) Any variation of a condition pursuant to subsection (7) of this section shall take effect when the variation is agreed between the immigration officer and the person, and shall be reduced to writing and notified to the person as soon as practicable thereafter.
- (10) A breach of any condition imposed or varied under this section nullifies the order for release, and thereafter—
 - (a) The person is liable to be arrested by any member of the Police without warrant and placed in custody; and
 - (b) Where the person is so arrested and placed in custody the person shall as soon as possible be brought again before a District Court Judge under subsection (2)(b) of this section; and
 - (c) Where the condition breached was a condition imposed by or under paragraph (a) or paragraph (b) of subsection (6) of this section, subsection (4) of this section shall no longer apply to allow the release of the person unless the District Court Judge is satisfied that the person had a reasonable excuse for breaching the condition.
- (10A) If a person fails to deliver himself or herself up in accordance with subsection (5) on the date of completion of the review proceedings,—
 - (a) The person is liable to be arrested by any member of the Police without warrant and placed in custody; and

- (b) If so arrested and placed in custody, the person must as soon as possible be brought again before a District Court Judge under subsection (2)(b) so that the Judge may determine whether the person should be detained pursuant to the warrant issued under section 128, or released.
- (11) Where a person is released under subsection (4) of this section, and whether or not the person complies with the conditions of the release or absconds during the currency of the order for release or fails to deliver himself or herself up on the expiry of the order,—
 - (a) The person shall be deemed for the purposes of the provisions of this Act still to be a person to whom section 128 of this Act applies, and to be detained under that section; and
 - (b) Nothing in Part 2 of this Act shall apply in respect of the person.
- (12) Where a person released under subsection (4) of this section fails to deliver himself or herself up to an immigration officer on the expiry of the order for release, the period for which detention is authorised by the warrant of commitment issued under section 128(7) (as extended or further extended under section 128(13B), where appropriate) shall be reckoned exclusive of—
 - (a) Any period referred to in subsection (2)(a) of this section during which review proceedings are in existence; and
 - (b) Any period commencing on the date of expiry of the order for release and ending on the date on which the person is again taken into custody under this Act.

Sections 128A and 128B were inserted, as from 18 November 1991, by section 38 Immigration Amendment Act 1991 (1991 No 113).

Subsection (2)(a) was substituted, as from 16 June 1999, by section 38(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (2)(b) was amended, as from 16 June 1999, by section 38(2) Immigration Amendment Act 1999 (1999 No 16) by omitting all the words that occurred before subparagraph (i), and substituting the words “Where the person is neither delivered up to a member of the Police under section 128(11) nor released under section 128(13)(a) before the expiry of the period for which detention is authorised by the warrant of commitment (as extended or further extended under section 128 (13B), where appropriate),—”.

Subsection (3)(b) was substituted, as from 16 June 1999, by section 38(3) Immigration Amendment Act 1999 (1999 No 16).

Subsection (5)(a) was amended as from 18 November 1991, by section 11 Immigration Amendment Act 2002 (2002 No 22), by substituting “detained” for “retained”.

Subsection (10A) was inserted, as from 16 June 1999, by section 38(4) Immigration Amendment Act 1999 (1999 No 16).

Subsection (12) was amended, as from 16 June 1999, by section 38(5) Immigration Amendment Act 1999 (1999 No 16) by substituting “the period for which detention is authorised by the warrant of commitment issued under section 128(7) (as extended or further extended under section 128(13B), where appropriate)” for “the period of 28 days specified in section 128(9)(c) of this Act”.

128B Detention of persons whose eligibility for permit is not immediately ascertainable

- (1) This section applies to every person who arrives in New Zealand from another country (not being a person who is exempt under section 11 or section 12 of this Act from the requirement to hold a permit) where—
 - (a) An immigration officer or any member of the Police has reason to suspect that the person may be a person to whom section 7(1) of this Act applies; or
 - (b) The person has no appropriate documentation for immigration purposes, or any such documentation held by the person appears to be false,—and a decision as to whether or not to grant that person a permit or, in the case where the person holds a pre-cleared permit, as to whether or not to revoke that permit, has not been made because the person’s status under section 7(1) of this Act cannot be immediately ascertained.
- (2) Any person to whom this section applies (including any such person who holds a pre-cleared permit) shall be deemed for the purposes of this Act to be in New Zealand unlawfully, but, for so long as this section applies to that person, that person is not liable to be dealt with under any of the provisions of Part 2 of this Act.
- (3) Any person to whom this section applies may be detained by any member of the Police and placed in custody in accordance with this section while a determination is made as to whether or not section 7(1) of this Act applies to that person.

- (4) Every such determination shall be made by the Minister acting on the advice of the Commissioner of Police, or of such other adviser as the Minister thinks appropriate in the circumstances of the case.
- (5) This section shall continue to apply to any person until—
 - (a) A determination is made that the person is not a person to whom section 7(1) applies, in which case an immediate determination must be made as to whether or not to grant the person a permit, and either—
 - (i) The person must be released immediately, if the person is granted a permit or already holds a pre-cleared permit; or
 - (ii) If no permit is granted to the person, and the person does not already hold a pre-cleared permit, the person is liable to be dealt with under section 128; or
 - (b) A determination is made that the person is a person to whom section 7(1) of this Act applies, in which case the person may from the time of that determination be treated as a person to whom section 128 of this Act applies and may be retained in custody under subsection (5) of that section pending the person's departure from New Zealand on the first available craft; or
 - (c) The person requests removal from New Zealand, in which case the person may be treated as a person to whom section 128 of this Act applies and may be retained in custody under subsection (5) of that section pending the person's departure from New Zealand on the first available craft.
- (6) Where a person to whom this section applies is detained by any member of the Police and placed in custody the following provisions shall apply:
 - (a) The Minister shall take all practicable steps to determine, as speedily as may be possible in the circumstances, whether or not the person is a person to whom section 7(1) of this Act applies:
 - (b) Where the Minister considers that there may be reasonable grounds for believing that the person is a person to whom section 7(1) of this Act applies, the Minister

shall give that person an opportunity to comment on or rebut those grounds:

- (c) A member of the Police or an immigration officer shall, not later than 48 hours after the person is taken into custody, apply to a District Court Judge for a warrant of commitment in the prescribed form authorising the detention in custody of that person for a period of 28 days in the first instance pending a determination as to whether or not the person is a person to whom section 7(1) of this Act applies.
- (7) Every person who is placed in custody under subsection (3) or subsection (6)(c) of this section and is to be detained overnight shall be detained—
- (a) In the case of a person under 17 years of age who is not married or in a civil union, in—
 - (i) Any residence (within the meaning of section 2 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
 - (ii) Any other premises agreed to by the parent or guardian of that person and an immigration officer; or
 - (b) In any other case, in—
 - (i) Any premises approved by the Secretary of Labour; or
 - (ii) A Police station; or
 - (iii) At the direction of a Judge, in a prison.
- (8)
- (9) A warrant of commitment issued under subsection (6)(c) of this section shall authorise the manager of the prison or the person in charge of the other premises to detain the person named in it until—
- (a) The expiry of 28 days from the date of the issue of the warrant, or the expiry of such further period for which the warrant may be extended under subsection (10) of this section; or

- (b) The person ceases to be a person to whom this section applies pursuant to subsection (5) of this section.
- (10) Where a person detained in custody pursuant to a warrant of commitment issued under subsection (6)(c) of this section is not, before the end of the 28-day period specified in that subsection, either released and given a permit or treated as a person to whom section 128 of this Act applies,—
 - (a) The person shall again be brought before a District Court Judge by an immigration officer or a member of the Police, and the Judge shall consider the question of that person's continued custody under the warrant; and
 - (b) Thereafter, while the person remains in custody, the person shall be brought before a District Court Judge at intervals of not more than 7 days for further consideration of that question.
- (11) Where a person is brought before a District Court Judge under subsection (10) of this section, the Judge shall extend the warrant if the Judge is satisfied the person is still a person to whom this section applies.
- (11A) If a person to whom this section applied is subsequently treated as a person to whom section 128 applies, that section applies as if any warrant of commitment issued under subsection (6)(c) of this section were a warrant of commitment issued under section 128(7).
- (12) No person detained pursuant to this section shall be granted bail.

Sections 128A and 128B were inserted, and section 129 was substituted, as from 18 November 1991, by section 38 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was amended, as from 15 September 1993, by section 14(1) Immigration Amendment Act 1993 (1993 No 100) by inserting “or, in the case where the person holds ... to revoke that permit,”.

Subsection (2) was amended, as from 15 September 1993, by section 14(2) Immigration Amendment Act 1993 (1993 No 100) by inserting “(including any such ... pre-cleared permit)”.

Subsection (5)(a) was amended, as from 15 September 1993, by section 14(3) Immigration Amendment Act 1993 (1993 No 100) by inserting “, unless the person already holds a pre-cleared permit,”.

Subsection (5)(a) was substituted, as from 16 June 1999, by section 39(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (7)(a) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “a person under 17 years of age who is not married or in a civil union” for “an unmarried person who is under 17 years of age”.

Subsection (7)(a)(i) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989” for “Director-General of Social Welfare”.

Subsection (7)(b)(iii) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (8) was repealed, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50). *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (9) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (9) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (11A) was inserted, as from 16 June 1999, by section 39(2) Immigration Amendment Act 1999 (1999 No 16).

129 Transit passengers

- (1) Subject to subsection (2) of this section, nothing in this Act requires any person to apply for or hold a permit if that person arrives in New Zealand from another country while in transit to another destination and remains on the craft, or in a Customs controlled area, or in the custody of the Police, throughout the whole period during which that person is in New Zealand.
- (2) This section shall cease to apply to any person on the expiry of the period of 24 hours that follows the time of the person’s arrival in New Zealand.
- (3) Nothing in this section affects the obligation of any person to apply for and obtain a transit visa under this Act.

This section was substituted, and sections 128A and 128B were inserted, as from 18 November 1991, by section 39 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “a Customs controlled area” for “the boarding station or examination station”.

Part 6A

Refugee determinations

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129A Object of this Part

The object of this Part is to provide a statutory basis for the system by which New Zealand ensures it meets its obligations under the Refugee Convention.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129B Definitions

- (1) In this Part, unless the context otherwise requires:

Authority means the Refugee Status Appeals Authority referred to in section 129N

Claim means a claim in New Zealand to be recognised as a refugee in New Zealand

Claimant, or **refugee status claimant**, means a person who has made a claim in New Zealand to be recognised as a refugee in New Zealand and whose claim has not been finally determined under this Act

Convention means the Refugee Convention defined in section 2

Refugee status officer, or **officer**, means an employee of the Department of Labour who is designated by the chief executive under section 129E to undertake refugee status determinations under this Act and is not disqualified from doing so by subsection (3) of that section

Subsequent claim means a claim in New Zealand to be recognised as a refugee in New Zealand by a person who has previously made such a claim in New Zealand 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 specified in section 129O(3).

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129C Refugee status to be determined under this Part

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

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129D Refugee Convention to apply

- (1) In carrying out their functions under this Part, refugee status officers and the Refugee Status Appeals Authority are to act in a manner that is consistent with New Zealand's obligations under the Refugee Convention.
- (2) The text of the Refugee Convention is set out in Schedule 6.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Claims for refugee status

129E Claim to be determined by refugee status officer

- (1) Every claim to be recognised as a refugee in New Zealand is to be determined by a refugee status officer.
- (2) The chief executive of the Department of Labour is from time to time to designate as refugee status officers such persons employed in the Department as the chief executive considers necessary for the purposes of this Part.
- (3) No person may be designated as a refugee status officer, or act as a refugee status officer, at any time when the person is also currently employed in considering applications for permits under this Act or in administering the removal provisions in Part 2.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129F Functions of officers considering claims

- (1) On receipt of a claim that is not a subsequent claim, it is the function of a refugee status officer to, as appropriate,—
 - (a) Determine whether the claimant is a refugee within the meaning of the Refugee Convention;
 - (b) Determine whether the claimant should be excluded from the protection of the Convention because of the application of any of Articles 1D, 1E, and 1F of the Convention.
- (2) On receipt of a subsequent claim, it is the function of an officer to—
 - (a) Determine whether, since the most recent claim by the person, circumstances in the claimant's home country have changed to such an extent that the subsequent claim is based on significantly different grounds to the previous claim; and
 - (b) Only if the officer is satisfied that circumstances have so changed, determine any matter specified in subsection (1).

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129G How claim made and handled

- (1) A claim is made as soon as a person signifies his or her intention to seek to be recognised as a refugee in New Zealand to a representative of the Department of Labour or to a member of the Police.
- (2) Once a claim is made, the claimant must, on request by a refugee status officer, confirm the claim in writing in the prescribed manner.
- (3) A claimant must as soon as is possible endeavour to provide to an officer all information relevant to his or her claim, including—
 - (a) A statement of the grounds for the claim; and
 - (b) An indication of whether any other members of the claimant's immediate family who are in New Zealand are also seeking recognition as refugees and, if so, whether any such claim is on different grounds.

- (4) A claimant must provide an 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 timely manner of a change in either of those addresses. The officer may rely on the latest address so provided for the purpose of communications under this Part.
- (5) It is the responsibility of the claimant to establish the claim, and the claimant must ensure that all information, evidence, and submissions that the claimant wishes to have considered in support of the claim are provided to the refugee status officer before the officer makes a determination on the claim.
- (6) For the purpose of determining a claim, an officer—
 - (a) May seek information from any source; but
 - (b) Is not obliged to seek any information, evidence, or submissions further to that provided by the claimant; and
 - (c) May determine the claim on the basis of the information, evidence, and submissions provided by the claimant.
- (7) Subject to this Part and to any regulations made under it, and to the requirements of fairness, an officer may determine his or her own procedures on a claim.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129H Powers of refugee status officers

- (1) In carrying out his or her functions under this Part, a refugee status officer may—
 - (a) Require a claimant to supply such information, and within such times, as the officer reasonably requires:
 - (b) Require the claimant to produce such documents in the claimant's possession or within the claimant's ability to obtain as the officer requires:
 - (c) Require the claimant to consent to the release by any other person of any relevant documents or information relating to the claimant:
 - (d) If the officer has good cause to suspect that a person other than the claimant has in his or her possession or control any document of the claimant (including any

- passport or travel document), in the prescribed manner request the person to produce any such document:
- (e) Require the claimant to provide or allow the taking of such fingerprints or photographs of the claimant as are reasonably necessary for the purpose of ascertaining or confirming the claimant's identity or nationality:
 - (f) Require the claimant to attend an interview.
- (2) A person who is requested to produce a document under subsection (1)(d) is not entitled to refuse to comply with the request by reason only that the person has a lien over the document.
 - (3) If a claimant is detained in custody, a refugee status officer may require the relevant member of the Police, manager or other officer in charge of the prison, or other person having custody of the claimant, to—
 - (a) Provide the officer with access to the place where the claimant is being detained, and to the claimant; and
 - (b) Produce the claimant for interview.
 - (4) The member of the Police, manager, or other officer concerned must comply with any such requirement, and make appropriate facilities available for an interview.
 - (5) Where a claimant who is required to attend an interview fails to attend at the appointed time and place, the officer may determine the claim without conducting the interview.
 - (6) An officer may decide the order in which claims are to be handled, and no decision on a claim is to be called into question on the basis that it ought to have been handled earlier or later than any other claim or category of claim.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (3) and (4) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “Superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

129I Decisions on claims

- (1) The decision of a refugee status officer on a claim is final, except insofar as it is overturned by the Refugee Status Appeals Authority on an appeal under section 129O.
- (2) An officer must notify a claimant, in the prescribed manner, of—
 - (a) The officer's decision on the claim; and
 - (b) The reasons for that decision; and
 - (c) The claimant's right of appeal to the Authority.
- (3) Once the decision is made and notified to the claimant, the officer may not re-open the claim for further consideration.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129J Limitation on subsequent claims for refugee status

- (1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.
- (2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129K Claim not to be accepted from holder of residence permit or New Zealand citizen

- (1) A refugee status officer may not consider a claim for refugee status by a person who is—
 - (a) The holder of a residence permit; or
 - (b) A New Zealand citizen; or
 - (c) Exempt under section 12 from the requirement to hold a permit.
- (2) This section does not affect the power of an officer to determine the question of such a person's continued refugee status arising under section 129L.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

*Additional functions of refugee status officers in
relation to continuation, etc, of refugee status*

129L Additional functions of refugee status officers

- (1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:
- (a) Determining whether the Refugee Convention has ceased to apply to a person who has previously been recognised as a refugee by a refugee status officer (but not by the Refugee Status Appeals Authority) in terms of Article 1C of the Convention:
 - (b) Determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, and determining to cease to recognise the person as a refugee in such a case if appropriate:
 - (c) Determining whether a person already recognised as a refugee should subsequently be excluded from the protection of the Convention, in any case where the matters dealt with in Articles 1D, 1E, and 1F of the Convention may not have been able to be properly considered by a refugee status officer (but not by the Authority) for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information:
 - (d) Determining whether, in the light of any relevant international arrangement or agreement, a person who may have lodged a claim for refugee status in another country, or had the opportunity to lodge such a claim, may have a claim for refugee status accepted for consideration in New Zealand:
 - (e) Determining, in the case of a person who has already been recognised as a Convention refugee by a country

- other than New Zealand, whether that person may avail himself or herself of the protection of that country:
- (f) Applying to the Refugee Status Appeals Authority for a determination as to whether—
 - (i) The Convention has ceased to apply, in terms of Article 1C, to a person who has previously been recognised as a refugee by the Authority;
 - (ii) The Authority should cease to recognise a person as a refugee, in any case where that recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information;
 - (iii) Any of Articles 1D, 1E, and 1F of the Convention should be applied to exclude a person from the protection of the Convention, in any case where the Authority has recognised the person as a refugee but the matters dealt with in those Articles may not have been properly considered by the Authority for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information.
 - (2) Refugee status officers also have the functions specified in paragraphs (a) to (c) of subsection (1), as if those paragraphs referred to recognition by the appropriate person or body rather than by a refugee status officer, in respect of—
 - (a) Persons who, before 1 January 1991, were recognised as refugees following consideration of their claims by the Interdepartmental Committee on Refugees; and
 - (b) Persons recognised as refugees outside New Zealand who have travelled to New Zealand as mandated refugees.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129M Procedures to be followed in carrying out additional functions

When carrying out any function under section 129L—

- (a) A refugee status officer must take all reasonable steps to notify the person concerned in the prescribed manner of the matter that is being considered; and
- (b) Except in the case of a function described in section 129L(1)(f), sections 129G, 129H, and 129I(2) and (3) apply, with any necessary modifications, as if the matter being considered were a claim for refugee status and the person concerned were a claimant.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Appeals to Refugee Status Appeals Authority

129N Refugee Status Appeals Authority

- (1) For the purposes of this Part there continues to be a body called the Refugee Status Appeals Authority.
- (2) The main functions of the Authority are—
 - (a) To hear appeals brought under section 129O from determinations by refugee status officers not to recognise a claimant as a refugee; and
 - (b) To make determinations in relation to a person's refugee status on applications made by refugee status officers under section 129L(1)(f).
- (3) The Authority is to consist of—
 - (a) Such number of members as the Governor-General determines from time to time on the advice of the Minister, being barristers or solicitors of the High Court who—
 - (i) Have held practising certificates for at least 5 years; or
 - (ii) Have other equivalent or appropriate experience (whether in New Zealand or overseas); and
 - (b) One ex officio member who is the representative of the United Nations High Commissioner for Refugees.
- (4) The members referred to in subsection (3)(a) are to be appointed by the Governor-General on the advice of the Minister.
- (5) For the purposes of any matter before it the Authority is normally to consist of 1 member.
- (6) The chairperson may direct that, because of the exceptional circumstances of any case, the case is to be heard and deter-

mined by more than 1 member. In any such case the chairperson must designate—

- (a) The members who are to hear and determine the case; and
 - (b) The member who is to be chairperson for the purposes of the hearing and determination.
- (7) The ex officio member under subsection (3)(b) may hear and be involved in the determination of any case so long as the quorum required by subsection (5) or subsection (6) is achieved by the other members of the Authority.
- (8) The provisions set out in Schedule 3C apply in relation to the Authority.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129O Appeals to Refugee Status Appeals Authority

- (1) A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer 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, may appeal to the Refugee Status Appeals Authority against the officer's decision.
- (2) A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision.
- (3) An appeal must be lodged with the Authority—
- (a) Within 5 working days after the appellant is notified under section 129I of the refugee status officer's decision, or within such further time as may be allowed under subsection (4), in the case of a person who is detained in custody at the time of notification; or
 - (b) Within 10 working days after receiving notification of the decision under that section, or within such further time as may be allowed under subsection (4), in any other case.

- (4) The Authority may extend the time for lodging an appeal where satisfied that special circumstances warrant such an extension.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129P Procedure on appeal

- (1) It is the responsibility of an appellant to establish the claim, and the appellant must ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are provided to the Authority before it makes its decision on the appeal.
- (2) The Authority—
- (a) May seek information from any source; but
 - (b) Is not obliged to seek any information, evidence, or submissions further to that provided by the appellant; and
 - (c) May determine the appeal on the basis of the information, evidence, and submissions provided by the appellant.
- (3) An appellant must provide the Authority with a current address in New Zealand to which communications relating to the appeal may be sent and a current residential address in New Zealand, and must notify the Authority in timely manner of a change in either of those addresses. The Authority may rely on the latest address so provided for the purpose of communications under this Part.
- (4) In its consideration of an appeal or other matter under this Part, the Authority may request the chief executive of the Department of Labour to seek and provide relevant information.
- (5) The Authority may dispense with an interview of the appellant or other affected person only if both—
- (a) The appellant or other affected person has been interviewed by a refugee status officer in the course of determining the relevant matter at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and
 - (b) The Authority considers that the appeal or other contention of the person affected is *prima facie* manifestly unfounded or clearly abusive.

- (6) Despite subsection (5), the Authority may determine an appeal or other matter without an interview if the appellant or other person affected fails without reasonable excuse to attend a notified interview with the Authority.
- (7) If a summons is issued by the Authority under section 4D of the Commissions of Inquiry Act 1908 in respect of a person detained in custody, the manager or other person in charge of the relevant prison or other approved premises, or other person having custody of the detained person, must produce, or allow the production of, the person as directed in the summons.
- (8) The Authority may decide the order in which appeals or other matters are to be heard, and no decision on an appeal or other matter is to be called into question on the basis that the appeal or other matter ought to have been heard or decided earlier or later than any other appeal or matter or category of appeal or matter.
- (9) In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Subsection (7) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (7) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “Superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

129Q Decisions of Authority

- (1) Where the Authority consists of more than 1 member on an appeal or other matter, the decision on that matter must be a majority decision.
- (2) If the members are evenly divided, the matter must be determined in favour of the appellant or other person affected.
- (3) A decision of the Authority must be given in writing, and include reasons both for the decision and for any minority view.
- (4) The Authority must notify the appellant or other affected person of its decision, and provide a copy of the decision.

- (5) A decision of the Authority is final once notified to the appellant or other affected person.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

*Functions of Authority otherwise than on
appeals*

**129R Functions of Authority in relation to continuation, etc,
of refugee status**

In addition to the function of hearing appeals from decisions of refugee status officers in relation to refugee status, the Authority also has the function of determining applications made by refugee status officers under section 129L(1)(f) as to whether—

- (a) The Refugee Convention has ceased to apply, in terms of Article 1C, to a person who has previously been recognised as a refugee by the Authority; or
- (b) The Authority should cease to recognise a person as a refugee, in any case where the earlier recognition by the Authority of the person as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or
- (c) Any of Articles 1D, 1E, and 1F of the Convention should be applied to exclude a person from the protection of the Convention, in any case where the Authority has recognised the person as a refugee and the matters dealt with in those Articles may not have been able to be properly considered by the Authority for any reason, including by reason of fraud, forgery, false or misleading misrepresentation, or concealment of relevant information.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

**129S Procedures to be followed in carrying out non-appellate
functions**

When carrying out any function under section 129R—

- (a) The Authority must take reasonable steps to notify the person concerned in the prescribed manner of the matter that is being considered; and
- (b) Section 129P and any regulations made under this Part apply (unless the context otherwise requires, and with any necessary modifications) as if the matter being considered were an appeal under section 129O and the person concerned were an appellant.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

General provisions relating to claims, etc

129T Confidentiality to be maintained

- (1) Subject to this section, confidentiality as to the identity of the claimant or other person whose status is being considered under this Part, and as to the particulars of their case, must at all times, both during and subsequent to the determination of the claim or other matter, be maintained by refugee status officers, the Authority, other persons involved in the administration of this Act, and persons to whom particulars are disclosed under subsection (3)(a) or (b).
- (2) 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 to identify the person concerned, or be likely to endanger any person.
- (3) Subsection (1) does not apply to prevent the disclosure of particulars—
 - (a) To a person necessarily involved in determining the relevant claim or matters; or
 - (b) To an officer or employee of a Government department or other Crown agency whose functions in relation to the claimant or other person require knowledge of those particulars; or
 - (c) To the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or
 - (d) In dealings with other countries for the purpose of determining the matters specified in section 129L(d) and
 - (e) (whether at first instance or on any appeal); or

- (e) To the extent 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 Authority under clause 12 of Schedule 3C or otherwise; or
 - (f) If 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.
- (4) Nor does subsection (1) 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, whether expressly or impliedly by their words or actions, waived his or her right to confidentiality under this section.
- (5) A person who without reasonable excuse contravenes subsection (1), and any person who without reasonable excuse publishes information released in contravention of subsection (1), commits an offence.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129U Special provision relating to refugee status claimants granted temporary permits

- (1) This section applies to any person who—
- (a) Is a refugee status claimant to whom a temporary permit has 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, ceases to be a refugee status claimant by virtue of having his or her claim under this Part to be recognised as a refugee declined.
- (2) A person to whom this section applies may not, whether before or after the expiry of the temporary permit,—
- (a) Apply for a further temporary permit or for a permit of a different type while in New Zealand; or
 - (b) While in New Zealand, request a special direction, or a permit under section 35A; or
 - (c) Bring any appeal under this Act to the Residence Review Board.

- (3) Despite subsection (2)(a), a claimant may apply for a further temporary permit for such period as may be required to maintain the claimant's lawful status in New Zealand while the claim is determined.
- (4) Nothing in this section prevents a person from bringing an appeal to the Removal Review Authority under Part 2.
- (5) This section ceases to apply to a person if and when his or her claim under this Part to be recognised as a refugee is successful.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Subsection (2)(c) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting "Residence Review Board" for "Residence Appeal Authority".

129V Effect of claimant leaving New Zealand

If a claimant leaves New Zealand, his or her claim or appeal is to be treated as withdrawn.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129W Immigration matters not within functions of refugee status officers and Authority

The following are matters for the Minister and any appropriate immigration or visa officer only, and are not within the functions, powers, or jurisdiction of refugee status officers and the Authority:

- (a) The grant or issue or giving under this Act of any visa, permit, exemption, or special direction:
- (b) The revoking or cancellation under this Act of any visa, permit, exemption, or special direction:
- (c) The conditions to be attached to any visa, permit, exemption, or special direction:
- (d) The removal or deportation of any person from New Zealand:
- (e) Any issue of a humanitarian nature that arises outside the context of a decision relating to the recognition of refugee status in New Zealand.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129X Prohibition on removal or deportation of refugee or refugee status claimant

- (1) No person who has been recognised as a refugee in New Zealand or is a refugee status claimant may be removed or deported from New Zealand under this Act, unless the provisions of Article 32.1 or Article 33.2 of the Refugee Convention allow the removal or deportation.
- (2) In carrying out their functions under this Act in relation to a refugee or refugee status claimant, immigration officers must have regard to the provisions of this Part and of the Refugee Convention.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129Y Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
 - (a) Prescribing procedures to be followed for the purposes of this Part:
 - (b) Providing for such other matters as are contemplated by or necessary for giving full effect to the Refugee Convention, and to the provisions of this Part and for its due administration.
- (2) Without limiting the generality of subsection (1), any such regulations may—
 - (a) Specify the manner in which any claim, appeal, or other matter is to be made:
 - (b) Provide for the manner of service of notices and documents, which may differ from the requirements of section 146, and provide for when they will be treated as having been received:
 - (c) Provide for the availability and use of interpreters:
 - (d) Provide for matters relating to communications with claimants and other affected persons:
 - (e) Specify the information that must be supplied to claimants and other affected persons, including information concerning their rights and concerning procedures under this Part:
 - (f) Make provision for the representation of minors:

- (g) Make provision for representation generally:
- (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:
- (j) Specify the obligations of claimants and other affected persons as to the provision of contact details, information, and documents:
- (k) Specify the manner in which a claim or other matter may be withdrawn:
- (l) Providing for any special matters relating to the handling of claims, appeals, or other matters when the claimant or other affected person is in custody:
- (m) Specifying procedures to be followed in relation to claims, appeals, and other matters not completed before the commencement of this Part.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

*Claims and appeals completed before 1 October
1999*

129Z Completed claims and appeals may not be challenged

No determination as to a person's refugee status in New Zealand made before the commencement of this Part by an employee of the Department of Labour or by the Refugee Status Appeals Authority (as constituted before the commencement of this Part) may be challenged on the ground that the employee or the Authority had no legal or statutory authority to make the decision in question.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Transitional provisions

129ZA Uncompleted claims and appeals

- (1) This Part applies on and from 1 October 1999 to any claim, appeal, or other matter relating to refugee status that had been made to the Department of Labour or to the Refugee Status

Appeals Authority before that date but which had not been finally determined as at that date.

- (2) Despite subsection (1),—
- (a) Where a person had an ongoing right to appeal a decision on a claim as at 1 October 1999, the period during which the appeal may be made is not affected by subsection (1):
 - (b) Where any appeal was part-heard as at 1 October 1999, the rules relating to that appeal continue to be those that applied immediately before that date.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

129ZB Continuation of membership of Refugee Status Appeals Authority

- (1) The persons who immediately before 1 October 1999 were members of the Refugee Status Appeals Authority continue as members of the Authority on the same terms and conditions as applied before that date.
- (2) The person who immediately before 1 October 1999 was chairperson of the Refugee Status Appeals Authority continues as chairperson of the Authority.
- (3) Where a member of the Authority to whom subsection (1) applies was appointed without a fixed duration for the appointment, that member is to be treated as having been appointed for a period of 4 years from 1 October 1999.

Part 6A (comprising sections 129B to 129ZB) was inserted, as from 1 October 1999, by section 40 Immigration Amendment Act 1999 (1999 No 16).

Part 7 Miscellaneous provisions

129ZC During epidemic courts 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 or Registrar may be dealt with by a District Court Judge or Registrar on the basis of documents only,

without the person's being brought before the Judge or Registrar.

- (2) Subsection (1) overrides every provision of this Act requiring a person to be brought before a District Court Judge or Registrar for the consideration or determination of a matter.
- (3) If the notice applies to only stated parts of New Zealand, subsection (1) applies within those parts only.

Sections 129ZC to 129ZG were inserted, as from 19 December 2006, by section 6 Immigration Amendment Act (No 2) 2006 (2006 No 87).

129ZD Modification during epidemic of requirements to bring people before court

- (1) This subsection applies to a requirement imposed by 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.
- (3) If the notice applies to only stated parts of New Zealand, subsection (2) applies within those parts only.

Sections 129ZC to 129ZG were inserted, as from 19 December 2006, by section 6 Immigration Amendment Act (No 2) 2006 (2006 No 87).

129ZE During epidemic certain warrants and extensions to have effect for 28 days

- (1) The following provisions apply to a warrant of commitment issued under this Act:
 - (a) if it 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:
 - (b) if it is issued while an epidemic management notice is in force, it authorises the detention of the person named in it for a period of 28 days, or any shorter period the Judge thinks reasonable in the circumstances:

- (c) if it was in force immediately before the commencement of an epidemic management notice, or is issued while an epidemic management notice is in force, it may be extended for a further period (or, as the case requires, further periods) of up to 28 days.
- (2) Subsection (1) overrides every provision of this Act to the contrary.
- (3) If the notice applies to only stated parts of New Zealand, subsections (1) and (2) apply within those parts only.

Sections 129ZC to 129ZG were inserted, as from 19 December 2006, by section 6 Immigration Amendment Act (No 2) 2006 (2006 No 87).

129ZF Application of section 128AB during epidemic

- (1) While an epidemic management notice is in force, an immigration officer and the released person may agree to vary a condition imposed under section 128AB(1)(c)—
 - (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.

Sections 129ZC to 129ZG were inserted, as from 19 December 2006, by section 6 Immigration Amendment Act (No 2) 2006 (2006 No 87).

129ZG Calculation of consecutive period of detention for purposes of section 60(7)

- (1) In calculating for purposes of section 60(7) the consecutive period for which a person has been detained' under one or more warrants of commitment under this Part,—
 - (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.
- (2) If the notice applies to only stated parts of New Zealand, subsection (1) applies within those parts only.

Sections 129ZC to 129ZG were inserted, as from 19 December 2006, by section 6 Immigration Amendment Act (No 2) 2006 (2006 No 87).

130 Special directions

- (1) The Minister may from time to time give to the chief executive of the Department of Labour, or to any other immigration officer or to any visa officer, either in writing or orally, a special direction in respect of—
 - (a) Any person, permit, visa, or document; or
 - (b) Any 2 or more persons, permits, visas, or documents where by reason of any specific event, occurrence, or unusual circumstances there is a common link between those persons, permits, visas, or documents,—in relation to any matter for which such a direction is contemplated by any of the provisions of this Act or of any regulations made under this Act.
- (1A) The Minister may from time to time give in writing a special direction classifying persons who require transit visas for the purposes of section 14E, and section 14E(2B) applies in respect of any such direction.
- (2) Where any special direction is given orally, the chief executive of the Department of Labour or another immigration officer shall, as soon as possible thereafter, make a written record of the content and date of the direction.
- (3) A special direction may be subject to such conditions as the Minister thinks fit.
- (4) A special direction may revoke or amend any previous special direction.
- (5) Nothing in this section shall limit or affect the powers of the Minister to give all such instructions to the chief executive of the Department of Labour as the Minister thinks fit in the ordinary course of the administration of the immigration portfolio and of this Act.
- (6) Nothing in this section, or in any other provision of this Act that refers to or confers a power to make any special direction, gives any person a right to apply for a special direction, or for any visa or permit in circumstances where the issue or grant of the visa or permit would be dependent on the giving of a

special direction, and where any person purports to make any such application—

- (a) The Minister or appropriate visa officer or immigration officer is under no obligation to consider the application; and
- (b) Whether the application is considered or not,—
 - (i) The Minister or appropriate officer is not obliged to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
 - (ii) Section 36 of this Act and section 23 of the Official Information Act 1982 shall not apply in respect of the application.

The words chief executive of the Department of Labour in subsections (1), (2), and (5) were substituted, as from 16 October 1989, for “the Secretary of Labour” pursuant to section 2(8)(a) Labour Department Act Repeal Act 1989 (1989 No 82).

Subsection (1) was amended, as from 1 October 1999, by section 41(1) Immigration Amendment Act 1999 (1999 No 16) by inserting “or to any visa officer”.

Subsection (1A) was inserted, as from 1 October 1999, by section 41(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (6) was inserted, as from 18 November 1991, by section 40 Immigration Amendment Act 1991 (1991 No 113).

131 Delegation of powers of Minister

- (1) The Minister may from time to time, by writing under the Minister’s hand, delegate to any immigration officer or any visa officer all or any of the powers conferred upon the Minister by this Act, except this power of delegation and the powers conferred by or referred to in Part 4A, or in any of sections 13B(1)(b), 13C(2), 14B(2), 17A(2), 18A(3), 18B(3) and (4), 18E(5), 20(1), 20A(1), 31(3), 49(3) and (4), 72, 73, 91, 92, and 129N(3) and (4), or in any of clauses 1(2), 1A, and 1B of Schedule 3A, clauses 1(2), 1A, and 1B of Schedule 3B, and clauses 1(2), 2, and 3 of Schedule 3C.
- (2) The immigration officer or visa officer to whom any such delegation may be made may be an officer referred to by name or the officer who for the time being and from time to time holds a specified position.

- (3) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.
- (4) Any such 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) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister by whom it was made has ceased to hold office, and shall continue to have effect as if made by the successor in office of that Minister.
- (6) The fact that any immigration officer or visa officer exercises any power of the Minister, other than a power referred to in subsection (1) of this section, shall, in the absence of proof to the contrary, be sufficient evidence that the officer has been authorised to do so by a delegation under this section.

Subsection (1) was substituted, as from 18 November 1991, by section 41 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was substituted, as from 1 October 1999, by section 42(1) Immigration Amendment Act 1999 (1999 No 16).

Subsections (2) and (6) were amended, as from 1 October 1999, by section 42(2) Immigration Amendment Act 1999 (1999 No 16) by inserting “or visa officer”.

132 Minister may approve forms

- (1) The Minister may from time to time approve and issue all such forms as the Minister considers necessary for the purposes of 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 Minister under and for the purposes of this Act shall be deemed to have been so approved and issued unless the Minister or an immigration officer otherwise certifies.

133 Immigration officers

- (1) The chief executive of the Department of Labour shall from time to time designate as immigration officers such persons employed in the Department of Labour as the chief executive considers necessary for the purposes of this Act, and every

such officer shall be issued with a warrant of designation signed by the chief executive.

- (2) Every such warrant shall be sufficient evidence of the officer's designation as an immigration officer, but shall not in itself confer any powers on the officer that are not conferred on immigration officers by any of the provisions of this Act.
- (3) Whenever an immigration officer (including any member of the Police or any customs officer exercising the powers of an immigration officer) seeks entry to any premises, building, or craft in the course of the officer's duties under this Act, the officer—
 - (a) Shall produce the officer's warrant of designation; and
 - (b) Shall, if called upon to do so, state the provision or provisions of this Act under which the officer is entitled to enter the premises, building, or craft.
- (4) An immigration officer (including any member of the Police or any customs officer exercising the powers of an immigration officer) shall 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 under any of the provisions of Parts 2 to 4 of this Act.
- (5) For the purposes of subsections (3)(a) and (4) of this section, it shall be sufficient compliance with those subsections if,—
 - (a) In the case of a Customs officer exercising the powers of an immigration officer, the officer produces his or her identity card or other means of identification as provided for in section 7 of the Customs and Excise Act 1996;
 - (b) 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 Police.
- (6) The chief executive of the Department of Labour may at any time revoke a warrant of designation issued under this section.

The words "chief executive of the Department of Labour" in subsections (1), (2), and (5) were substituted, as from 16 October 1989, for "the Secretary of Labour" pursuant to section 2(8)(a) Labour Department Act Repeal Act 1989 (1989 No 82).

Subsection (5)(a) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

133A Designation of officers, etc, by chief executive

- (1) Every designation by the chief executive of a person as an immigration officer, visa officer, or refugee status officer, or for any other purpose under this Act, is revocable in writing at will.
- (2) Any such designation continues in force according to its tenor until it is revoked, notwithstanding that the chief executive by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive.

Section 133A was inserted, as from 1 October 1999, by section 43 Immigration Amendment Act 1999 (1999 No 16).

134 Arrests by members of Police

- (1) It is the duty of every member of the Police when arresting any person without warrant under any of the provisions of Part 2 of this Act—
 - (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
 - (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.
- (2) A failure to fulfil either of the duties mentioned in subsection (1) of this section shall not of itself deprive the member of the Police, or any assistant, of protection from criminal responsibility, but shall be relevant to any inquiry whether the arrest might not have been effected by reasonable means in a less violent manner.
- (3) A member of the Police is not guilty of an offence and is not liable to any civil proceedings in respect of the arrest by that member of any person pursuant to any of the provisions of Part 2 or Part 3 or Part 4 of this Act if the member of the Police has reasonable and probable grounds for believing that the provision applies to that person.

135 Member of Police 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 in the vicinity for assistance.
- (2) Every person so called upon is justified in assisting unless that person knows that there is no reasonable ground for the arrest.

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

- (1) Where an immigration officer has good cause to suspect that any person has committed an offence against section 142 of 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 this section, require the person to do all or any of the following things:
 - (a) Supply the person's name and address:
 - (b) Produce for inspection documentary or other evidence of the person's identity:
 - (c) Produce or surrender 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 or surrender any permit relating or purporting to relate to the person, whether or not it also relates to any other person.
- (2) Every person commits an offence against this Act who, after being warned in accordance with subsection (1) of this section, refuses or fails without reasonable excuse to comply with any requirement of an immigration officer under this section.

137 Powers of entry and search

- (1) For the purpose of serving or executing any removal order or deportation order or any notice under section 20(2) or notice under section 34C(3)(a) of this Act, any member of the Police may, on producing the order or notice but without further authority than this section, and by force if necessary, enter at any reasonable time by day or night any building or premises in which the member of the Police believes on reasonable

grounds that the person named in the order or notice is present.

- (2) Where a member of the Police, or a customs officer undertaking immigration duties, believes on reasonable grounds that it is necessary for the purpose of detecting any offence against this Act or of apprehending any person who is in New Zealand unlawfully or in respect of whom a deportation order has been made or to whom section 128 of this Act applies, the member or officer may at any time, without a warrant or any other authority than this section, do all or any of the following things:
 - (a) Enter and search any form of aircraft or any other form of air-borne vehicle that arrives in New Zealand, being an aircraft or vehicle capable of transporting any person to New Zealand from any country outside New Zealand, for the purpose of determining whether or not there is on board the aircraft or vehicle any stowaway or any other person from or in respect of whom documentation is or may be required under section 125 or section 126 of this Act:
 - (aa) Enter and search any form of ship or any other form of sea-borne vessel that arrives in New Zealand, being a ship or vessel capable of transporting any person to New Zealand from any country outside New Zealand, for the purpose of determining whether or not there is on board the ship or vessel any stowaway or any other person from or in respect of whom documentation is or may be required under section 125 or section 126 of this Act:
 - (b) Enter and search any land or premises in any airport, including any Customs place or Customs controlled area or transit building.
- (2A) This subsection applies to a person who, if he or she lands in New Zealand, will—
 - (a) commit an offence against this Act; or
 - (b) be in New Zealand unlawfully.
- (2B) A member of the police, or a customs officer undertaking immigration duties, who believes on reasonable grounds that there are on board a ship or any other form of sea-borne vessel that is within the contiguous zone or territorial sea of

New Zealand people to whom subsection (2A) applies may, without a warrant or any authority other than this section,—

- (a) for the purpose of determining whether or not there are on board the ship or vessel people to whom subsection (2A) applies, enter and search it; and
 - (b) if satisfied that there are on board the ship or vessel people to whom subsection (2A) applies, exercise any power he or she could exercise if it were within New Zealand.
- (2C) A person does not enter New Zealand lawfully by reason only of being brought into New Zealand—
- (a) by a member of the police or customs officer who is exercising or has exercised powers by virtue of subsection (2B)(b); or
 - (b) on board a ship or vessel permitted or required to enter New Zealand by a member of the police or customs officer who is exercising or has exercised powers by virtue of subsection (2B)(b).
- (3) Where a member of the Police, or a customs officer undertaking immigration duties, has good cause to suspect that an offence against this Act is likely to be or is being committed in or on, or that a person, being a person who is in New Zealand unlawfully or a person in respect of whom a deportation order has been made or a person to whom section 128 of this Act applies, is in or on any part of the foreshore, or the shores or banks of any port, bay, harbour, lake, river, or other waters, or any land or premises in any port, including any containerbase, Customs place, Customs controlled area, wharf, or transit building, or any pier or other structure attached to and extending from any such shore or bank, the member or officer may enter and search those places at any time if the member or officer considers the entry to be necessary for the purpose of discovering the offence or apprehending the person so suspected.

Subsection (1) was amended, as from 18 November 1991, by section 23(2) Immigration Amendment Act 1991 (1991 No 113) by substituting “removal order” for “removal warrant”, and by omitting “warrant or” in two places.

Subsection (1) was amended, as from 1 October 1999, by section 44 Immigration Amendment Act 1999 (1999 No 16) by inserting “or notice under section 34C(3)(a)”.

Subsection (2)(a) was substituted, as from 1 August 1996, by section 3 Immigration Amendment Act 1996 (1996 No 75).

Subsection (2)(aa) was inserted, as from 1 August 1996, by section 3 Immigration Amendment Act 1996 (1996 No 75).

Subsection (2)(b) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “Customs place or Customs controlled area” for “examination station”.

Subsections (2A) to (2C) were inserted, as from 18 June 2002, by section 12 Immigration Amendment Act 2002 (2002 No 22).

Subsection (3) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting “Customs place, Customs controlled area,” for “boarding station”.

138 Powers of entry and inspection

- (1) Where an immigration officer believes on reasonable grounds that the information contained in any register or list kept by the operator of any hotel, motel, guesthouse, motorcamp, or other premises in which accommodation is offered for valuable consideration to any member of the public might lead to the apprehension of any person who is in New Zealand unlawfully, the officer may at any reasonable time during which the premises are open for business, whether by day or by night, without a warrant or any other authority than this section, enter any part of the premises (other than a part of the premises which is a dwellinghouse) in which the officer reasonably believes the register or list is kept, and require any person appearing to have that register or list under that person’s control to produce any part of that register or list that relates to any such person to the immigration officer for inspection by the officer.
- (2) Where an immigration officer believes on reasonable grounds that—
 - (a) Any wages and time record kept by an employer in accordance with the provisions of any Act is kept on any business premises; and
 - (b) There may be an entry in that record relating to any person who is in New Zealand unlawfully, or who is not entitled under this Act to undertake employment in New Zealand or to undertake employment by that employer,—the officer may at any reasonable time during which work is being carried on on the premises or the premises are open for

business, whether by day or by night, without a warrant or any other authority than this section, enter any part of those premises in which the officer reasonably believes the record is kept, and require the employer or the person appearing to have the record under that person's control to produce for inspection any such wages and time record.

- (3) An immigration officer may copy any part of any document produced to the officer under this section that relates to a person who the immigration officer believes on reasonable grounds is in New Zealand unlawfully, or is not entitled under this Act to undertake employment in New Zealand or to undertake the employment to which the document relates.

Subsection (1) was amended, as from 18 November 1991, by section 42(1)(a) and (b) Immigration Amendment Act 1991 (1991 No 113) by substituting “any person” for “a particular person”, and by substituting “any such person” for “the particular person”.

Subsection (2)(a) and (b) were substituted, as from 18 November 1991, by section 42(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (3) was substituted, as from 18 November 1991, by section 42(3) Immigration Amendment Act 1991 (1991 No 113).

138A Power to require surrender of documents from suspected person

- (1) If an immigration officer has good cause to suspect that a person is in New Zealand unlawfully and is liable to be removed from New Zealand under Part II, or is a person to whom any provision of Part VI applies, 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—
- (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:
 - (b) to provide 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 im-

migration officer also has good cause to suspect is in New Zealand unlawfully, or is a person to whom Part VI applies:

- (iv) any travel tickets, or cash or security in lieu of travel tickets, held by or on behalf of the suspect person:
 - (c) if the person does not currently have in his or her possession any of the documents or other things referred to in paragraph (b), to give the officer details of where they can be found and who is holding them.
- (2) If the person refuses or fails without reasonable excuse to comply with any request under subsection (1) (other than a request to surrender travel tickets, or cash or security in lieu of travel tickets), the officer must warn the person that if the refusal or failure persists the person is liable to be detained under this Act.
 - (3) If the refusal or failure still persists, any member of the police may arrest the person without warrant and place the person in custody.
 - (4) If a person has been arrested and placed in custody under this section because the person failed to identify himself or herself or failed to produce relevant documents to confirm his or her identity, an immigration officer must ensure that, unless the person's identity has been confirmed, the person is brought before a District Court Judge as soon as practicable so that the person can establish his or her identity to the satisfaction of the Judge.
 - (5) The Judge may determine who the person is, and both before and after doing so may make any orders and give any directions the Judge thinks fit.
 - (6) Anything that was done in the exercise of a power under former section 65 and that was in effect immediately before its repeal continues to have effect as if it had been done under this section.

Section 138A was inserted, as from 18 June 2002, by section 13(1) Immigration Amendment Act 2002 (2002 No 22).

139 Police to have powers of immigration officers

Every member of the Police shall have all the powers of an immigration officer under any of the provisions of Parts 2, 3, 4, and 6, and sections 136, 138, and 138A, of this Act.

Section 139 was amended, as from 2 July 2004, by section 6 Immigration Amendment Act 2004 (2004 No 56) by substituting the expression “, 138, and 138A” for the expression “and 138”.

140 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 whom the addressee of the warrant 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—
 - (a) A person on whom a removal order has been served is in custody under Part 2; or
 - (b)
 - (c) A person is arrested and placed in custody, or is detained pursuant to a warrant of commitment, under Part 3 or Part 4 or section 128B of this Act,—

any member of the Police may take any particulars of the person so held in custody, including photographs, fingerprints, palm-prints, and footprints, and may use or cause to be used such reasonable force as may be necessary to secure those particulars.
- (3) All particulars taken under this section shall be destroyed—
 - (a) Where, in relation to a person upon whom a removal order has been served, the removal order is subsequently cancelled or quashed, or otherwise ceases to be in force under this Act:
 - (b) Where, in relation to a person detained under section 128B of this Act, that section ceases to apply to the person other than in the circumstances specified in subsection (5)(b) of that section:
 - (c) Where, in relation to a person arrested and placed in custody, or detained pursuant to a warrant of commitment, under Part 3 or Part 4 of this Act—

- (i) The Minister decides not to make a deportation order, or fails to make a deportation order within 14 days of the date of the arrest; or
 - (ii) Any deportation order made is subsequently cancelled or quashed under this Act.
- (4) Where any person (in this subsection referred to as the detainee) is held in custody under this Act (whether pursuant to a warrant of commitment or otherwise), the person responsible for the detainee's custody shall inform the detainee of the detainee's right to contact a solicitor or counsel or any responsible adult nominated by or in respect of the detainee under section 141B (or, where the detainee is under 17 years of age, a parent or guardian of the detainee), and shall, on request by the detainee, any solicitor or counsel acting for the detainee, or, where appropriate, any responsible adult, parent, or guardian, take all such reasonable steps as may be practicable to enable the solicitor or counsel, or the responsible adult, parent or guardian, to visit the detainee and communicate with the detainee in private.
- (4A) Where a person is detained under this Act in a prison, that person must be treated, in accordance with the Corrections Act 2004 and any regulations made under that Act, regulating the treatment of prisoners detained in prisons under this Act.
- (5) A person to whom a warrant of commitment is addressed may take such reasonable measures as are necessary to give effect to the warrant.

Subsection (2)(a) was substituted, as from 18 November 1991, by section 43(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (2)(a) was substituted, as from 1 October 1999, by section 45(1) Immigration Amendment Act 1999 (1999 No 16).

Subsection (2)(b) was repealed, as from 18 November 1991, by section 43(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (2)(c) was amended, as from 18 November 1991, by section 43(2) Immigration Amendment Act 1991 (1991 No 113) by inserting "or section 128B".

Subsection (3)(a) and (b) were substituted, as from 18 November 1991, by section 43(3) Immigration Amendment Act 1991 (1991 No 113).

Subsection (4) was amended, as from 1 October 1999, by section 45(2) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression "section 141B" for the expression "section 60 or section 62 of this Act".

Subsection (4A) was inserted, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50). *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (5) was inserted, as from 16 June 1999, by section 45(3) Immigration Amendment Act 1999 (1999 No 16).

140A Additional provisions relating to custody in approved premises

- (1) Without limiting section 140(5), where a person to whom a warrant of commitment is addressed is the person who is in charge of premises approved under section 128(7), that person and any person acting under the authority of that person may, for the purpose of giving effect to the warrant, use such physical force as the person has reasonable grounds for believing is reasonably necessary—
 - (a) To prevent the person to whom the warrant applies (**the detainee**) from harming any person; or
 - (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.
- (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
 - (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—
 - (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).

- (4) Where a detainee is delivered into the custody of a member of the Police under subsection (3),—
 - (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
 - (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).
- (5) The Judge may also extend the warrant (as amended, if appropriate) under section 128, where an immigration officer makes a contemporaneous application under section 128(13) for extension of the warrant.
- (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 128(6).
- (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, which renders any circumstances—
 - (a) A justification or excuse for the use of force; or
 - (b) A defence to a charge involving the use of force.

Section 140A was inserted, as from 16 June 1999, by section 46 Immigration Amendment Act 1999 (1999 No 16).

141 Special powers of member of Police pending removal or deportation

- (1) Where any person in respect of whom a removal order or deportation order is in force, or any person detained under section 128 of this Act, is to be removed or deported or taken from New Zealand to another country, a member of the Police shall have 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:
 - (a) The power to photograph and measure that person:
 - (b) The power to take that person's fingerprints, palm-prints, or footprints:
 - (c) The power to require that person to undergo any inoculation.
- (2)

This section was substituted, as from 18 November 1991, by section 44 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1) was amended, as from 1 October 1999, by section 47(a) Immigration Amendment Act 1999 (1999 No 16) by omitting “Subject to subsection (2) of this section,”.

Subsection (2) was repealed, as from 1 October 1999, by section 47(b) Immigration Amendment Act 1999 (1999 No 16).

141AA Disclosure of information overseas

- (1) The chief executive may disclose any information specified in section 141AB(1) 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 (8).
- (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 actions of a kind whose prevention or identification, or responding to which, is among the functions of the agency or body;
 - (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 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
- (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
 - (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.
- (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.
- (7) This section does not limit the general powers of the chief executive to enter into agreements not related to the disclosure of information with any overseas agency, body, or person.
- (8) 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
 - (b) the information is disclosed subject to conditions stating—
 - (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
- (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.
- (9) The chief executive must not disclose any information under subsection (8) 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;
 - (b) in any other case, to a suspected violation of the law of the state concerned.

Sections 141AA and 141AB were inserted, as from 18 June 2002, by section 14 Immigration Amendment Act 2002 (2002 No 22).

141AB Information that may be disclosed

- (1) The information that may be disclosed under section 141AA is—
 - (a) airline passenger and crew lists;
 - (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);
 - (f) modus operandi of specified people;
 - (g) known currency and other financial transactions of relevant interest, including involvement in money laundering;

- (h) intelligence analysis assessments and reports:
 - (i) details of mail interceptions:
 - (j) personal identification details (which may include photograph, distinguishing features, and details of identity or travel documents):
 - (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 or permit held by a person.
- (2) Section 141AA does not prevent or limit any disclosure of information otherwise than under that section that may be required or authorised by or under law, or any treaty, agreement, or arrangement concluded by the Government of New Zealand.

Sections 141AA and 141AB were inserted, as from 18 June 2002, by section 14 Immigration Amendment Act 2002 (2002 No 22).

141AC Disclosure of immigration information for Corrections purposes

- (1) The purpose of this section is to facilitate the disclosure of information by the Department of Labour to the Department of Corrections for the purpose of determining the immigration status of any person sentenced to imprisonment.
- (2) For the purpose of this section, the chief executive of the Department of Labour may from time to time, in accordance with arrangements in writing made from time to time between the chief executive of the Department of Labour and the chief executive of the Department of Corrections, supply to that chief executive, in respect of those persons sentenced to imprisonment identified by that chief executive, the information specified in subsection (3).
- (3) The information referred to in subsection (2) is as follows:
- (a) identifying information about the person:
 - (b) the prisoner'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.

- (4) The chief executive of the Department of Labour may, for the purpose of this section, supply the information requested to any officer or employee or agent of the Department of Corrections who is authorised for the purpose by the chief executive of that department.
- (5) Information supplied under subsection (2) may be supplied in any form that is determined by agreement between the chief executive of the Department of Labour and the chief executive of the Department of Corrections.
- (6) In this section **identifying information** in relation to any person includes the person's full name, date and place of birth, gender, Corrections unique identifying number, citizenship, and any known alias.

Section 141AC was inserted, as from 1 June 2005, by section 204 Corrections Act 2004 (2004 No 50). See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

141AD Interpretation

In sections 141AE and 141AF, unless the context otherwise requires,—

authorised officer means any officer, employee, or agent of the Department who is authorised by the chief executive of the Department to supply information to, or receive information from, the Secretary of Labour under section 141AE

Department means the Ministry of Justice or other department of State that, with the authority of the Prime Minister, is for the time being responsible for the enforcement of fines

fine means—

- (a) a fine within the meaning of section 79 of the Summary Proceedings Act 1957 or an amount of reparation:
- (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

fines enforcement action includes the execution of a warrant to arrest a person in respect of the non-payment of the whole, or of 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
- (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—

- (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); 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
- (c) the warrant has not been withdrawn or executed.

Sections 141AD to 141AG were inserted, as from 10 April 2006, by section 4 Immigration Amendment Act 2006 (2006 No 9).

141AE Disclosure of immigration information for fines enforcement purposes

- (1) The purpose of this section is to facilitate the exchange of information between the Department of Labour and the Department to enable—
 - (a) the 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 Secretary of Labour any identifying information about a person who is in serious default.
- (3) If, in relation to a person who is in serious default, identifying information is supplied in accordance with subsection (2), the Secretary of Labour may compare that information with any

information held by the Department of Labour that relates to that person.

- (4) If the Department of Labour has immigration information relating to a person who is in serious default, the Secretary of Labour 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 of Labour:
- (a) the person's full name:
 - (b) the person's date of birth:
 - (c) the person's sex:
 - (d) the person's nationality:
 - (e) the person's address (if known):
 - (f) the person's occupation (if known):
 - (g) the expiry date of any permit granted to the person (if applicable):
 - (h) the date that the person is expected to return to New Zealand (if applicable).
- (5) The Secretary of Labour and the chief executive of the 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.

Sections 141AD to 141AG were inserted, as from 10 April 2006, by section 4 Immigration Amendment Act 2006 (2006 No 9).

141AF 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—
- (a) after the arrival of the alleged defaulter in New Zealand; 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 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.

Sections 141AD to 141AG were inserted, as from 10 April 2006, by section 4 Immigration Amendment Act 2006 (2006 No 9).

141AG Chief executive of Department of Labour 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.
- (2) The chief executive may supply the information to any person or persons concerned with the movement of persons out of New Zealand.
- (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
 - (b) may, in whole or in part, be in the form of a code representing the information.
- (4) In this section,—

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 Zealand, for commercial purposes, or the agent of an owner or operator of that kind

specified fines defaulter has the meaning given to it by section 280F of the Customs and Excise Act 1996.

Sections 141AD to 141AG were inserted, as from 10 April 2006, by section 4 Immigration Amendment Act 2006 (2006 No 9).

141A Disclosure of immigration information

- (1) In this section, unless the context otherwise requires, the term **benefit** has the same meaning as in section 3(1) of the Social Security Act 1964; and includes—
 - (a) A lump sum payable under section 61DB or section 61DC or section 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.
- (2) The purpose of this section is to facilitate the disclosure of information by the Department of Labour to the department for the time being responsible for the administration of the Social Security Act 1964 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.
- (3) For the purpose of this section, the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 may from time to time, in accordance with arrangements made from time to time between that chief executive and the chief executive of the Department of Labour, request the chief executive of the Department of Labour to supply, in respect of the following persons, the information specified in subsection (4):
 - (a) Persons whom the chief executive of the Department of Labour believes are in New Zealand unlawfully;
 - (b) Persons who are in New Zealand lawfully but only by virtue of being the holder of a temporary permit or limited purpose permit of whatever type.
- (4) The information referred to in subsection (3) is as follows:
 - (a) The person's full name;
 - (b) Any aliases known to be used by the person;
 - (c) The person's date of birth;
 - (d) The person's nationality;
 - (e) The person's address (if known);
 - (f) The expiry date of any permit granted to the person.
- (5) On receipt of a request made under subsection (3), the chief executive of the Department of Labour may, for the purpose

of this section, supply the information requested to any officer or employee or agent of the department for the time being responsible for the administration of the Social Security Act 1964 who is authorised for the purpose by the chief executive of that department.

- (6) Information supplied pursuant to a request made under subsection (3) may be supplied in such form as is determined by agreement between 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.

Section 141A was inserted, as from 19 December 1991, by section 2 Immigration Amendment Act (No 2) 1991 (1991 No 134).

Section 141A was substituted, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Subsection (3)(b) was amended, as from 1 October 1999, by 48 Immigration Amendment Act 1999 (1999 No 16) by inserting “or limited purpose permit”.

141B Children to have responsible adult to represent their interests, etc

- (1) In any matters of the kind referred to in subsection (2) that relate both to a dependent child who is under 17 years of age and not married or in a civil union (in this section and sections 141C and 141D referred to as a **minor**) and to 1 or more of that child’s parents,—
- (a) The minor’s interests are to be represented by any such parent; and
 - (b) The parent is the responsible adult for the minor for the purposes of this section and sections 141C and 141D.
- (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 represent the minor’s interests in relation to any of the following matters under this Act:
- (a) The making, serving, and execution of a removal order or a deportation order in the minor’s name;
 - (b) The revocation of the minor’s residence permit;
 - (c) Any claim by the minor to be recognised as a refugee;
 - (d) Any appeal by the minor under this Act:

- (e) Any detention of the minor under this Act.
- (3) The responsible adult is to be nominated by an Authority, the Board, the Tribunal, an immigration officer, a refugee status officer, or a Judge, as the case may require.
- (4) A person may be nominated as a responsible adult under subsection (2) only if—
 - (a) The person is 20 years of age or more; and
 - (b) Except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or the holder of a residence permit; and
 - (c) The person is any of the following:
 - (i) A parent, guardian, or relative of the minor; or
 - (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 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
 - (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.
- (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 refugee status officer, or to an Authority or the Board 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.

Sections 141B to 141D were inserted, as from 1 October 1999, by section 49 Immigration Amendment Act 1999 (1999 No 16).

Subsection (1) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “not married or in a civil union” for “unmarried”.

Subsection (3) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board,” after “an Authority,”.

Subsection (4)(c)(iv) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989” for “Director-General of Social Welfare”.

Subsection (7) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “or the Board” after “an Authority”.

141C Role and rights of responsible adult

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 an Authority or the Board or the Tribunal under any of Parts 2, 3, 4, and 4A, or to the High Court under section 115A, on the minor’s behalf, and may make submissions to the Authority, Board, or Tribunal:
- (b) The responsible adult may appear and be heard in any District Court proceedings under this Act relating to the minor:
- (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:
- (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.

Sections 141B to 141D were inserted, as from 1 October 1999, by section 49 Immigration Amendment Act 1999 (1999 No 16).

Paragraph (a) was substituted, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47).

141D Views of minor to be considered

In any proceedings or process of a kind referred to in section 141B(2) in relation to a minor,—

- (a) An opportunity must be given, so far as is practicable, for the minor to express his or her views on the matter, whether personally or through a responsible adult; and
- (b) Due weight is to be given to those views having regard to the age and level of maturity and understanding of the minor.

Sections 141B to 141D were inserted, as from 1 October 1999, by section 49 Immigration Amendment Act 1999 (1999 No 16).

142 Offences

- (1) Every person commits an offence against this Act who—
 - (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 permit, or any expression of interest in residence under section 13D; or
 - (ii) Any claim to an exemption; or
 - (iii) Any request for variation of the conditions of a permit; or
 - (iv) Any appeal or application in the nature of an appeal to the Minister, the Residence Review Board, the Removal Review Authority, or the Tribunal; or
 - (b) Without reasonable excuse, refuses or fails to produce or surrender any document or to supply any information when required to do so by an immigration officer in accordance with any of the provisions of this Act; or
 - (c) Without reasonable excuse, produces or surrenders any document or supplies any information to an immigration officer or visa officer or refugee status officer knowing that it is false or misleading in any material respect; or
 - (d) whether within or outside New Zealand, produces or surrenders or passes off a passport, certificate of iden-

- tity, visa, permit, invitation to apply for residence, or certificate of citizenship, or anything purporting to be a passport, certificate of identity, visa, permit, invitation to apply for residence, or certificate of citizenship,—
- (i) as relating to that person when in fact, to that person's knowledge, it relates to some other person; or
 - (ii) knowing it to be forged or to have been obtained fraudulently; or
- (e) whether within or outside New Zealand, sells, hires, lends, gives, or otherwise disposes of a passport, certificate of identity, visa, permit, invitation to apply for residence, or certificate of citizenship relating to that person (or anything purporting to be a passport, certificate of identity, visa, permit, invitation to apply for residence, or certificate of citizenship relating to that person) to any other person (the **receiver**)—
- (i) without necessarily knowing which, knowing that the receiver will—
 - (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; 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; or
- (ea) for a material benefit, aids, abets, incites, counsels, or procures any other person to be or to remain in New Zealand unlawfully or to breach any condition of a permit granted to the other person; or
- (eb) 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 enter New Zealand unlawfully (whether by arriving in New Zealand in a manner that does not comply with section 126(1), by arriving in New Zealand with-

- out holding a visa where the other person requires a visa to travel to New Zealand, or otherwise howsoever)—
- (i) knowing that the person's entry into New Zealand is or would be unlawful; or
 - (ii) reckless as to whether the person's entry into New Zealand is or would be unlawful; or
- (ec) whether within or outside New Zealand, aids, abets, incites, counsels, or procures any other person to complete an arrival card in a manner that the person aiding or assisting knows to be false or misleading in any particular; or
- (f) aids, abets, incites, counsels, or procures any other person to be or to remain in New Zealand unlawfully or to breach any condition of a permit granted to the other person under this Act; or
- (fa)
- (g) Resists or intentionally obstructs any visa officer or immigration officer or member of the Police in the exercise of the powers of that officer or member under this Act; or
- (h) Not being a visa officer or an immigration officer or a refugee status officer, personates or pretends to be a visa officer or immigration officer or refugee status officer; or
- (i) 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 representations knowing that the information is, or the representations are, false or misleading; or
- (j) *[Repealed]*
- (2) Every person commits an offence against this Act who, not being a visa officer, an immigration officer, or a refugee status officer,—
- (a) after the person to whom a form required to be completed for the purposes of this Act relates has signed it and declared its contents to be true,—
 - (i) alters information entered on it; or
 - (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—
 - (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.
- (3) In subsection (1)(ea), **for a material benefit** has the same meaning as in section 2(1) of the Crimes Act 1961.

Subsection (1)(a) was substituted, as from 18 November 1991, by section 45 Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(a)(i) was amended, as from 9 September 2003, by section 17(1)(a) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “, or any expression of interest in residence under section 13D” after “visa or permit”.

Subsection (1)(a)(iv) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Residence Review Board” for “Residence Appeal Authority”.

Subsection (1)(c) was amended, as from 1 October 1999, by section 50(1) Immigration Amendment Act 1999 (1999 No 16) by inserting “or visa officer or refugee status officer”.

Subsection (1)(d) was substituted, as from 18 June 2002, by section 15(1) Immigration Amendment Act 2002 (2002 No 22).

Subsection (1)(d) was amended, as from 9 September 2003, by section 17(1)(b) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “invitation to apply for residence,” after the expression “permit,” where it twice occurs.

Subsection (1)(e) was substituted, as from 18 June 2002, by section 15(1) Immigration Amendment Act 2002 (2002 No 22).

Subsection (1)(e) was amended, as from 9 September 2003, by section 17(1)(c) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “invitation to apply for residence,” after the expression “permit,” where it twice occurs.

Subsection (1)(ea) to (ec) were inserted, as from 18 June 2002, by section 15(1) Immigration Amendment Act 2002 (2002 No 22).

Subsection (1)(f) was substituted, as from 18 June 2002, by section 15(1) Immigration Amendment Act 2002 (2002 No 22).

Subsection (1)(fa) was inserted, as from 16 June 1999, by section 50(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (1)(fa) was repealed, as from 18 June 2002, by section 15(1) Immigration Amendment Act 2002 (2002 No 22).

Subsection (1)(h) was amended, as from 1 October 1999, by section 50(3)(a) Immigration Amendment Act 1999 (1999 No 16) by inserting “or a refugee status officer”.

Subsection (1)(h) was amended, as from 1 October 1999, by section 50(3)(b) Immigration Amendment Act 1999 (1999 No 16) by inserting “or refugee status officer”.

Subsection (1)(i) was amended, as from 1 October 1999, by section 50(4) Immigration Amendment Act 1999 (1999 No 16) by inserting the expression “; or”.

Section 142(1)(j): repealed, on 4 May 2008, by section 95 of the Immigration Advisers Licensing Act 2007 (2007 No 15).

Subsection (1)(j) was inserted, as from 1 October 1999, by section 50(4) Immigration Amendment Act 1999 (1999 No 16).

Subsection (1)(j) was substituted, as from 9 September 2003, by section 17(2) Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsections (2) and (3) were inserted, as from 18 June 2002, by section 15(2) Immigration Amendment Act 2002 (2002 No 22).

143 Evidence in proceedings

- (1) In any proceedings relating to any matter under this Act, whether before any Court or an Authority or the Board or the Tribunal, a certificate signed by an immigration officer and containing a statement in relation to any person to the effect that—
- (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 a permit; or
 - (c) Any permit or visa granted to the person was granted for a specified period or on or until a specified date, or was granted for an express purpose, or is or was subject to specified conditions; or
 - (d) The person is or was at any material time, or is not or was not at any material time, exempt under this Act from the requirement to hold a permit; or
 - (e) The person, or any visa, permit, 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) an invitation to apply for residence was or was not issued to the person, or was or was not revoked (including the date of issue or revocation, where appropriate); or

- (eb) a decision whether or not to issue or grant any visa or permit has been made; or
- (ec) an immigration officer or a visa officer was or was not satisfied as to any relevant specified matter; or
- (ed) whether or not a particular stage of processing an application had been reached; or
- (ee) an automated electronic system was or was not applying criteria predetermined in accordance with Government residence policy; or
- (ef) the result of the process described in paragraph (ee) has or has not been applied as the basis for a decision; or
- (f) The person was removed or deported from New Zealand on a specified date, or that there is in force in respect of that person a removal order or deportation order; or
- (g) For the purpose of obtaining any visa, the person while outside New Zealand made any statement or supplied any information to a visa officer that was false or misleading in any material respect or produced or surrendered to a visa officer any passport or certificate of identity or other document that was forged or obtained fraudulently; or
- (h) For the purpose of obtaining any permit, or any variation of the conditions of any permit, or of claiming any exemption from the requirement to hold a permit, or in support of any appeal against removal or deportation from New Zealand, the person, while in New Zealand, produced or surrendered to an immigration officer any passport, certificate of identity, or other document that was forged or obtained fraudulently or that contained any visa or permit that was forged or so obtained; or
- (i) 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
- (j) The person has, or has not, lodged an appeal under section 47; or
- (k) The person is, or is not, a person to whom paragraph (a) or paragraph (b) of section 7(1) of this Act applies; or—

- (l) the person travelled to New Zealand on a certain commercial craft at a certain time; or
 - (m) the person travelled to New Zealand before a decision was made by the chief executive under section 125AB(1); or
 - (n) the person travelled to New Zealand contrary to a decision made by the chief executive under section 125AB(1)(b) or (c); or
 - (o) the person did not provide information requested by the chief executive under section 125AD(1); or
 - (p) the person did not provide the chief executive with access to information under section 125AD(3),—
shall, in the absence of proof to the contrary established on the balance of probabilities, be deemed to be proof of the truth of the statement.
- (1A) In any proceedings relating to any matter under Part 6A, whether before any court or an Authority or the Board or the Tribunal, a certificate signed by an immigration officer or a refugee status officer and containing a statement in relation to any person to the effect that—
- (a) The person has or has not, as at any material time, claimed to be a refugee in New Zealand (or elsewhere); or
 - (b) The person has or has not, as at any material time, been recognised as a refugee in New Zealand (or elsewhere); or
 - (c) The person, while in New Zealand, produced or surrendered to an immigration officer or refugee status officer any passport, certificate of identity, or other document that was forged or obtained fraudulently; or
 - (d) The person has, or has not, lodged an appeal under section 129O, or a matter is or is not before a refugee status officer under section 129L or the Refugee Status Appeals Authority under section 129R,—
is to be treated as proof of the truth of the statement in the absence of proof to the contrary established on the balance of probabilities.
- (2) Where any such certificate contains a statement as to any matter specified in subsection (1)(g) of this section, the Court or

the Tribunal or the Authority or the Board in its discretion, if it considers it fair and equitable to do so, may accept 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 the same would be otherwise admissible in a Court of law.

- (3) In any proceedings relating to any matter under this Act, whether before any Court or an Authority or the Board or the Tribunal, 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 Minister shall be sufficient evidence of the fact that it was or was not so approved and issued.
- (4) For the purposes of any proceedings under this Act, 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, shall be sufficient evidence of the fact that such a special direction was given under this Act in respect of the person named, or the permit, visa, or document described, and on the date specified, in the document or certificate.
- (4A) For the purposes of any proceedings under this Act, 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 Government residence policy applicable on any date or dates specified in the certificate shall be sufficient evidence of the fact that the document did or did not express Government residence policy applicable on that date or those dates.
- (4B) For the purposes of any proceedings under this Act, a document purporting to be a removal order made under Part 2, or a copy of such an order that is certified to be such by the Minister or an immigration officer, shall be sufficient evidence of the fact that such a removal order was made under this Act in respect of the person named, and on the date specified, in the document or certificate.
- (5) Every person signing any certificate under this section shall, in the absence of proof to the contrary, be presumed to be duly authorised to sign it.

- (6) In any proceedings relating to any matter under this Act, a certificate signed by the Chief Executive of the New Zealand Customs Service stating that a particular place is or was a Customs controlled area of any particular type or a Customs place shall be sufficient evidence of the fact that that place is or was a Customs controlled area of that type or a Customs place, as the case may be.
- (7) For the purposes of any proceedings under this Act, section 6(2) of the Evidence Amendment Act 1952 (which contains presumptions as to documents executed outside New Zealand) does not apply, and the Court, Authority, Board, Tribunal, or other person or body conducting or in charge of the proceedings may—
- (a) If it considers it fair and equitable to do so, accept as evidence any statement, document, or information tendered in respect of a document to which that section 6(2) would otherwise apply, whether or not it would be normally admissible in a court of law; and
 - (b) Determine the credibility or weight (if any) to be given in the proceedings to the document concerned and its contents.

Subsection (1) was amended, as from 18 November 1991, by section 46(1)(a) Immigration Amendment Act 1991 (1991 No 113) by inserting “or the Residence Appeal Authority or the Removal Review Authority”.

Subsection (1) was amended, as from 1 October 1999, by section 51(1)(a) Immigration Amendment Act 1999 (1999 No 16) by substituting “or an Authority” for “or the Residence Appeal Authority or the Removal Review Authority”.

Subsection (1) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “or the Board” after “or an Authority”.

Subsection (1)(c) was amended, as from 15 September 1993, by section 15 Immigration Amendment Act 1993 (1993 No 100) by inserting “on or”.

Subsection (1)(c) was amended, as from 1 October 1999, by section 51(1)(b) Immigration Amendment Act 1999 (1999 No 16) by inserting “or was granted for an express purpose,”.

Subsection (1)(ea) to (1)(ef) was inserted, as from 9 September 2003, by section 18 Immigration Amendment Act (No 2) 2003 (2003 No 47).

Subsection (1)(f) was amended, as from 18 November 1991, by section 46(1)(b) Immigration Amendment Act 1991 (1991 No 113) by substituting “removal order” for “removal warrant”.

Subsection (1)(h) was amended, as from 18 November 1991, by section 46(1)(c) Immigration Amendment Act 1991 (1991 No 113) by inserting “; or”.

Subsection (1)(i), (j), and (k) was inserted, as from 18 November 1991, by section 46(2) Immigration Amendment Act 1991 (1991 No 113).

Subsection (1)(i) was amended, as from 1 October 1999, by section 51(1)(c) Immigration Amendment Act 1999 (1999 No 16) by inserting “, 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”.

Subsection (1)(j) was amended, as from 1 October 1999, by section 51(1)(d) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression “section 47” for the expression “section 63A or section 63B of this Act”.

Subsection (1)(l) to (p) was inserted, as from 2 July 2004, by section 7 Immigration Amendment Act 2004 (2004 No 56).

Subsection (1A) was inserted, as from 1 October 1999, by section 51(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (1A) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “or the Board” after “or an Authority”.

Subsection (2) was amended, as from 1 October 1999, by section 51(3) Immigration Amendment Act 1999 (1999 No 16) by inserting “or the Authority” after “the Court or the Tribunal”.

Subsection (2) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “or the Board” after “Authority”.

Subsection (3) was amended, as from 18 November 1991, by section 46(3) Immigration Amendment Act 1991 (1991 No 113) by inserting “or the Residence Appeal Authority or the Removal Review Authority”.

Subsection (3) was amended, as from 1 October 1999, by section 51(4) Immigration Amendment Act 1999 (1999 No 16) by substituting “or an Authority” for “or the Residence Appeal Authority or the Removal Review Authority”.

Subsection (3) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “or the Board” after “Authority”.

Subsections (4A) and (4B) were inserted, as from 18 November 1991, by section 46(4) Immigration Amendment Act 1991 (1991 No 113).

Subsection (4B) was amended, as from 1 October 1999, by section 51(5) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression “Part 2” for “section 50 of this Act”.

Subsection (6) was inserted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Subsection (7) was inserted, as from 1 October 1999, by section 51(6) Immigration Amendment Act 1999 (1999 No 16).

Subsection (7) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting the expression “Board,” after the expression “Authority,”.

144 General penalty for offences

- (1) A person who commits an offence against section 142(1)(c), section 142(1)(d), section 142(1)(e), section 142(1)(ea), or section 142(2) is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both.
- (1A) A person who commits an offence against section 142(1)(eb) or section 142(1)(ec) 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.
- (1B) A person who commits an offence against section 126(4), section 142(1)(f), section 142(1)(g), or section 142(1)(j) is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding \$5,000, or both.
- (2) Every person who commits an offence against this Act or against any regulations made under this Act for which no penalty is provided elsewhere than in this subsection is liable to a fine not exceeding \$2,000.
- (3) Where any person is convicted of an offence against section 142(f) of this Act in respect of any person who is or was 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 removing the person in relation to whom the offence was committed.
- (4) For the purposes of subsection (3) of this section, the costs incurred or likely to be incurred in removing a person include—
 - (a) The costs of locating, detaining, and maintaining that person; and
 - (b) Internal travel costs for that person,—
incurred or likely to be incurred pending the person's removal from New Zealand.

Subsection (1) was amended, as from 18 November 1991, by section 47(a) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “\$5,000” for the expression “\$2,000”.

Subsection (1) was amended, as from 1 October 1999, by section 52(1) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression “142(g), and 142(j)” for the expression “and 142(g)”.

Subsection (1) was substituted, as from 18 June 2002, by section 16 Immigration Amendment Act 2002 (2002 No 22).

Subsection (1A) was inserted, as from 16 June 1999, by section 52(2) Immigration Amendment Act 1999 (1999 No 16).

Subsection (1A) was substituted, as from 18 June 2002, by section 16 Immigration Amendment Act 2002 (2002 No 22).

Subsection (1B) was inserted, as from 18 June 2002, by section 16 Immigration Amendment Act 2002 (2002 No 22).

Subsection (2) was amended, as from 18 November 1991, by section 47(b) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “\$2,000” for the expression “\$1,000”.

145 Procedural provisions relating to offences

- (1) An offence against section 39A(1), section 142(1)(c), section 142(1)(d), section 142(1)(e), section 142(1)(ea), section 142(1)(eb), section 142(1)(ec), or section 142(2) is punishable on indictment.
- (2) Except as provided in subsection (1), every offence against this Act or any regulations made under it is punishable on summary conviction.
- (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.
- (4) An information for an offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.
- (5) Subsection (4)—
 - (a) overrides section 14 of the Summary Proceedings Act 1957; but
 - (b) does not limit or affect subsection (1).

Section 145 was substituted, as from 18 June 2002, by section 17(1) Immigration Amendment Act 2002 (2002 No 22).

146 Service of notices, etc

- (1) Where under any of the provisions of this Act any notice or other document is to be served on or supplied to the Minister, it shall be delivered to the Minister’s office or to an immigration officer at an office of the Department of Labour.
- (2) Where under any of the provisions of this Act or of any regulations made under this Act any notice or other document is to be served on or supplied to any immigration officer, it shall be

delivered personally to an immigration officer or sent by registered post to an immigration officer at an office of the Department of Labour.

- (3) Where under any of the provisions of this Act any person is to be notified of any matter, written notice of that matter shall be given, served on, or supplied to that person either by personal service or by registered post addressed to that person at that person's New Zealand address, or by service upon the person's solicitor in accordance with subsection (4) of this section.
- (4) Where a solicitor represents that the solicitor is authorised to accept service of any notice or document on behalf of any person, it shall be sufficient service to deliver the document to the solicitor if the solicitor signs a memorandum stating that he or she accepts service of the document on behalf of that person.
- (5) Where under any of the provisions of this Act any notice or other document is to be given, served on, or supplied to the holder of any temporary permit, or any person who is, or is believed to be, in New Zealand unlawfully, by registered post addressed to that person's New Zealand address, the notice or other document shall be deemed to have been given, served on, or received by that person 7 days after the date on which it was posted.
- (6) Except in a case to which subsection (5) of this section applies, where under any of the provisions of this Act any notice or other document is to be given, served on, or supplied to any person by registered post, it shall be deemed to have been given, served on, or received by that person 7 days after the date on which it was posted unless that person proves that, otherwise than through fault on that person's part, the document was not so given, served or received.

Subsections (1) and (2) were amended, as from 16 October 1989, by section 2 Immigration Amendment Act 1989 (1989 No 87) by substituting "an immigration officer" for "a District Superintendent".

146A Special provisions relating to judicial review of decisions under this Act

- (1) Any review proceedings in respect of a statutory power of decision arising out of or under this Act must be commenced within 3 months after the date of the decision, unless the High

Court decides that, by reason of special circumstances, further time should be allowed.

- (2) Where a person has both—
- (a) Appealed against a decision of the Board or an Authority or the Tribunal under any of sections 115, 115A, and 117; and
 - (b) Brought review proceedings in respect of that same decision,—
- the High Court is to 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.

Section 146A was inserted, as from 1 April 1999, by section 53 Immigration Amendment Act 1999 (1999 No 16).

Subsection (2)(a) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by inserting “the Board or” after “a decision of”.

147 Administration of Act

This Act shall be administered in the Department of Labour.

148 Costs of removal, deportation, or repatriation

- (1) Subject to subsections (3) and (4) of this section and to any order of the Court under section 144(3) of this Act, all costs incurred by the Crown in removing, deporting, or repatriating any person from New Zealand may be paid from the Crown Bank Account.
- (2) If—
- (a) any person has been or is to be removed, deported, or repatriated from New Zealand; and
 - (b) that person has in New Zealand a spouse, civil union partner, de facto partner, or a dependent child; and
 - (c) the Minister is satisfied that the effect of the removal, deportation, or repatriation has been or will be to separ-

ate that person from the spouse, civil union partner, de facto partner, or the dependent child,—

the Minister may provide that person or that person's spouse, civil union partner, or de facto partner with such assistance as the Minister thinks fit for the purpose of reuniting the spouse, civil union partner, de facto partner, or the dependent child with the person in the country to which the person has been or is to be removed, deported, or repatriated, and any such assistance may include the grant of a sum out of the Crown Bank Account to meet all or part of the travelling or other costs that will be incurred in any such exercise.

- (3) Subject to any order made by a Court pursuant to an application under subsection (4) of this section, or pursuant to section 144(3) of this Act, all costs incurred by the Crown in removing, deporting, or repatriating any person shall be recoverable as a debt due to the Crown by that person, and any sum so recovered shall be paid into the Crown Bank Account.
- (4) The Minister or an immigration officer may, at any time before a person is removed, deported, or repatriated from New Zealand, apply to a Court of competent jurisdiction to fix such sum as in the opinion of the Court represents any reasonable costs incurred or likely to be incurred by the Crown in removing, deporting, or repatriating that person, and any sum so fixed shall be recoverable as a debt due to the Crown by that person and shall on recovery be paid into the Public Account.
- (5) For the purposes of this section, the costs incurred or likely to be incurred in removing, deporting, or repatriating any person include—
 - (a) The costs of locating, detaining, and maintaining that person; and
 - (b) Internal travel costs for that person,—
incurred or likely to be incurred pending the person's removal, deportation, or repatriation from New Zealand.
- (6) Nothing in this section or in section 28(2) or section 125(4) or section 144(3) of this Act authorises the Crown to recover any particular cost more than once.

The words “Crown Bank Account” were substituted, as from 1 July 1989, for “Public Account” pursuant to section 114(6) Public Finance Act 1977 (1977 No 65) pursuant to section 83(7) Public Finance Act 1989 (1989 No 44).

Subsection (2) was substituted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

148A Fees

- (1) Without limiting the generality of the power to prescribe fees set out in section 150(b), fees may be prescribed under that section in relation to any matter or service under or arising from this Act, whether it be any 1 or more of the acceptance for processing, the processing, or the decision on any application, request, or appeal, whether it relates to a formal process or not, whether or not any other fee is payable in respect of some other aspect of the same matter, and whether it relates to a permit, visa, special direction, exemption, waiver, or other exercise of powers under this Act.
- (2) Fees may apply to an individual person or application, or to a group of persons or applications, or otherwise.
- (3) Fees may not be imposed on refugee status claimants for any matter relating to refugee 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.
- (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 1 level of fee for the same service provided in different ways, or provided in or in respect of different places:
 - (c) Differ for otherwise similar services provided in different ways:
 - (d) Differ for otherwise similar services provided to different categories of person:
 - (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 requesting or obtaining the services in question:
 - (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—
 - (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 directly to be provided to the person who pays the fee but which 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.
- (7) A fee is payable at such time as is prescribed in respect of a particular service, whether that time be 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,—
 - (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 time to time by the chief executive of the Department of Labour.
- (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 of Labour must be paid into the Departmental Bank Account.

Sections 148A to 148C were inserted, and section 149 was substituted, as from 1 October 1999, by section 54 Immigration Amendment Act 1999 (1999 No 16).

148B Bonds

- (1) This section applies in any case where a bond may be imposed under this Act.

- (2) The amount of any bond is to be at a level determined or authorised by—
 - (a) Government residence policy under section 13B, in respect of bonds of a type required by that policy; and
 - (b) Regulations made under this Act, in respect of other bonds.
- (3) Different levels of bond, or different methods of determining levels of bond, may be determined or prescribed 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.
- (4) A bond must specify—
 - (a) The conditions in respect of which it is paid (which must relate to or be based on requirements of the relevant Government residence policy, if appropriate, or on other requirements and obligations imposed by or under this Act, including conditions attached to the relevant permit); and
 - (b) The situations in which it may be refunded or forfeited, whether in whole or in part.
- (5) Regulations made under this Act 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).
- (6) A bond required in respect of any type of matter is payable at the time prescribed for that class of matter in regulations, or in Government residence policy as the case may require, and may be payable either by the person concerned or by any other class of person specified in the regulations or policy. For the avoidance of doubt, a bond payable in relation to the grant of a permit may be required to be payable at the time of the issue of a visa that may lead to the grant of the permit.

- (7) Forfeiture of a bond is at the discretion of the Minister or an immigration officer or a visa 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
 - (c) Any explanation given as to the breach of the bond conditions; and
 - (d) The estimated cost to the Crown of the breach.
- (8) The 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.
- (9) A bond paid must be held in trust by the Department of Labour until refunded or forfeited.
- (10) No interest is payable on a bond to the person who paid it. The chief executive of the Department of Labour may apply any interest towards the costs of administering the bond system, and any surplus interest must be paid into the Crown Bank Account.
- (11) In the case of a bond imposed in relation to a temporary or limited purpose visa or permit, no refund may be made until the person in question either is no longer in New Zealand or, in the case of the holder of a temporary permit, is granted a residence permit.
- (12) 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.
- (13) If all or any part of a bond is forfeited, the Department of Labour must pay the amount forfeited into the Crown Bank Account.
- (14) No bond may be imposed on any refugee status claimant for any matter relating to refugee status, and any bond imposed upon a person before that person became a refugee status claimant must be refunded if the person is subsequently determined under Part 6A to be a refugee.

Sections 148A to 148C were inserted, and section 149 was substituted, as from 1 October 1999, by section 54 Immigration Amendment Act 1999 (1999 No 16).

148C Other charges

- (1) Nothing in section 148A or section 148B prevents the Department of Labour 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.
- (2) Without limiting subsection (1), and for the avoidance of doubt, the Department may—
 - (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, or the cost of moving, at the person's request, the administration of a matter relating to the person from 1 office of the Department to another:
 - (c) Charge for the cost of written material, unless that material is required by any Act or by regulations made under this Act to be provided free of charge:
 - (d) Charge for access to any website, or for information or services provided by any website, operated by the Department:
 - (e) Charge for access to any library or research services provided in relation to immigration or refugee matters:
 - (f) Charge any person for services requested by (and provided to) that person in relation to immigration matters, other than services provided in a customs place:
 - (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.
- (3) All such charges received by the Department of Labour must be paid into the Departmental Bank Account.
- (4) Nothing in subsection (1) or subsection (2)(f) authorises the charging of any person who operates a customs place for services provided in relation to immigration or refugee matters.
- (5) Nothing in subsection (2)(f) affects the ability to recover costs under section 125 or section 148.

Sections 148A to 148C were inserted, and section 149 was substituted, as from 1 October 1999, by section 54 Immigration Amendment Act 1999 (1999 No 16).

149 Exemptions and refunds

- (1) Regulations made under this Act may provide for exemptions from or refunds of any fee or bond 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 any bond, in whole or in part.

Sections 148A to 148C were inserted, and section 149 was substituted, as from 1 October 1999, by section 54 Immigration Amendment Act 1999 (1999 No 16).

149A Immigrant Resettlement and Research Fund

- (1) In this section, unless the context otherwise requires,—
Departmental Bank Account means such Departmental Bank Account operated by the Department of Labour as the Minister of Finance from time to time determines
Fund means the Immigrant Resettlement and Research Fund established under this section.
- (2) There is hereby established a Fund to be known as the Immigrant Resettlement and Research Fund, which shall comprise a credit sum within the Departmental Bank Account.
- (3) The Fund shall be applied for the purposes of—
 - (a) Funding programmes for the resettlement of immigrants in New Zealand:
 - (b) Funding research into—
 - (i) The social and economic effects of immigration to New Zealand:
 - (ii) The circumstances and experiences of immigrants after their settlement in New Zealand.
- (4) There shall be paid into the Departmental Bank Account, to the credit of the Fund, such amounts of public money as Parliament appropriates from time to time for the purpose, and such amounts shall be separately accounted for.
- (5) Payments from the Departmental Bank Account may be debited to the Fund only if such payments are authorised by this section, but nothing in this section shall prevent the investment, in accordance with section 65I of the Public Finance Act 1989, of any money for the time being standing to the credit

of the Fund in the Departmental Bank Account and not immediately required for the purposes of the Fund.

- (6) There shall be paid out of the Departmental Bank Account and debited to the Fund such amounts as the chief executive of the Department of Labour from time to time determines to allocate for any of the purposes for which the Fund may be applied.
- (7) Any allocation made pursuant to subsection (6) of this section may be subject to such terms and conditions as the chief executive of the Department of Labour thinks fit, including conditions to ensure that the persons to whom allocations are made are obliged to account for the use of the funds so allocated.

Section 149A was inserted, as from 9 August 1990, by section 2 Immigration Amendment Act 1990 (1990 No 90).

Subsection (3)(a) was amended, as from 22 May 1998, by section 2 Immigration (Migrant Levy) Amendment Act 1998 (1998 No 23) by omitting “, particularly those programmes that have an emphasis on the development of language skills”.

Subsection (5) was amended, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113) by substituting the expression “section 651” for the expression “section 23”.

149B Migrant levy

- (1) Any regulations made under section 150 may provide for the imposition and collection of a migrant levy on persons who are issued with a visa or are granted a permit.
- (2) The purpose of the levy is to fund, or contribute to the funding 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 the impacts of immigration,—whether through the Immigration Resettlement and Research Fund established under section 149A or through any other fund or programme having a similar purpose.
- (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;
 - (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 of the Department of Labour pending the grant of a residence permit.
- (4) A person who has paid the migrant levy in respect of the issuing of a visa may not also be required to pay the levy in respect of a permit granted on the basis of that visa.
- (5) Not later than 1 October in each year the chief executive of the Department of Labour must furnish to the Minister a report setting out, in respect of the financial year ending on the preceding 30 June,—
- (a) The amount collected through the migrant levy; and
 - (b) How the amount of the migrant levy was applied.
- (6) The Minister must present the report to the House of Representatives within 15 sitting days after its receipt.

Section 149B was inserted, as from 22 May 1998, by section 3 Immigration (Migrant Levy) Amendment Act 1998 (1998 No 23).

Subsection (1) was amended, as from 9 September 2003, by section 19(1) Immigration Amendment Act (No 2) 2003 (2003 No 47) by omitting “residence” in both places where it occurs.

Subsection (4) was amended, as from 9 September 2003, by section 19(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by omitting “residence” in both places where it occurs.

149C Purpose of section 149D

Section 149D recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.

Sections 149C and 149D were inserted, as from 1 January 2002, by section 55 Human Rights Amendment Act 2001 (2001 No 96).

149D Relationship between this Act and Human Rights Act 1993

- (1) Despite anything in the Human Rights Act 1993, no complaint may be made under that Act in respect of—

- (a) the content or application of this Act or any regulations made under this Act; or
 - (b) the content or application of any policy made in accordance with section 13A and section 13B.
- (2) The Human Rights Commission may, subject to subsection (3), perform, in relation to immigration matters, any function conferred on the Commission under section 5 of the Human Rights Act 1993.
- (3) The Commission may not, in relation to any matter referred to in subsection (1),—
 - (a) bring any proceedings of a kind referred to in section 5(2)(i) of the Human Rights Act 1993; or
 - (b) exercise the powers conferred by section 5(2)(j) of that Act in relation to any proceedings.

Sections 149C and 149D were inserted, as from 1 January 2002, by section 55 Human Rights Amendment Act 2001 (2001 No 96).

150 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing forms for the purposes of this Act:
- (b) Prescribing fees in respect of any matters under this Act, and providing for exemptions from or refunds of any such fees, in whole or in part, in any class of case:
- (ba) Prescribing matters in respect of the migrant levy referred to in section 149B:
 - (ba) Prescribing matters in respect of bonds that may be imposed under this Act:
- (c) Prescribing any procedural matters in relation to proceedings before the Tribunal:
- (ca) Prescribing any procedural matters in relation to proceedings before the Residence Review Board:
 - (cb) Prescribing any procedural matters in relation to proceedings before the Removal Review Authority:
- (d) Prescribing any procedural matters in relation to any applications under this Act:
- (e) Exempting any class of person from the requirement to obtain any visa or to hold any permit:

- (ea) Classifying persons who require transit visas for the purposes of section 14E of this Act:
- (f) Prescribing conditions in respect of permits or any type of permit:
- (g) Prescribing the period of currency, or maximum period of currency, for temporary permits or limited purpose permits or for any type or class of temporary permit or limited purpose permit:
- (h) Prescribing classes of courses of study or training for which a student permit is not required under this Act:
- (i) Prescribing procedures to be followed in relation to the responsibilities under section 125 of this Act of carriers and person in charge of any craft, and the manner in which the responsibilities of any such person may be fulfilled:
- (j) Prescribing procedures to be followed in relation to the responsibilities under section 126 of this Act of persons arriving in or leaving New Zealand, and the manner in which the responsibilities of any such person may be fulfilled:
- (k) Exempting any class of carrier or person from any of the requirements of section 125 or section 126 of this Act:
- (l) Prescribing offences in respect of the contravention of, or non-compliance with, any regulations made for the purposes of this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$2,000:
- (m) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Paragraph (ba) was inserted, as from 22 May 1998, by section 4 Immigration (Migrant Levy) Amendment Act 1998 (1998 No 23).

A second paragraph (ba) was inserted, as from 1 October 1999, by section 55(1) Immigration Amendment Act 1999 (1999 No 16).

Paragraph (ca) was inserted, as from 18 November 1991, by section 48(1) Immigration Amendment Act 1991 (1991 No 113).

Paragraph (ca) was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting "Residence Review Board" for "Residence Appeal Authority".

Paragraph (cb) was inserted, as from 18 November 1991, by section 48(1) Immigration Amendment Act 1991 (1991 No 113).

Paragraph (ea) was inserted, as from 18 November 1991, by section 48(2) Immigration Amendment Act 1991 (1991 No 113).

Paragraph (g) was substituted, as from 1 October 1999, by section 55(2) Immigration Amendment Act 1999 (1999 No 16).

Paragraph (l) was amended, as from 18 November 1991, by section 48(3) Immigration Amendment Act 1991 (1991 No 113) by substituting the expression “\$2,000” for the expression “\$1,000”.

151 Amendments and repeals

- (1) The enactments specified in the first column of Schedule 4 to this Act are hereby amended in the manner indicated in the second column of that Schedule.
- (2) The enactments specified in Schedule 5 to this Act are hereby repealed.

Schedule 1

Section 64

**Departments and bodies from whom
information may be required**

Schedule 1 was amended, as from 1 July 1992, by section 90 Energy Companies Act 1992 (1992 No 56) by inserting the item “Energy companies under the Energy Companies Act 1992”.

Schedule 1 was substituted, as from 1 October 1999, by section 56 Immigration Amendment Act 1999 (1999 No 16).

Department or Body	Class of Records or Information
Housing New Zealand	Postal delivery records
New Zealand Post Limited	
Telecom Corporation of Zealand Limited	
The department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964	Telephone subscriber records, other than confidential listings

Department or Body	Class of Records or Information
New Zealand Transport Agency	
Power supply authorities	Customer names and addresses
Local authorities	Customer names and addresses
Energy companies under the Energy Companies Act 1992	Customer names and addresses
Clear Communications	Telephone subscriber records, other than confidential listings

Department of Work and Income: this item was omitted, as from 1 October 2001, by section 12(1) State Sector Amendment Act 2003 (2003 No 41).

The department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964: this item was inserted, as from 1 October 2001, by section 12(1) State Sector Amendment Act 2003 (2003 No 41).

Department of Social Welfare: this item was omitted, as from 1 October 2001, by section 12(1) State Sector Amendment Act 2003 (2003 No 41).

Schedule 1 Land Transport New Zealand: repealed, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Land Transport New Zealand: this item was inserted, as from 1 December 2004, by section 19(1) Land Transport Management Amendment Act 2004 (2004 No 97). *See* sections 20 to 22 of that Act as to the savings and transitional provisions.

Land Transport Safety Authority: this item was omitted, as from 1 December 2004, by section 19(1) Land Transport Management Amendment Act 2004 (2004 No 97). *See* sections 20 to 22 of that Act as to the savings and transitional provisions.

Schedule 1 New Zealand Transport Agency: inserted, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Schedule 2

Section 103(6)

Provisions relating to Deportation Review Tribunal

1 Term of office

- (1) Except as otherwise provided in this Act, every member of the Tribunal shall hold office for a term of 3 years, but any such member may from time to time be reappointed.

- (2) Notwithstanding that the term of office of a member of the Tribunal may have expired, the member shall, unless sooner vacating office under clause 2 of this Schedule, continue to hold office until his or her successor comes into office.
- (3) Notwithstanding that the term of office of a member of the Tribunal has expired or that a member of the Tribunal has resigned, the member shall be deemed to continue a member of the Tribunal for the purpose of deciding any appeal that was wholly heard before the expiry of the term of office or before the resignation took effect, as the case may be.

2 Extraordinary vacancies

- (1) Any member of the Tribunal may at any time be removed from office by the Minister of Justice for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign the office by writing addressed to the Minister.
- (2) If any member of the Tribunal dies or resigns or is removed from office, the office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.
- (3) The Minister of Justice may appoint any person to fill an extraordinary vacancy for the residue of any period for which the vacating member was appointed.

Subclause (1) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting “inability to perform the functions of the office” for “disability”.

3 Fees and allowances

There shall be paid out of money appropriated by Parliament for the purpose to the members of the Tribunal remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Tribunal were a **statutory Board** within the meaning of that Act.

4 Deputies

- (1) The Minister of Justice may from time to time appoint any person to be the deputy of any member of the Tribunal. The

deputy of any member shall have authority to act as a member of the Tribunal in the event of the absence from any sitting of the member whose deputy he or she is, and while so acting shall be deemed to be a member of the Tribunal. Every such deputy shall hold office during the pleasure of the Minister of Justice

- (2) A deputy of the member who is the presiding member of the Tribunal shall be a person who is qualified to be appointed as presiding member.

5 Sickness or incapacity

- (1) In the event of the sickness or other incapacity of any member of the Tribunal, the Minister of Justice may appoint any person to act in the place of that member during the incapacity.
- (2) Any person appointed under this clause to act in the place of the presiding member shall not act as presiding member by reason only of appointment under this clause.

6 Tribunal to have seal

The Tribunal shall have a seal which shall be judicially noticed in all Courts and for all purposes.

7 Tribunal to be Commission of Inquiry

The Tribunal shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act and of any regulations made under this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs) shall apply accordingly.

8 Sittings of Tribunal

- (1) Sittings of the Tribunal shall be held at such times and places as the Tribunal or the presiding member from time to time appoints.
- (2) Any sitting of the Tribunal may be adjourned from time to time and from place to place by the Tribunal or the presiding member.

- (3) No sitting of the Tribunal shall take place unless all the members are present, but the decision of a majority of the members shall be the decision of the Tribunal.

9 Members of Tribunal not personally liable

No member of the Tribunal shall be personally liable for any act done or omitted to be done by the Tribunal or by any member thereof in good faith in pursuance or intended pursuance of the powers and authorities of the Tribunal.

10 Procedure

- (1) The procedure of the Tribunal shall, subject to this Act and to any regulations made under this Act, be such as the Tribunal thinks fit.
- (2) No appointment under clause 4 or clause 5 of this Schedule and no act done by any person by virtue of any such appointment and no act done by the Tribunal while any person is acting as a deputy, or in the place, of a member of the Tribunal by virtue of any such appointment shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.
- (3) Proceedings before the Tribunal shall not be held bad for want of form.

11 Inquiries and evidence

- (1) For the purposes of any appeal under section 22 or section 104 of this Act, and notwithstanding anything in Schedule 3 to this Act, the Tribunal may make such inquiries and obtain such reports (if any) as it considers necessary and shall not be bound by any rules of evidence but may inform itself in such manner as it thinks fit.
- (2) Subject to subclause (1) of this clause, the Evidence Act 2006 shall apply to the Tribunal in the same manner as if the Tribunal were a **Court** within the meaning of that Act.

Clause 11(2) was amended, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69) by substituting “Evidence Act 2006” for “Evidence Act 1908”. See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Schedule 3

Procedural provisions

Section 104(4)

1 Place for filing

Every appeal under section 22 or section 104 of this Act shall be made on a form to be provided by the chief executive of the Department for Courts, and shall be filed in the office of the Tribunals Division of the Department for Courts in Wellington.

Clause 1 was amended, as from 1 July 1995, by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting “chief executive of the Department for Courts” for “Secretary for Justice”. Clause (1) was amended by the same provision by substituting “Department for Courts” for “Department of Justice”.

2 Appeals to be referred to Tribunal

As soon as practicable after an appeal under section 22 or section 104 of this Act is filed, the officer of the Department for Courts who is for the time being acting as Secretary of the Tribunal shall refer it to the Tribunal for determination.

Clause (2) was amended, as from 1 July 1995, by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting “Department for Courts” for “Department of Justice”.

3 Copy to be forwarded to Minister

The Tribunal shall forward to the Minister a copy of the appeal together with a notice informing the Minister of the appeal and specifying a period of not less than 14 days from the service of the notice during which the Minister may notify the Tribunal that the Minister does not wish to make representations to the Tribunal in respect of the appeal.

4 Appellant or Minister may be required to supply information

The Tribunal may, by notice in writing served on the appellant or the Minister, require the appellant or the Minister to give to the Tribunal, within such period (being not less than 14 days) from the service of the notice as may be specified in the notice, such information as it may reasonably require regarding the case as may be specified in the notice.

5 Hearing

- (1) As soon as the Tribunal considers the appeal ready for hearing, it must—
 - (a) fix a time and place for the hearing of the appeal; and
 - (b) notify the appellant and the Minister of the time and place fixed; and
 - (c) comply with section 39(3)(b) of the Victims' Rights Act 2002 (which relates to the Tribunal giving certain victims prior notice of the hearing).
- (2) Every notice to the appellant under subclause (1) of this clause may be served on the appellant by personal service, or by registered post addressed to the appellant's New Zealand address.
- (3) At the hearing the appellant, and the Minister, may call evidence and shall be given an opportunity to be heard either in person or by a person authorised by the appellant or the Minister in that behalf, whether or not that person is of counsel or a solicitor.
- (4) If the appellant or the Minister or both fail to appear before the Tribunal at the time and place appointed, the Tribunal may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

Subclause (1) was substituted, as from 17 December 2002, by section 53 Victims' Rights Act 2002 (2002 No 39).

6 Hearing to be open to public

- (1) Every such hearing shall be open to the public, except that 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.
- (2) Subject to subclause (3) of this clause, the Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in respect of any appeal before the Tribunal.
- (3) No order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal.

7 Stating case for High Court

- (1) The Tribunal may at any time, on the application of the appellant or the Minister 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 before the Tribunal.
- (2) Every such question shall be dealt with in accordance with the rules of Court.
- (3) Every such question shall be heard and determined by the Administrative Division of the High Court.

8 Decisions

- (1) Every decision of the Tribunal shall be given in writing, with a statement of the Tribunal's reasons for the decision.
- (2) A copy of the decision shall be given to the appellant and to the Minister.

9 Costs

No party to any proceedings on any appeal under section 22 or section 104 of this Act (other than proceedings in the High Court) shall be liable to pay the costs of any other party to the proceedings unless the Tribunal makes an order for the payment of any such costs on the ground that it is desirable for special reasons to make such an order.

10 Tribunal may dismiss frivolous or vexatious appeal

The Tribunal may at any time dismiss any appeal under section 22 or section 104 of this Act, if it is satisfied that the appeal is frivolous or vexatious.

Schedule 3A

Section 18B(7)

**Provisions relating to Residence Review
Board**

Schedule 3A was inserted, as from 18 November 1991, by section 49 Immigration Amendment Act 1991 (1991 No 113).

The Schedule heading was substituted for the heading "Provisions relating to Residence Appeal Authority", as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47).

1 Term of office

- (1) Every member of the Board shall hold office for such period not exceeding 4 years as is fixed in the member's warrant of appointment.
- (2) Any member of the Board may at any time be removed from office by the Minister for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign the office by writing addressed to the Minister.
- (3) Notwithstanding that the term of office of a member of the Board has expired or that a member of the Board has resigned, the member shall be deemed to continue as a member of the Board for the purpose of deciding any appeal that was wholly heard before the expiry of the term of office or before the resignation took effect, as the case may be.

Clause 1 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting "Board" for "Authority" wherever it appears.

Subclause (2) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting "inability to perform the functions of the office" for "disability".

1A Chairperson

- (1) The Minister may from time to time, by notice in writing, appoint one of the members of the Board as the chairperson of the Board for such period as the Minister thinks fit and specifies in the notice.
- (2) The chairperson of the Board shall be responsible for making such arrangements as are necessary or desirable to ensure the orderly and expeditious discharge of the functions of the Board.
- (3) Any member holding the office of chairperson of the Board may—
 - (a) At any time be removed from the office of chairperson by the Minister;
 - (b) At any time resign the office of chairperson by notice in writing addressed to the Minister.

- (4) If the person holding the office of chairperson of the Board ceases to be a member of the Board, he or she shall immediately vacate the office of chairperson.

Clauses 1A and 1B were inserted, as from 2 September 1996, by section 2(1) Immigration Amendment Act (No 2) 1996 (1996 No 129).

Clause 1A was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

1B Deputy Chairperson

- (1) The Minister may from time to time designate a member of the Board to act for the chairperson in the circumstances set out in subclause (2) of this clause, and may at any time revoke any such designation.
- (2) If the chairperson of the Board is unable, by reason of illness, absence from New Zealand, or other sufficient cause, to act as chairperson, any person for the time being designated pursuant to subclause (1) of this clause shall act as the chairperson.
- (3) The fact that any person for the time being designated pursuant to subclause (1) of this clause acts as chairperson of the Board shall be conclusive evidence of that person’s authority to do so.

Clauses 1A and 1B were inserted, as from 2 September 1996, by section 2(1) Immigration Amendment Act (No 2) 1996 (1996 No 129).

Clause 1B was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

2 Fees and allowances

- (1) There shall be paid out of money appropriated by Parliament for the purpose to the chairperson (if any) and to the other members of the Board remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Board were a **statutory Board** within the meaning of that Act.
- (2) Without limiting subclause (1) of this clause, the remuneration paid to the chairperson may be at a rate which is different from the rate of remuneration paid to the other members of the Board.

Clause 2 was amended, as from 2 September 1996, by section 2(2) Immigration Amendment Act (No 2) 1996 (1996 No 129) by substituting “the chairperson (if any) and to the other members” for “the members”.

Clause 2 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

Subclause (2) was inserted, as from 2 September 1996, by section 2(3) Immigration Amendment Act (No 2) 1996 (1996 No 129).

3 Staffing

The Board shall be serviced by employees of the Department of Labour, not being employees who are also currently employed to consider applications for permits under this Act, and the Department shall provide such other resources as may be necessary to enable the Board to carry out its functions under this Act.

Clause 3 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

4 Board to have seal

The Board shall have a seal which shall be judicially noticed in all courts and for all purposes.

Clause 4 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” in both places it appears.

5 Members of Board not personally liable

No member of the Board shall be personally liable for any act done or omitted to be done by the Board or by any member thereof in good faith in pursuance or intended pursuance of the powers and functions of the Board.

Clause 5 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

6 Procedure

- (1) The procedure of the Board shall, subject to this Act and to any regulations made under this Act, be such as the Board thinks fit.

- (2) Proceedings before the Board shall not be held bad for want of form.

Clause 6 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

7 Annual report

- (1) The chairperson of the Board shall in each year make a report to the Minister on the exercise of its functions under this Act in respect of the financial year ending in that year, and the Minister shall lay a copy of any such report before the House of Representatives within 20 sitting days after receiving it.

- (2) Any such report shall include the following information:

- (a) The number of appeals lodged with the Board under section 18C of this Act:
- (b) The number of appeals determined by the Board under each of paragraphs (a) to (f) of section 18D(1) of this Act:
- (c) The number of appeals withdrawn or not proceeded with.

Clause 7 was amended, as from 9 September 2003, by section 12(2) Immigration Amendment Act (No 2) 2003 (2003 No 47) by substituting “Board” for “Authority” wherever it appears.

Subclause (1) was amended, as from 2 September 1996, by section 2(4) Immigration Amendment Act (No 2) 1996 (1996 No 129) by substituting “The chairperson of the Authority” for “The Authority”.

Subclause (1) was amended, as from 1 October 1999, by section 57 Immigration Amendment Act 1999 (1999 No 16) by inserting “in respect of the financial year ending in that year”.

Schedule 3B

Provisions relating to Removal Review Authority

Section 63(6)

Schedule 3B was inserted, as from 18 November 1991, by section 49 Immigration Amendment Act 1991 (1991 No 113).

1 Term of office

- (1) Every member of the Authority shall hold office for such period not exceeding 4 years as is fixed in the member's warrant of appointment.
- (2) Any member of the Authority may at any time be removed from office by the Minister for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign the office by writing addressed to the Minister.
- (3) Notwithstanding that the term of office of a member of the Authority has expired or that a member of the Authority has resigned, the member shall be deemed to continue as a member of the Authority for the purpose of deciding any appeal that was wholly heard before the expiry of the term of office or before the resignation took effect, as the case may be.

Subclause (2) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting "inability to perform the functions of the office" for "disability".

1A Chairperson

- (1) The Minister may from time to time, by notice in writing, appoint one of the members of the Authority as the chairperson of the Authority for such period as the Minister thinks fit and specifies in the notice.
- (2) The chairperson of the Authority shall be responsible for making such arrangements as are necessary or desirable to ensure the orderly and expeditious discharge of the functions of the Authority.
- (3) Any member holding the office of chairperson of the Authority may—
 - (a) At any time be removed from the office of chairperson by the Minister:
 - (b) At any time resign the office of chairperson by notice in writing addressed to the Minister.
- (4) If the person holding the office of chairperson of the Authority ceases to be a member of the Authority, he or she shall immediately vacate the office of chairperson.

Clauses 1A and 1B were inserted, as from 2 September 1996, by section 3(1) Immigration Amendment Act (No 2) 1996 (1996 No 129).

1B Deputy Chairperson

- (1) The Minister may from time to time designate a member of the Authority to act for the chairperson in the circumstances set out in subclause (2) of this clause, and may at any time revoke any such designation.
- (2) If the chairperson of the Authority is unable, by reason of illness, absence from New Zealand, or other sufficient cause, to act as chairperson, any person for the time being designated pursuant to subclause (1) of this clause shall act as the chairperson.
- (3) The fact that any person for the time being designated pursuant to subclause (1) of this clause acts as chairperson of the Authority shall be conclusive evidence of that person's authority to do so.

Clauses 1A and 1B were inserted, as from 2 September 1996, by section 3(1) Immigration Amendment Act (No 2) 1996 (1996 No 129).

2 Fees and allowances

- (1) There shall be paid out of money appropriated by Parliament for the purpose to the chairperson (if any) and to the other members of the Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Authority were a **statutory Board** within the meaning of that Act.
- (2) Without limiting subclause (1) of this clause, the remuneration paid to the chairperson may be at a rate which is different from the rate of remuneration paid to the other members of the Authority.

Clause (2) was amended, as from 2 September 1996, by section 3(2) Immigration Amendment Act (No 2) 1996 (1996 No 129) by substituting "the chairperson (if any) and to the other members" for "the members".

Clause (2)(2) was inserted, as from 2 September 1996, by section 3(3) Immigration Amendment Act (No 2) 1996 (1996 No 129).

3 Staffing

The Authority shall be serviced by employees of the Department of Labour, not being employees who are also currently

designated for the purposes of section 54 as immigration officers who may make removal orders, and the Department shall provide such other resources as may be necessary to enable the Authority to carry out its functions under this Act.

Clause 3 was amended, as from 1 October 1999, by section 58(1)(a) Immigration Amendment Act 1999 (1999 No 16) by substituting the expression “section 54” for the expression “section 50 of this Act”.

4 Authority to have seal

The Authority shall have a seal which shall be judicially noticed in all courts and for all purposes.

5 Members of Authority not personally liable

No member of the Authority shall be personally liable for any act done or omitted to be done by the Authority or by any member thereof in good faith in pursuance or intended pursuance of the powers and functions of the Authority.

6 Procedure

- (1) The procedure of the Authority shall, subject to this Act and to any regulations made under this Act, be such as the Authority thinks fit.
- (2) Proceedings before the Authority shall not be held bad for want of form.

7 Annual report

- (1) The chairperson of the Authority shall in each year make a report to the Minister on the exercise of its functions under this Act in respect of the financial year ending in that year, and the Minister shall lay a copy of any such report before the House of Representatives within 20 sitting days after receiving it.
- (2) Any such report must include the following information:
 - (a) The number of appeals lodged with the Authority under section 47:
 - (b) The number of cases in which an appeal against the requirement to leave New Zealand is upheld by the Authority:

- (c) The number and type of permits granted in accordance with directions given by the Authority under section 52(2):
- (d) The number of appeals withdrawn or not proceeded with.

Clause 7(1) was amended, as from 2 September 1996, by section 3(4) Immigration Amendment Act (No 2) 1996 (1996 No 129) by substituting “The chairperson of the Authority” for “The Authority”.

Clause 7(1) was amended, as from 1 October 1999, by section 58(1)(b) Immigration Amendment Act 1999 (1999 No 16) by inserting “in respect of the financial year ending in that year”.

Clause 7(2) was substituted, as from 1 October 1999, by section 58(2) Immigration Amendment Act 1999 (1999 No 16).

Schedule 3C

Provisions relating to Refugee Status Appeals Authority

Section 129N(8)

Schedule 3C was inserted, as from 1 October 1999, by section 59 Immigration Amendment Act 1999 (1999 No 16).

1 Term of office

- (1) Every member of the Authority is to hold office for such period not exceeding 4 years as is fixed in the member’s warrant of appointment.
- (2) Any member of the Authority may at any time be removed from office by the Minister for disability affecting the performance of his or her duties, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign the office by writing addressed to the Minister.
- (3) Notwithstanding that the term of office of a member of the Authority has expired or that a member of the Authority has resigned, the member is deemed to continue as a member of the Authority 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, as the case may be.

2 Chairperson

- (1) The Minister may from time to time, by notice in writing, designate 1 of the members of the Authority as the chairperson of the Authority for such period as the Minister thinks fit and specifies in the notice.
- (2) The chairperson is responsible for making such arrangements as are necessary or desirable to ensure the orderly and expeditious discharge of the functions of the Authority.
- (3) Any member holding the office of chairperson may—
 - (a) At any time be removed from the office of chairperson by the Minister:
 - (b) At any time resign the office of chairperson by notice in writing addressed to the Minister.
- (4) If the person holding the office of chairperson ceases to be a member of the Authority, he or she immediately vacates the office of chairperson.

3 Deputy chairperson

- (1) The Minister may from time to time designate a member or members of the Authority as deputy chairperson or chairpersons of the Authority, and may at any time revoke any such designation.
- (2) If the chairperson of the Authority is unable, by reason of illness, absence from New Zealand, or other sufficient cause, to act as chairperson, any person for the time being designated under subclause (1) is to act as the chairperson.
- (3) The fact that any person for the time being designated under subclause (1) acts as chairperson of the Authority is conclusive evidence of that person's authority to do so.

4 Fees and allowances

- (1) There is to be paid out of money appropriated by Parliament for the purpose to the chairperson (if any) and to the other members of the Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the Authority were a statutory Board within the meaning of that Act.

- (2) Without limiting subclause (1), the remuneration paid to the chairperson (or any person acting for the chairperson) may be at a rate which is different from the rate of remuneration paid to the other members of the Authority.

5 Staffing

The Authority is to be serviced by employees of the Department of Labour, not being employees who are also currently employed to consider applications for permits under this Act or employed to administer Part 2 or designated for the purpose of section 129E as refugee status officers, and the Department is to provide such other resources as may be necessary to enable the Authority to carry out its functions under this Act.

6 Authority to have seal

The Authority is to have a seal which is to be judicially noticed in all courts and for all purposes.

7 Authority to be Commission of Inquiry

The Authority has the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908 within the scope of its jurisdiction, and, subject to Part 6A and any regulations made under it, all the provisions of that Act except sections 11 and 12 (which relate to costs) apply to the Authority as if it were a Commission of Inquiry.

8 Procedure

- (1) Subject to this Act and to any regulations made under it, the procedure of the Authority is to be such as the Authority thinks fit.
- (2) Proceedings before the Authority may not be held bad for want of form.

9 Inquiries and evidence

- (1) For the purposes of any appeal under section 129O or other matter under section 129R, the Authority may make such inquiries and obtain such reports (if any) as it considers neces-

sary and is not bound by any rules of evidence but may inform itself in such manner as it thinks fit.

- (2) Subject to subclause (1) of this clause and to section 143(7), the Evidence Act 2006 applies to the Authority in the same manner as if the Authority were a court within the meaning of that Act.

Clause 9(2) was amended, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69) by substituting “Evidence Act 2006” for “Evidence Act 1908”. See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

10 Members of Authority not personally liable

No member of the Authority is personally liable for any act done or omitted to be done by the Authority or by any member of it in good faith in pursuance or intended pursuance of the powers and functions of the Authority.

11 Annual report

- (1) The chairperson of the Authority must in each financial year make a report to the Minister on the exercise of its functions under this Act in respect of the financial year ending in that year, and the Minister must present a copy of any such report to the House of Representatives within 20 sitting days after receiving it.
- (2) The report to the Minister must include the following information:
- (a) The membership of the Authority:
 - (b) The number of cases dealt with by the Authority (classified by type, where appropriate):
 - (c) The number of claims for refugee status upheld, withdrawn, and declined:
 - (d) The number of claims excluded on the basis of Article 1F of the Refugee Convention:
 - (e) A breakdown of the gender of claimants:
 - (f) The number of claimant children.

12 Publication of decisions for research purposes

Any publication for research purposes by the Authority of a decision made by it, other than publication to persons involved

in the matter or in the administration of Part 6A, must be edited in such a way as to remove the name of the appellant or other affected person, and any particulars likely to lead to the identification of the appellant or person.

Schedule 4
Enactments amended

Section 151(1)

Enactments	Amendment
1971, No 11—The Consular Privileges and Immunities Act 1971	By repealing section 14(2) and Schedule 2.
1977, No 61—The Citizenship Act 1977	By omitting paragraph (b) of section 8(2), and substituting the following paragraph: “(b) That the applicant is entitled, in terms of the Immigration Act 1987, to be in New Zealand indefinitely:
1980, No 29—The Electoral Amendment Act 1980 (RS Vol 7, p 290)	By repealing section 2(6).

Enactments	Amendment
1982, No 11—The Citizenship (Western Samoa) Act 1982	By omitting from section 7(1)(b)(ii) the words “1964, to reside in New Zealand permanently”, and substituting the words “1987, to be in New Zealand indefinitely”. By omitting from section 8(2) the words “a prohibited immigrant for the purposes of the Immigration Act 1964”, and substituting the words “deemed to be a person to whom section 7 of the Immigration Act 1987 applies”.
1982, No 156—The Official Information Act 1982	By repealing paragraph (b) of the definition of the term permanent resident of New Zealand in section 2(1), and substituting the following paragraph: “(b) Is not— “(i) A person to whom section 7 of the Immigration Act 1987 applies; or “(ii) A person obliged, by or pursuant to that Act, to leave New Zealand immediately or within a specified time; or “(iii) Deemed for the purposes of that Act to be in New Zealand unlawfully:.

Enactments	Amendment
	By omitting from section 2(1) the definition of the term prohibited immigrant .

See the enactments listed for the omission of so much as relates to the following:—

Shipping and Seamen Act 1952 (1952 No 49): omitted, as from 1 February 1995, by section 202 Maritime Transport Act 1994 (1994 No 104). *See* regulation 2 Maritime Transport Act Commencement Order 1994 (SR 1994/272).

Labour Department Act 1954: omitted, as from 16 October 1989, by section 2(2) Labour Department Act Repeal Act 1989 (1989 No 82).

Passports Act 1980: omitted, as from 13 October 1992, by section 41(c) Passports Act 1992 (1992 No 92).

Criminal Justice Act 1985: omitted, as from 1 September 1993, by section 43(2)(b) Criminal Justice Amendment Act 1993 (1993 No 43).

Schedule 4 item Electoral Act 1956: repealed, on 1 July 1994, by section 284 of the Electoral Act 1993 (1993 No 87).

Schedule 4 item Electoral Amendment Act 1980 (1980 No 29): repealed, on 1 July 1994, by section 284 of the Electoral Act 1993 (1993 No 87).

Schedule 5

Enactments repealed

Section 151(2)

- 1919, No 44—The Undesirable Immigrants Exclusion Act 1919 (RS Vol 6, p 871).
- 1964, No 43—The Immigration Act 1964 (RS Vol 6, p 591).
- 1965, No 87—The Immigration Amendment Act 1965 (RS Vol 6, p 632).
- 1968, No 30—The Immigration Amendment Act 1968 (RS Vol 6, p 632).
- 1969, No 83—The Immigration Amendment Act 1969 (RS Vol 6, p 633).
- 1976, No 158—The Immigration Amendment Act 1976 (RS Vol 6, p 633).
- 1977, No 98—The Immigration Amendment Act 1977 (RS Vol 6, p 634).

- 1978, No 9—The Immigration Amendment Act 1978 (RS Vol 6, p 634).
- 1978, No 54—The Immigration Amendment Act (No 2) 1978 (RS Vol 6, p 636).
- 1979, No 135—The Immigration Amendment Act 1979 (RS Vol 6, p 636).
- 1980, No 115—The Immigration Amendment Act 1980

Schedule 6

Section 129D(2)

**Convention relating to the status of
refugees**

Schedule 6 was inserted, as from 1 October 1999, by section 60 Immigration Amendment Act 1999 (1999 No 16).

Done at Geneva on 28 July 1951²

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 prin-

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

² 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

Done at Geneva on 28 July 1951¹—*continued*

ciple that human beings shall enjoy fundamental rights and freedoms without discrimination.

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.

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.

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.

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything 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:

I

General Provisions

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:

Done at Geneva on 28 July 1951¹—*continued*

I—*continued*

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:
- (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, specify-

Done at Geneva on 28 July 1951¹—*continued*

I—*continued*

ing which of these meanings it applies for the purpose of its obligations under this Convention.³

- (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.
- 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
 - (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
 - (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;
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

³ On acceding to 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 of this Act.

Done at Geneva on 28 July 1951¹—*continued*

I—*continued*

recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

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.

- 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.

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.

- 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.

- 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;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (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

Done at Geneva on 28 July 1951¹—*continued*

I—*continued*

regulations as well as to measures taken for the maintenance of public order.

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.

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.

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.

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.

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.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

Done at Geneva on 28 July 1951¹—*continued*

I—*continued*

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.
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.
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.

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.

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 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.

Done at Geneva on 28 July 1951¹—*continued*

I—*continued*

Article 10 Continuity of residence

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.
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.

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.

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.
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.

Done at Geneva on 28 July 1951¹—*continued*

II—*continued*

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.

Article 14 Artistic rights and industrial property

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.

Article 15 Right of association

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

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.

Done at Geneva on 28 July 1951¹—*continued*

III

Gainful Employment

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.
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:
 - (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;
 - (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.

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.

Done at Geneva on 28 July 1951¹—*continued*

III—*continued*

Article 19 Liberal professions

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.
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.

IV

Welfare

Article 20 Rationing

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

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.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable

Done at Geneva on 28 July 1951¹—*continued*

IV—*continued*

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.

Article 23 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 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;
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, 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;
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which

Done at Geneva on 28 July 1951¹—*continued*

IV—*continued*

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.

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.⁴
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.
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.

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.

⁴ 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.

Done at Geneva on 28 July 1951¹—*continued*

V—*continued*

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.
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.
5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26 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.

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

Done at Geneva on 28 July 1951¹—*continued*

V—*continued*

unable to obtain a travel document from the country of their lawful residence.

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.

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.
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.

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.
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.

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.

Done at Geneva on 28 July 1951¹—*continued*

V—*continued*

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.

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.
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.
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.

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.
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

Done at Geneva on 28 July 1951¹—*continued*

V—*continued*

particularly serious crime, constitutes a danger to the community of that country.

Article 34 Naturalization

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.

VI

Executory and Transitory Provisions

Article 35 Co-operation of the national authorities with the United Nations

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.
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 appropriate 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 hereafter 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 to ensure the application of this Convention.

Done at Geneva on 28 July 1951¹—*continued*

VI—*continued*

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 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.

VII

Final Clauses

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 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 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 23 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.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article.

Done at Geneva on 28 July 1951¹—*continued*

VII—*continued*

Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

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.
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.
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.

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 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 Parties which are not Federal States,
- (b) With respect to those Articles of this Convention 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

Done at Geneva on 28 July 1951¹—*continued*

VII—*continued*

such Articles with a 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 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 showing the extent to which effect has been given to that provision by legislative or other action.

Article 42 Reservations

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 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General 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.
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.

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.

Done at Geneva on 28 July 1951¹—*continued*

VII—*continued*

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.

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.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

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:

- (a) of declarations and notifications in accordance with Section B of Article 1;
- (b) of signatures, ratifications and accessions in accordance with Article 39;
- (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;
- (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 on 28 July 1951¹—*continued*

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.

III

Protocol Relating to the Status of Refugees of 31 January 1967⁶

Entry into force: 4 October 1967, in accordance with Article VIII
Text: United Nations Treaty Series No 8791, Vol 606, p 267

Preamble

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 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:

⁵ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

⁶ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

Done at Geneva on 28 July 1951¹—*continued*
Protocol Relating to the Status of Refugees of 31
January 1967⁵—*continued*

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 1A(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 1B(1)(a) of the Convention, shall, unless extended under Article 1B(2) thereof, apply also under the present Protocol⁷.

Article II Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol 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 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:

⁷ For New Zealand's declaration, see footnote to Article 1B(1) of the Convention as it appears in this schedule of this Act.

Done at Geneva on 28 July 1951¹—*continued*
Protocol Relating to the Status of Refugees of 31
January 1967⁵—*continued*

- (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

Done at Geneva on 28 July 1951¹—*continued*
Protocol Relating to the Status of Refugees of 31
January 1967⁵—*continued*

the same as those of States Parties which are not Federal States:

- (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;
- (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.

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.
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.

Done at Geneva on 28 July 1951¹—*continued*
Protocol Relating to the Status of Refugees of 31
January 1967⁵—*continued*

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.
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.

Article VIII Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
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.

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.
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

Done at Geneva on 28 July 1951¹—*continued*
Protocol Relating to the Status of Refugees of 31
January 1967⁵—*continued*

force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI Deposit in the archives of the Secretariat of the 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.

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Notes**1 General**

This is an eprint of the Immigration Act 1987. It incorporates all the amendments to the Immigration Act 1987 as at 1 August 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Land Transport Management Amendment Act 2008 (2008 No 47): section 50(1)

Immigration Advisers Licensing Act 2007 (2007 No 15): section 95
