



HUMAN RIGHTS FOUNDATION OF NEW ZEALAND
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Immigration Bill: Summary of Issues

The Immigration Bill, 375 pages long, includes positive aspects, but also raises many concerns. Overall, the Bill seems to be drafted from the perspective of security services and border control, undermining the fulfillment of New Zealand's domestic and international human rights obligations, as well as findings of the New Zealand Courts. There is a concern that the cumulative approaches proposed by the Bill undermine the institution of asylum.

States must balance the need to ensure security with respect for the rights of individuals - this is a key challenge for immigration systems globally. This Bill, however, contains many measures which are out of step with international best practice, even in countries which are facing more serious security threats than our Pacific nation.

Submissions on the Bill

Concerns and issues can be elaborated in submissions to the Transport and Industrial Relations Select Committee, which is considering the Bill.

Submissions are due on **Friday, October 12, 2007**.

The Committee requires two hard copies of a written submission to be sent to:

The Clerk of the Committee
Transport and Industrial Relations Committee
Parliament House
Wellington

The Human Rights Foundation has sent a letter, endorsed by Amnesty International, to the Chairperson of the Committee requesting a general extension of the deadline. We consider that the two month period between the Bill's introduction on August 8 and the submission deadline is grossly insufficient for a Bill of such complexity and importance.

The letter also requested the facilitation of easier access to the Bill. The entire Bill can be downloaded online from the Parliament website: however this is sometimes difficult due to its size. Hard copies must be purchased from Bennetts Bookshops for \$15.95.

For further information on making submissions, visit the Parliament website, www.parliament.govt.nz.

Public meeting

There will be a public meeting held to discuss the Bill further. All are welcome. There will be immigration lawyers and other speakers present to discuss concerns and answer questions.

Lynfield Room, Fickling Centre, 546 Mt Albert Rd, Three Kings

Wednesday October 3 at 5:00pm

Summary of Concerns

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| <u>The Immigration and Protection Tribunal</u> | See Part 7, Clause 193 |
| <p>The Bill creates a new Tribunal, the Immigration and Protection Tribunal (the 'Tribunal') to replace the current Residence Review Board, the Refugee Status Appeals Authority, the Removal Review Authority, and the Deportation Review Tribunal.</p> <p>There are concerns about the possible lack of expertise in certain areas of law, particularly refugee law, on a Tribunal with such a broad-ranging mandate.</p> <p>Various concerns about processes at the Tribunal are dealt with under relevant headings below.</p> | |
| <u>Definition of Security</u> | See Part 1, Clause 4 On deportation of persons threatening security, see Part 6, Clause 152 |
| <p>In this Bill, the definition of security includes 'adverse impact on New Zealand's international reputation.' There is no requirement in this for potential violence or harm, except to reputation, which is very broad. This definition overrides the standards established by the Supreme Court in the Zaoui case. The Government could define someone a 'security risk' for all sorts of reasons under this definition.</p> <p>Once defined as a security risk, people are subject to all sorts of strict measures, including deportation, with no right of appeal per se.</p> | |

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| <p><u>Definition and use of Classified Information</u></p> | <p>See Part 1, Clause 5</p> |
| <p>The Zaoui case demonstrated how difficult it is to defend yourself against allegations which you know nothing about. The process needs to be changed, but the Bill makes the situation even more difficult than it is now, on several counts.</p> <p>First, the definition of classified information is wider. Classified information used to be limited to information from security services. The Bill changes the definition, so that the Chief Executive of <i>any</i> government agency can designate information as classified. The definition is very wide, making it would be easy to designate information as classified. It expands the use of secret information exponentially.</p> <p>The broad definition could include information from WINZ, from the Police or the Immigration Service; it could include spiteful letters from ex-spouses and community infighting. The definition is far too broad.</p> <p>Moreover, undue power is given to Chief Executives of agencies in the process for the use of classified information laid out in Bill. Chief Executives can determine what they present to the Tribunal, and the Tribunal cannot seek information from Chief Executives. This limits the Tribunal's effectiveness in cases involving classified information (<i>see Part 7, Clause 215</i>).</p> <p>In addition, the legislation will be retrospective so that secret information will be able to be used for cases being considered now, including in refugee and protection status decisions. (<i>See Part 12, Clause 435</i>).</p> <p>It is also noteworthy that this broad use of "classified" information was not proposed in April 2006 Immigration Act Review Discussion Paper on which many individuals and groups made submissions. The public has not been consulted on this proposal.</p> | |

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| <u>Limited role of Special Advocates</u> | See Part 7, Clause 235 – 239 |
| <p>In a case which involves classified information, Special Advocates can be used, as in the Zaoui case. This enables the Advocate to see the information, and then endeavour to fairly represent the person concerned. However, this Bill will severely limit the role of the Special Advocate – they will be able to do much less than what they did in the Zaoui case.</p> <p>The Special Advocate should be able to represent the person concerned in the disclosure process (that is, the way the information, or parts of it, are communicated to the person concerned) – either of the information itself, or of a summary of allegations.</p> <p>According to this Bill, however, this information must be approved solely by the people making the decisions (for example, in review, the Tribunal - <i>on Tribunal approval of summary of allegations, see Part 7, Clause 216</i>). The Special Advocate cannot represent the person concerned in this process.</p> <p>This is out of step with the Special Advocate brief in the Zaoui process, and also with practice in the United Kingdom.</p> <p>Special Advocates are also unable to bring their own proceedings, for example by way of judicial review (<i>see Part 7, Clause 235(2)</i>). This limits natural justice as the decisions made by the Tribunal where classified information is involved cannot be supervised by the judiciary. Judicial supervision is crucial for ensuring that justice is served in our common law system. The Bill removes this completely for cases that involve classified information.</p> | |
| <u>Detention arising from classified information</u> | See Part 9, Clause 289 |
| <p>At present, a person can be detained on the basis of classified security information. If a person is detained on this basis, they can go to court to seek release on conditions or challenge their detention, as natural justice demands.</p> <p>However, in the Bill, the Court must treat the secret information as accurate – Clause 289(c) reads, ‘the classified information must be treated as accurate.’</p> <p>The court’s ability to supervise detention is completely undermined by this process – the courts will be powerless to assess the information. Effectively an unsupervised power of detention is given to those officials classifying the information.</p> | |
| <u>Protected Persons</u> | See Part 5, Clause 122(b) |
| <p>The Bill sets out provisions for ‘protected persons’, intending to offer protection for persons who do not come under the Refugee Convention (which requires individual persecution on a specific basis) but still face torture, arbitrary deprivation of life, or cruel treatment in their home countries. This kind of provision, known as ‘complementary protection’, is commonly</p> | |

used in Western countries, currently for example for people arriving from Somalia or Iraq. It is usually intended for people who are threatened by situations of generalised or indiscriminate violence.

In this Bill, however, the 'protected persons' category is negated by Clause 122(b). This denies protection if 'torture, arbitrary deprivation of life, or cruel treatment' are generally faced by other persons in their country. In other words, it would not apply to people who are threatened by indiscriminate or generalised violence in their country.

This is inconsistent with New Zealand's core obligations under, for example, the Convention Against Torture and other international human rights conventions. It places us far out of step with other countries in the provision of complementary protection: the Bill effectively offers none at all.

Biometrics

**On use in decision making, see Part 2, Clause 29
On collection at overseas ports, see Part 4, Clause 88**

The Bill allows collection of biometric information such as bone density tests and iris scans, not only from immigrants or potential immigrants, but also from New Zealand citizens. This raises privacy issues. The Privacy Commissioner has consistently raised concerns regarding this.

There are concerns about the use of biometric methods for determining the age of child applicants. Age tests require triangulation of methods, which will involve an extensive process of information collection on vulnerable children, and there are no safeguards in the Bill on this.

Detention

**Police, see Part 9, Clause 275
Immigration Officers, Part 9, Clause 274**

Under the Bill, new arrivals can now be detained by Police for an extended period of 96 hours without a Warrant of Commitment. Previously this was 72 hours. It is worth noting that this initial period of detention has hitherto and is likely to continue to be in police cells. Penal facilities are routinely identified as inappropriate for immigration detainees.

The Bill extends powers of detention to Immigration Officers, who can detain individuals at the airport for up to four hours. This raises concern as to the qualifications of an Immigration Officer to exercise such a significant power.

Extensions to current periods and powers of detention are contrary to the norms and principles of international law which state that there should be a presumption against detention, particularly for asylum seekers; and that forced and voluntary migrants should only be detained for the minimum justifiable period.

See also *Detention arising from classified information*, above.

Advance Passenger

See Part 4, Clauses 86 – 88

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| <u>Processing</u> | |
| <p>Advance Passenger Processing (APP) is a system of checking passengers as they board New Zealand bound craft overseas, and preventing the boarding of suspect passengers.</p> <p>Governments are entitled to control immigration and entry, but in doing so need to ensure and demonstrate adequately that asylum seekers have effective access to asylum procedures and that any restrictions on entry, such as sanctions on airlines or other transporters and practices such as the APP system, do not obstruct this access in practice.</p> <p>The APP system screens people before they travel to New Zealand, operating as a barrier to entry without effective guarantees that this process does not act as a barrier to genuine refugees accessing asylum procedures.</p> | |
| <u>The rights of children</u> | On the status of children born in NZ, see Part 11, Clause 336, 337 |
| <p>Children born in New Zealand do not automatically become New Zealand citizens. Under the Bill, the immigration status of children born in New Zealand is dependent on that of their parents. If the child's parents are in New Zealand irregularly, and the child cannot claim citizenship in the country of their parent's birth, then a child could be born stateless in New Zealand, effectively with no right of appeal.</p> <p>There are concerns that the Bill at times fails to make special provisions for children, which means that children could be subject to inappropriate treatment or processes.</p> <p>See also <i>biometrics</i> above.</p> | |

Summary of Positive Aspects

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| <u>Recognition of International Human Rights Conventions</u> | |
| <p>The Bill recognises some of the international human rights conventions including the Convention Against Torture and the International Covenant on Civil and Political Rights. This is a positive step, though there are other relevant Conventions which have a bearing on the Bill which are not recognised, such as the Convention on the Rights of the Child. Also, the Bill does not include a non-refoulement obligation as provided for in Article 3 of the Refugee Convention – the UN Committee against Torture has criticised the current legislation for this omission.</p> | |
| <u>Regularisation of</u> | See Part 5, Clause 116 |

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| <u>refugee quotas</u> | |
| <p>Every year New Zealand accepts a number of refugees for settlement that have been determined as refugees overseas, usually by the UNHCR. These are known as 'quota' refugees.</p> <p>The status of refugees that come to New Zealand under the refugee quota is regularised under law in this Bill. This secures their status and is a positive step.</p> | |
| <u>The rights of children</u> | <p>On compulsory education, see Part 10, Clause 315(3) On the consideration of views, see Part 11, Clause 340</p> |
| <p>Under the Bill, children who are here irregularly can continue to attend compulsory education. Educational providers will not be committing an offence by continuing to teach these children.</p> <p>In proceedings involving minors, the child's right to present his or her views and for those views to be considered is provided for in the Bill.</p> <p>These are positive steps: however there are also concerns in relation to the rights of children, see '<i>the rights of children</i>' in the summary of concerns above.</p> | |