The Law Association OF NEW ZEALAND

Vero Centre
Level 18
48 Shortland Street
Auckland City 1010
New Zealand
PO Box 58
1010 Auckland
DX CP24001
09 303 5270
thelawassociation.nz

Immigration (Fiscal Sustainability and System Integrity) Amendment Bill

Submissions on behalf of The Law Association of New Zealand by the Immigration and Refugee Law Committee

INTRODUCTION

1. This submission has been prepared by The Law Association of New Zealand's Immigration and Refugee Law Committee (the Committee), which comprises experienced practitioners with expertise in immigration law and policy. The Committee's primary interest is in ensuring that immigration legislation upholds the rule of law, is clear and workable in practice, and is consistent with New Zealand's domestic and international legal obligations.

2. The Committee supports the general intent of the Bill to enhance the integrity of the immigration system and ensure effective enforcement of immigration decisions. Many of the amendment are welcomed. However, we raise several concerns regarding the Bill's potential implications for procedural fairness, access to justice, and human rights protections especially with regard to the ninth amendment and its impact on judicial discretion.

EXECUTIVE SUMMARY

3. The Committee welcomes many of the proposals in the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill and supports the overarching objective of strengthening system integrity and improving operational effectiveness. However, the Committee raises several concerns regarding access to justice, the erosion of judicial discretion, and the potential human rights implications for vulnerable migrants.

4. In summary:

- The Committee supports the requirement for immigration officers to obtain judicial warrants before undertaking out-of-hours compliance activities. This is a positive development that aligns with principles of procedural fairness and respect for individual rights. It is essential that the humanitarian rationale underpinning this change is reflected in policy development and operational practice.
- The Committee cautiously supports the introduction of electronic monitoring for asylum seekers as an alternative to detention. While this may be an appropriate tool in limited circumstances, it must never become a default response. The Committee emphasises the importance of proportionality, robust safeguards, individualised assessments, and ongoing judicial oversight. The Committee also requests formal consultation on the development of the relevant policy settings.
- The Committee expresses serious concern regarding the proposed amendment linking deportation liability to criminal offending rather than conviction. This change would undermine judicial discretion under section 106 of the Sentencing Act 2002, increase risks of unjust deportation, and burden already stretched administrative processes. The Committee strongly opposes this amendment and recommends its withdrawal.
- The new ministerial power under section 75A to cancel residence visas on national security grounds also raises significant concerns. In its current form, the provision

lacks procedural safeguards and risks creating long-term uncertainty for affected individuals. If enacted, it must be amended to include clear protections, including work rights and a right of appeal.

- The proposed requirements for immigration officers to obtain judicial warrants for out-of-hours compliance activity is welcomed and the humanitarian purpose of this amendment must be remembered when drafting the specific policy and instructions. While we do not want asylum seekers to be viewed as criminals, the amendments allowing electronic monitoring for asylum seekers who may otherwise be detained when all ese has failed is cautiously embraced and the Committee requests that it be consulted on the drafting of this policy in practice

5. In this submission, the Committee has focused its feedback on those provisions of the Bill that, in its view, raise significant legal, procedural, or practical issues warranting further consideration.

SUBMISSIONS

6. Amendments One and Two – Increasing Levies

6.1 The Committee does not have any comments on this amendment other than to strongly advise that the visas which exist for the purpose of protecting vulnerable communities remain fee free; being for example the Refugee and Protected Persons Visas, Migrant Exploitation Protection Visa, Victims of Family Violence Visa and Refugee Family Support Category Visa.

7. Amendment Three – Judicial Warrants for Out of Hours Immigration Compliance Activities

7.1 The Committee supports this amendment in principle, however, recommends that the process for issuing, reviewing, and recording these warrants includes:

- A clear record of reasons for out-of-hours compliance action to be published along with the warrant itself; and
- Data collection and reporting to support oversight by MBIE and external bodies (such as the Immigration Reference Group or Ombudsman).

8. Amendment Four: Warrant of Commitment Requirements for Asylum Seekers

8.1 The Committee generally supports Amendment 4.

8.2 We support the change to make detention only in cases where a Judge is satisfied that the claimant poses a clearly articulated threat or risk and detention is reasonable in all the circumstances, proportionate, and the least restrictive measure necessary to manage that threat or risk.

8.3 This should be extended to include to all immigration detainees, especially including unlawful persons.

9. Amendment Five: Electronic Monitoring of Asylum Seekers as an Alternative to Detention

9.1 The Committee acknowledges that Amendment Four, which would authorise electronic monitoring of asylum seekers, raises legitimate concerns particularly regarding implementation, potential community stigma, and proportionality.

9.2 The Committee emphasises that:

- The power to impose electronic monitoring must remain proportionate, and must never become a default measure where residency and reporting may be better suited
- Electronic monitoring should only be used where strictly necessary, and subject to individualised assessment.
- Any monitoring regime must include explicit procedural safeguards, regular judicial oversight, and mechanisms for review or variation.

9.3 Oversight mechanisms such as the Immigration Reference Group, internal INZ/MBIE governance structures, and civil society engagement provide some level of accountability. The Committee requests that the current oversight panel concerning the detention of asylum seekers, known as the “Casey Panel” be formally incorporated into regulations or the INZ Operational Manual.

10. Amendment Seven – Section 75A: Ministerial Power to Cancel Residence Following National Security Certification

10.1 The underlying security certification regime in section 163 is not new. The Committee has previously expressed concern, and continues to hold these concerns, that this regime lacks transparency, procedural fairness, and adequate safeguards, given that affected individuals may have no meaningful opportunity to test the information underpinning a certification or to appeal against that decision or against their liability for deportation on the facts or on humanitarian grounds.

10.2 New section 75A allows for the cancellation of a residence visa where the Minister certifies that the person poses a threat to national security.

10.3 The RIS provides that this stops those who have NSCs to be allowed to vote and buy property in New Zealand.

10.4 However, the wider risk of removing the permanent ability to work in New Zealand has not been considered. Those individuals to whom s 75A may apply will remain in New Zealand indefinitely, and it is unclear what benefits are

attained by replacing a residence visa with a temporary visa or how any negative consequences to both the individual concerned and the public may be mitigated. There is no evidence or advice provided from national security, terrorism or mental health professionals as to how such persons would be impacted by the loss of residence (for example, impacts on their livelihood and employment, and second-order impacts on their family or dependents), nor is their consideration as to the potential for negative reactions from such a person. It is foreseeable that adverse consequences and social instability may serve only to exacerbate the risks posed by such persons. There is no information on what the risks to their own family would be or the risk to the wider New Zealand community if their residence is cancelled and replaced with a short-term temporary visa.

10.5 In this regard, the Committee considers the information provided to the Minister and Cabinet appears to be severely lacking as to the unintended consequences of cancelling the visa of a person already considered to be a serious risk to the community. The benefits of cancelling a residence visa in such circumstances seems to be dramatically outweighed by the potential negative consequences for society, especially when no apparent consideration has been given to such matters.

10.6 This section would apply only to refugees and protected persons, a group which experiences disproportionately high rates of mental health issues including complex trauma, and often experiences economic instability and vulnerability. The loss of residence may impact their ability to hold long-term employment and may contribute to their social isolation within New Zealand. Given that this section applies to individuals who have been identified as posing a risk to national security, but cannot be removed from New Zealand, the Committee is concerned that this may only exacerbate such risks for no clear benefit.

10.7 With that said, the requirement to provide a temporary visa is a positive development from the existing position, under which such persons may become unlawful.

10.8 A further concern, however, arises from the drafting because s 75A does not address the type of temporary visa that should be issued. Noting the concerns expressed above, the Committee considers that s 75A should be amended to provide either that visas issued under that section will be work visas or will include work rights equivalent to an open work visa.

10.9 The Committee reiterates its concerns regarding the s 163 certification process and the lack of procedural safeguards applying to that process.

10.10 The introduction of 75A in its present form is opposed.

10.11 Should Parliament decide that 75A is required:

- Section 75A should include safeguards to ensure that individuals affected will retain the ability to support themselves through long-term employment. This may be achieved by clarifying that visas issued under that section will be work visas, or will include work rights equivalent to an open work visa
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- Consideration should be given to the utility of this process as a whole, and whether cancellation of residence visas is in fact a desirable outcome for the public. Alternatives should be considered, including that persons caught by ss 163, 164 and 75A should have the ability to appeal on humanitarian grounds or on the facts against the loss of their residence visa and/or their underlying liability for deportation.

- There should be appropriate avenues for independent review or appeal, to safeguard against the risk of arbitrary or inconsistent application.

11 Amendment Eight: Offence to Charge Premiums for Employment Regardless of Employment Status

11.1 The Committee supports the intent of amendment Eight.

11.2 However, The Committee notes the importance of clear legislative drafting to ensure:

- The offence provision clearly captures non-employer third parties, including agents or recruiters (both domestic and offshore), while avoiding overreach.
- There is adequate definitional clarity around what constitutes a “premium” or improper payment, to distinguish unlawful conduct from legitimate recruitment costs or administrative fees (where permitted); and
- Appropriate defences or exceptions are included to prevent criminal liability where fees are paid unknowingly or under duress.

12 Amendment Nine – We enclose a joint submission from The Law Association Criminal Law Committee and the Immigration and Refugee Committee and in addition

12.1 The Committee strongly opposes the proposed amendment to clarify that deportation liability arises from criminal offending, rather than being contingent on a criminal conviction.

12.2 Under the current legislative framework, deportation liability is triggered only when a person has been convicted of a qualifying offence. This reflects an important and well-justified legal distinction: individuals who are discharged without conviction under section 106 of the Sentencing Act 2002 are, by law, not treated as convicted. That distinction is made deliberately, following a considered assessment by the sentencing judge of the gravity of the offence and the disproportionate consequences that a conviction may have on the individual.

12.3 The proposed change would significantly undermine the discretion of the judiciary, particularly the role of experienced criminal court judges who are best placed to assess both the offending and the consequences of conviction in individual cases. It would effectively remove from the court the ability to mitigate the collateral consequences of minor or one-off offending in appropriate circumstances, and transfer that discretion to immigration officials, who do not have the same evidential base or specialist expertise. This is not the role of the Immigration New Zealand.

12.4 While it is accepted that individuals served with a deportation liability notice as a result of their offending have access to a humanitarian appeal to the Immigration and Protection Tribunal (IPT) under section 207 of the Act, the Committee notes that:

- This appeal right is governed by a very high legal threshold, namely that there must be exceptional humanitarian circumstances that would make it unjust or unduly harsh for the person to be deported; and
- The IPT cannot not undertake an assessment of the gravity of the offending as part of the threshold analysis.
- The IPT cannot consider the relative merits and proportionality of the decision to issue a deportation liability notice.

12.5 The IPT's threshold for overturning a deportation liability on humanitarian grounds—namely, the requirement to show "exceptional circumstances of a humanitarian nature"—is extremely high. In practice, very few residence class visa holders succeed in such appeals when criminal offending is involved. This threshold is significantly more stringent than the test currently applied by the Court when considering a discharge without conviction for resident class visa holders, which is whether the consequences of deportation would be out of all proportion to the seriousness of the offence.

12.6 As a result, the gravity of the offence is only considered after the threshold has been met, which many individuals, including those who have received a discharge without conviction, will not be able to satisfy. The judicial consideration under section 106 therefore plays a critical gatekeeping function that the IPT cannot replicate.

12.7 The Committee notes that no compelling evidence has been presented to demonstrate that the current legal test, based on conviction, is inadequate or has given rise to systemic issues that require legislative correction. In the absence of such evidence, the proposed amendment appears to be a solution in search of a problem, with the potential to cause significant harm to individuals without advancing any clearly articulated public interest.

12.8 The amendment also raises critical access-to-justice implications. A resident class visa holder facing criminal proceedings is eligible for criminal legal aid. In

contrast, access to civil legal aid for IPT appeals is far more limited, making it harder for affected individuals to challenge their deportation.

12.9 Additionally, this amendment would place considerable strain on Immigration New Zealand's Resolutions Team. That team is already under pressure with the existing volume of criminal conviction cases involving resident class visa holders. The amendment will result in more residents being captured by deportation liability provisions, the number of cases requiring full deportation assessments could double or even triple. This would significantly increase processing times and likely create a substantial backlog. In such cases, the deportation liability assessment process could take years to commence, undermining the very purpose of a fair and timely resolution process. While the amendment has been presented as a way to ensure we safeguard New Zealand's immigration integrity and public safety, in reality, these are considerations taken into account by the criminal courts when an offender is sentenced.

12.10 More broadly, the amendment is part of a troubling legislative trend in which discretion is progressively removed from the judiciary, particularly in areas where consequences for non-citizens are severe and often irreversible. Deportation can result in family separation, the loss of a home and community ties, and return to a country where a person may face hardship, persecution, or worse. Such consequences must be proportionate and subject to robust, fair, and transparent legal processes.

12.11 The Committee therefore submits that:

- Deportation liability must remain linked to conviction, not mere findings of guilt or criminal allegations;
- The discretion of the judiciary under section 106 of the Sentencing Act is a vital constitutional safeguard and must be preserved;
- The proposed amendment is disproportionate, unnecessary, and legally problematic, and should not proceed.

CONCLUSION

13 Thank you for the opportunity to provide feedback on the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill and is willing to engage further on its implementation, especially with regard to safeguards for vulnerable groups and the preservation of judicial discretion.

14 Should any aspect of this submission require further clarification, we would be pleased to discuss our views in more detail. Please contact Moira McFarland, Committee Executive, at moira.mcfarland@tlanz.nz to arrange a meeting or to address any queries.

ACKNOWLEDGMENTS

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Ngā mihi,

LAUREN QIU
Convenor of The Law Association of New Zealand
Immigration & Refugee Law Committee