

Chair
Cabinet Policy Committee

DECISIONS FOR THE IMMIGRATION BILL

PURPOSE

- 1 This paper makes recommendations for the Immigration Bill (the Bill) on issues that have arisen from:
 - a. submissions to the Transport and Industrial Relations Committee (the Committee), and
 - b. a further departmental review of the Bill in consultation with key stakeholders.

EXECUTIVE SUMMARY

- 2 This Cabinet paper makes recommendations for the Bill in relation to the areas that were subject to the most submissions and are of interest to the Committee, along with the detention and monitoring system. This paper also addresses the "reasonable excuse" defence for the offence of producing or supplying false or misleading information or documents, and the role of the Human Rights Commission (HRC) in the immigration system. A further Cabinet paper on the recommendations for the refugee and protection system will be submitted to Cabinet in early March 2008.

Classified information

- 3 This paper makes recommendations, among other things, relating to:
 - a. limiting classified information to information from security, defence, law enforcement and border agencies along with the Ministry of Foreign Affairs and Trade (MFAT) and the Department of Internal Affairs (DIA)
 - b. enabling the use of classified information only where a summary of allegations can be given to the non-citizen so that they may be informed of the gist of the prejudicial allegations against them
 - c. lifting the limitation on a special advocate lodging an appeal on a point of law or judicial review on behalf of a non-citizen relating to the classified "security" information aspect of their case, and
 - d. enabling senior, security-cleared determination officers to make first instance refugee and protection decisions using classified information.

Appeals and appeal authorities

- 4 This paper recommends that where a failed refugee and protection claimant lodges an appeal, they must also lodge their humanitarian appeal. If their humanitarian appeal is not lodged at that time, failed claimants who subsequently became unlawful would not get a further opportunity to appeal.

Establishment of an Immigration Commissioner

- 5 Approximately 10 submissions call on the Government to establish an Immigration Commissioner to oversee the work of the Department of Labour (the Department). Unless some of the current appeal, review and complaint making mechanisms were limited, this position would have the potential to create parallel and duplicate mechanisms. It would come at some considerable cost, requiring the establishment of a new agency with an appropriate support structure.
- 6 In response to the submissions, I have directed the Department to report back to me on initiatives that could be used to increase awareness about the current formal and informal mechanisms and remedies available to non-citizens engaged in the immigration system. Developing such initiatives would be valuable in addressing the concerns about perceived lack of oversight. I do not recommend establishing an Immigration Commissioner.

Changes to the "reasonable excuse" defence for employers

- 7 Business New Zealand (Business NZ) and its stakeholder organisations support of the retention of the IR330 Tax Code Declaration form as a "reasonable excuse" defence for employers who employ a non-citizen without entitlement to work. They are primarily concerned about compliance costs associated with the changes to a "reasonable excuse" defence in the Bill.
- 8 Implementation planning for the new legislation includes the development of an online system to enable prospective employers to check entitlement to work. Communication and support provided to employers is the key to the success of the new provision. No change to the Bill is recommended.

Detention and monitoring

- 9 This paper recommends partially restoring the status quo of the 1987 Act so that, where a warrant of commitment (warrant) is sought, except in exceptional circumstances, there is a presumption of detention of certain non-citizens who deliberately hinder their departure.
- 10 If it is Government's intent that non-citizens who hinder their departure may be detained until deported, this could be achieved by excluding the "length of detention" as an "exceptional circumstance". There is a risk, however, that this recommendation could be inconsistent with the New Zealand Bill of Rights Act 1990 (BORA) and, therefore, also the International Covenant on Civil and Political Rights (ICCPR).

Knowingly providing false or misleading information

- 11 This paper recommends removing the "reasonable excuse" provision from the offence of knowingly producing any false or misleading document to an

immigration officer. The “reasonable excuse” defence is hampering the prosecution of non-citizens who knowingly seek to deceive the Department.

Role of the Human Rights Commission

- 12 Two options are being recommended for the role of HRC, including the status quo of the 1987 Act which has been retained in the Bill, and enabling the HRC to intervene in legal proceedings (as an intervener or amicus curiae) in matters involving immigration law and policy. The option of enabling HRC to intervene was outlined to HRC in a letter from the former Minister of Immigration, and discussed with the Chief Commissioner by the Department. HRC was supportive of the option but maintained that it did not go far enough.
- 13 This Cabinet paper also has two appendices. Appendix A includes a range of technical policy recommendations. It is recommended that Cabinet agree to the recommendations in Appendix A. Appendix B includes a range of technical recommendations. It is recommended that Cabinet note the recommendations that will be made to the Committee in Appendix B. The recommendations will ensure that the Bill meets the objectives agreed by the Government.

BACKGROUND

Development of the Bill

- 14 In November 2006, Cabinet Business Committee (CBC) (with the power to act) agreed to the Immigration Act review’s proposals to draft a new Bill to replace the 1987 Act [CBC Min (06) 20/14]. In April and May 2007, Cabinet made further decisions on the classified information system and managing security risks, including to repeal Part 4A [CAB Min (07) 14/1A, CAB Min (07) 18/3]. Some further decisions resulting from drafting and consultation on the Bill were also made [CAB Min (07) 20/1, CBC Min (07) 25/1A].
- 15 In June 2007, Cabinet agreed to introduce the Bill [CAB Min (07) 21/5]; it was introduced on 8 August 2007. It had its first reading on 16 August 2007 and was referred to the Committee.

The Committee phase

- 16 The Committee has received 90 submissions on the Bill from a range of individuals and organisations including employer organisations, law societies, refugee and migrant groups and communities, immigration consultants, carriers, Government agencies, and education providers. The aspects of the Bill that were subject to the most submissions and are of interest to the Committee include the:
 - a. use of classified information
 - b. refugee and protection system
 - c. appeals and the appeal authorities
 - d. introduction of an Immigration Commissioner, and
 - e. changes to the “reasonable excuse” defence for employers.

- 17 The recommendations for the Bill in relation to these areas of interest, along with the detention and monitoring system, are discussed below. This paper also addresses two other issues that the Department indicated it would work on during the Committee phase:
 - a. the "reasonable excuse" defence for the offence of producing or supplying false or misleading information or documents [CAB Min (07) 20/1], and
 - b. the role of HRC in the immigration system [CAB Min (07) 21/5].
- 18 A further Cabinet paper on the recommendations for the Refugee and Protection System will be submitted to Cabinet in early March 2008.

Appendices to this Cabinet paper

- 19 This Cabinet paper has two appendices. Appendix A seeks Cabinet agreement to a range of technical policy recommendations. Appendix B asks Cabinet to note a range of technical recommendations. The recommendations will ensure that the Bill meets the objectives agreed by the Government to:
 - a. ensure New Zealand's interests are protected and advanced
 - b. ensure compliance with international obligations, and
 - c. establish fair, firm, and fast decision-making [CAB Min (05) 18/7].
- 20 The recommendations aim to ensure that the Bill creates an immigration system that is more transparent, easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness. Some of the recommendations require the rescinding of earlier Cabinet decisions to achieve the objectives and aims of the Bill.

THE USE OF CLASSIFIED INFORMATION

- 21 The Bill has been designed to allow greater ability to use classified information both in immigration and in refugee and protection decision-making, while creating natural justice protections for the non-citizen. Almost all the submissions contain some level of opposition to the classified information provisions. In particular, submissions focus on the:
 - a. definition of classified information
 - b. need for a summary of allegations to be provided in all circumstances, and
 - c. limitations on the role of the special advocate.
- 22 There are also other aspects of the classified information provisions that could be subject to further refinement in the Bill consistent with earlier Cabinet decisions [CAB Min (07) 14/1A, CAB Min (07) 18/3]. Where these are not addressed below, they are included in the appendices.
- 23 It is recommended that the classified information provisions be a code for natural justice in immigration and in refugee and protection decision making. Any proposal to replicate the provisions in the Bill in other legislation where the

Government is seeking to use classified information, such as in the Terrorism Suppression Act 2002, must be carefully considered.

The definition of classified information

- 24 Submitters have expressed concern that any public service chief executive can certify information as classified information. In response, it is recommended to limit classified information to information from specified security, defence, law enforcement, and border agencies¹. It is also recommended that MFAT and DIA be able to certify information as classified information, DIA because of their responsibilities for New Zealand citizenship.
- 25 The Office of the Ombudsmen (the Ombudsmen) made three specific recommendations with regard to the definition of classified information. The first recommendation is to maintain the applicability of the Ombudsmen Act 1975, Official Information Act 1982 (OIA) and Privacy Act 1993 (the Privacy Act) through the insertion of a specific clause. The effect of this will be that these Acts will operate in parallel with the provisions of the new legislation, as per the status quo. This proposal is supported by the Privacy Commissioner.
- 26 The second recommendation was to delete the words "in the opinion of the chief executive" in clause 5(1) to make the definition of classified information more objective. This would be consistent with the OIA and the Privacy Act. In addition, the Ombudsmen recommended that the chief executive's power of delegation under section 41 of the State Sector Act 1988 should not apply to this clause. This will mean that chief executives have to make the decision to certify information as classified personally.

Summary of allegations to be provided in all circumstances

- 27 A number of submitters are of the view that all potentially prejudicial information (PPI) should be disclosed to non-citizens if it is to be used in decision-making. In particular, the Privacy Commissioner expressed concern over the use of undisclosed PPI in refugee and protection decision making.
- 28 Those submissions fail to recognise the imperative that New Zealand must be able to act on reliable information that, for security reasons, cannot be disclosed in its entirety. However, in order to ensure a greater natural justice balance in the Bill and respond to the concerns of submitters, it is recommended that classified information cannot be used unless a summary of allegations can be provided to a non-citizen, so that they may be meaningfully informed of the gist of the prejudicial allegations.
- 29 The Privacy Commissioner recommends that classified information should not be used unless a summary of the "adverse information" can be provided. However, there is a substantive difference between the requirement to provide a summary

¹The agencies are the Department of Labour, the New Zealand Security Intelligence Service (NZSIS), the Government Communications Security Bureau, New Zealand Defence Force and Police (Police), the Ministries of Foreign Affairs and Trade, Agriculture and Forestry, and Fisheries, the Civil Aviation Authority, Maritime New Zealand and Aviation Security, the New Zealand Customs Service (Customs) and the Department of Corrections (Corrections).

of “allegations” and a summary of “adverse information”. The intent of the summary is to enable a non-citizen to be meaningfully informed of the gist of the prejudicial allegations. Being informed of the prejudicial allegations will enable the non-citizen to rebut them in the course of the PPI process and during any appeal. This can occur without all the “adverse information” contained in documentation being summarised.

Lift the limitation on the role of the special advocate

- 30 Submitters also express concern about the limitations on the role of the special advocate, in particular, their inability to lodge proceedings on behalf of a non-citizen under clause 235 of the Bill (which establishes the role of special advocates). It is recommended that this limitation be lifted.
- 31 A special advocate may be the most appropriate person to lodge an appeal on a point of law, or seek judicial review on behalf of a non-citizen where the appeal or review relates to the classified information aspect of their case. It should be noted, however, that it is not intended that special advocates be given the ability to lodge an appeal or review in their own right. This would be inconsistent with the role of a lawyer or agent in any case.
- 32 It is further recommended to the Committee that the Bill be redrafted to clarify the role of special advocates in matters involving classified information as having a duty to:
 - a. the Immigration and Protection Tribunal (the Tribunal) and courts
 - b. ensure that classified information remains protected, and
 - c. represent the interests of the appellant.

First instance refugee and protection decisions

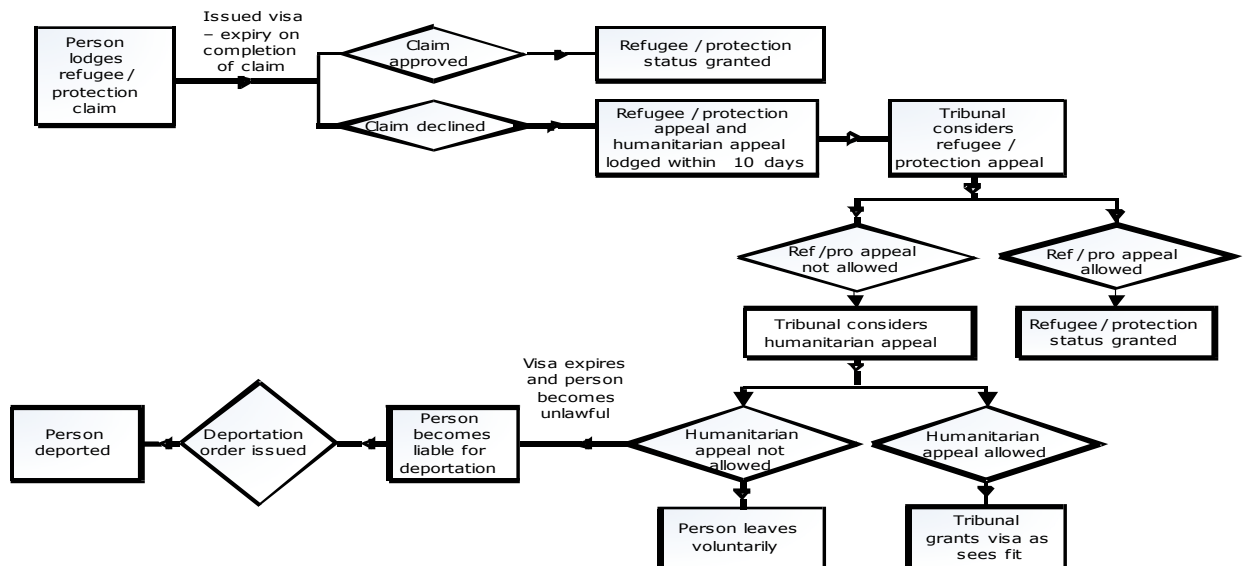
- 33 As drafted, the Bill requires the Tribunal to make first instance refugee and protection decisions when they involve classified information. This was intended to protect the classified information by limiting the number of people who had access to it. It also means that one appeal avenue is removed for a refugee and protection claimant. The likely result will be, however, longer and more costly appeal hearings because appropriate, detailed preliminary work has not been undertaken by a determination officer making a first instance decision. The intention is that a limited number of senior determination officers would be security-cleared to enable them to make these decisions.
- 34 It is recommended that Cabinet rescind its previous decision that “all refugee and protection decisions using classified information must be made by the Immigration and Protection Tribunal” [CAB Min (07) 25/1A], and instead, that the Bill be amended so that senior, security-cleared determination officers make first instance refugee and protection decisions involving classified information. While this matter has not been the subject of a substantial number of submissions, the proposal is supported by the classified information Senior Officials Group and the Refugee Status Appeals Authority (RSAA).

APPEALS AND APPEAL AUTHORITIES

Further efficiency in the appeals process

- 35 Some submitters and members of the Committee have commented that the appeals process does not appear to be a “one-stop-shop”. This is primarily due to the fact that a non-citizen can be entitled to lodge an appeal at different stages of their interaction with the immigration system as a result of their circumstances changing over time. To further increase efficiency in the appeals process, it is recommended that failed refugee and protection claimants be required to lodge their humanitarian appeal at the same time as their appeal against their declined refugee or protection claim. If their humanitarian appeal is not lodged at that time, it is recommended that failed claimants who subsequently became unlawful do not get further access to a humanitarian appeal.
- 36 To ensure consistency in the appeals process, and to ensure that no perverse incentives to claim refugee or protection status are created, limited visa holders and unlawful non-citizens who have already had the opportunity to lodge an appeal would not be able to access a humanitarian appeal.
- 37 If this recommendation is agreed, it is intended the Tribunal would first consider any refugee or protection matters. If a failed claimant was granted refugee or protection status, their humanitarian appeal would not be considered and they would be refunded their lodgement fee. If their refugee or protection status was cancelled at a later date and they became liable for deportation, they could then lodge a humanitarian appeal consistent with the provisions in the Bill. Chart one details the process.

Chart One: Proposed process for streamlining refugee, protection, and humanitarian appeals



- 38 As can be seen in Chart One, only if the original decision were upheld (ie. an appeal failed) would the Tribunal then consider the humanitarian appeal (on the papers). This would enable a final decision to be made on the claimant’s entitlements under the new legislation and would reduce their incentives to overstay in New Zealand.

- 39 Important aspects of this proposal which should be noted include that:
- there would be no limitations on claiming refugee or protection status
 - humanitarian interviews prior to deportation would continue, and
 - non-citizens would still be able to request ministerial intervention².

Retention of the Refugee Status Appeals Authority

- 40 Approximately 20 submitters, including Amnesty International, oppose the dis-establishment of the RSAA. It is also an issue that has been raised during oral submissions to the Committee. The United Nations High Commissioner for Refugees (UNHCR) recommends:

the experience and high quality of expertise of refugee status determination, currently located in the Refugee Status Appeals Authority, be preserved in the context of any appellate structures and procedures that are envisaged under the Bill.

- 41 The UNHCR understands the intent of the Tribunal; that is, not to dilute the experience or expertise of the current appeal authorities, but rather to enhance the whole appeals process. It is the quality of the Chair and the members appointed to the RSAA which result it in being held in such esteem.
- 42 The submitters generally fail to understand that there is considerable crossover experience and expertise required for immigration and refugee and protection appeal decision making. This is particularly so in the deportation context. Currently, this is gained through the cross-appointment of RSAA members to the other appeals bodies (and vice versa). Combining the appeal authorities into the Tribunal will not result in the loss of experience and expertise, but rather enhance our appeals processes. For these reasons the establishment of the Tribunal is supported by the current Chairs of the RSAA and the Deportation Review Tribunal.

IMMIGRATION COMMISSIONER

- 43 A number of submissions contain recommendations for increased scrutiny of the immigration system, particularly where it is perceived that there was no independent appeal right. Approximately 10 submissions also call on the Government to establish an Immigration Commissioner to oversee the work of the Department, including decision-making, use of powers of entry and inspection or search, and detention. The submissions contain few allegations of systematic issues or faults in immigration practice in support of the proposal. Generally, they focus on the Bill itself and concerns regarding potential abuses, rather than current practice.
- 44 In all cases where a power can be exercised under the auspices of the Bill, a person has either:

² The later two provisions are not in the Bill but are an established and accepted part of the immigration system.

- a. formal avenues of review and appeal to the Tribunal, the courts, the Ombudsmen, the Privacy Commissioner or the HRC, along with
 - b. informal avenues to challenge the decisions of immigration officers or to make a complaint about the exercise of immigration powers, or
 - c. both formal and informal avenues.
- 45 It has long been considered appropriate for certain non-citizens to have no formal immigration appeal or review rights where a decision is essentially about making an exception to the normal requirements of the immigration system, and where a temporary visa application is declined offshore. The current departmental reconsideration of onshore temporary entry decline decisions is also considered appropriate. It is important to note that there has been no reduction in appeal or review rights in the Bill.
- 46 Formal avenues of complaint, appeal and review outside the Bill include the complaint-making procedures established in the:
- Ombudsmen Act 1975
 - Human Rights Act 1993
 - Official Information Act 1982
 - Privacy Act 1993, and
 - Habeas Corpus Act 2001.
- 47 Non-citizens can also seek judicial review of most exercises of statutory power under the Bill. Additional remedies can be sought under the New Zealand Bill of Rights Act 1990 (BORA), including injunctive relief from deportation. Informal avenues include writing to the Department, or to ministers.
- 48 Unless some of the current appeal and complaint making mechanisms are limited, the establishment of an Immigration Commissioner would have the potential to create parallel and duplicate appeal or review mechanisms.
- 49 This would serve to undermine the effective operation of the current mechanisms that represent the status quo under the 1987 Act. It may also create delays in the effective operation of the immigration system. The establishment of an Immigration Commissioner would also come at some considerable cost, requiring the establishment of a new agency with an appropriate support structure that was overseen by a Government agency.
- 50 In response to the concerns raised in the submissions, I have directed the Department to report back to me on initiatives that could be used to increase awareness about the current formal and informal mechanisms and remedies available to non-citizens engaged in the immigration system. Developing such initiatives would be valuable in addressing the concerns about perceived lack of oversight. Some examples include:
- a. making information about mechanisms and remedies more available and accessible in Immigration New Zealand (INZ) offices and online, and

- b. developing a client service charter for INZ staff that includes lines of accountability where a complaint is made.
- 51 I also note that the Immigration Advisers Licensing Act 2007 will help ensure that the immigration advice given to non-citizens is regulated. The purpose of that Act is to:

"promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice".

- 52 The Immigration Business Transformation (IBT) project also provides an excellent opportunity for the Department to review its interaction with its clients and work towards improved client services, including timely and consistent decision making in the exercise of all powers under immigration legislation. For these reasons, I do not recommend establishing an Immigration Commissioner.

CHANGES TO THE "REASONABLE EXCUSE" DEFENCE FOR EMPLOYERS

- 53 The "reasonable excuse defence" in the 1987 Act of holding a signed IR330 tax code declaration form has resulted in an inability to prosecute employers who employ a non-citizen without entitlement to work. Because of this, as a part of the Immigration Act review, the Cabinet Business Committee (CBC) (with the power to act) agreed to change the defence [CBC Min (06) 20/14]. In the Bill, an employer has a defence for employing a non-citizen without entitlement to work if they do not know that the non-citizen is not entitled, and

take reasonable precautions and exercise due diligence to ascertain whether the non-citizen was entitled to do the work.

- 54 This does not change the general nature of the offence from the status quo. It changes the defence for an employer the Department is seeking to prosecute.

Submissions on the "reasonable excuse" defence

- 55 In response to the *Immigration Act review: Discussion paper*, 65 percent of organisations and 80 percent of individuals considered that there should be a stronger basis for employer responsibilities. Fifty-five percent supported the removal of the IR330 form as a defence. In submissions on the Bill, Business New Zealand (Business NZ) and its stakeholder agencies submitted in support of the retention of the IR330 tax code declaration form.
- 56 Along with a concern over the potential compliance cost of meeting the new defence, Business NZ expressed concern that employers may only ask for evidence of entitlement to work from people who appear to be non-citizens and that this may lead to a form of de facto racial profiling by employers. Submitters proposed linking work entitlement to a tax file number issued by the Inland Revenue Department (IRD). This proposal assumes that IRD would verify a non-citizen's entitlement to work prior to issuing a tax file number.

Tax codes and work entitlement

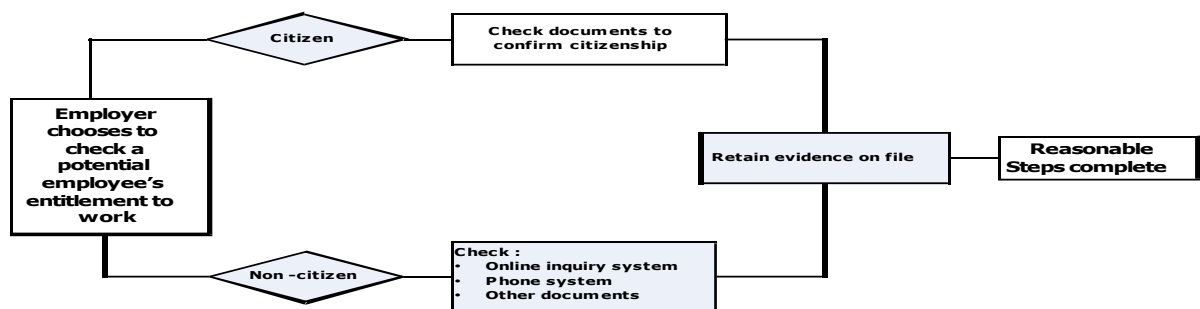
- 57 The Department and IRD explored the tax file number proposal. There is no automatic link between work entitlement and the issue of a tax file number. Non-citizens have to hold tax file numbers in many circumstances where they may not have entitlement to work, for example, non-citizens earning investment income.
- 58 A link between work entitlement and a tax file number would be unlikely to be effective for the key reason that obtaining a tax file number is not mandatory. Employees can choose a "non-declaration" tax rate of 45% instead of providing a tax file number³. Any link to the tax system may also create an incentive for non-citizen employees to avoid paying tax, threatening voluntary compliance with, and the integrity of, the tax system. The proposal to link work entitlement and tax file numbers raises also questions about information disclosure which would need to be considered in a privacy context.

Reducing compliance costs

- 59 CBC was advised that changing the defence was not intended to make the employment process more difficult. Guidance will be developed by the Department in consultation with employers and employer organisations [CBC Min (06) 20/14]. The Department has met with Business NZ to discuss this. Business NZ's starting position is that any obligation to check entitlement to work should sit with the IRD, but both agencies have agreed to work together to implement the change to the defence in a way that:
- a. has the least impact on employers, and
 - b. minimises the risk of discrimination by employers.
- 60 Both agencies recognise that many employers already have effective employment process in place. Often these processes require employees to supply a passport, birth certificate, or document which indicates their immigration status. These processes could be adapted to meet the new defence. Simple adaptation of current practice is a key goal for the Department and Business NZ.
- 61 To reduce compliance costs, CBC agreed to enable the Department to disclose certain immigration status information to prospective employers. Implementation planning for the new legislation includes the development of an online system to enable prospective employers to check entitlement to work. The system will provide relevant information about a non-citizen's entitlement to work and any relevant conditions. Alternative methods of checking will also be available (e.g. via fax or phone). Chart Two, on the next page, provides a basic outline of this process.

³ Although this rate of tax is normally an incentive for individuals to provide a tax file number.

Chart Two: basic outline for checking entitlement to work



62 Communication and support provided to employers is the key to the success of the new provision. Employers will be aware of the changes and what is needed to ensure compliance. No change to the Bill is recommended.

DETENTION AND MONITORING

Managing non-citizens who hinder departure

- 63 At a high level, Cabinet agreed that the current system for ongoing monitoring and detention that enables the courts to order the release of a non-citizen on conditions, or to authorise their detention under a warrant, be continued [CBC Min (06) 20/14]. However, the detention and monitoring system in the Bill is less stringent than the 1987 Act.
- 64 Cabinet also agreed to a six month maximum limit on detention of non-citizens who, having exhausted all appeal rights, are liable for deportation [CBC Min (06) 20/14]. After this six month period, non-citizens who cannot be deported through no fault of their own will be released. Only non-citizens who deliberately hinder their departure may be detained longer than six months.
- 65 In the first six month period there is a presumption of detention for non-citizens who hinder their departure. However, after six months, the Bill provides the courts with the discretion to issue a warrant of commitment (warrant) for their further detention. This discretion could pose a risk to the integrity of the immigration system. It diminishes the incentive for non-citizens to cooperate in the deportation process, as they can seek to secure their release prior to deportation and therefore achieve access to the New Zealand community.
- 66 It is recommended that the Bill be amended to partially restore the status quo of the 1987 Act so that, where a warrant is sought, except in exceptional circumstances, there is a presumption for the detention of non-citizens who:
- a. claim refugee or protection status after they are served with a deportation liability notice, or who are liable for arrest and deportation, and
 - b. deliberately hinder their departure.

Length of time as an "exceptional circumstance"

67 A key risk to this proposal is that, in two cases, the courts have determined that the length of time spent in detention itself constitutes "exceptional circumstances"

under which a non-citizen may be released from detention. In light of these decisions, non-citizens may choose to hinder their departure and “wait out” time in detention, in order to create an “exceptional circumstance” to justify their release or to achieve an immigration outcome.

- 68 The courts play an important role in monitoring the reasonableness of detention, providing independent oversight through the warrant process. It may be appropriate, however, to provide the courts with clearer guidance as to Government’s intent in managing non-citizens who hinder their departure. This could be done by excluding length of detention from being an “exceptional circumstance”. Unless other exceptional circumstances arose, this would generally ensure that a non-citizen could be subject to detention until they ceased hindering their departure and were deported from New Zealand.
- 69 If Cabinet agrees, excluding “length of detention” from being an “exceptional circumstance” for non-citizens who hinder their departure, this will be recommended to the Committee. It is noted that oversight of detention would continue through the warrant process, and non-citizens would continue to be able to challenge their detention through habeas corpus proceedings and substantive appeal under the District Courts Act 1947. They would also be able to seek judicial review of the decision by the Department to seek renewal of their warrant.
- 70 Justice advises that the recommendation may be inconsistent with section 22 of the BORA which affirms the right to protection against arbitrary detention. MFAT notes that if the recommendation is inconsistent with the BORA, it is likely also to be inconsistent with Article 9 of the ICCPR⁴. A final determination of consistency could not be made until provisions were drafted for the Bill. The Department will work with Justice if provisions are drafted for the Bill to endeavour to ensure consistency with the BORA (and ICCPR). MFAT will be consulted on any consequential impacts on our international treaty obligations.
- 71 Police were supportive of both proposals. The Department of Corrections (Corrections) supports reinstating the effect of the 1987 Act but notes that it may, in turn, impact on the prison population. Given the small number of non-citizens in immigration detention, and that the problem of non-citizens who hinder their departure is limited, any fiscal impact on the overall activities of Corrections is likely to be negligible.
- 72 One way of limiting the impact of immigration detention on both Police and Corrections is to enable detention to be given effect outside their facilities. During the consultation phase on the *Immigration Act review: Discussion Paper*, a number of submitters, including the UNHCR, expressed concern about the negative impacts of immigration detention in Police and Corrections facilities. The Auckland District Law Society, in its submission on the Bill, submitted that the Bill should make provision for separate immigration detention facilities.

⁴ If the proposal is inconsistent with the ICCPR it has the potential to be the subject of complaints to the United Nations Human Rights Committee or to the Special Procedures mechanisms of the United Nations Human Rights Council.

73 It is recommended that a person in charge of an "approved premises" for the purpose of immigration detention (and any person acting under the authority of that person) be authorised to detain non-citizens, whether they are detained with or without a warrant. This proposal is supported by Police, Justice, MFAT and Corrections. Currently, the Bill permits the person in charge of an "approved premises" to detain a non-citizen under a warrant, but not within the 96 hour period of detention without a warrant. This is inconsistent with the policy intent behind the November 2006 CBC decision that the Department scope options around immigration detention [CBC Min (06) 20/14].

Other detention and monitoring recommendations

74 It is recommended the Bill be a code for the immigration detention of non-citizens. If it is not, there may be instances where the courts, in considering a warrant application, could exercise their jurisdiction to grant bail to a non-citizen. This power could be used to undermine the specific provisions for immigration detention and monitoring under the Bill, which would be contrary to the policy intent.

75 It is also recommended that Cabinet rescind the decision "where a non-citizen has exhausted all appeal rights and has no right to remain in New Zealand, and they have not departed after an ongoing period of secure immigration detention of 12 months, the Bill require the courts to consider ordering the non-citizen to either:

- a. cease the action preventing their departure being facilitated, or
- b. undertake an action in order to facilitate their departure [CBC Min (06) 20/14].

76 The provisions for the courts to order a non-citizen to cooperate, and to find them in contempt of court if they fail to do so, are unlikely to be used by the courts. This may result in a form of administrative detention becoming penal detention, which could be considered inappropriate. The provisions are also inconsistent with the proposal to partially restore the status quo.

KNOWINGLY PROVIDING FALSE OR MISLEADING INFORMATION

77 In June 2007, Cabinet noted that the Department was undertaking further work on the "reasonable excuse" defence for the offence of knowingly providing false or misleading information [CAB Min (07) 20/1, CAB Min (07) 21/5]. This is because what constitutes a "reasonable excuse" has been interpreted differently in the courts and has resulted in significant difficulties for the Department obtaining convictions. It is a particular problem in jury trial scenarios where defendants play on the sympathies of jurors and fabricate excuses in order to avoid prosecution.

78 It is recommended that the "reasonable excuse" provision is removed from the offence of knowingly producing false or misleading document to an immigration officer. The proposal would remove a defence that is hampering the prosecution of non-citizens who knowingly seek to deceive, but would not prevent a judge from taking into account any mitigating circumstances during sentencing.

- 79 It is noted that as a party to the Convention Relating to the Status of Refugees (Refugee Convention), New Zealand has an obligation to ensure that genuine refugees who provide false documentation or information are not penalised where they “present themselves without delay to the authorities”. Discretion is currently used in decisions on whether or not to prosecute failed refugee status claimants. In order to formalise this process, and mitigate any impact on genuine refugees from removing the “reasonable excuse” defence, I will direct officials to develop policy and prosecution guidelines to ensure that New Zealand’s international obligations under article 31.1 of the Refugee Convention continue to be fulfilled.
- 80 Corrections notes that removing the “reasonable excuse” defence may impact on the prison population, depending on the number of effective prosecutions and sentencing decisions. Justice and MFAT do not support removing the defence. If the recommendation is agreed, both agencies would prefer a legislative provision be incorporated into the Bill deferring prosecution pending the outcome of any refugee status claim and disallowing the prosecution of refugees. Justice is of the view this would be the most appropriate approach in the New Zealand context to ensure compliance with the Refugee Convention⁵.
- 81 The Justice and MFAT approach would likely give rise to an increase in manifestly unfounded refugee status claims by non-citizens who knowingly seek to deceive and then seek to delay or avoid prosecution. While manifestly unfounded claims can be managed by the Department, any increase in them would have resource implications. The Justice and MFAT approach would also limit the Department’s ability to prosecute refugees who provide false or misleading information in the non-border context, such as when providing information in relation to their claim, or during an interview with a determination officer. This provision of false or misleading information in these contexts is not protected by the Refugee Convention.
- 82 In response to Justice and MFAT concerns, I recommended the insertion of an “avoid any doubt” clause that recognises that the offence in no way limits the application of Article 31.1 of the Refugee Convention. This would focus on the obligation to ensure that genuine refugees are not penalised where they “present themselves without delay to the authorities”.
- 83 In a report commissioned by the UNHCR on non-penalisation of refugees, it was found that many States have no legislative provision implementing their obligation under article 31.1 of the Refugee Convention, and that there is instead “judicious use of executive discretion”⁶. The report further noted that implementing the Refugee Convention is a matter for States themselves and that “both formal and informal or ad hoc procedures” are acceptable. Therefore, the development of policy and prosecution guidelines is consistent with the approach accepted by the UNHCR. It also recognises that failed refugee status claimants are not the issue with the “reasonable excuse” defence. They make up only a

⁵ It is noted that the Refugee Convention, in its entirety, is incorporated into the 1987 Act and the Bill.

⁶ G Goodwin-Gill “*Article 31 of the 1951 Refugee Convention relating to the Status of Refugees: Non-penalisation, Detention and Protection*” (October 2001)

small percentage of the non-citizens the Department seek to prosecute and are not considered a problem in this regard.

THE ROLE OF THE HUMAN RIGHTS COMMISSION

- 84 HRC opposes the current limitation to its jurisdiction imposed by the 1987 Act, which has been retained in the Bill. In June 2007, Cabinet invited the Minister of Immigration to lead a process of further engagement with HRC and Justice to discuss HRC's role in the immigration system [CAB Min (07) 10/11]. HRC's role has also been the subject of submissions to the Committee.
- 85 In their submission, HRC has proposed to the Committee that the Bill be amended to allow it to seek declaratory judgments and bring legal proceedings (pursuant to an inquiry). HRC's proposal poses significant risks:
- it runs contrary to the rationale that immigration decision-making inherently involves some discrimination based on personal characteristics
 - it would establish a separate review and appeal process, by which all immigration policies could be subject to challenge, and
 - it would mean that review and appeal processes could be subject to significant delays because of the parallel review and appeal avenues.
- 86 HRC's proposal is not a viable alternative to the status quo. Instead, two options are being recommended. Those options are:
- a. the status quo of the 1987 Act which has been retained in the Bill, or
 - b. enabling HRC to intervene in legal proceedings (as an intervener or amicus curiae) in matters involving immigration law and policy.
- 87 A proposal to enable HRC to intervene was outlined to the HRC in a letter from the former Minister of Immigration, and discussed with the Chief Commissioner by the Department. HRC was supportive of the option but maintained that it did not go far enough.
- 88 Providing HRC with the ability to intervene would not raise significant risks to the effective functioning of the immigration system. It would bring the functions of HRC in line with other international human rights organisations. Notably, HRC has one function that the comparative institutions do not, namely, the ability to report directly to the Prime Minister on human rights matters which include immigration.
- 89 Alongside the development of the option to enable HRC to intervene, the Department has been working with the HRC to establish more effective lines of communication and engagement between the two agencies, aimed at strengthening their relationship. This has resulted in the establishment of a key contact in the Department for HRC to raise issues or cases of concern, and an agreement to engage in regular relationship meetings.

CONSULTATION

- 90 The Departments of Prime Minister and Cabinet, Internal Affairs, Inland Revenue and Correction, and the Ministries of Justice, Foreign Affairs and Trade, Defence, Agriculture and Forestry, Transport, and Fisheries have been consulted on this

Cabinet paper along with the New Zealand Security Intelligence Service, New Zealand Customs Service, and the New Zealand Police. The Government Communications Security Bureau and Legal Services Agency have also been consulted. The views of the agencies consulted are reflected in this paper under the discussion of particular issues.

- 91 The Treasury and the Crown Law Office, along with the Ministries of Social Development, Health and Pacific Island Affairs, Te Puni Kōkiri, the Office of Ethnic Affairs and the State Services Commission have been informed.
- 92 In particular, the submissions by the Refugee Status Appeals Authority, the Office of the Ombudsmen, the Privacy Commissioner, and the Human Rights Commission were considered in developing the recommendations in this paper. The Ombudsmen and the Privacy Commissioner were consulted. These agencies will continue to be consulted on the development of the Bill as appropriate.

FINANCIAL IMPLICATIONS

- 93 While there are no direct financial implications associated with this Cabinet paper, it should be noted that funding for implementing the Act review, including establishing the Tribunal, was sought through Budget 2007 and has been agreed [CAB Min (07) 12/1 (27), CAB Min (07) 12/1 (14), CAB Min (07) 12/1 (29)].
- 94 If Cabinet were to agree to the establishment of an Immigration Commissioner, it would come at some considerable cost. It would require the establishment of a new agency with an appropriate support structure that was overseen by a Government agency.

HUMAN RIGHTS IMPLICATIONS

- 95 Justice notes that, if agreed, the proposal to exclude “length of time” as an “exceptional circumstance” in the detention and monitoring system may be inconsistent with section 22 of the New Zealand Bill of Rights Act 1990 (BORA) which affirms the right to protection against arbitrary detention. MFAT notes that if the recommendation is inconsistent with the BORA, it is likely also to be inconsistent with Article 9 of the ICCPR⁷. A final determination of consistency could not be made until provisions were drafted for the Bill. If the recommendation is progressed, the Department will provide further advice to Cabinet on consistency with the BORA (and ICCPR) when provisions are drafted for the Bill. Options can then be provided for Cabinet consideration if required.

⁷ If the proposal is inconsistent with the BORA and ICCPR, it has the potential to be the subject of complaints to the United Nations Human Rights Committee or to the Special Procedures mechanisms of the United Nations Human Rights Council.

LEGISLATIVE IMPLICATIONS

- 96 Legislation is required to implement the proposals. Should Cabinet agree to the proposals in this paper, I would direct officials to recommend the agreed changes to the Committee in the departmental report on the Bill.
- 97 The Bill will be binding on the Crown in keeping with the general principle that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of Government.

REGULATORY IMPACT ANALYSIS

- 98 A Regulatory Impact Statement (RIS) has been prepared only for the parts of this paper that will alter substantially any earlier Cabinet decisions on the Bill. This is because any impacts of the early decisions are in earlier RIS relevant to the Bill [CBC Min (06) 20/14, CAB Min (07) 14/1A, CAB Min (07) 20/1, CAB Min 25/1A].
- 99 The Department is satisfied that the principles of the Code of Good Regulatory Practice have been complied with fully. The RIS was circulated with the Cabinet paper for departmental consultation.

PUBLICITY

- 100 As the Bill is currently before the Committee, no publicity is recommended in conjunction with this Cabinet paper.

RECOMMENDATIONS

- 101 It is recommended that Cabinet:
1. **note** that, where agreed, the recommendations below will be made to the Transport and Industrial Relations Committee;
 2. **agree** to the recommendations in Appendix A;
 3. **note** the recommendations in Appendix B;
 4. **agree** that the Immigration Bill be a code for natural justice in immigration and in refugee and protection decision making involving classified information;
 5. **agree** to limit classified information to information from security, defence, law enforcement, and border agencies and the Ministry of Foreign Affairs and Trade and the Department of Internal Affairs;
 6. **agree** to maintain the application of the Ombudsmen Act 1975, Official Information Act 1982 and Privacy Act 1993 in the classified information provisions of the Immigration Bill;
 7. **agree** to delete the words "in the opinion of the chief executive" in clause 5(1) of the Immigration Bill to make the definition of classified information more objective;

8. **agree** that the chief executive's power of delegation under section 41 of the State Sector Act 1988 should not apply to the definition of classified information in the Immigration Bill;
9. **agree** that classified information cannot be used in immigration and refugee and protection decision making unless a summary of allegations can be provided to a non-citizen so that they may be informed of the gist of the prejudicial allegations;
10. **agree** that the limitation on a special advocate lodging proceedings on behalf of a non-citizen under clause 235 of the Immigration Bill be lifted;
11. **agree** that the Immigration Bill be redrafted to clarify the role of special advocates in matters involving classified information as having a duty to:
 - a. the Immigration and Protection Tribunal (the Tribunal) and courts
 - b. ensure that the classified information remains protected, and
 - c. represent the interests of the appellant;
12. **rescind** its previous decision that "all refugee and protection decisions using classified information must be made by the Immigration and Protection Tribunal" [CAB Min (07) 25/1A];

And instead,
13. **agree** that the Immigration Bill be amended so that senior, security-cleared determination officers make first instance refugee and protection decisions involving classified information;
14. **agree** that failed refugee and protection claimants be required to lodge their humanitarian appeal at the same time as their appeal against their declined refugee or protection claim;
15. **note** that the Minister of Immigration has directed the Department of Labour to report back to him on initiatives that could be used to increase awareness about the current formal and informal complaint mechanisms and address the concerns of perceived lack of oversight of the immigration system;
16. **agree** that the Immigration Bill be amended to partially restore the status quo of the Immigration Act 1987 so that, where a warrant is sought, except in exceptional circumstances, there is a presumption of detention of non-citizens who:
 - a. claim refugee or protection status after they are served with a deportation liability notice, or who are liable for arrest and deportation, and
 - b. deliberately hinder their departure;
17. **agree** to exclude "length of detention" from being an "exceptional circumstance";

18. **note** that if recommendation 17 is agreed, the Department of Labour will work with the Ministry of Justice to endeavour to ensure consistency with the Bill of Rights Act and the International Covenant on Civil and Political Rights and the Ministry of Foreign Affairs will be consulted
19. **agree** that a person in charge of an "approved premises" for the purpose of immigration detention (and any person acting under the authority of that person) be authorised to detain non-citizens, whether they are detained with or without a warrant;
20. **agree** that the Immigration Bill be a code for the immigration detention of non-citizens;
21. **rescind** the decision "where a non-citizen has exhausted all appeal rights and has no right to remain in New Zealand, and they have not departed after an ongoing period of secure immigration detention of 12 months, the Bill require the courts to consider ordering the non-citizen to either:
 - a. cease the action preventing their departure being facilitated, or
 - b. undertake an action in order to facilitate their departure" [CBC Min (06) 20/14];
22. **agree** that the "reasonable excuse" provision be removed from the offence of knowingly producing false or misleading document to an immigration officer;
23. **agree** to the insertion of an "avoid any doubt" clause that recognises that the offence in no way limits the application of Article 31.1 of the United Nations Convention relating to the status of Refugees;
24. **agree**, in relation to the role of the Human Rights Commission in the immigration system, to:

Either:

 - a. retain the status quo of the Immigration Act 1987 which has been retained in the Immigration Bill

Or,

 - b. to enable the Human Rights Commission to intervene in legal proceedings (as an intervener or amicus curiae) in matters involving immigration law and policy;
25. **note** that as the Immigration Bill is currently before the Transport and Industrial Relations Committee, no publicity is recommended in conjunction with this Cabinet paper.

APPENDIX A: CABINET AGREEMENTS

- 1 This appendix seeks Cabinet agreement to a range of technical policy changes that are required to ensure the Immigration Bill (the Bill) meet the objectives agreed by the Government to:
 - a. ensure New Zealand’s interests are protected and advanced
 - b. ensure compliance with international obligations, and
 - c. establish fair, firm, and fast decision-making [CAB Min (05) 18/7].
- 2 The proposals aim to ensure that the Bill creates an immigration system that is more transparent, easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

It is recommended that Cabinet:	Rationale	Submissions
Part Two: Core provisions and decision making - Key proposals		
<p>1. Agree that the Bill enable dual citizens who do not wish to prove their <i>New Zealand citizenship</i> at the border to hold a visa.</p>	<p>The Bill does not enable citizens to hold visas. However, this would adversely impact on dual citizens. Dual citizens by descent, for example, would be forced to register and provide proof of their New Zealand citizenship, even if they wanted to visit for a short time using their foreign passport.</p> <p>Note that if a dual citizen were to prove their New Zealand citizenship at a later date, any visa would be cancelled.</p>	<p>This issue has been identified by the Department of Internal Affairs.</p>
Part Four: Arrivals and Departures - Key proposals		
<p>2. Agree that operating areas used for the processing of persons arriving in or departing from New Zealand and facilities necessary for ensuring that a non-citizen is placed on the first available craft leaving New Zealand must be provided by port operators without charge to the Department of Labour (the Department).</p>	<p>The Bill provides that port operators provide certain operating areas to the Department free of charge. In light of the Department’s recent experience in negotiating lease agreements and litigation of similar provisions in the Customs and Excise Act 1996, there is a need to clarify which types of operating areas, and which necessary, essential fittings must be provided free of charge.</p>	<p>NIL</p>
<p>3. Agree that operating areas include essential fittings within these areas, and the ongoing maintenance of these areas.</p>	<p>As above</p>	<p>NIL</p>

It is recommended that Cabinet:	Rationale	Submissions
4. Agree that the Bill clearly provide that it is an offence for people to fail to provide biometrics when required at the border.	Biometrics will be used to establish identity at the border; however, the Bill is not clear that it would be an offence not to do so. Note that Citizens will only be required to provide photographic biometric information.	The Ministry of Justice has signalled that an offence for non-compliance is appropriate.
5. Agree that the penalty applied to the offence for failing to provide biometrics at the border would be the general penalty of up to \$5,000.	If Cabinet agrees that it would be an offence not to provide biometrics at the border, the general penalty of \$5,000 is appropriate.	As above
6. Agree that the Bill provide for the collection of biometric information from non-citizens on departure.	<p>The ability to accurately identify non-citizens on departure and match them to their record through the use of biometric information will enhance the integrity of the immigration system and the accuracy of immigration records.</p> <p>The establishment of any biometric system will come into effect by Order in Council. As biometric information is personal information, the system for its collection, storage and use will be developed in compliance with the Privacy Act 1993.</p>	Submissions generally raised concerns over the use of biometric information. Most considered that its use should be limited and reviewable, and that it should comply with privacy requirements.
Part Seven: Review and Appeals - Key proposals		
7. Agree that an exception be made in the Bill to enable an appeal against residence class visa application decisions to be made by the Minister where classified information has been used.	Generally, there is no right of appeal against a decision of the Minister to decline a residence class visa in the Bill. This includes where classified information is used in making the decision. However, excluding an appeal right in this situation would not allow independent scrutiny by the Tribunal of the veracity and relevance of the classified information.	Submissions on this clause expressed a concern at the lack of avenues for appeal generally, saying that there should always be an ability to provide checks and balances on the exercise of powers, in particular, where classified information is used.
8. Agree that the Bill be amended by introducing criteria for granting leave to appeal to the High Court.	As above	NIL
9. Agree that these criteria would broadly be the same as required to	As above	NIL

It is recommended that Cabinet:	Rationale	Submissions
seek the leave of the Court of Appeal, in summary, that the matter is of general or public importance or for any other reason ought to be submitted.		
10. Agree that the courts must treat appeals and judicial review proceedings brought by non-citizens here unlawfully or on a temporary basis with priority.	There can be significant delays in courts. In matters involving those unlawfully or temporarily in New Zealand, delay can have a major effect on outcome as a non-citizen's circumstances may change during the delay.	NIL
11. Agree that the Immigration and Protection Tribunal (the Tribunal) or courts be able to appoint an amicus curiae (or friend of the court), who does not need to be a lawyer, regardless of whether an individual has also appointed a special advocate and that, where dealing with any classified information, the amicus must be security-cleared.	The courts would generally have the ability to appoint an amicus curiae to assist them in a case, and this should also be possible in an appeal or judicial review involving classified information. The amicus may be of assistance to the Tribunal or court in considering the matter before it.	NIL
Part Eight: Compliance and enforcement - Key proposals		
12. Agree that a list of agencies and providers required to provide address information be placed in regulations, and that an appropriate regulation-making power be placed in the Bill.	Making changes to the categories and list of agencies, persons, and providers without the need to amend legislation would provide greater flexibility.	The Auckland District Law Society considers that these provisions would lead to "wholesale breaches of the Privacy Act". Another submission has expressed concern that there would be "too much intrusion" into people's privacy by requiring a large list of agencies to provide the information.
Part Ten: Offences, penalties and proceedings - Key proposals		
13. Agree that "endorsements in foreign passports" be included in classes of documents subject to the offences contained in the Bill.	The Bill provides offences relating to non-citizens who fraudulently produce passports or visas, or who sell or otherwise deal improperly with these documents. It is possible that endorsements that indicate New Zealand citizenship could be misused by non-citizens.	NIL

It is recommended that Cabinet:	Rationale	Submissions
Part Eleven: Miscellaneous - Key proposals		
14. Agree that the requirements to prove citizenship prior to the issue of an endorsement be contained in regulations.	Placing the requirements to prove citizenship in regulations will allow them to be scrutinised by Parliament and will also future-proof the Bill by enabling them to be updated.	NIL
15. Agree that the Bill provides a mechanism for cancelling an endorsement where a non-citizen is deprived of citizenship.	As endorsements will be used to indicate citizenship at the border, where a person has been deprived of citizenship, their endorsement should be cancelled.	

APPENDIX B: CABINET NOTES

- 1 This appendix asks Cabinet to note a range of technical changes that are required to ensure the Immigration Bill (the Bill) meet the objectives agreed by the Government to:
 - a. ensure New Zealand’s interests are protected and advanced;
 - b. ensure compliance with international obligations; and
 - c. establish fair, firm, and fast decision-making [CAB Min (05) 18/7].
- 2 The proposals aim to ensure that the Bill creates an immigration system that is more transparent, easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

It is recommended that Cabinet:	Rationale	Submissions
Part One: Preliminary provisions - Key proposals		
1. Note that officials will recommend to the Committee that the purpose statement in clause 3 of the Bill be refined consistent with the November 2007 CBC decisions.	The purpose of the Bill outlines some of the interests the Bill is seeking to support. It is important that purpose statements are drafted carefully, as they can lead to litigation.	The submissions are supportive of the inclusion of a purpose statement. Some submitters have suggested broadening its scope.
2. Note that officials will recommend to the Committee that a definition of “stowaway” is incorporated into the Bill.	A “stowaway” is referred to seven times in the Bill and would benefit from being defined.	NIL
Part Two: Core provisions and decision making - Key proposals		
3. Note that officials will recommend to the Committee that the Bill be clarified so that New Zealand citizens must prove their <i>citizenship</i> and <i>identity</i> at the border in order to establish their right to be in New Zealand as a citizen.	The Bill establishes the right of citizens to be in New Zealand at any time. It is important, however, that they establish their citizenship and identity at the border in order to access that right. Confirming citizenship can occur through the presentation of a New Zealand passport or a foreign passport with an endorsement at the border. The passport can then be used to confirm identity. Cabinet’s intention is that the photographic biometric information in the passport will be used to do this.	NIL
4. Note that officials will recommend to the Committee that non-citizens lawfully in New Zealand	Among other legislation, the International Crimes and International Criminal Court Act	NIL

It is recommended that Cabinet:	Rationale	Submissions
under non-immigration legislation are not considered unlawful under immigration legislation.	2000 and the Extradition Act 1999 enable non-citizens to enter New Zealand lawfully outside the immigration legislation. This reflects the status quo of the Immigration Act 1987 (the 1987 Act).	
5. Note that officials will recommend to the Committee to clarify the status of immigration instructions as Government policy, not regulations for the purposes of the Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989.	Enabling immigration policies to sit outside the legislation and regulations is a key element to their effective operation. There would be value in clarifying the status of immigration instructions in the Bill. This reflects the status quo of the 1987 Act.	While this issue has not been of substantial interest some submitters considered that immigration policies should be subject to regulations review. If this were the case they could be subject to disallowance.
6. Note that officials will recommend to the Committee that the classified information provision in the Bill refer to information "relied on" in the decision making process.	The Chief Ombudsman has recommended this change so that only classified information relied on in the decision making process set out in the Bill would be subject to the Bill's confidentiality provisions and any subsequent appeal process.	The Chief Ombudsman's recommendations are generally supported by other key submitters including the Privacy Commissioner and Human Rights Commissioner.
7. Note that officials will recommend to the Committee that the Minister can receive a written or oral briefing on any classified information.	The Bill enables the Minister to receive an oral briefing. The Minister should be able to receive a written or oral briefing.	NIL
8. Note that officials will recommend to the Committee that clause 31(1)(d) of the Bill be deleted.	As currently drafted, clause 31(1)(d) would require the entire content of the briefing to be withheld irrespective of whether it was "classified information". The Chief Ombudsman has recommended that the clause be deleted to enable the Official Information Act 1982 and Privacy Act 1993 to apply as per the status quo.	The Chief Ombudsman's recommendations are generally supported by other key submitters including the Privacy Commissioner and Human Rights Commissioner.
Part Three: Visas - Key proposals		
9. Note that officials will recommend to the Committee to allow the Minister, by special direction, to vary conditions of temporary entry class visas whether or not the visa was granted as an	The ability of the Minister to vary conditions of temporary entry class visas in this manner would provide additional flexibility to decision making and maintain the status quo.	NIL

It is recommended that Cabinet:	Rationale	Submissions
exception to immigration instructions.		
10. Note that officials will recommend to the Committee to allow the Minister, by special direction, to vary conditions of resident visas whether or not the visa was granted as an exception to immigration instructions.	The ability to vary conditions of resident visas in this manner would provide additional flexibility to decision making and maintain the status quo.	NIL
Part Four: Arrivals and Departures - Key proposals		
11. Note that officials will recommend to the Committee that resident visa holders who were granted their visas onshore are entitled to be granted entry permission.	To ensure consistency with the intent, the Bill should provide that entry permission must be granted to resident visa holders where their visa was granted onshore. Currently, where these citizens leave New Zealand, they could be denied re-entry.	NIL
12. Note that officials will recommend to the Committee that arrest, detention and turnaround provisions extend to non-citizens who are required to hold visas but do not, or whose travel is inconsistent with the conditions of their visa.	Arrest, detention, and turnaround provisions need to be able to respond to any scenario where a non-citizen has entered New Zealand unlawfully. The current drafting does not adequately enable this to occur.	One submitter questioned the fairness of the turnaround provisions in general and believed there should be appeal rights.
Part Five: Refugee and Protection Status Determinations - Key proposals		
13. Note that officials will recommend to the Committee that the confidentiality provisions for refugee and protection matters be refined to ensure that they focus on the confidentiality of the claim (as per the policy intent) and address problems identified in a recent Court of Appeal decision in <i>Attorney General v X and Z</i> [2007] NZCA 388.	A Court of Appeal decision held that the current confidentiality provision (section 129T) prevents information from refugee status proceedings being used for extradition or prosecution purposes. This interpretation of the confidentiality requirements does not reflect the policy intent.	The RSAA submitted on this provision and offered to provide further comment to the Committee.

It is recommended that Cabinet:	Rationale	Submissions
Part Six: Deportation - Key proposals		
14. Note that officials will recommend to the Committee that the Bill provide no prohibition on entry for non-citizens under 18 years of age who have previously been deported for remaining unlawfully in New Zealand.	The Bill does not replicate the status quo of the 1987 Act. This is an oversight and was not the intention of the Bill.	NIL
Part Seven: Review and Appeals - Key proposals		
15. Note that officials will recommend to the Committee that a non-citizen who is onshore and seeks reconsideration of a temporary application decline decision, and subsequently becomes unlawful, has 42 days to appeal their deportation from the date they receive confirmation of the decline decision.	By not providing for this, the Bill is inconsistent with the status quo of the 1987 Act. This is an oversight and was not the intention of the Bill. If non-citizens do not seek a reconsideration, they will continue to have 42 days from the date they become unlawful to lodge their humanitarian appeal as per the status quo.	NIL
16. Note that officials will recommend to the Committee that the Bill clarify that the decision-maker, the Immigration and Protection Tribunal (the Tribunal) or Court, and the chief executive of the relevant agency may be involved in the process of approving a summary of classified information.	The Bill lists who <i>may not</i> be involved with the summary of classified information process. It would be clearer if the Bill listed who <i>may</i> be involved in this process: the decision-maker, Tribunal and the chief executive of the relevant agency.	Several submissions commented on the role of special advocates in updating the summary. Some considered that the special advocate cannot adequately represent the non-citizen concerned without involvement in the process.
17. Note that officials will recommend to the Committee that the provision enabling the Tribunal to state a case for the High Court be deleted.	According to the Legislation Advisory Committee guidelines, "stating a case" for a higher court is a cumbersome and outdated procedure.	NIL
18. Note that officials will recommend to the Committee that the Bill provide a mechanism to provide, add to or update classified information summaries during an appeal or judicial review.	Given the chief executive of the relevant agency can provide, add to, update or withdraw classified information during an appeal or judicial review, there should be provision for a summary to be updated as required.	NIL
19. Note that officials will recommend to the Committee that the Bill be amended so that the	The Bill currently allows only the chief executive of the relevant agency to provide classified	NIL

It is recommended that Cabinet:	Rationale	Submissions
decision maker, in consultation with the chief executive of the relevant agency, provides classified information relied on in the decision to the courts and special advocate.	information to the courts and special advocate for an appeal. Enabling the decision maker to provide the information, in consultation with the chief executive, will ensure that irrelevant information does not inadvertently become part of the appeal process.	
20. Note that officials will recommend to the Committee that the Bill be amended to enable the Tribunal to consider information that is of benefit to the individual, regardless of whether or not the Tribunal considers it meets the definition of classified information.	Currently, the Tribunal must disregard information it finds not to be classified. Where the information is of benefit to the individual, it will increase fairness if the Tribunal can consider its relevance to an appeal.	This clause is of interest to the Committee.
Part Nine: Detention and monitoring - Key proposals		
21. Note that officials will recommend to the Committee that the Bill provide that refugees and protected persons who are liable for deportation and therefore, detention, may be arrested and detained, except in a circumstance where deportation is prohibited.	There may be circumstances where a refugee or protected person is deportable under the Bill, and should be subject to arrest and detention.	NIL
22. Note that officials will recommend to the Committee that the Bill be amended to require police officers to arrest the non-citizen, if requested to do so by an immigration officer.	The current language in the Bill is discretionary, which could result in difficulties if police officers were not required to arrest a non-citizen at the request of an immigration officer.	Several submitters have expressed concern regarding the potential human rights implications of the arrest and detention of non-citizens.
23. Note that officials will recommend to the Committee that the Bill be amended to state that the initial six-month period of detention re-starts in the case of a refugee or protection claim made subsequent to a non-citizen becoming unlawful or being served with a deportation liability notice.	The Bill could be seen to provide incentives for non-citizens to make subsequent refugee or protection claims as, after six months, they would be released from secure detention.	NIL
24. Note that officials will recommend to the Committee that the Bill be amended to clarify that "appeal rights" means the rights of appeal in relation to deportation	The Bill does not provide adequate guidance on what is meant by "appeal rights".	NIL

It is recommended that Cabinet:	Rationale	Submissions
proceedings and in relation to refugee or protection claims made before the non-citizen was served with a deportation liability notice or arrested and detained pending turnaround or deportation.		
25. Note that officials will recommend to the Committee that the Bill be amended to clarify, for the purposes of the detention provisions, that a refugee or protection claim is concluded when a refugee or protection claimant has exhausted the appeals associated with that claim.	The Bill could be interpreted to imply that a claim concludes when the non-citizen has exhausted <u>all</u> appeals to remain in New Zealand. Such an interpretation could mean delays, and possibly encourage non-citizens to make refugee or protection claims.	NIL
26. Note that officials will recommend to the Committee that the Bill provide a process for a special advocate to be appointed for warrant hearings involving classified information.	While it is unlikely that classified information will be used in warrant hearings, it is appropriate that the Bill provides a mechanism for appointing special advocates.	Submitters are not supportive of the provision that classified information must be treated as accurate in warrant hearings. This ensures that a warrant hearing is not a parallel appeal process.
Part Eleven: Miscellaneous - Key proposals		
27. Note that officials will recommend to the Committee that the requirements to prove citizenship prior to the issue of an endorsement be contained in regulations.	Placing the requirements to prove citizenship in regulations will allow them to be scrutinised by Parliament and will also future-proof the Bill by enabling them to be updated.	NIL
28. Note that it is intended that regulations will require a citizen to hold a New Zealand passport to prove their citizenship and identity in order to obtain an endorsement in a foreign passport.	The requirements for obtaining an endorsement will require consultation during the development of regulations. However, requiring a citizen to hold a passport would be the simplest mechanism for the Department to determine their citizenship and identity. It would also enable the collection of biometric information from citizens through the standard passport process.	NIL
Schedules: Schedule 2: Provisions relating to Tribunal - Key proposals		
29. Note that officials will recommend to the Committee that	It is important that the Tribunal has the necessary range of powers to	NIL

It is recommended that Cabinet:	Rationale	Submissions
<p>the Bill be reviewed to ensure that the Tribunal has the necessary powers to investigate the veracity of any classified information that is subject to appeal.</p>	<p>perform effectively its functions in relation to classified information. For example, it should have the power to question officials of the relevant agency that owns the information.</p>	
<p>30. Note that officials will recommend to the Committee to amend the Bill to better reflect current practice for publishing refugee and protection decisions.</p>	<p>For current refugee decisions, the RSAA prepares an original decision for the appellant, representatives, United Nations High Commissioner for Refugees, and the Department. It then prepares a depersonalised copy which is appropriate for public release and most commonly used for legal research. The Bill would currently require the Tribunal to release its "original" decision.</p>	<p>The RSAA submitted on this clause, explaining the current practice for publishing decisions and suggested that the Bill reflect this better.</p>

REGULATORY IMPACT STATEMENT

EXECUTIVE SUMMARY

The key policy issues discussed in this Regulatory Impact Statement (RIS) include:

- the use of classified information
- the refugee and protection system
- the appeals process
- the management of non-citizens who hinder their departure
- the defence for knowingly providing false or misleading information, and
- the role of the Human Rights Commission (HRC).

ADEQUACY STATEMENT

A RIS has been prepared only for the parts of the Cabinet paper that will substantially alter any earlier Cabinet decisions on the Immigration Bill (the Bill). This is because any impacts of the early decisions are contained in the earlier RIS [CBC Min (06) 20/14, CAB Min (07) 14/1A, CAB Min (07) 20/1, CAB Min 25/1A]. The impact of the changes being proposed should not be substantial as they are generally consistent with the intent of the Bill.

The RIS was circulated with the Cabinet paper for departmental consultation.

STATUS QUO AND PROBLEM

This table follows the order of the Cabinet paper. The numbered boxes can be matched against the "alternative options" and "preferred options" tables in the RIS.

No.	Bill	Issue
Classified information		
1	In summary, classified information is information that the chief executive of the relevant agency certifies in writing cannot be disclosed.	Submitters express concern that any chief executive can classify information.
2	If it is classified information, potentially prejudicial information (PPI) can be withheld from non-citizens.	A number of submitters are of the view that all PPI should be disclosed to non-citizens if it is to be used in decision making.
3	There are limitations on the role of the special advocate.	Some submitters expressed concern over the limitations on the special advocate.
4	If classified information is to be used in a refugee or protection claim, the Immigration and Protection Tribunal (the Tribunal) must determine that claim.	The claimant in this situation would have no appeal on their claim, only an appeal on points of law to the courts.

No.	Bill	Issue
Appeals		
5	The Bill creates greater efficiencies in the appeals process, while maintaining standards of fairness.	The Transport and Industrial Relations Committee (the Committee) and submitters have expressed concern that the appeals process does not appear to be fully streamlined.
Detention and monitoring		
6	The Bill provides a framework for managing non-citizens who hinder their departure.	Where a warrant of commitment (warrant) is sought, the Bill does not create an initial presumption for the detention of non-citizens who claim refugee/protection status <u>after</u> they have been served with a deportation liability notice, or have been arrested and detained pending turnaround and deportation. Further, after the initial six month period of detention, the court has discretion to grant a further warrant of commitment for non-citizens who hinder their departure.
7	A court, in considering a warrant of commitment application, could exercise its jurisdiction to grant bail to a non-citizen.	These powers could be used to undermine the specific provisions for detention and monitoring under the Bill, which is contrary to the policy intent of the Bill.
8	The person in charge of an "approved premises" can give effect to the detention of non-citizens only under a warrant of commitment.	The Bill does not provide the ability for the person in charge of approved premises to give effect to the detention of non-citizens within the 96 hour period of detention without a warrant. This is inconsistent with the policy intent.
Knowingly providing false or misleading information		
9	Clause 305(b) of the Bill makes it an offence for a person to produce any document or supply any information to an immigration officer knowing that it is false or misleading, unless the person has a "reasonable excuse".	The "reasonable excuse" defence in clause 305(b) is broadly and inconsistently interpreted by the courts or a jury, which can lead to difficulties in obtaining a conviction for the offence.
Role of the Human Rights Commission		
10	Clause 350 provides the Human Rights Commission (HRC) with the power to	HRC opposes the current limitation to its jurisdiction imposed by the Bill which retains

No.	Bill	Issue
	perform most of its functions under section 5 of the Human Rights Act 1993 (HRA), but it limits the jurisdiction of HRC in matters of immigration law or policy.	the status quo of the Immigration Act 1987 (the 1987 Act).
Appendix A		
11	Under the provisions of the Bill citizens may not hold a visa.	This will adversely impact on dual citizens. For example, dual citizens by descent would be forced to register and provide proof of their citizenship, even if they wanted to visit for a short time using their foreign passport.
12	The Bill provides that people seeking entry to New Zealand may be required to provide biometric information to confirm their identity.	There is no negative outcome for people who refuse to comply with the requirement to provide biometric information.
13	Information on refugee and protection matters must be kept confidential in many circumstances.	The provision in the 1987 Act has been subject to litigation around whether information from a refugee status proceeding can be used for extradition or prosecution purposes.
14	Generally, there is no right of appeal against a decision of the Minister to decline a residence class visa, including where classified information has been used.	Excluding an appeal right where classified information has been used would not allow independent scrutiny by the Tribunal of the veracity and relevance of the classified information.
15	The Bill is silent on criteria for leave to appeal to the High Court or judicial review proceedings.	Specifying criteria for leave would add clarity to the legislation and ensure that matters appealed were those of importance, reducing the use of the appeal and judicial review process to delay deportation.
16	Courts must give priority to appeals involving classified information proceedings. There is no requirement to give priority to other immigration matters.	Delays in hearing any immigration matters involving those unlawfully or temporarily in New Zealand can have a significant effect on outcomes.
17	The Bill does not contain an offence for fraudulently or improperly dealing with endorsements in foreign passports.	It is possible that endorsements in foreign passports, which indicate citizenship, could be misused by non-citizens.
18	The Bill does not outline the requirements for proving New Zealand citizenship to get an endorsement.	It would be useful to provide clarity on the requirements for obtaining a endorsement.

OBJECTIVES

The proposals in the attached Cabinet paper seek to ensure that the Bill is consistent with the policy objectives of the Immigration Act review agreed by the Government to:

- a. ensure New Zealand’s interests are protected and advanced;
- b. ensure compliance with international obligations; and
- c. establish fair, firm, and fast decision-making [CAB Min (05) 18/7].

The proposals aim to ensure that the Bill creates an immigration system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

The proposals also respond to key policy issues that have arisen during:

- the Committee hearing of submissions on the Bill, and
- a further departmental review of the Bill, supported by key stakeholders.

ALTERNATIVE OPTIONS

This table follows the order of “status quo and problems” table above.

No.	Alternatives
Classified information	
1	The status quo is the only viable alternative option.
2	The status quo is the only viable alternative option.
3	The status quo is the only viable alternative option.
4	The status quo is the only viable alternative option.
The refugee and protection system	
	TBC
Appeals	
5	The status quo is the only viable alternative option.
Detention and monitoring	
6	There are two alternative options for managing non-citizens who hinder their departure: <ol style="list-style-type: none"> 1. the status quo, or 2. strengthening the proposal by excluding “length of detention” from exceptional circumstances.
7	The status quo is the only viable alternative option.
8	The status quo is the only viable alternative option.

No.	Alternatives
Knowingly providing false or misleading information	
9	<p>There are two alternative options for addressing the issues around the “reasonable excuse” defence:</p> <ol style="list-style-type: none"> 1. the status quo, or 2. removal of the defence, but provide an explicit reference to prevent the prosecution of genuine refugees who fit the criteria of Article 31 of the Refugee Convention.
Role of the Human Rights Commission	
10	The status quo is the only viable alternative option.
Appendix A	
11	The status quo is the only viable an alternative option.
12	<p>There are two alternative options for responding to people who do not provide biometric information to confirm their identity</p> <ol style="list-style-type: none"> 1. the status quo, or 2. detain them until identity can be confirmed.
13	No alternative options have been identified.
14	The status quo is the only viable alternative option.
15	The status quo is the only viable alternative option.
16	<p>There are two alternative options for prioritising immigration matters in courts:</p> <ol style="list-style-type: none"> 1. the status quo, or 2. prioritising all immigration, refugee and protection matters.
17	The status quo is the only viable alternative option.
18	The status quo is the only viable alternative option.

PREFERRED OPTION

This table follows the order of “status quo and problems” and “alternative options” tables above in the RIS.

No.	Preferred option
Classified information	
1	<p>Limit the definition of classified information to classified “security” information from security, defence, law enforcement and border agencies and from the Ministry of Foreign Affairs and Trade and the Department of Internal Affairs.</p> <p>IMPACT: This proposal will narrow the scope of chief executives who can certify</p>

No.	Preferred option
	information as classified. It will have no significant impact.
2	<p>Classified information cannot be used unless a summary of allegations can be provided.</p> <p>IMPACT: This proposal will ensure that non-citizens will be provided with a summary of allegations where classified PPI is held about them. It will have a positive impact.</p>
3	<p>Lift the limit on the inability of the special advocate to lodge proceedings on behalf of a non-citizen under clause 235 of the Bill.</p> <p>IMPACT: This proposal will have no significant impact.</p>
4	<p>That senior, security-cleared determination officers make first instance refugee and protection decisions involving classified information.</p> <p>IMPACT: The proposal will ensure that where classified information is used in a refugee or protection decision, the decision and the use and veracity of the information can be challenged in an appeal.</p>
Appeals	
5	<p>Where a failed refugee or protection claimant lodges an appeal, they must also lodge their humanitarian appeal if they wish to have their humanitarian circumstances considered.</p> <p>IMPACT: Non-citizens who become unlawful after having their humanitarian circumstances considered will have no access to a further appeal. This is consistent, however, with the scenario where an overstayer has a humanitarian appeal and does not depart New Zealand for some time after that. No further humanitarian appeal is allowed even where circumstances may have changed.</p>
Detention and monitoring	
6	<p>Revert to the approach of the 1987 Act so that where a warrant is sought, unless there are exceptional circumstances, there is a presumption for the detention of non-citizens who:</p> <ul style="list-style-type: none"> • claim refugee or protection status after they are served with a deportation liability notice, or who are liable for arrest and deportation, and • (except in "exceptional circumstances") deliberately hinder their departure. <p>IMPACT: There will be no change to what currently occurs. Where secure detention is sought, those non-citizens who deliberately hinder departure will be detained until they cooperate. This may be for an extended period.</p>
7	<p>Clarify that the Bill will be a code for immigration detention.</p> <p>IMPACT: This will provide clarity but will prevent the courts from exercising their power to grant bail. It reduces the avenues that may be available to a non-citizen for secure release from detention.</p>
8	<p>Ensure that the person in charge of an approved premises (and any person acting under the authority of that person) is authorised to detain non-citizens, both with and without a warrant of commitment.</p>

No.	Preferred option
	IMPACT: This will enable immigration detention to occur outside police and corrections facilities. It should have a positive impact on non-citizens who are liable for detention.
Knowingly providing false or misleading information	
9	<p>Remove the “reasonable excuse” defence from the Bill.</p> <p>IMPACT: There will be no legislated defence for <i>knowingly</i> providing false or misleading information. Any mitigating circumstances will, therefore, only be considered by the judge in the sentencing decision. This may result in more successful prosecutions.</p>
Role of the Human Rights Commission	
10	<p>Provide ability for HRC to intervene in legal proceedings (as an intervener or amicus curiae) in matters involving immigration law and policy.</p> <p>IMPACT: This proposal will more closely align the powers of HRC with its international counterparts. It will enable HRC to participate further in immigration matters.</p>
Appendix A	
11	<p>Enable citizens who do not wish to prove their citizenship at the border to hold a visa.</p> <p>IMPACT: This proposal should minimise the impact of the immigration system, in particular, on border entry requirements of dual citizens by descent.</p>
12	<p>The Bill clearly provides that it is an offence for people to fail to provide biometric information when required at the border.</p> <p>IMPACT: This proposal will ensure that the decision to use biometric information can be enforced. It may result in some people being fined for failing to provide biometrics.</p>
13	<p>Clarify the policy intent that the fact that a refugee claim has been made is confidential, and address problems identified as a result of the Court of Appeal’s decision in <i>X and Z</i>.</p> <p>IMPACT: The proposal will ensure that the policy intent behind the confidentiality provision is upheld. It may result in some matters raised in refugee claims and appeals being disclosed for prosecution purposes.</p>
14	<p>Enable an appeal against residence class visa application decisions to be made by the Minister where classified information has been used.</p> <p>IMPACT: This will ensure an appeal right where classified information is used in a residence decision.</p>
15	<p>Set out criteria for granting leave to appeal to the High Court and for judicial review proceedings in the Bill.</p> <p>IMPACT: This will ensure that appeals and judicial reviews are taken as matters of importance, reducing the use of the appeal and judicial review process to delay deportation. It may limit the ability of some non-citizens to lodge an appeal.</p>
16	<p>Courts must treat, as a priority, appeals and judicial review proceedings brought by persons in New Zealand unlawfully or on a temporary basis.</p>

No.	Preferred option
	IMPACT: This will ensure timely decision making. It will impact on the courts by requiring them to prioritise these matters.
17	<p data-bbox="272 376 1394 443">Include an offence in the Bill for fraudulently or improperly dealing with endorsements in foreign passports.</p> <p data-bbox="272 477 1394 544">IMPACT: This will ensure that there is no incentive to seek to defraud the Department of Labour. It may result in some people being prosecuted.</p>
18	<p data-bbox="272 577 1394 645">The requirements to prove New Zealand citizenship in order to obtain an endorsement be contained in regulations.</p> <p data-bbox="272 678 1394 763">IMPACT: This will provide clarity and certainty about the requirements of obtaining an endorsement. The requirements will be subject to Parliamentary scrutiny. It may result in preferred requirements being disallowed.</p>

IMPLEMENTATION AND REVIEW

The Immigration Bill (the Bill) is currently being considered by the Transport and Industrial Relations Committee (the Committee) which will report back to the House in 2008.

CONSULTATION

Stakeholder Consultation

A public discussion paper on the Immigration Act review was released in April 2006. The Department held public meetings in May and June 2006, attended by more than 650 people, to outline the proposals. The Department received 3,985 written submissions in response to the discussion paper, of which 360 were unique.

Submissions were received from a wide range of individuals and organisations including employer organisations, law societies, refugee and migrant groups and communities, immigration consultants, carriers, Government agencies, and education providers.

The Bill was referred to the Committee in August 2007. The Committee called for submissions and 90 were received, again from a wide range of individuals and organisations including employer organisations, law societies, refugee and migrant groups and communities, immigration consultants, carriers, Government agencies, and education providers. The submissions on the Bill showed that the most contentious aspects of the Bill are:

- the use of classified information
- the refugee and protection system
- the retention of the Refugee Status Appeals Authority, and
- changes to the "reasonable excuse" for employers.

A significant number of submissions also call on the Government to establish an Immigration Commissioner to oversee the work of the Department of Labour, including decision making, use of powers of entry and inspection and/or search, and detention.

As anticipated, a number of submissions include a policy focus. There is often misunderstanding about the nature of the immigration legislation, as “framework legislation”, compared to the Government’s immigration policies. These have a more direct impact on individuals engaging with the immigration system but are not of a legislative nature.

The proposals in the Cabinet paper respond to many of the concerns raised in the submissions to the Committee, in particular, the proposals with regard to the use of classified information in immigration and the refugee and protection system.

In particular, the submissions by the Refugee Status Appeals Authority, the Office of the Ombudsman, the Privacy Commissioner, and the Human Rights Commission were considered in developing the recommendations in this paper.

Government Departments/Agencies Consultation

The Departments of Prime Minister and Cabinet, Internal Affairs, Inland Revenue and Corrections and the Ministries of Justice, Foreign Affairs and Trade, Agriculture and Forestry, Transport, and Fisheries have been consulted on this Cabinet paper along with the New Zealand Security Intelligence Service, New Zealand Customs Service, and New Zealand Police. The Government Communications Security Bureau and Legal Services Agency have also been consulted. The views of the agencies consulted are reflected in this paper under the discussion of particular issues.

The Treasury and Crown Law, along with the Ministries of Social Development, Health and Pacific Island Affairs have been informed. Te Puni Kōkiri, the Office of Ethnic Affairs and the State Services Commission have also been informed.

The following Government departments and public agencies were consulted on the draft Bill and were also consulted during the policy development stage: the Departments of Prime Minister and Cabinet, Internal Affairs, Corrections and Inland Revenue; the ministries of Defence, Economic Development, Education, Foreign Affairs and Trade, Health,; Justice, Pacific Island Affairs, Social Development, Transport and Te Puni Kokiri; the New Zealand Customs Service, New Zealand Police and New Zealand Security Intelligence Service; the Government Communications Security Bureau; the Treasury; the New Zealand Qualifications Authority; the Office of Ethnic Affairs; Housing New Zealand Corporation; and the Office of the Privacy Commission.

The chairs of the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board, and the Deportation Review Tribunal were consulted as were the chief judges of the courts. The Office of the Ombudsman and the Human Rights Commission were also consulted.