MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Michael Wood	**Portfolio**	Immigration
Title of Cabinet paper	Addressing legal risks to the safe and effective management of a mass arrival	**Date to be published**	28 March 2023

List of documents that have been proactively released		
Date	**Title**	**Author**
June 2022	Addressing legal risks to the safe and effective management of a mass arrival	Office of the Minister of Immigration
1 June 2022	Addressing legal risks to the safe and effective management of a mass arrival DEV-22-MIN-0125 Minute	Cabinet Office
June 2022	Regulatory Impact Statement: Warrant of commitment	Ministry of Business, Innovation and Employment
December 2022	Immigration (Mass Arrivals) Amendment Bill	Office of the Minister of Immigration
8 December 2022	Immigration (Mass Arrivals) Amendment Bill LEG-22-MIN-0228 Minute	Cabinet Office

Information redacted **YES** / ~~**NO**~~

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Some information has been withheld for the reasons of maintenance of the law, national security or defence, international relations, legal professional privilege, and confidential advice to government.

Restricted

Office of the Minister of Immigration

Chair, Cabinet Economic Development Committee

Addressing legal risks to the safe and effective management of a mass arrival

Proposal

1. The Immigration Act 2009 (the Act) defines a mass arrival group as a group of 31 or more people who arrive irregularly in New Zealand on one or more craft. We need to ensure that we can manage a maritime mass arrival, should one occur, in an orderly and safe manner, and that in doing so we protect the rights of those involved. This paper seeks Cabinet approval to three adjustments to the Act to address identified risks to a safe and effective maritime mass arrival response. These are:

    1.1. Provide more time for the Courts to consider an application for a mass arrival warrant of commitment and allow for migrants to be detained while applications are determined by the Courts;

    1.2. Make it clear that members of an irregular maritime arrival group are responsible for applying for entry permission and a visa, and enable them to be deemed to have done so if they do not; and

    1.3. Remove any possibility that members of an irregular maritime arrival group are deemed to hold a visa on arrival.

Executive summary

2. Maritime people smuggling is an enduring challenge in our region. A transnational crime that exposes vulnerable migrants to significant risks while generating profits for facilitators, it also undermines the integrity of international borders and migration systems. New Zealand has international obligations to prevent and combat people smuggling and to protect the rights of smuggled migrants.

3. A potential maritime mass arrival of irregular migrants to New Zealand is a national security risk. It would increase pressure on our resources and infrastructure and would set a clear precedent for further irregular arrival by sea, Maintenance of the law, National security or defence, International relations Responding to a mass arrival would be complex and costly and would involve a large number of agencies and resources. Following a review of our arrangements for a mass arrival response, the following risks have been identified:

    3.1. current provisions in the Act require warrants of commitment for detention to be obtained within 96 hours of the initial detention. It is very unlikely that warrants could be obtained in this timeframe unless they were considered and granted *ex parte* (without legal representation for the people affected). This does not meet natural justice principles Legal professional privilege

    3.2. the Act's entry provisions mean it is not certain whether members of an irregular maritime arrival group can apply for entry permission on arrival. This creates uncertainty around our legal ability to process them effectively (including to consider them for the grant of a visa or immigration detention) and also reduces our ability to provide care; and

3.3. members of a mass arrival group who were rescued at sea by a cargo vessel (or a cruise vessel, if they held Electronic Travel Authorities) and were brought to New Zealand would be deemed, under Schedule 3 of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (the Visa Regulations), to hold a visa on arrival. This would mean that they would fall outside the provisions of the existing legislation for managing members of a mass arrival, as they would already hold a lawful status in New Zealand.

4. I consider these risks to be unacceptable. I am therefore seeking Cabinet decisions to amend the Act, through an Amendment Bill planned for introduction during 2022. I propose amendments to the Act which will achieve the following objectives:

4.1. **Provide more time for the Courts to consider an application for a mass arrival warrant of commitment and allow for migrants to be detained while applications are determined by the Courts**. Under the proposal, the current 96-hour deadline for deciding an application would instead become a deadline for an application to be submitted. This would provide time for individual members of a mass arrival group to be afforded their rights to obtain legal representation and for a formal hearing of the warrant application[1]. To minimise the risk of prolonged detention while this process occurs, and the associated risk that detention becomes arbitrary, we will ensure that the hearing of the application is prioritised and time-limited (within seven days at most, with the final decision made no later than 28 days from the date of the application), that members of the mass arrival group can access legal aid as soon as possible and that this detention is under the supervision of the Courts. We will ensure that mass arrival group members receive medical care and are safely accommodated during this process.

4.2. **Remove any doubt in legislation that members of an irregular maritime arrival group are responsible for applying for entry permission and a visa**. It is currently unclear whether members of such a group are required to apply for entry permission upon arrival, and settings currently preclude them from applying for a visa. An application for entry permission and a visa is important for the management of the group, because it enables an immigration officer to require the person to undertake an interview, provide further information, and undergo a medical examination, and provides a decision-making process most consistent with New Zealand's international obligations. The medical examination will both mean the migrants can be provided with the medical treatment they require and also manage any public health risks.

4.3. **Remove any possibility that members of an irregular maritime arrival group are deemed to hold a visa on arrival**. The Act provides that a passenger, in relation to a craft, means a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier, or the person in charge, of the craft. Schedule 3 of the Visa Regulations provides that cruise ship passengers and cargo ship passengers are generally deemed to hold a temporary visa on arrival in New Zealand, meaning as above that they would not be required (or able) to make an application for a visa or entry permission.

[1] Section 23 of the *New Zealand Bill of Rights Act 1990* (BORA), which relates to the rights of persons arrested or detained, requires among other things that everyone who is arrested or detained shall have the right to have the validity of the arrest or detention determined without delay by way of *habeas corpus* and to be released if the arrest or detention is not lawful.

Background

Maritime people smuggling is a transnational crime that New Zealand has promised to combat

5. People smuggling offers facilitators financial reward with a low risk of accountability or punishment. Large sums of money are solicited from vulnerable people and their families in search of a better life. A number of smuggled migrants are women, young children, and the elderly fleeing desperate situations. There is a low chance of success, and violence, abuse, and the risk of exploitation are widespread traits of this crime.

6. Overseas, many migrants perish at sea, or suffocate in containers, or end up stranded in transit countries with no means to continue their journeys or return home. During their journeys from their home countries, individuals are generally unable to access health or social services, rely on informal opportunities to earn income, and experience persecution or discrimination from local authorities or the local population. New Zealand is committed to working with the United Nations and the wider international community to protect vulnerable migrants, including through pursuing and prosecuting people who exploit them.

7. New Zealand is a party to a range of international legal instruments which establish our obligations. These include the:

    7.1. 1951 *Convention relating to the Status of Refugees* and its 1967 Protocol (together "the Refugee Convention")

    7.2. *United Nations Convention Against Torture*

    7.3. *International Covenant on Civil and Political Rights*

    7.4. *United Nations Universal Declaration of Human Rights*

    7.5. *United Nations Convention against Transnational Organized Crime* (UNTOC) and its Protocols[2], specifically the*:*

        7.5.1. *Protocol Against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime* ("the Migrant Smuggling Protocol"), and

        7.5.2. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* ("the Human Trafficking Protocol").

8. The Migrant Smuggling Protocol obliges New Zealand to investigate and prosecute migrant smuggling offences and sets out a framework to cooperate with the other parties to hold those responsible accountable. The Human Trafficking Protocol sets similar obligations with the specific aim of preventing and combatting trafficking in persons, including through criminalisation of the activities, strengthening border measures, and protecting victims.

9. We also give effect to our international commitments through our contribution to resettling refugees under the annual Refugee Quota Programme, which we have doubled in recent years. In our own region, we are committed to strengthening cooperation and the capacity to address irregular migration, in particular through the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*. Cabinet approved a significant investment in 2019 maritime mass arrival prevention activities in 2019, which included enhancements to our participation in the Bali process.

[2] New Zealand will shortly undergo an international peer review of its compliance with UNTOC and these protocols.

10. In recent years Cabinet has also approved a Transnational Organised Crime (TNOC) strategy. Migrant exploitation, which includes people smuggling and trafficking, is one of six key crime types that the TNOC Strategy aims to prevent and combat. Strengthening legislative settings and closing loopholes that attract TNOC is a priority action under the Strategy. I note that the amendments proposed in this paper have been endorsed by the Security and Intelligence Board as an agreed cross-agency priority under the TNOC Year Two Action Plan [ERS-21-MIN-0027].

11. Finally, Parliament is currently considering the Maritime Powers Bill, which provides New Zealand law enforcement agencies with a clear statutory basis to exercise enforcement powers in international waters. The changes I am proposing will complement these initiatives.

The Canadian experience shows that New Zealand is vulnerable to a mass arrival

12. New Zealand has never experienced a maritime mass arrival[3]. Our geographic distance from irregular migration source and transit areas and the dangerous oceans around New Zealand have historically limited both our attractiveness as a target and the likelihood of a successful mass arrival by sea. While (prior to COVID-19 border restrictions) there was some people smuggling into New Zealand by air, we have relatively strong control of air routes and travel. Asylum claims are typically made by individuals or small groups who have entered on commercial air services and who often have lived here for some time.

13. However, before the COVID-19 pandemic, people smugglers continued to test whether a maritime journey to New Zealand was possible. Serious attempts to target New Zealand are likely to continue into the future; Maintenance of the law, International relations, National security or defence

14. The possibility of a successful venture cannot be discounted. In particular, Canada's experience in 2010, when a vessel with almost 500 asylum seekers arrived from Indonesia following a voyage of more than 14,000 km, indicates that distance and ocean conditions are not in themselves an insurmountable barrier. Although the legislation defines a mass arrival as more than 30 people, a large boat, with potentially hundreds of passengers, is a viable scenario.

15. A mass arrival in New Zealand would have nationally significant consequences. A complex multi-agency response would be required to safely interdict the vessel, if required; provide emergency assistance to its passengers; process the expected asylum claims; and meet the immediate accommodation, health, education, and social care needs of passengers who may include children. Casualties are possible. National security or defence, International relations Our response would be closely scrutinised by the international community, as well as the public.

16. A successful maritime people smuggling venture would also encourage further attempts from people smugglers, International relations, National security or defence, Maintenance of the law This would both risk the lives of further potentially vulnerable migrants and raise the likelihood of subsequent arrivals in New Zealand.

[3] Note that the Immigration Act 2009 defines a "mass arrival" as a group of more than 30 people, which is meaningful with regard to applications for group warrants. The Migrant Smuggling Protocol and the Human Trafficking Protocol do not set minimum numbers, and our prevention, prosecution and protection obligations therefore apply regardless of the size of any group.

New Zealand is focusing on both prevention and management of an arrival

17. We need to ensure that we can manage a mass arrival, should one occur, in an orderly and safe manner; and that in doing so we protect the rights of those involved. New Zealand's current approach is to support the international rules-based system for regular migration, to invest in preventing a maritime mass arrival in the first instance (through the *Mass Arrival Prevention Strategy*, or MAPS, which received additional resourcing through Budget 2019), and, should it occur, to manage an effective and safe response through the all-of-government *Mass Arrival Response Plan* (MARP). The MARP establishes the effective and efficient control and processing of a maritime mass arrival, which would:
    17.1. ensure the health and safety of members of the mass arrival group and of officials involved in the response;
    17.2. manage any threat or risk to the public and to national security (including health, biosecurity, customs, immigration and security risks);
    17.3. avoid disrupting the efficient functioning of government and essential services;
    17.4. meet our domestic and international human rights obligations; and
    17.5. support New Zealand's deterrence messaging.
18. Many of the powers to support this are provided within domestic legislation, including:
    18.1. the *Customs and Excise Act 2018*, which enables the interdiction and control of a people smuggling vessel in the contiguous zone[4], as well as the controlled disembarkation and screening of irregular migrants;
    18.2. the *Health Act 1956* and *Biosecurity Act 1993*, which enable health and biosecurity assessment and screening;
    18.3. the *Immigration Act 2009* (the Act) which manages arrangements to:
        18.3.1. process the entry and, if appropriate, detention of irregular migrants[5]; refugee and protection claims processing;
        18.3.2. undertake visa processing; and
        18.3.3. establish arrangements for deportation, where appropriate.
19. The *Crimes Act 1961* establishes the offences of trafficking in persons and migrant smuggling, and their penalties (up to 20 years in prison and up to $500,000 in fines) and the *Search and Surveillance Act 2012* provides investigatory powers. The Maritime Powers Bill, once enacted, will provide enforcement powers in international waters for serious criminal offences including migrant smuggling and human trafficking.

However, legal gaps may compromise our ability to manage a safe and effective response

20. I have reviewed New Zealand's mass arrival response plans and consider there are two unacceptable risks that need to be addressed through small but necessary legislative changes:
    20.1. a mass arrival warrant of commitment for the detention of irregular migrants is unlikely to be obtained within the timeframe prescribed in legislation without being undertaken *ex parte*. Legal professional privilege

[4] The contiguous zone extends to 25 nautical miles from shore.

[5] Where a group of irregular migrants numbers more than 30 people, special provisions apply which classify that group as a mass arrival.

Legal professional privilege

and reducing our ability to provide them with timely medical care and ensure safe accommodation; and

20.2. it is not clear whether members of a mass arrival group are actually able under the Act to apply for entry permission and a visa on arrival, and there is no requirement that they do so. It is important that there is a clear onus placed on members of a mass arrival group to apply for entry permission and a visa because this enables immigration officers to process them effectively and provides a decision-making process most consistent with New Zealand's obligations.

20.3. Compounding this, in some situations members of a mass arrival group may actually be deemed to hold a temporary visa on arrival (for example, if they were rescued at sea and brought to New Zealand by a cargo vessel, as happened with the MV Tampa in 2001). This would also be the case if group members were rescued by a cruise vessel, as long as they held an Electronic Travel Authority on arrival.

21. I propose legislative amendments (and an interim regulatory amendment) to address these risks and enable agencies to better:

21.1. manage any threats or risks to the public and to national security (including to public health and biosecurity) and customs and immigration risks;

21.2. process members of the mass arrival group in a way that protects their human rights and enables natural justice, minimising uncertainty for the individuals;

21.3. avoid disrupting the efficient functioning of government and essential services; and

21.4. manage risks to wider impact on our Courts and immigration systems.

The Act has special arrangements for the detention of members of a mass arrival group

It provides for detention where there are risks to the management of the group, public or national security, or the integrity of our immigration and courts systems

22. Under the Act, people liable for turnaround, including members of a mass arrival group, can be detained without warrant for up to 96 hours for specified purposes. In certain circumstances, a District Court Judge can authorise a warrant of commitment to detain persons for a further period. Applications must currently be determined by the Court within 96 hours of the initial detention.

23. The Act was amended in 2013 to enable a District Court Judge (or Judges) to grant a mass arrival warrant allowing for the commitment of a mass arrival group to detention for a period of up to six months, if they are satisfied it is necessary to:

23.1. effectively manage the mass arrival group; or

23.2. manage any threat or risk to security or to the public arising from, or that may arise from, one or more members of the mass arrival group; or

23.3. uphold the integrity or efficiency of the immigration system; or

23.4. avoid disrupting the efficient functioning of the District Court, including the warrant of commitment application procedure.

24. It must also be clear that within the 96-hour period, for each member of the group, one of the following circumstances will apply:

24.1. there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or

24.2. the person will not, or is unlikely to, supply satisfactory evidence of his or her identity; or

24.3. the Minister of Immigration has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or

24.4. for any other reason, the person is unable to leave New Zealand (eg outstanding medical issues).

25. Despite the 2013 amendment, which addressed some of the warrant application time constraints (through enabling group warrant applications), practical considerations mean it is unlikely that the relevant applications could be made, heard and decided by a Judge (or Judges) within the 96-hour period, unless this were done on an *ex parte* basis (ie an application without legal representation or the ability to appear before the Court).

The Act timeframes mean members of a group would not be likely to be able to be represented Legal professional privilege

26. Enabling individual members of the group to have access to legal representation and the Court to properly consider arguments on the applications through an oral hearing (ie an on-notice application) is an important part of delivering on our commitments to human rights and natural justice, under both domestic and international law. However, at a practical level, the 96-hour window for obtaining a mass arrival warrant is unlikely to allow time for members of a mass arrival group to obtain legal representation and appear before the Court.

27. This is because management of a mass arrival would involve a large number of individuals (at least 31 people, but, as noted at paragraph 14 above, also potentially in the hundreds). Officials would have to focus on supporting the complex circumstances of those irregular migrants, including housing them, providing for acute medical needs, commencing criminal investigation, assessing security risks, and providing for interpretation and translation services, at the same time as undertaking the warrant application process. It is unlikely that legal representation and appearance before the Court could also be organised for all mass arrival group members within that 96-hour period.

28. Legal professional privilege

[6] Conditions can include, for example, residing at a specified address, or reporting to police at specified intervals.

The consequential early release of migrants into communities would compromise the efficiency and effectiveness of a mass arrival response

30. The most significant risk to an effective mass arrival response is the potential failure to obtain a mass arrival warrant of commitment within the prescribed timeframe, resulting in the early release of the irregular migrants, including before security and health concerns could be investigated and managed.

31. The early release of migrants into the community, without conditions on that release, would raise welfare issues for the group. In these circumstances, where there are likely to be high and complex needs and a significant number of people to manage, detention would support the efficient provision of welfare services, such as the provision of adequate shelter, health services and education for minors. Planning for a mass arrival includes consideration of how different groups may be housed: for example, Oranga Tamariki would be responsible for care and protection services for children and young people, [redacted]
National security or defence, Maintenance of the law, International relations

32. It is both important and required by law that detention is minimised for each individual. This means that, as the Act and the BORA establish, it must be for the least possible time and in the least restrictive facility which is commensurate with achieving the lawful purposes for which people are detained. Other options available, which must be regularly considered for each individual, include accommodation in a low or no security facility and release into the community on conditions (such as reporting conditions) or without conditions.

33. [redacted]
National security or defence, Maintenance of the law, International relations

35. The volume of cases could impose a significant burden on the functioning of our immigration and Courts systems. Well-managed housing and detention of migrants is important for the efficient processing of the mass arrival group. It means that refugee claims, visa applications, and (where appropriate) deportation processing or settlement can be managed efficiently. As above, this is important not only to manage the cost to government, but also to minimise the time that members of a mass arrival group are left in an uncertain position.

[redacted]
Legal professional privilege

Legal professional privilege

[redacted]

Proposal: Provide the Courts with more time to consider a mass arrival warrant application on-notice while ensuring that detention does not become arbitrary

39. I consider the risk level of early release to be too high. I therefore propose to amend the Act to allow for continued (but time-limited) detention of members of a mass arrival group beyond 96 hours, where an on-notice application for a mass arrival warrant of commitment has been submitted and is before the District Court.

40. Specifically, I propose that the Act establish that:

    40.1. an application for a mass arrival warrant must be heard in the District Court as soon as reasonably practicable, and in no case later than seven days from the date of the application; and

    40.2. if, having considered the application, the Judge is satisfied that it is not reasonably practicable to determine the application within the seven days referred to in 40.1

[7] Noting that, where people were, for example, identified as victims of trafficking, they might still be housed although not legally detained, if better accommodation in the community was not available to them.

above, the Judge may adjourn the application subject to the longstop period in 40.3 below; and

40.3. an application for a mass arrival warrant must be finally determined before the expiry of 28 days from the date of the application.

41. Compared with the status quo, I consider that my proposal would provide for a more rights-enhancing process, enabling natural justice to be met, while ensuring the effective management of the mass arrival group and any threat or risk to security or to the public arising from members of the group. Officials would still be required to make the application prior to the current 96-hour deadline under the Act. It would however give the Court the flexibility to consider an application beyond this time, enabling an on-notice process and time for legal representations to be heard, should the Judge consider it appropriate.

42. While an on-notice application for individuals in a large group would have a higher impact on the functioning of the District Court than an *ex parte* application, the provisions under my proposal would also enable the Court to manage the impact on its functioning more effectively, while also ensuring that consideration of the application was explicitly prioritised.

43. My proposal manages the risk that the detention of members of a mass arrival group while awaiting the Court's decision might become arbitrary, in terms of s 22 of the BORA. This is because there would be a final deadline by which the Judge would be required to determine the application, and because any detention following the initial hearing of the application would be under the Court's supervision. Additional safeguards in this system include:

43.1. the time that members of a mass arrival group are detained without a warrant could be minimised by streamlining legal aid processes and increasing the legal aid resources available, to ensure that decisions can be made as quickly as possible;

43.2. the Judge could make a decision to release some or all of the irregular migrants with conditions at any time, meaning that the risk of the proposal resulting in arbitrary detention is low; and

43.3. as noted, once an application was made and heard, any continued detention would be supervised by the Court.

44. Legal professional privilege

45. I have considered and ruled out the alternative approach of making it explicit in legislation that the Court is to also consider a mass arrival group warrant *ex parte*. This would be less likely to be considered to be consistent with the BORA. Legal professional privilege

The entry obligations for members of a mass arrival group are not clear

Entry permission provisions do not apply to members of a mass arrival group and they cannot apply for a visa

46. There is some ambiguity in the Act regarding what members of a mass arrival group have to, or can, do upon arrival with regard to applying for visas and entry permission. The Act

establishes that every person who is not a New Zealand citizen must either hold a visa before travel (and apply for entry permission on arrival) or, if travelling on a document which enables them to travel visa waiver, apply for a visa and entry permission on arrival, unless they fall into one of the classes of people[8] deemed to hold a visa and entry permission on arrival.

47. However, the Act is drafted on the basis of people who arrive lawfully. It is unclear whether members of a mass arrival group are even able to apply for entry permission upon arrival. Members of a mass arrival group are generally unlikely to hold a visa upon arrival in New Zealand or to be eligible to apply for one upon arrival [9] - because they are, by definition, unlawfully in New Zealand, and s 20 of the Act sets out that unlawful people cannot apply for a visa. Even without this prohibition, under s 79 of the Act members of a mass arrival group are not eligible to apply for a visa upon arrival.

48. On the other hand, if they were rescued at sea, in some cases members of a mass arrival group might be deemed to hold a visa and entry permission on arrival in New Zealand.

49. As noted below, if members of a mass arrival group do not apply for entry permission and a visa, officials would be limited with regard to what they can require them to do. It could be argued that it is reasonable to interpret the Act such that members of a mass arrival group are obliged to present to an immigration officer without delay and to apply for entry permission. However, this is not beyond doubt.

50. This ambiguity raises two risks. Firstly, Legal professional privilege which would undermine the effectiveness of a mass arrival response, including undermining the speed and efficiency of processing of claims.

51. Secondly, it would prevent activities from taking place which are essential to managing the arrival well. The ability of an immigration officer to make decisions about an arriving person (including to seek a warrant of commitment) hinges on the ability to grant or refuse entry. A person who either cannot apply for entry permission, or who is deemed to hold entry permission, cannot therefore be managed within the Mass Arrivals response framework.

Proposal: Remove doubt about members' responsibility to apply for entry permission and a visa

52. I propose to clarify that members of a mass arrival group are obliged to present and apply for entry permission and a visa. This is consistent with the wider approach to arrivals in New Zealand under the Act and is desirable for the safe and effective processing of such groups, because certain actions may only be taken if they follow from an application for entry permission or a visa. In particular, under regulation 24(5) of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*, the immigration officer processing the application may require the applicant to:

    52.1. be interviewed by an immigration officer;

    52.2. produce further information or evidence (including photographs) that the officer thinks necessary to determine the application; and/or

    52.3. undergo a medical examination or another medical examination, as the case may be.

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[8] Schedule 3 of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* - People deemed to hold visa and have been granted entry permission

[9] Air passengers and crew and some marine passengers and crew must hold an Electronic Travel Authority (NZeTA) before travel to be visa waiver. Members of a mass arrival group, even if technically eligible for a visa waiver, are also unlikely to hold an NZeTA.

53. These actions would be most consistent with refugee protections, as the interview would allow the least restrictive intervention (such as release without conditions or release on conditions) to be considered before moving through to an application for warranted detention. They would also help immigration officers establish identity, would enable the members' health and wellbeing to be supported (through providing early access to essential medical treatment) and would help to protect public health across the wider community.

Proposal: Remove the possibility that members of a mass arrival group could be deemed to hold entry permission and a visa

54. Schedule 3 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (People deemed to hold visa and have been granted entry permission) sets out a range of classes of people whose lawful arrival is facilitated for historic administrative reasons. Included in the list of people deemed to hold a visa and entry permission are all cargo ship passengers travelling between any foreign port and New Zealand, and cruise ship passengers who hold an Electronic Travel Authority.

55. "Passenger" is defined in the Immigration Act 2009 as "a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier, or the person in charge, of the craft". This raises a risk that, were a cargo or cruise vessel to rescue members of mass arrival group at sea and bring them to New Zealand (noting the MV Tampa incident of 2001), they similarly might not be to be managed within the Mass Arrivals response framework.

56. I seek Cabinet's agreement now to a clarification of the status of people in this situation, through an amendment to the definition of "passenger" in the Act.

Constitutional conventions [redacted]

Consultation

59. The following agencies were consulted prior to the finalisation of this paper and their feedback was incorporated into its development: the Ministries of Foreign Affairs and Trade and Justice, the Department of Prime Minister and Cabinet, the New Zealand Customs Service, the New Zealand Police, the Treasury, the Crown Law Office and the New Zealand Defence Force.

Financial implications

60. The proposals in this paper raise no immediate financial implications. However, in the case of a mass arrival eventuating, it is likely that additional time-limited resourcing may be required across a range of Votes to address specific additional costs, including to

Immigration New Zealand (such as to determine asylum claims, and house the irregular migrants), to agencies supporting the operational response (such as Customs, Health and Police) and in Vote Justice (such as to boost legal aid, Immigration and Protection Tribunal capacity, and court interpretation resources).

Legislative implications and Parliamentary stages

61. The *Immigration Act 2009* will need to be amended to give effect to the proposals outlined in this paper. I have sought to include relevant legislation on the 2022 Legislation Programme, with a category 4 priority ("to be referred to a Select Committee in the year").

Associated regulations

62. This paper proposes a change to Schedule 3 of the Visa Regulations, to carve out from the deemed grant of a visa people who arrive in New Zealand on a cruise or cargo vessel following a rescue at sea. The proposed amendment to the Act will then remove the requirement for this carve out.

Impact analysis

63. Cabinet's impact analysis requirements apply to the Cabinet paper on addressing legal risks to the safe and effective management of a mass arrival. However, there was no accompanying Regulatory Impact Statement (RIS), and no exemption had been granted by The Treasury, when the paper was considered at Cabinet Economic Development Committee and substantive decisions were made [DEV-22-MIN-0125 refers].

64. The Ministry of Business, Innovation and Employment (MBIE) have since advised that an earlier RIS was prepared to support decisions when the paper was initially commissioned in 2019. The RIS is attached at Appendix one.

65. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Summary prepared by MBIE. Limited consultation means that the Regulatory Impact Summary does not fully meet the Regulatory Impact Analysis criteria. However the Panel notes the urgency of the proposed changes in order to ensure consistency with BORA from a natural justice perspective, enable all members of a mass arrival group to be appropriately housed and provided with medical care, and prevent the release of potentially high risk members of a mass arrival group.

66. On this basis, the Panel considers that the information and analysis summarised in the Regulatory Impact Summary partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

67. There is one additional recommendation in this Cabinet paper which was not covered by the 2019 RIS, which is to amend the definition of "passenger" in the Immigration Act 2009. The Regulatory Impact Analysis (RIA) Team at The Treasury would have granted an exemption for this specific recommendation on the grounds that it will have no or only minor impacts to businesses, individuals and not-for-profit entities. Therefore, on behalf of respective Ministers, the RIA Team and MBIE have agreed that no further supplementary analysis is necessary.

Publicity

68. If approved by Cabinet, the changes in this paper would not be announced until the Bill was introduced. National security or defence, International relations, Maintenance of the law

National security or defence, International relations, Maintenance of the law

Proactive Release

69. MBIE will proactively release a redacted version of this paper at the point that the Bill is introduced into the House.

Recommendations

The Minister of Immigration recommends that Cabinet:

1. **note** that there is a need to ensure that we are able to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and that in doing so we protect the rights of those involved;

2. **note** that risks have been identified which would compromise New Zealand's effective management of a maritime mass arrival response:

   2.1. a mass arrival warrant of commitment for the detention of irregular migrants is unlikely to be obtained within the 96 hours prescribed in legislation, unless the migrants are not represented, Legal professional privilege and

   2.2. there is some doubt in current legislation (the *Immigration Act 2009*) regarding the responsibilities and ability of members of an irregular maritime arrival group to apply for entry permission and a visa on arrival, but that it is important that they do apply because this enables immigration officers to process them effectively;

Specific proposals

3. **agree** that the current 96-hour deadline for deciding an application for a mass arrival warrant of commitment instead become a deadline for an application to be submitted, noting that this would provide time for:

   3.1. individual members of a mass arrival group to be afforded their rights to obtain legal representation and

   3.2. a formal hearing of the warrant application;

4. **agree** to provide for continued detention of the irregular migrants while that application for a warrant is before the Courts, which will enable them to be provided with timely medical care and safe accommodation;

5. **agree** that**:**

   5.1. an application for a mass arrival warrant must be heard in the District Court as soon as reasonably practicable, and in no case later than seven days from the date of the application; and

   5.2. if, having considered the application, the Judge is satisfied that it is not reasonably practicable to determine the application within the seven days referred to in paragraph 5.1 above, the Judge may adjourn the application subject to the longstop period in paragraph 5.3 below; and

   5.3. an application for a mass arrival warrant must be finally determined before the expiry of 28 days from the date of the application;

6. Legal professional privilege [redacted]

7. **agree** to clarify the obligation of members of a mass arrival group to apply for entry permission upon arrival, which will address the risk identified in paragraph 2.2;

8. **agree** to establish an obligation on members of a mass arrival group to apply for a visa upon arrival and to give them the ability to do so, which will also address the risk identified in paragraph 2.2;

9. **agree** to amend the definition of "passenger" in the *Immigration Act 2009* to exclude the possibility that members of a mass arrival group are deemed to hold a temporary visa on arrival, and in the interim to address this issue through an amendment to Schedule 3 of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*;

Legislative implications

10. **invite** the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office to draw up an *Immigration Amendment Bill* to bring into effect the decisions in paragraphs 3 to 9 above;

Constitutional conventions [redacted]

12. **note** that the Minister of Immigration intends to seek Cabinet decisions on the above further amendments, with a view to introducing the full legislative package in 2022;

Regulatory implications

13. **invite** the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office to implement the regulatory decision in paragraph 9 above;

Financial implications

14. **note** that the proposals in this paper raise no immediate financial implications, although, in the case of a mass arrival eventuating, additional time-limited resourcing may be required across a range of Votes.

Authorised for lodgement

Hon Kris Faafoi
Minister of Immigration

Appendix one: Regulatory Impact Assessment

Impact Summary: Warrant of commitment

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet

Key Limitations or Constraints on Analysis
• *Describe any limitations or constraints — both those listed below and any others you have identified:* • *Scoping of the problem* • *Evidence of the problem* • *Range of options considered* • *Criteria used to assess options* • *Assumptions underpinning impact analysis* • *Quality of data used for impact analysis* • *Consultation and testing*
The key constraints on analysis are: • **Time** – the need for the proposal was identified through an inter-agency contingency and operational planning process working towards the potential for immediate situation or scenario. • **Options** –The changes considered are to improve the working of the current arrangements. Fundamental changes to the process to manage an unscheduled irregular group arrival are not in scope, immediate remedies to the current legislative settings have been prioritised. • **Evidence** – the evidence of the problem is limited by the fact that New Zealand has never had an irregular group arrival and an irregular arrival warrant has never been applied for, although the experience of other countries provides a useful counterfactual. • **Consultation and testing** – Proposals were developed closely with the agencies which would be involved in an operational response, but not more broadly with the wider community, due to time constraints and operational security concerns.
Responsible Manager (signature and date):
Kirsty Hutchison Immigration (Borders and Funding) Policy, Employment, Skills and Immigration Policy Labour Science and Enterprise Ministry of Business, Innovation and Employment Date: 3 June 2022

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

- *Describe the current situation and how it is expected to develop if no action is taken, over and above what is already intended. This is the "counterfactual" against which other options should be assessed, and your preferred option described, in section 4.*
- *Why does the current situation constitute "a problem", or why is it expected to do so if it continues?*
- *What is the underlying cause of the problem? Why does government need to act – why can't individuals or firms be expected to sort it out themselves, under existing arrangements?*
- *Why does it need to be addressed now?*
- *How much confidence is there in the evidence and assumptions for the problem definition?*

Certain provisions in the Immigration Act 2009 to manage an unscheduled irregular group arrival are unclear and give inadequate time to meet natural justice and human rights requirements under the Bill of Rights Act 1990 (BORA).

Enabling individual members of the group to have access to legal representation and to oppose the application and appear in the Court to be heard (ie an on-notice application) is an important part of delivering on our commitments to human rights and natural justice, under both domestic and international law.

In the absence of due process, there is a likelihood of a warrant application being refused, or, if granted, overturned on appeal. Either of these would mean members of the irregular arrival group would be released with or without conditions by the Courts into communities in the early stages of the response, reducing our ability to provide them with timely medical care and ensure safe accommodation, and before security concerns can be investigated and eliminated,

The release gives rise to significant risks to the effective management of the response, to public health and security, and to the proper functioning of New Zealand's immigration and court systems.

- In the event of a large scale unscheduled arrival of irregular migrants to New Zealand, it is important that government can manage the response in an orderly and safe manner; and that, in doing, so we protect the rights of those involved and hold the perpetrators of people smuggling and trafficking to account.
- A potential maritime arrival of an unscheduled group of irregular migrants to New Zealand also poses significant risks to our national security and the wider public, including to public health, security and the integrity and efficient running of our court and immigration systems. Responding to such an arrival would be complex and costly to manage and would involve a large number of agencies and resources.
- Unique and complex circumstances are involved in managing the arrival of an unscheduled irregular group, compared to responding to irregular migrants arriving through regular controlled routes (e.g. at an airport). For example, issues include the volume of individuals, likely complex and immediate health needs, [redacted] National security or defence, Maintenance of the law [redacted]

2.1 What is the policy problem or opportunity?

- As a result, current provisions in the Immigration Act 2009 already provide for detention of members of an irregular arrival group for up to 96 hours without warrant. Recognising this timeframe is unlikely to be adequate to manage an arrival, the Act also provides for continued detention to be sought, if an irregular arrival warrant of commitment is obtained from the Court before the initial 96 hour period expires. If a warrant of commitment is not granted within the 96 hours, the power to detain members of the group expires and the migrants must be released without conditions.
- However, the current provisions in the Act for seeking a warrant of commitment provide inadequate time for a Court to meet natural justice and human rights protections under the BORA. The processes required to meet natural justice principles include the right to seek legal representation and to a fair hearing. These would require longer than 96 hours to complete for a large group where multiple warrant applications would be needed. Although the legislation defines an irregular arrival group as more than 30 people, this is a minimum level, and other countries have seen large boats arrive with hundreds of passengers.
- If warrants were sought on an ex parte basis (without representation or hearing), a District Court Judge is unlikely to hear or grant the warrant application. If the Judge did grant the warrant ex parte, it is highly likely an appeal would be successful on the grounds the warrant would be inconsistent with the BORA (because the members of the irregular arrival group did not have the opportunity for legal representation or individual oral hearings). In both circumstances, this means the migrants would be released, with or without conditions.
- If the current legal provisions remain un-amended, this situation gives rise to risks to New Zealand to our national security and the wider public, including to public health, security and the integrity and efficient running of our court and immigration systems.
- Immigration detention must be minimised for each individual. This means that, as the Act and the BORA already establish, it must be for the least possible time and in the least restrictive facility which is commensurate with achieving the lawful purposes for which people are detained. Other options available, which must be regularly considered for each individual, include accommodation in a low or no security facility and release into the community on conditions (such as reporting conditions) or without conditions.
- It is critical that members of an irregular arrival group are detained appropriately in order to manage risks to the public and national security and to investigate criminal migrant smuggling activity. It will take time and resources to establish the identity of members of the irregular arrival group, National security or defence, Maintenance of the law, and conduct national security checks.
- Appropriate and proportionate detention also supports the safe and orderly processing of the irregular arrival group. Well-managed housing and detention of migrants is important for the efficient processing of the irregular arrival group. It means that refugee claims, visa applications, and (where appropriate) deportation processing or settlement can be managed efficiently. As above, this is important not only to manage the cost to government, but also to minimise the time that members of an irregular arrival group are left in an uncertain position. Detention also enables the efficient provision of services to the migrants, such as adequate accommodation, health services, and education for minors, in a manner that ensures that their human rights are met.

2.2 Who is affected and how?

- *Whose behaviour do we seek to change, how is it to change and to what purpose?*
- *Who wants this to happen? Who does not?*

These provisions impact on members of the irregular arrival group, both passengers and crew, which may include potential refugees or protected persons, economic migrants, National security or defence, Maintenance of the law and crew.

The provisions also impact on government agencies and organisations supporting the response, and the wider New Zealand public, due to the potential impacts on security, public health and the functioning of our immigration and courts systems.

We wish to ensure the safe and orderly processing of the irregular arrival group, while managing these impacts and protecting the rights of those involved, and holding to account those perpetrating the criminal offence of people smuggling or human trafficking.

The early release of members of an irregular arrival group could result in dispersal of the group. New Zealand agencies would like to be able to manage the movement of the members of the irregular arrival group, National security or defence, Maintenance of the law It is important that migrants are accessible to agencies, to ensure that processing (particularly of asylum and protection claims) runs smoothly.

National security or defence, Maintenance of the law

Many low risk members of an irregular arrival group would likely rather have no restrictions to their movement. However, National security or defence, Maintenance of the law access to the accommodation and services that can be provided efficiently and humanely under the proposed detention arrangements National security or defence, Maintenance of the law

There are constraints on being able to accommodate people on different conditions (eg some people invited to reside, others in detention) National security or defence, Maintenance of the law

This proposal will restore natural justice to those people for whom a warrant of commitment is being sought. Rather than the ex parte process necessary to meet the current 96-hour deadline, the proposal enables an on-notice process and time for legal representations to be heard.

Some human rights advocates have in the past argued against the need for an irregular arrival warrant of commitment. However, they would likely support the objective of restoring natural justice with regard to legal representation to ensure consistency with the Bill of Rights Act.

However, this proposal raises the risk of applicants being subject to arbitrary detention, which is also a denial of human rights. To reduce this risk, it is also proposed that the Court be required to explicitly prioritise consideration of the application or applications.

2.3 Are there any constraints on the scope for decision making?
• *What constraints are there on the scope, or what is out of scope? For example, ministers may already have ruled out certain approaches.* • *What interdependencies or connections are there to other existing issues or ongoing work?*
• The changes considered are to improve the working of the current arrangements. • Fundamental changes to the irregular arrival arrangements are out of scope. The introduction of a mandatory detention regime for example, has not been considered as part of this process. • These changes do not have any connections to other ongoing work at this stage.

Section 3: Options identification

3.1 What options have been considered?

- *List the options and the criteria you used to assess them. Briefly describe their pros and cons.*

The following options were considered:

No change to legislation (with non-legislative mitigations)

- **Pros:** Ex-parte applications are quicker and require less resourcing than on-notice applications in the first instance. This process would shorten the period of detention without warrant, which is a positive aspect for the irregular migrants. If the 96 hours was reached without warrants being approved, it would likely lead to most or all of the irregular migrants being released without conditions. If successfully challenged (on natural justice grounds) it would likely lead to most or all of the irregular migrants being released with conditions. Both outcomes would be positive in terms of release for many of the irregular migrants, National security or defence, Maintenance of the law
- **Cons:** From the Crown and community perspective the status quo option has a high likelihood that irregular migrants National security or defence, Maintenance of the law could otherwise find it difficult to access accommodation and services such as medical care.

Make ex-parte application explicit for irregular arrival warrants. This would likely require applying for a short term (eg 28 days) and undertaking to apply for any extension on-notice after that.

- **Pros:** As for the first option (as ex parte applications are the only option).
- **Cons:** It could be more expensive for the Crown than option 1 (a second application would be required after 28 days, or whatever term was decided, and the costs of a likely appeal). A warrant of commitment granted on an ex-parte basis would breach natural justice principles and would have a high risk of being invalidated through legal challenge. This would result in the release of the group, which would mean risks to the public and to the management of the group. As for option 1, some group members released National security or defence, Maintenance of the law and could otherwise find it difficult to access accommodation and services.

Require the application to be made within 96 hours but allow for continued detention beyond 96 hours where an application for an irregular arrival warrant is before the courts. This could enable an application for a period up to 6 months. [Recommended option]

- **Pros:** This reduces or eliminates the risk that irregular migrants are released into the community without any conditions early in the irregular arrival response due to a failure to obtain an irregular arrival warrant of commitment. Compared with the ex parte process of the first two options, it would also be more consistent with the Bill of Rights and less subject to a risk of legal challenge on the grounds on natural justice, through enabling the irregular migrants to have legal representation. This option means that

risks to the public are managed on an ongoing basis, and that members of an irregular arrival group are accessible for the efficient delivery of housing, health and education services and the processing of refugee claims and visas, and are able to access those services.

- **Cons:** The warrant of commitment process requires more time and resourcing for the Crown initially than an ex-parte process. However, it would be more efficient than option 2, as there would be no need to apply again after a short ex-parte period (eg 28 days). The proposal also means that members of an irregular arrival group would be detained for a longer period without a warrant, noting that officials consider that the risk of arbitrary detention would be low, as it would be supervised by the Court.

  The objective of ensuring as brief a timeframe as possible would be supported by explicitly requiring the Court to prioritise consideration of warrant of commitment applications (this is already the case for certain Immigration cases – see s s 250 of the Immigration Act 2009). This objective could also be supported by streamlining processes and increasing legal aid resources.

3.2 Which of these options is the proposed approach?

- *Which is the best option? Why is it the best option?*
- *How will the proposed approach address the problem or opportunity identified?*
- *Identify and explain any areas of incompatibility with the Government's 'Expectations for the design of regulatory systems'.*
  See http://www.treasury.govt.nz/regulation/expectations

On balance, the best option is to allow for continued detention beyond 96 hours where an application for an irregular arrival warrant is before the courts. This is the best option because it would:

- ensure consistency with BORA from a natural justice perspective
- National security or defence, Maintenance of the law
- enable all members of an irregular arrival group to be appropriately housed and provided with medical care (and education, if minors)
- be efficient (by enabling the first application to cover the full period of detention).

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits
Summarise the expected costs and the benefits in the form below. Add more rows if necessary. *Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie costs or benefits additional to what would happen if no actions were taken. Note that "wider government" may include local government as well as other agencies and non-departmental Crown entities.* *See http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/x/x-guide-oct15.pdf and http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis for further guidance*

Affected parties *(identify)*	**Comment**: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties	Members of an irregular arrival group would lose freedom of movement that would have if detention powers were to expire. Longer period of detention without a warrant.	Low
Regulators	Higher initial costs for INZ to service an on-notice application (offset by longer detention period)	Low
Wider government	Higher initial costs for Court to service an on-notice application (offset by longer detention period)	Low
Other parties		
Total Monetised Cost		
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	Faster processing of refugee claims and less time in limbo (as a result of more efficient irregular group arrival response)	Medium
Regulators	Ensure integrity of immigration system More efficient visa, refugee and deportation processing, due to effective management of the group.	High
Wider government	Efficient delivery of services (Health, Education) or investigations (Police, NZSIS).	High
Other parties	The wider public benefits from more effective management of risks	Medium
Total Monetised Benefit		
Non-monetised benefits		High

4.2 What other impacts is this approach likely to have?

- *Other likely impacts which cannot be included in the table above, eg because they cannot readily be assigned to a specific stakeholder group, or they cannot clearly be described as costs or benefits, eg equity impacts*
- *Potential risks and uncertainties*

There may be risk to New Zealand's international reputation, on the basis that this proposal enables detention without warrant of an undetermined duration (although timeframes are established in the proposed amendments). The irregular arrival group warrant of commitment was criticised by human rights organisations when it was put in place in 2013.

However, this risk can be managed by emphasising that the proposal will ensure natural justice in terms of legal representation for members of an irregular arrival group, and that the risk of arbitrary detention is low because consideration of applications will be prioritised and detention will be supervised by the Court.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?
• *Who has been, or will be, consulted, and at what stage(s)? Has consultation with iwi/hapū occurred, or should it?* • *What is the nature of their interest?* • *Do they agree with your analysis of the problem and its causes?* • *Do they agree with your proposed approach?* • *Has your proposed approach been modified as a result of stakeholder feedback?*
Only government agencies have been consulted. All agencies support the proposals. The initial introduction of the irregular arrival warrant of commitment (through the Immigration Amendment Act 2013 – at that point called a mass arrival warrant of commitment) went through the standard legislative process and committee review. Stakeholder groups objected to the warrant of commitment arrangements, saying they amounted to mandatory or arbitrary detention. This proposal does not fundamentally change the irregular arrival warrant of commitment regime – it just enables more time for the Court to follow due process and ensure natural justice rights. The groups would have concerns about prolonged detention without a warrant, but would likely prefer it to making an ex-parte process explicit.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

• *How is the proposed approach to be given effect? Eg,*
  o legislative vehicle
  o communications
  o transitional arrangements
• *Once implemented, who will be responsible for ongoing operation and enforcement of the new arrangements? Have they expressed any concern about their ability to do so?*
• *When will the new arrangements come into effect? Does this allow sufficient preparation time for regulated parties?*
• *How will implementation risks be managed or mitigated?*

• The proposed approach will require legislative change to the Immigration Act 2009. • The Ministry of Business, Innovation and Employment (MBIE) administers the Act. MBIE will be responsible for submitting one or more warrants of commitment within the 96 hour period. • The District Court has time to consider the application or applications in a manner consistent with BORA. • The changes will come into effect immediately. There is no need to provide preparation time.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

• *How will you know whether the impacts anticipated actually materialise?*
• *System-level monitoring and evaluation*
  o Are there already monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?
  o Are data on system-level impacts already being collected?
  o Are data on implementation and operational issues, including enforcement, already being collected?
• *New data collection*
  o Will you need to collect extra data that is not already being collected? Please specify.

We will know that our arrangements are successful if: • members of an irregular arrival group are effectively detained while an application is with the Courts. • once in place, detention arrangements are not successfully legally challenged This data will be collected in the event of an irregular group arrival by Immigration New Zealand.

7.2 When and how will the new arrangements be reviewed?
• *How will the arrangements be reviewed? How often will this happen and by whom will it be done? If there are no plans for review, state so and explain why.* • *What sort of results (that may become apparent from the monitoring or feedback) might prompt an earlier review of this legislation?* • *What opportunities will stakeholders have to raise concerns?*
The Irregular Arrival Control and Processing Plan, and agency readiness to deliver it, is regularly reviewed. The next opportunity to review the legislation would likely be either: • the next comprehensive review of the Immigration Act • after New Zealand's first irregular arrival group.

RIARP Quality Assurance Statement
Overall Opinion on Quality of Analysis

Title of Paper: Warrant of commitment

Date: Tuesday 11 November 2019

RIARP Recommendation:

RIARP confirms that its feedback is reflected in the Regulatory Impact Summary. The Regulatory Impact Summary has undergone minor changes as a result of the RIARP process.

The RIARP reviewer recommends that you authorise the inclusion of the following paragraph in the Cabinet Paper under the heading *Impact Analysis*:

> MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Summary prepared by MBIE. Limited consultation means that the Regulatory Impact Summary does not fully meet the Regulatory Impact Analysis criteria. However the Panel notes the urgency of the proposed changes in order to ensure consistency with BORA from a natural justice perspective, enable all members of a mass arrival group to be appropriately housed and provided with medical care, and prevent the release of potentially high risk members of a mass arrival group.
>
> On this basis, the Panel considers that the information and analysis summarised in the Regulatory Impact Summary partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Kate Challis
RIARP Chair

Director of Regulatory Systems Statement:

I approve the inclusion of the recommended statement in the Cabinet Paper under the heading *Impact Analysis*.

Mark Steel
Director, Regulatory Systems
Strategic Policy and Programmes
Ministry of Business, Innovation and Employment