



COVERSHEET

Minister	Hon Erica Stanford	Portfolio	Immigration
Title of Cabinet paper	Approval of an Amendment Paper to the Immigration (Mass Arrivals) Amendment Bill	Date to be published	25 June 2024

List of documents that have been proactively released		
Date	Title	Author
May 2024	Approval of an Amendment Paper to the Immigration (Mass Arrivals) Amendment Bill	Office of the Minister of Immigration
9 May 2024	LEG-24-MIN-0083 Minute	Cabinet Office

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of legal professional privilege.

In Confidence

Office of the Minister of Immigration

Cabinet Legislation Committee

Approval of an Amendment Paper to the Immigration (Mass Arrivals) Amendment Bill

Proposal

- 1 This paper seeks Cabinet approval to the Minister of Immigration tabling an Amendment Paper to the Immigration (Mass Arrivals) Amendment Bill (the Bill), during its Committee of the Whole House stage.

Policy

Immigration (Mass Arrivals) Amendment Bill

- 2 Work undertaken during 2019, and later in 2022, identified three risks to New Zealand’s ability to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and in a way that protects the rights of all involved. The risks are:
 - 2.1 A mass arrival warrant of commitment for the detention of irregular migrants is unlikely to be obtained within the timeframe prescribed in legislation (within 96 hours) unless there is no formal hearing, meaning no legal representation for the migrants (i.e., the decision is made on an ex parte basis). [REDACTED]
Legal professional privilege
§ 9(2)(h)
 - 2.2 There is some doubt in the Immigration Act 2009 as it stands regarding the responsibilities of members of an irregular maritime arrival group to apply for entry permission, while on the other hand, those members also may not currently apply for a visa on arrival. It is important that they do 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 refugee rights.
 - 2.3 There was some ambiguity regarding the status of those that have been deemed to be a “passenger”; members of a mass arrival group who may have boarded a cruise or cargo ship at sea (for example, because they had been rescued) would be deemed on arrival in New Zealand to be a “passenger”, and therefore to automatically hold entry permission and a 28-day temporary visa. This would mean that they would not be able to be processed under the mass arrivals framework in the Act.
- 3 In June 2022 the previous Cabinet agreed [DEV-22-MIN-0125] to issue drafting instructions for the Immigration (Mass Arrivals) Amendment Bill. The Bill was

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introduced on 29 April 2023 and referred to the Foreign Affairs, Defence and Trade Select Committee. The Bill returned to the House unamended on 31 July 2023.

- 4 On 28 March 2024, the Cabinet Legislation Committee agreed that the Bill continue to progress through the House, and it was subsequently confirmed on this Government's Legislative Programme [LEG-24-MIN-0055 and LEG-24-MIN-0058].

Proposed Amendment Paper

- 5 The first aspect of the Bill, to provide more time for the District Court to consider an application for a group warrant of commitment, was contentious when the Bill underwent examination before the Committee.
- 6 Many submitters on the Bill raised concerns that that the legislative changes proposed might mean vulnerable migrants' human rights could be at risk and, in particular, that groups of people might be held in prison inappropriately.
- 7 There are protections within the New Zealand judicial system against this, because the New Zealand Bill of Rights Act 1990 provides for an absolute right against arbitrary detention. This means that detention that was arguably too long or too restrictive (such as a group of ordinary people committed to prison for months) could have been challenged in any case, on the grounds that it breached the individuals' rights to not be arbitrarily detained.
- 8 To respond to submitters' concerns, Ministers agreed last May [DEV-23-MIN-0098], to four explicit safeguards being incorporated into the Bill. These safeguards are:
1. *establish that, prior to a warrant of commitment being issued, a member of a mass arrival group may be detained in premises approved by the Chief Executive (under section 330 of the Act), except in a prison or police station;*
 2. *require an immigration officer to establish, in making an application for a Group Warrant of Commitment:*
 - a. *why the proposed detention is necessary;*
 - b. *that the detention sought is for the least amount of time and is the least restrictive necessary to achieve the outcomes of detention;*
 - c. *how the proposed detention meets the government's obligations under the New Zealand Bill of Rights Act 1990; and*
 - d. *how the proposed detention meets New Zealand's obligations under the 1951 Convention on the Status of Refugees and other relevant international obligations;*
 3. *require an immigration officer to report to the court weekly (unless varied by a Judge) during a period of warrantless detention of a mass arrival group; and*
 4. *provide that a Judge may order that the location specified in an application for a Group Warrant of Commitment be varied on their own motion, or upon application by a party.*
- 9 An Amendment Paper has been prepared to introduce these changes, to be considered when the Committee of the Whole House considers the Bill and any potential

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amendments. If the Amendment Paper (copy as drafted attached at Annex One) is incorporated into the Bill, its provisions will make human rights protections explicit, and also provide a Judge with the ability to order a change to any proposed location of detention within a warrant of commitment.

- 10 Cabinet agreed on 2 April 2024, when considering the Bill for reinstatement, that the Amendment Paper be introduced at the appropriate time [LEG-24-MIN-0055] and separately, in April 2024, formally confirmed the Bill on this Government's Legislative Programme [LEG-24-MIN-0058].

Consultation

- 11 The following agencies were consulted during the development of the Bill and Amendment Paper and their views were reflected in policy development: Crown Law, the Department of Prime Minister and Cabinet, the Ministries of Foreign Affairs and Trade, and Justice, the New Zealand Customs Service, the New Zealand Police, the Treasury, and the New Zealand Information Community.
- 12 The ACT and New Zealand First parties, and Cabinet Legislation Committee Ministers were consulted, and no feedback was received.

Timelines for progress

- 13 The Bill returned to the House unamended on 31 July 2023 and has since been confirmed on the Government's Legislative Programme [LEG-24-MIN-0055 and LEG-24-MIN-0058]. It completed its Second Reading on Wednesday, 1 May 2024.

Proactive Release

- 14 I intend to proactively release this paper in whole, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that the Immigration (Mass Arrivals) Amendment Bill has been confirmed on the Legislative Programme and has completed its Seconding Reading on Wednesday, 1 May 2024;
[LEG-24-MIN-0055, LEG-24-MIN-0058]
- 2 note that an Amendment Paper has been drafted which addresses concerns raised at the Select Committee stage through incorporating additional safeguards into the Bill; and
- 3 note that Cabinet has agreed that the Amendment Paper be introduced at the appropriate time;

[LEG-24-MIN-0055]

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4 agree to reconfirm that the Amendment Paper be introduced at the appropriate time.

Authorised for lodgement

Hon Erica Stanford

Minister of Immigration

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