

Chair
Cabinet Policy Committee

IMMIGRATION CHANGE PROGRAMME: IMMIGRATION ACT REVIEW

PURPOSE

- 1 This paper seeks your agreement to the Immigration Act review's proposals to draft a new Immigration Bill (the Bill) to replace the Immigration Act 1987 (the 1987 Act).

EXECUTIVE SUMMARY

- 2 The proposals in this paper seek to develop a strong legislative foundation for New Zealand's immigration system. They will allow the government to facilitate the entry and stay of the people New Zealand wants and needs, and to manage risks to the integrity of the immigration system, and the safety and security of New Zealand, in a fair and balanced way.
- 3 Several of the core elements of the 1987 Act will be retained. The key proposals for change include:
 - a. a simplified visa system that provides for greater clarity and flexibility in managing non-citizens' travel to and stay in New Zealand
 - b. providing for more responsiveness and efficiency by enabling the Minister of Immigration (the Minister) to delegate positive discretion in residence decision-making to officials, and enabling electronic decision-making
 - c. a single protection determination procedure that incorporates New Zealand's core immigration-related international obligations
 - d. a streamlined deportation process that is more efficient while maintaining fairness
 - e. a robust independent appeals system, including a single appeals tribunal
 - f. an ability to use classified information in a limited range of decision-making situations without disclosure, balanced by a set of special safeguards
 - g. enhanced incentives for third parties (employers, education providers and carriers) to comply with their obligations in the immigration system
 - h. more flexible powers for compliance and enforcement to provide for integrity in the immigration system
 - i. more flexible and responsive monitoring and detention provisions that maintain a commitment to human rights, and
 - j. the ability to collect and use specified biometric information for identity verification purposes.

BACKGROUND

Previous Cabinet decisions on the Immigration Act review

- 4 In March 2005 Cabinet directed the Department of Labour (the Department) to begin a fundamental review of the 1987 Act [CAB Min (05) 10/4 refers]. In May 2005 Cabinet agreed to terms of reference for the review [CAB Min (05) 18/7 refers]. Cabinet agreed that the objectives of the review were to:
 - ensure New Zealand's interests are protected and advanced
 - ensure compliance with international obligations, and
 - establish fair, firm, and fast decision-making processes.
- 5 In April 2006, Cabinet agreed to release a discussion paper, *Immigration Act Review: Discussion paper*, for public consultation [CAB Min (06) 11/13 refers]. Cabinet directed the Department to report back with proposals for change in October 2006, with the intention of introducing a Bill to Parliament in April 2007.

Public consultation

- 6 The public discussion paper was released in April 2006. Officials held public meetings in May and June 2006 to outline the proposals, which were attended by more than 650 people. The Department received 3,985 written submissions in response to this 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.
- 7 All submissions received through the public process have been considered in preparing this paper and a detailed summary of submissions has been prepared for public release. Specific comments made by submitters are discussed in the attached background paper in context with the relevant proposals.¹

The Immigration Change Programme

- 8 The Immigration Act review is part of the broader Immigration Change Programme focusing on skills, security and settlement. The programme aims to improve the immigration system to ensure that:
 - New Zealand has the skills, talent and labour it needs, now and in the future
 - New Zealanders are confident of the security of our border, and
 - migrants and refugees settle well and integrate into communities.
- 9 The three interlocking components of the Immigration Change Programme are:
 - developing a strong legislative foundation
 - repositioning the policy framework, and
 - implementing a new business model for service delivery.

¹ The percentages used in the background paper should be treated as approximate only. Many submitters commented on an issue without expressing a view either way. For example, 70 percent support for a proposal does not necessarily mean that 30 percent opposed it.

- 10 The change programme as a whole will ensure that we have a modern immigration system, fit for the globally competitive environment of the 21st century. It will enable New Zealand to facilitate high-value, low-risk customers and effectively protect the border. Taken together, the change programme will further the government's goals of economic transformation, strong national identity, and security and opportunities for families.

SCOPE AND STRUCTURE OF THE BILL

- 11 The primary purpose of immigration legislation is to establish a legal framework that allows for the entry to and stay in New Zealand of non-citizens in New Zealand's interests. The ways immigration can serve New Zealand's interests may change over time, and it is important that the legislation provides the flexibility that allows the immigration system to respond.
- 12 Immigration is subject to a significant level of public scrutiny. It is essential that immigration legislation provides for a robust and accountable system that creates public confidence.
- 13 Like the 1987 Act, I propose that the Bill be largely framework legislation, with detail generally contained in regulations or instructions. This provides the strongest foundation for the government to manage immigration in New Zealand's interests. Immigration policy is a matter of ongoing debate, and it is the responsibility of the government of the day to decide this. Fixing policy criteria in legislation is undesirable. Approximately 80 percent of 92 submitters agreed that the Bill should be framework legislation.
- 14 In some instances, particularly where a clear minimum standard is required, and to signal clearly New Zealand's requirements, prescription in the legislation is necessary. This is important where there are potential impacts on an individual's rights.

RATIONALE FOR THE PROPOSALS IN THIS PAPER

- 15 Significant global changes have taken place since the 1987 Act was enacted. There are greater flows of people around the world and greater competition for skills, talent, and labour. There are heightened risks and pressures on the border. New Zealand needs to adapt to these changes to ensure that the best outcomes for the country are realised. Relevant, flexible and responsive legislation is an important tool to help achieve this.
- 16 The Immigration Act review proposals are particularly focused on:
 - a. facilitating the entry and stay of people who meet New Zealand's needs, and
 - b. managing risks in a fair and balanced manner.
- 17 The proposals retain many of the core elements of the 1987 Act such as requiring non-citizens to have authorisation to be in New Zealand, a role for the Minister in individual decision-making, and an independent appeals system. In all cases the proposals are focused on creating a system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

Visas

- 18 The current visa and permit system is fundamentally sound but technically complicated and somewhat inflexible. The proposed new visa system would be more simple and transparent, and would provide for more flexible levels of scrutiny and control.

Trans Tasman Travel Arrangement

- 19 Freedom of movement under the Trans Tasman Travel Arrangement, is a very significant element in New Zealand's relationship with Australia, underlining the essential people-to-people nature of the broader relationship and underpinning economic growth under the Australia-New Zealand Closer Economic Relations Trade Agreement. Although it is recommended that Australians, like all non-citizens, be brought under the proposed visa system, (they are currently exempted from the requirement to hold a visa or permit), there would be no change in substance to their present ability to travel freely to and stay indefinitely in New Zealand. Australians would not be subject to any actual additional administrative requirements, such as completing visa application forms. The process at the border, in most cases, would be automatic and invisible. This system would be similar to Australia's use of the Special Category Visa granted on arrival to New Zealand citizens entering Australia.

Decision-making

- 20 Changes are proposed to the statutory immigration decision-making rules, for example, to enable the Minister to delegate the ability to exercise positive discretion in residence decision-making, and to facilitate electronic decision-making. This would provide for more responsiveness and efficiency in the system.

International protection

- 21 A new protection regime is proposed that would ensure that all core immigration-related international conventions are provided for in domestic legislation and would require all claims for international protection to be assessed in a single procedure. This would build on the highly regarded refugee determination system and would keep New Zealand in line with best practice internationally. The proposals also take the opportunity to clarify how New Zealand can deal with a protected person who would otherwise be liable for deportation, particularly where they present a significant risk to New Zealand.

Deportation

- 22 The proposed deportation system would bring together numerous provisions regarding removal, revocation and deportation in a transparent framework that clearly sets out a non-citizen's rights and obligations. It would provide for more efficient deportation processes, but would also increase fairness by, in many cases, allowing people to continue to work or study during any appeals.

Review and appeal

- 23 The proposed independent appeals system would establish a new single Immigration and Protection Tribunal (the tribunal), replacing the four existing

appeals bodies. The tribunal would allow any non-citizen a single right of appeal that may include consideration of the facts of the matter, international obligations and humanitarian concerns, depending on the circumstances. Again, this proposal would create greater efficiencies in the overall immigration system, while maintaining New Zealand's high standards of fairness and improving transparency for non-citizens.

Using classified information

- 24 The proposals would allow classified information to be used in certain types of decision-making and appeals, as a last resort, without disclosing the information to the person for comment. These proposals would allow New Zealand to make appropriate decisions based on all available information. They build in special safeguards to the initial decision and appeal, including requiring a non-classified summary of the information to be disclosed where possible, appeals to be heard by a panel of up to three Judges on the tribunal, and special advocate provisions.

Third parties

- 25 New Zealand benefits by allowing third parties such as employers and education providers to engage with the immigration system and this will continue under the proposals in this Cabinet paper. Third party engagement in the system comes with obligations to ensure that their actions are lawful. While the obligations on third parties will not change, it is proposed that the incentives to comply with them are strengthened.

Compliance and enforcement

- 26 Ensuring integrity in the immigration system requires a balance between facilitating the entry and stay of non-citizens who comply with their obligations, and being able to manage those non-citizens who do not. The proposals would enable the Department to access the people, places and information required to ensure compliance with the immigration system.

Monitoring and detention

- 27 The immigration monitoring and detention framework being proposed aligns with New Zealand's national and international human rights obligations. The proposals are for a tiered system that would allow for more flexible responses to risk, including a greater ability to use reporting conditions instead of secure detention and greater discretion for the courts in issuing warrants of commitment. A limited power for designated officers to detain is proposed, but only to be activated by Order in Council once all systems and training are in place. The proposals also introduce additional safeguards, such as legal aid for detainees.

Biometric information

- 28 Finally, there are proposals to allow for a limited range of biometric information to be collected and stored electronically for identity verification purposes. This would enable the Department to use technological advances to help improve the integrity of the immigration system.

OVERVIEW OF PROPOSALS

- 29 The tables below present the key proposals for change, the status quo, what was in the discussion paper, and submitters' views at a high level. Detailed discussion of every proposal is set out in the accompanying background paper (Appendix B). The recommendations in this paper seek agreement to the high-level proposals for the Bill. A set of more detailed and technical recommendations are attached as Appendix A.
- 30 The proposals are set out in 11 chapters:
- Chapter One: Core provisions
 - Chapter Two: Visas
 - Chapter Three: Decision-making
 - Chapter Four: Protection
 - Chapter Five: Deportation
 - Chapter Six: Review and appeal
 - Chapter Seven: Using classified information
 - Chapter Eight: Third parties
 - Chapter Nine: Compliance and enforcement
 - Chapter Ten: Monitoring and detention
 - Chapter Eleven: Biometric information

Key proposals for change

Chapter One: Core provisions - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
1	Purpose statement establishes key goals of immigration: skills, security, settlement, and international obligations, as well as balancing individual rights and national interest.	No purpose statement in 1987 Act.	Carefully drafted purpose statement.	Support for purpose statement in Bill. Support for stating positive goals of immigration and importance of individual rights.
2	Non-citizens in NZ must have valid visa and comply with visa conditions.	Proposal mirrors status quo (with terminology changes).	No specific comment sought.	No comment generated.
3	Bill to exclude non-citizens with serious convictions or risk to NZ, slightly broader than status quo.	Grounds for character exclusion include criminal convictions, previous expulsion from a country and threats to public safety.	Provisions to exclude non-citizens from New Zealand who meet clear criteria relating to both character and health.	Strong reservations about health exclusion criteria, no longer proposed. Transparency desirable for character exclusion criteria.

Chapter Two: Visas - Key proposals

	Proposal	Status quo	Discussion paper	Submissions
4	<p>Integrated visa system:</p> <ul style="list-style-type: none"> - Visas for travel to and stay in NZ, and - Visas for travel to NZ may be waived. <p>Those currently exempted from holding a permit will be granted visas, including Australians.</p>	<p>Visa, permit and exemption system.</p>	<p>Integrated visa system.</p>	<p>Strong support for integrated visa system.</p>
5	<p>High level visa types in Bill:</p> <ul style="list-style-type: none"> - Permanent resident - Resident - Temporary entrant - Limited visitor - Transit passenger <p>Temporary visa types set in Immigration Instructions.</p>	<p>The 1987 Act creates residence visas, residents permits, returning resident's visas, temporary visas, temporary permits (work, visitor and student), limited purpose visas/ permits, transit visas, and temporary and permanent visa and permit exemptions.</p>	<p>High level visa types in statute, with specific visa types in Immigration Instructions.</p> <p>No proposals on actual types.</p>	<p>No significant comment generated.</p>
6	<p>Visas available in interim when application lodged for further visa.</p>	<p>Applicants may become unlawful while awaiting a decision on an application for a further permit.</p>	<p>Visas available in interim when application lodged for further visa.</p>	<p>Strong support for interim visa (90% of 91 submitters and from public meetings).</p>
7	<p>Key border requirements in statute, others in regulations to allow flexibility.</p>	<p>Most border requirements currently in statute.</p>	<p>Not discussed.</p>	<p>No comment generated.</p>

Chapter Three: Decision-making - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
8	<p>Minister to certify "Immigration Instructions" containing the rules relating to visa applicants and applications for travel to, entry and stay in New Zealand.</p>	<p>Minister certifies Government immigration policy and Government residence policy to establish rules relating to visa applicants and applications.</p>	<p>Change in terminology was not included in the discussion paper.</p>	<p>The submissions highlighted confusion over the use of "policy" in the 1987 Act.</p>

	Proposals	Status quo	Discussion paper	Submissions
9	Legislation to refer to the ability to establish health criteria in Immigration Instructions.	Health is not specifically referred to in the 1987 Act but in policy.	Proposal to include health "exclusion" criteria similar to character exclusion criteria.	Most submitters responded negatively to health exclusion criteria in the legislation.
10	Minister retains all current powers but can delegate power to make positive exceptions to Residence Instructions.	Only the Minister can make exceptions to Government residence policy.	Minister may delegate power to make positive exceptions to residence decisions.	Proposals supported by approximately two-thirds of submitters who commented that the Minister should retain some power to intervene.
11	Retain the status quo for the provision of potentially prejudicial information (PPI) and reasons for decisions to all applicants.	The administrative practice of providing PPI and reasons for decisions is guided by the 1987 Act, the Official Information Act 1982, the Privacy Act 1993, and the principles of administrative law.	Withhold PPI and reasons from offshore applicants.	Discussion in the Department, between agencies, in the public meetings, and submissions supported PPI and reasons being given to all applicants.
12	Enable electronic decision-making.	The Department uses available and affordable technology to support the application process but all final decisions are made by officers.	Enable electronic decision-making.	Approximately 75% of 60 organisations, and half the 47 individual submitters agreed. They commented that New Zealand needs to move with the times and make use of technology.

Chapter Four: Protection- Key proposals

	Proposals	Status quo	Discussion paper	Submissions
13	Single protection procedure for claims under Refugee Convention, Convention Against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR).	Only refugee determination in 1987 Act. Other obligations assessed administratively or in humanitarian appeals.	Single protection procedure.	Support for single protection procedure.

	Proposals	Status quo	Discussion paper	Submissions
14	CAT and ICCPR protected persons must be protected, even if serious criminal offender (but serious offending assessed and temporary status, prosecution, extradition to safe country may be possible).	CAT and ICCPR protected persons must be protected, even if serious criminal offender.	CAT and ICCPR protected persons must be protected, even if serious criminal offender.	Few submissions generated. Some strong views that serious offenders should be excluded.
15	Options: - Not to sign Stateless Persons Convention at this time due to unknown costs, OR - Agree not to include in Bill and defer consideration, OR - Agree to become party and include in Bill.	NZ not signed up to Stateless Persons Convention.	Question posed in discussion paper.	Support for signing Convention.

Chapter Five: Deportation - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
16	Use a single term "deportation".	Various terms used: revocation, removal, deportation.	Single term "expulsion" proposed.	General support for single term "deportation", but not "expulsion". Some considered that different terms reflect differing levels of seriousness.
17	Deportation liability triggered by criteria in statute with ministerial or departmental discretion to intervene. Robust decision-making processes and appeals retained.	Removal liability currently triggered by criteria in statute, other action requires ministerial decision to proceed.	"Automatic" liability proposed when non-citizen comes within statutory criteria.	Approximately 50% support. Concerns include placing onus on the non-citizen and removal of Minister from the process.
18	Maintain non-citizens' lawful status during deportation appeals. Temporary entrants could apply for further visas during deportation appeals.	Residents retain status, temporary entrants do not.	Immigration status would expire on departure once all appeals exhausted.	No specific written responses, but strong support in public meetings.

	Proposals	Status quo	Discussion paper	Submissions
19	Deportation liability where the Minister / Department determine visa granted to a false identity. Person unlawful from date false identity visa issued.	Treated like other types of fraud.	The paper asked whether non-citizens obtaining their status by fraud should be treated the same as those unlawfully in New Zealand.	Approximately half of the 43 organisations commenting and 75% of 51 individuals agreed.
20	Non-citizens who are determined to be a threat or a risk to national or international security may be deported by Order in Council.	Two processes available: Order in Council for threats to national security and ministerial order for suspected terrorists.	A criterion of being a threat to national security, including a terrorist threat, was proposed in the discussion paper.	Some considered the proposal was too vague and open to abuse, with processes unclear.
21	Residents would be liable, for five years, for deportation where new information relating to character, applicable at the time residence was granted, indicates that they would not have been granted residence.	There is no comparable provision in the 1987 Act.	This proposal has arisen from interagency consultation subsequent to the public consultation process.	There were no submissions on this issue.
22	The threshold for liability in the first five years of residence would be a conviction for an offence that is punishable by imprisonment for 24 months or more.	Current threshold is an actual sentence of 12 months or more, or capable of running for 12 months or more; or two offences punishable by imprisonment for 12 months or more for each.	There was no proposal to change the current thresholds.	Some submissions, mostly from private individuals, sought a hard line, with criminal offending by a non-citizen being sufficient for immediate deportation.
23	Deportation liability notices would advise non-citizens of their liability and appeal rights (except for overstayers and security deportations). 10 year time limit on deportation liability.	Deportation and revocation orders have similar effect to deportation liability notice. Deportation orders must be made within six months of release.	No specific proposal for deportation liability notice.	Several submissions to the effect that non-citizens liable for deportation should be notified of this, and their rights.

	Proposals	Status quo	Discussion paper	Submissions
24	The Minister or delegated official would be able to suspend deportation liability to give second chance.	No equivalent legal process.	Proposal not included in discussion document.	No submissions.
25	A system of graduated two year, five year and permanent re-entry ban periods is proposed as penalties after deportation.	Removed overstayers are banned for five years, deported former residents are banned permanently.	Two year, five year and permanent bans were proposed, varied according to the seriousness of the reason for deportation.	Differentiated ban periods received strong support.

Chapter Six: Review and appeal - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
26	A single independent tribunal.	Four separate independent appeals bodies.	A single tribunal.	Mixed support – those who did not support were concerned that refugee expertise may be lost. This issue has been addressed by creating clear legislative framework for protection appeals.
27	Options: Justice or Labour to support tribunal.	Labour supports three appeals bodies. Justice supports one.	Justice indicated as preferred agency to support.	Submissions clearly favoured Justice.
28	Chair to be District Court Judge (DCJ) – requires DCJ cap to be lifted by one.	Chair not District Court Judge.	Chair and deputies to be District Court Judges.	Support for Chair and deputies to be District Court Judges.
29	A single appeal to tribunal – all grounds for appeal presented on lodgement.	Multiple appeals to separate tribunals.	Options presented including single appeal.	Mixed responses – support conditional on maintaining fairness.
30	All declined resident applicants may appeal.	All declined residence applicants may appeal.	Options presented including restricting residence applicants who may appeal.	Support for all declined residence applicants to have access to appeal.
31	Single deportation appeal opportunity on facts (to courts, Department or tribunal).	Inconsistent - Single deportation appeal opportunity on facts in some cases, multiple in others.	Single deportation appeal opportunity on facts.	Support for single deportation appeal opportunity on facts conditional on maintaining fairness.

	Proposals	Status quo	Discussion paper	Submissions
32	Humanitarian appeal for all liable for deportation within time limits.	Humanitarian appeal for all liable for deportation within time limits.	Options presented including limiting access to humanitarian appeals.	Support for humanitarian appeal for all liable for deportation within time limits.
33	Judicial review and appeals on points of law to High Court must be lodged within 28 days and heard together if possible.	Judicial review must be lodged within 3 months. High Court appeals on points of law from three of four appeals bodies only – within 21 days. Must be heard together where possible.	No proposals made - views sought.	Support for having a High Court appeal on points of law from tribunal across the board.
34	Human Rights Commission cannot investigate individual cases relating to immigration law and policy but can exercise all other functions.	Human Rights Commission cannot investigate individual cases relating to immigration law and policy but can exercise all other functions.	No proposal for change.	Human Rights Commission considers this provision should be repealed.

Chapter Seven: Classified information - Key proposals

	Proposals
35	<p>EITHER, OPTION A:</p> <p>Classified information may be used in immigration and protection decision-making with safeguards (detailed below),</p> <p>OR, OPTION B:</p> <p>The status quo be retained, that is, on the basis of fairness and transparency, the Department does not use non-disclosed classified information in standard immigration decision-making,</p> <p>OR, OPTION C:</p> <p>Decisions on the use of classified information in decision-making be deferred to the review of Part 4A of the 1987 Act.</p> <p>In addition to Option A, B or C:</p> <p>EITHER</p> <p>Officials report back on the review of Part 4A following the conclusion of Mr Zaoui's case,</p> <p>OR</p> <p>Officials report back on Part 4A prior to finalising the draft Bill for introduction to Parliament in April 2007.</p>

	Proposals	Status quo	Discussion paper	Submissions
36	<p>Option A – Classified information only may be used in visa, protection and deportation decisions where national or international security, criminal conduct or significant international reputation issues for New Zealand may be an issue.</p> <p>Safeguards:</p> <ul style="list-style-type: none"> - Non-classified summary to be provided if possible - Minister to make decisions - Reasons for decision to be given - All appeals to panel of 3 Judges on new tribunal - Appeals allowed when person would ordinarily have appeal, and - Special advocates. 	<p>No provisions for use of classified information other than Part 4A (which is outside scope of this review).</p> <p>The Department does not use non-disclosed classified information in standard immigration decision-making.</p>	<p>Proposal that classified information may be used in visa and protection decisions. - -</p> <p>No limitations relating to the nature of the information as now proposed.</p> <ul style="list-style-type: none"> - Offshore decisions would have no appeal mechanisms. Onshore decisions would have standard appeal rights with special mechanisms. - Classified security information appeals to Inspector-General (except protection). - All other appeals to Judge on tribunal. - Special advocates. 	<p>Mixed responses. Both those who supported and those who did not recommended summary of information and special advocate provisions, and having a panel of Judges hearing appeals.</p>

Chapter Eight: Third parties - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
37	<p>An employer must not knowingly or without reasonable excuse, employ (or continue the employment of) a non-citizen who is not entitled to work.</p> <p>Holding a tax code declaration IR330 form is not a reasonable excuse.</p>	<p>An employer must not knowingly or without reasonable excuse, employ (or continue the employment of) a non-citizen who is not entitled to work.</p> <p>Holding a tax code declaration IR330 form is a reasonable excuse.</p>	<p>Stronger legislative basis for employer responsibilities.</p> <p>Remove the IR330 form as a reasonable excuse.</p>	<p>65% of 62 organisations and 80% of 42 individuals supported providing a stronger legislative basis for employer obligations.</p> <p>55% of 104 submitters supported removing the IR330 form. Business NZ did not support this. New Zealand Council of Trade Unions said "sighting of an employee's tax code declaration is too low a threshold".</p>

	Proposals	Status quo	Discussion paper	Submissions
38	<p>Options: Share work entitlement information and duration with potential employers, with safeguards:</p> <p>EITHER <i>without</i> explicit consent, OR <i>with</i> explicit consent.</p>	Consent needed to share work entitlement information.	Facilitative systems to share work entitlement information.	Many commented that work entitlement information should be shared.
39	<p>An education provider must not either knowingly or without reasonable excuse, enrol (or continue the enrolment of) a non-citizen who is not entitled.</p> <p>Increased fines for education providers who fail to comply with obligations.</p>	<p>Education providers must not knowingly enrol or continue the enrolment of a non-citizen who is not entitled.</p> <p>\$2,000 fine on conviction for knowingly enrolling a non-citizen without entitlement.</p>	A flexible penalties regime including instant fines, immigration consequences and prosecution.	Over 3/4 of 76 submitters supported a flexible offences and penalties regime.
40	An instant fine system for strict liability offences where carriers fail to meet their obligations.	Fines on conviction rarely used, offences dealt with through voluntary system of penalty free infringement notices.	An instant fine system for strict liability offences where carriers fail to meet their obligations.	Mixed views with little substantive comment. Not supported by airlines or airline representatives.
41	<p>Continue current information sharing and data matches and</p> <p>EITHER enable deportation and protection claim information to be shared with the agency responsible for the administration of Social Security,</p>	The data match with the agency responsible for Social Security does not allow information to be shared on deportation, or outcomes of protection claims.	Not in discussion paper. Arose out of consultation with Ministry of Social Development.	Many submitters expressed the view that disclosing immigration status is necessary to ensure that health, welfare and other publicly funded services are only provided to those who are eligible for these services.

	Proposals	Status quo	Discussion paper	Submissions
	OR continue data-matching provisions as per the status quo.			
42	Disclose immigration status information to publicly funded service providers, with safeguards, to determine eligibility.	Consent needed to share immigration status information.	Disclose immigration status information to publicly funded service providers to determine eligibility.	65% of 95 submitters indicated support to ensure that health, welfare and other publicly funded services are only provided to those eligible.

Chapter Nine: Compliance and enforcement - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
43	Improved information sources for locating people who are or may be liable for deportation.	Address information can only be sought from a limited pool of businesses and only about overstayers.	Improved information sources for locating people who are or who may be liable for deportation.	70% of 94 submitters supported the proposal.
44	Enable the chief executive to designate entry and search powers. This power would be activated by Order in Council.	Only police may enter premises to serve a deportation or removal order. Only police and customs officers may enter border areas to locate people unlawfully present or to detect or prevent an immigration offence.	Aligning powers of immigration officers with the powers explicitly granted to police and customs officers to perform immigration functions.	Individual submissions (31) were split evenly on the issue. One-third of 49 organisations supported this proposal.
45	Enable the chief executive to designate entry and inspection powers. Powers additional to the 1987 Act would be activated by Order in Council.	Immigration officers exercise some powers of entry and inspection when monitoring compliance with visa conditions.	Aligning powers of immigration officers with the powers explicitly granted to police and customs officers to perform immigration functions.	Individual submissions (31) were split evenly on the issue. One-third of 49 organisations supported this proposal.

	Proposals	Status quo	Discussion paper	Submissions
46	Increase the information that may be inspected when monitoring compliance with immigration obligations by non-citizens, education providers and employers.	Only time and wage information may be inspected, ruling out other information that may be held about an employee. There is no power to inspect records related to an employer or education provider not meeting immigration obligations.	Increase the information that may be inspected when monitoring compliance with immigration obligations by non-citizens. Proposals regarding obligations on education providers and employers noted that monitoring would be required.	70% of 38 organisations and 85% of 38 individuals supported the ability to inspect a wider variety of information to monitor compliance.
47	Allow search in border areas for travel and identity documentation related to unlawful people or immigration offences.	Currently there is no power to search for identity or travel documentation when exercising the existing power to locate unlawful people in border areas or to detect or prevent immigration offences in those areas.	This was not discussed in the discussion paper as the proposal had not been considered at that time.	There were no submissions on this issue.
48	Statutory right of access to Immigration Control Areas for officers undertaking immigration functions.	Immigration officers do not have any legislated right to access border areas to undertake immigration functions.	This proposal was not developed at the time of the discussion paper so was not the subject of consultation.	There were no submissions on this issue.
49	Power to require the provision of operational passenger processing space at airports and to be exempt from charge for operational passenger processing space.	The Department currently pays rent at the metropolitan international airports for all space requirements. Other border agencies do not. All space is acquired through negotiation.	This issue was not consulted on through the discussion paper – it was consulted on with airport companies separately.	Airport companies have expressed concern at the prospect of increasing space requirements, possible duplication of functions and resources required with other border agencies and the possibility of losing income for expensive infrastructure.

	Proposals	Status quo	Discussion paper	Submissions
50	Confirmation of existing powers, offences, penalties and procedural provisions related to offences with slight improvement in the way the timeframe to lay information is expressed to prevent people avoiding prosecution by hiding evidence.	Mirrors proposal. Current timeframe for laying information is unclear.	Did not propose change to remaining powers, offences, penalties or procedural provisions related to offences.	There were no submissions on these issues.

Chapter Ten: Monitoring and detention - Key proposals

	Proposals	Status quo	Discussion paper	Submissions
51	Legal aid for warrant of commitments (warrant) hearings.	Detained non-citizens are ineligible for legal aid unless they are refugee status claimants.	There was no proposal to extend provisions for legal aid in the discussion paper.	Many submitters, including from the New Zealand Law Society, considered legal aid should be available for detained non-citizens.
52	Monitoring agreements outside the court process.	Informal agreements made between the Department and non-citizens liable for detention.	Not in discussion paper.	Many submissions supported the use of alternatives to secure detention, including the Human Rights Commission.
53	Courts to issue warrants considering: <ul style="list-style-type: none"> - individual circumstances of the non-citizens case - level of risk the non-citizen represents, and - need to ensure a high level of compliance with immigration law. 	Courts issue warrants considering a range of factors depending on the reason a warrant is required. Factors include the need to ensure high level of compliance with immigration law.	Not in discussion paper. Appropriate to provide some guidance to courts in warrant process while enabling discretion.	Public considered that reasons for detention need to be transparent.

	Proposals	Status quo	Discussion paper	Submissions
54	Six month limit on immigration detention except where non-citizen deliberately obstructs departure.	No limits on detention except for 3 month limit on detention for non-citizens issued a removal order (who do not subsequently claim refugee status or hinder the removal process).	Extend the three month limit on detention for non-citizens issued a removal order where administrative difficulties prevented their departure being facilitated.	Numerous public submissions commented that detention should not be ongoing.
55	Warrants may be issued for up to 28 days.	Warrants issued for up to seven, 28 or 30 days.	Warrants may be issued for up to 28 days.	Approximately 40% of 83 submitters agreed and 40% opposed the proposal.
56	No immigration warrants for criminal prisoners.	Warrants required for prisoners to retain "refused entry" status and not gain immigration appeals.	No immigration warrants for criminal prisoners.	Approximately 60% of submitters agreed but little substantive comment was made.
57	96 hours (4 days) detention without a warrant.	48 or 72 hours detention without a warrant. Not long enough to facilitate departure.	96 hours (4 days) detention without a warrant.	45% of submitters supported the proposal, 35% did not. The Board of Airlines Representatives New Zealand confirmed difficulties in obtaining appropriate travel documents in 72 hours.
58	Non-citizens liable for deportation may be monitored or detained dependent on level of risk.	Non-citizens cannot generally be detained during immigration appeals or if they make a protection claim onshore.	Detention at the border and onshore for protection claimants.	Concerns that New Zealand was seeking to detain protection claimants on the basis of a claim being made.
59	4 hour power of detention for trained, designated officers.	Only police officers can detain for immigration purposes.	4 hour power of detention for designated officers.	Half supported a limited power of detention with approximately 40% opposed.
60	Enable the Department to manage detention.	Department can only manage open detention for refused entry non-citizens.	Immigration detention outside Police and Corrections facilities.	Only 15 out of 78 submitters were opposed. Some supported the status quo.

Chapter Eleven: Biometrics - Key proposals

	Proposal	Status quo	Discussion paper	Submissions
61	Power to require the collection, storage and use of biometric information from non-citizens when engaged with the immigration process and to collect and use limited biometric information from New Zealand citizens at the border.	Applicants for a visa or permit must provide sufficient information to allow an immigration officer to determine their identity. Immigration officers may demand an arriving person's passport or certificate of identity. Immigration officers may require evidence of identity where an offence is suspected or where a person is suspected of being in New Zealand unlawfully.	Mirrored proposal. This paper provides more detail about the mechanics, safeguards, and consequences of failure to provide such information.	Just under half of 56 organisations indicated support for the proposal compared to almost 80% of 46 individual submitters. Over a third of the organisations that addressed this issue did not indicate support or opposition to the proposal, but commented on the safeguards that would need to be in place.

CONSULTATION

- 31 In addition to the public consultation discussed above, the following agencies were consulted in the preparation of this paper: the Departments of Prime Minister and Cabinet and Internal Affairs, the Ministries of Foreign Affairs and Trade, Health, Education, Economic Development, Transport, Justice, and Pacific Island Affairs, the New Zealand Qualifications Authority, the Tertiary Education Commission, the New Zealand Defence Force, Police, Customs Service, and Security Intelligence Service, the Inland Revenue Department, the Office for Disability Issues, Crown Law, the Legal Services Agency and the Treasury. Te Puni Kōkiri was also informed of the proposals.
- 32 The chairs of the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board, the Deportation Review Tribunal, the Privacy Commissioner, the Office of the Ombudsmen and the Human Rights Commission were also consulted.
- 33 Specific comments made by those consulted are discussed in the background paper in context with the relevant proposals.

TIMING

- 34 The legislative priority accorded to the Bill by Cabinet requires that the following timetable be implemented:

Cabinet approval of proposals for legislative change	November 2006
Drafting of legislation	December 2006 – March 2007
Bill introduced to Parliament	April 2007

- 35 Based on this timetable, it is anticipated that the Bill will be passed around April 2008, and that implementation would occur in 2008/09. The costings discussed

below are based on implementation in the first quarter of the 2008/09 financial year, with implementation planning beginning one year prior.

FINANCIAL IMPLICATIONS

Tribunal related costs

36 Table One and Table Two relate to the options for the administration of the single appeals tribunal (by either Justice or the Department).

Table One: Additional funding required if tribunal supported by Justice (\$M)

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
Net operating impact		0.105	0.894	0.525	0.527	0.527	0.527	3.105
Net Capital impact		1.200	0.800	0	0	0	0	2.000
Vote Justice								
Net operating impact		2.074	1.968	2.716	1.872	0.786	0.786	10.202
Net Capital impact		0.486	2.279					2.765
TOTAL OPERATING		2.179	2.862	3.241	2.399	1.313	1.313	13.307
TOTAL CAPITAL		1.686	3.079	0	0	0	0	4.765

Table Two: Additional funding required if tribunal supported by Labour (\$M)

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
Net operating impact	0	2.175	2.587	2.895	1.768	0.840	0.431	10.696
Net Capital impact	0	2.753	0	0	0	0	0	2.753
TOTAL OPERATING	0	2.175	2.587	2.895	1.768	0.840	0.431	10.696
TOTAL CAPITAL	0	2.753	0	0	0	0	0	2.753

37 Table Three compares the cost difference between Justice and Labour at a high level.

Table Three: Net cost comparison of Justice or Labour supporting tribunal (\$M)

	Justice	Labour
Maximum capital over first five years (net)	\$4.765	\$2.753
Maximum operating over first five years (net)	\$13.307	\$10.696
Cost in outyears (net)	\$1.313	\$0.431

38 The current cost of the Labour supported appeals bodies is \$6.101 million per annum. The current cost of the Justice supported Deportation Review Tribunal is \$0.160 million per annum.

39 Table Four provides more detail. It compares the Justice and Labour costs of supporting the tribunal over the first five years, and outyears, with the current annual costs. It sets out the gross and net costs.

Table Four: Net cost comparison of Justice or Labour supporting tribunal (detail) (\$M)

Operating Costs	MoJ Option (Years 0-5)	DOL Option (Years 0-5)	MoJ Option (Outyears)	DOL Option (Outyears)	Current annual costs
Personnel and Operating (Including Property)	37.542	36.765	6.849	6.171	5.785
One Off Project Costs	3.555	1.859			
Depreciation and Capital Charge	5.802	5.664	1.183	0.978	0.316
GROSS TOTAL	46.899	44.288	8.031	7.149	6.101
Offsetting DOL baseline	30.505	30.505	6.101	6.101	

Offsetting MOJ DRT baseline	0.800	0.800	0.160	0.160	
Offsetting Fee Revenue	2.287	2.287	0.457	0.457	
NET TOTAL OPERATING	13.307	10.696	1.313	0.431	
Capital Costs	MoJ Option (Years 0-5)	DOL Option (Years 0-5)	MoJ Option (Outyears)	DOL Option (Outyears)	Current annual costs
I.T.	3.144	1.278	0	0	0
Property	1.621	1.475	0	0	0
TOTAL CAPITAL	4.765	2.753	0	0	0

Why are there additional costs?

- 40 The additional costs associated with the proposed tribunal relate to the refurbishment of existing premises, developing a new case management system, developing a website, having a District Court Judge as chair, and increased salaries for tribunal members commensurate with the new roles. The Justice option also requires developing an IT interface between the Department and the tribunal to allow the tribunal access to the immigration Application Management System.
- 41 The tribunal costs are projected maximum figures. Whichever option is agreed, funding will be sought as part of the 2007 budget bid to develop the business case and for planning in 2007/08 (this portion of the funding would be appropriated through the Budget for 2007/08).
- 42 Further work on these costs is being undertaken prior to the 2007 budget bid, including an independent audit. In addition, a report back to Cabinet with a detailed business case would be required to draw down the costs from the funding agreed in Budget 2007. The area of highest uncertainty, and with the most potential to decrease, relates to the IT costs as a detailed business case has not been undertaken.

Why is the single tribunal necessary?

- 43 The proposed tribunal is necessary for the protection, deportation, and classified information proposals to proceed, as well as the proposals to streamline appeals more generally. For example, the deportation proposals remove the distinction between removal and deportation which distinguishes the roles of the Removal Review Authority and the Deportation Review Tribunal. Costs relating to protection, deportation and classified information appeals are covered by the tribunal costs. The implementation of the Bill is therefore dependent on the budget bid being approved.
- 44 The tribunal would:
- allow any person liable for deportation from New Zealand to have a single independent appeal, including where the person makes a protection claim
 - ensure all protection-related deportation appeals are heard by a tribunal with international law expertise
 - provide the independent scrutiny needed to allow for classified information to be used in immigration and protection decision-making, and
 - ensure speedier appeals processes and fewer delays in deportation.

Other Act review costs

45 The tribunal related costs are by far the most significant of this review. All other funding required (additional to fees and current baselines) to implement this review is summarised below:

Table Five: Department costs for all other proposals

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
Net operating impact	0	0.460	1.070	1.085	0.967	0.375	0.375	4.332
Net Capital impact	0	0	0	0	0	0	0	0
TOTAL OPERATING	0	0.460	1.070	1.085	0.967	0.375	0.375	4.332
TOTAL CAPITAL	0	0	0	0	0	0	0	0

46 These costs relate to:

- a. implementation
- b. protection proposals, and
- c. compliance proposals.

47 *Implementation* - Implementation will incur project management costs and the project itself will involve a wide range of activity. Changes will be required to the immigration operational manual, forms and guides. Work on the operational manual will need to begin in the current financial year. These implementation costs are \$0.189 million, of which \$0.142 million is being sought in this paper from the memorandum account.

48 As a major government initiative there will need to be a communications package to publicise the changes externally and internally and a number of the proposals will require specialist staff training. A further set of costs are associated with the need for increased management reporting relating to the proposed changes and increased departmental corporate legal and human resource support.

49 *Protection* - The proposal to broaden the current refugee determination process to include the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR) is forecast to increase the number of protection claims from around 350 to around 500 in the first two years. It is forecast that this will drop back to current inflows from year four. Mechanisms to target assessment to genuine claims have been proposed and it is possible that these conservative estimates will not eventuate. While this is the greatest single area of cost forecast for the Department, at \$1.600 million (operating) over four years, there are no ongoing costs projected.

50 *Compliance* - Another key set of proposals is to strengthen the integrity of New Zealand's immigration system through measures which support compliance activities carried out by the Department. There are costs for a small increase in the number of staff on an ongoing basis.

Costs not reflected in this paper

51 *IT costs* - The IT changes that are required to support the new Act have been integrated into the new business model IT change programme. Additional funding for the Immigration Act review would be required if the new business model proposals are not agreed.

- 52 *Detention-related costs* - The Department of Corrections has advised that the proposals for monitoring and detention that may increase the number of non-citizens liable for detention or the length of immigration detention in some circumstances are likely to result in a small increase in the prison population and associated costs. This will be taken into account in future forecasts of prisoner numbers. New Zealand Police have advised that the impact of the proposals upon Police resources appears negligible.

How costs are to be met

- 53 The costs above indicate what cannot be met from baselines and fees (based on the new fees framework recently agreed). The Department and Justice are developing a joint budget bid for Budget 2007 to seek the funding necessary to implement the new tribunal, and the Department is developing a budget bid for Budget 2007 to seek the funding necessary for all the other proposals in the review. All of the decisions in this paper are subject to additional funding being agreed through Budget 2007. Prior to the budget bid, the Department will commission an independent audit of these costs.

Treasury comment

- 54 Indicative costs were updated after consultation and Treasury has not had an opportunity to validate the estimates. Treasury understands that the indicated costs are projected maximums and will work with the Department and Justice to ensure that implementation options are reassessed for consideration against other Immigration and wider sector pressures in Budget 2007.

HUMAN RIGHTS IMPLICATIONS

- 55 Justice has been intensively consulted on the proposals in the paper. A number of the proposals potentially raise issues of inconsistency with the New Zealand Bill of Rights Act 1990 (NZBORA). The proposals are broad and given the nature of immigration management provide for: entry and search regimes; monitoring and detention regimes; and decision-making where traditional notions of natural justice and fairness are curbed. Some of the proposals also draw distinctions on the basis of age which may be discriminatory. Justice is confident that by continuing to work closely with the Department on these issues to ensure a robust and carefully tailored Bill is developed, most of the prima facie inconsistencies with NZBORA will be justifiable in terms of section 5 of NZBORA.
- 56 The paper proposes that section 149D of the 1987 Act relating to the Human Rights Commission's role be carried over into the Bill. While the proposal limits the availability of the publicly funded discrimination complaints process under Part 1A of the Human Rights Act 1993, Justice considers the right to bring a discrimination claim under section 19(1) NZBORA is sufficient in the immigration context.

TREATY OF WAITANGI IMPLICATIONS

- 57 The Department has carefully considered the implications of the Treaty of Waitangi for this review. The 1987 Act regulates the administration of immigration-related decision-making and border control, but it leaves decisions on the actual content of immigration policy explicitly to the executive government. This review proposes to retain this fundamental structure.

Assuming that the Bill prescribes key powers, obligations and processes, and leaves policy content to the executive government, as proposed, there are no Treaty implications noted.

LEGISLATIVE IMPLICATIONS

- 58 Legislation is required to implement the proposals. The priority ranking for this Bill is Category 5 (instructions to the Parliamentary Counsel Office to be provided in the year), with a view to introducing legislation to the House in April 2007.
- 59 Should Cabinet agree to the proposals in this paper, the Department would issue drafting instructions to Parliamentary Counsel in accordance with Cabinet's decisions. I propose that decisions on technical issues that might arise in the course of drafting be delegated to me, as Minister. If issues of substance arise in the course of drafting, these will be referred back to the Cabinet Policy Committee, following consultation with other relevant Ministers.
- 60 The Bill should 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 AND BUSINESS COMPLIANCE COST STATEMENT

- 61 A Regulatory Impact Statement (RIS) and Business Compliance Cost Statement (BCCS) are attached that comply with the requirements for RISs and BCCSs as set out in Cabinet Office Circular CO (04) 4. This is an aggregate RIS/BCCS of the overall review of the 1987 Act. Individual RIS/BCCSs on each of the chapters have been prepared and are available on the Department's website (www.dol.govt.nz).
- 62 There may be compliance costs for some employers and for businesses required to provide address information or records related to their own and/or a non-citizen employee's compliance with immigration obligations or conditions of entry and stay in New Zealand. The Department will take steps to minimise the cost for employers and businesses as outlined in the individual BCCS.
- 63 Based on the information provided in the attached aggregate RIS/BCCS, the Regulatory Impact Analysis Unit (RIAU) considers that the disclosure of information in the aggregate RIS/BCCS is adequate. Further analyses of the proposals are contained in the individual RIS/BCCSs, which the RIAU have considered but not assessed for adequacy.

GENDER IMPLICATIONS AND DISABILITY PERSPECTIVE

- 64 There are no gender implications associated with this paper. People with disabilities may be among the skilled and talented people New Zealand wants and needs. It is therefore appropriate that the Bill does not contain entry criteria that would result in exclusion of people with disabilities per se.

PUBLICITY

- 65 There has been considerable public interest in this review. Should Cabinet agree to the recommendations in this paper, I propose to release a media statement. At the same time, this paper, the summary of public submissions and the RIS and BCCS will be released on the Department's website. Some

sections (such as Budget sensitive information) may be withheld under the Official Information Act 1982.

RECOMMENDATIONS

66 I recommend that the Committee:

- 1 **note** that in March 2005 Cabinet directed the Department of Labour to review the Immigration Act 1987 to ensure that New Zealand's interests are protected and advanced, to ensure compliance with international obligations, and to establish fair, firm and fast decision-making processes [CAB Min (05)10/4 refers];
- 2 **note** that the proposals are particularly focused on:
 - a. facilitating the entry and stay of people who meet New Zealand's needs, and
 - b. managing risks in a fair and balanced manner;
- 3 **agree** that the Bill be largely framework legislation, with prescription where safeguards relating to individual rights are necessary;

Core provisions (Appendix B: Chapter One)

- 4 **agree** that the Bill include a purpose statement;
- 5 **agree** that the purpose of the Bill is to:
 - a. allow for immigration to New Zealand that ensures that New Zealand has the skills and labour it needs
 - b. contribute to the security of New Zealand's border
 - c. uphold New Zealand immigration-related international obligations
 - d. facilitate the settlement of migrants and refugees, and
 - e. balance the rights of individuals with the obligation of the government to manage immigration in the national interest, as determined by the Crown;
- 6 **agree** that the Bill reaffirms the right of New Zealand citizens to be in New Zealand;
- 7 **agree** that:
 - a. all non-citizens in New Zealand are required to hold a valid visa and to comply with the conditions of that visa, and
 - b. non-citizens in New Zealand who do not hold a valid visa are prohibited from applying for a visa;
- 8 **agree** that the Bill includes exclusion criteria, based largely on the Immigration Act 1987, that exclude non-citizens who have convictions at a specified level of seriousness or pose a threat or risk to New Zealand;

Visas (Appendix B: Chapter Two)

- 9 **agree** that the single term "visa" be used to describe all authorities to travel to or stay in New Zealand and that:
 - a. all non-citizens must hold a valid visa to before travelling to New Zealand, unless the requirement is waived individually or by class

- b. non-citizens must abide by their visa conditions;
- 10 **note** that freedom of movement under the Trans Tasman Travel Arrangement is a very significant element of New Zealand’s relationship with Australia and that under present arrangements Australian citizens and permanent residents are not required to hold a visa to travel to New Zealand or a permit to stay;
- 11 **agree** that Australian citizens and residents not be exempted from the requirement that all non-citizens hold a valid visa to be in New Zealand lawfully;
- 12 **agree** that Australian citizens and residents be given a waiver under regulations from having to hold a visa to travel to New Zealand and, on arrival, be granted a resident visa with permission to stay conditions;
- 13 **note** that Australians would not be subject to any actual additional administrative requirements, and that this system would be similar to Australia’s use of the Special Category Visa granted on arrival to New Zealand citizens entering Australia;
- 14 **agree** that any changes in the treatment of Australian citizens and residents travelling to and staying in New Zealand be carefully communicated as early as possible to the Australian Government, at a suitable level, and ahead of any public announcement;
- 15 **agree** that the types of visa established under the Bill be:
- a. permanent resident visas, giving an indefinite stay and right of re-entry without other conditions
 - b. resident visas, allowing non-citizens to stay indefinitely but subject to conditions, and those who meet conditions could become permanent residents
 - c. temporary entrant visas of various types valid for travel and stay for specified periods, rather than indefinitely, to be established in Immigration Instructions, including current temporary permit types and current temporary exemptions
 - d. limited visitor visas, giving a stay for an express purpose only, with extensions available only for that purpose, and
 - e. transit passenger visas, which do not give a right to apply for entry permission but allow the intentions of transit passengers to be examined before they travel;

Decision-making (Appendix B: Chapter Three)

- 16 **agree** that the Bill allow the Minister to certify “Immigration Instructions”, incorporating “Residence Instructions” and “Temporary Entry Instructions”, that contain the fundamental rules relating to visa applicants and applications governing the travel to, entry and stay in New Zealand;
- 17 **agree** that the Bill include the powers of the Minister of Immigration to:
- a. certify Immigration Instructions
 - b. grant visas (including to non-citizens unlawfully in New Zealand)
 - c. make special directions

- d. cancel or suspend liability for deportation, and
 - e. delegate powers;
- 18 **agree** that the Bill require the chief executive of the Department to designate an officer or a class of officers to perform specified statutory functions subject to any limits or conditions;
- 19 **agree** that the Bill enable electronic decision-making, with appropriate safeguards such as the ability to reverse decisions made in administrative error and that the implementation of electronic decision-making would be subject to further Cabinet consideration;

Protection (Appendix B: Chapter Four)

- 20 **agree** that New Zealand's existing obligations to assess claims to protection under the Refugee Convention, article 3 of the Convention Against Torture (CAT), and articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) be set out in the Bill, in a single determination procedure;
- 21 **agree** that determination officers would have the additional function of assessing whether there are serious reasons for considering that a claimant has:
- a. committed a crime against peace, a war crime, or a crime against humanity
 - b. committed a serious non-political crime outside New Zealand prior to entry to New Zealand, or
 - c. been guilty of acts contrary to the purposes and principles of the United Nations;
- 22 **note** that the criteria in recommendation 21 have the effect of excluding a person from the Refugee Convention, but not from CAT or ICCPR
- 23 **agree** that the Minister would be responsible for determining what immigration status, if any, be given to persons protected under CAT or ICCPR but excluded from the Refugee Convention (prosecution in New Zealand or extradition to a safe third country may also be options);
- 24 **agree:**

EITHER, OPTION A

- a. that New Zealand should not become party to the 1954 Convention Relating to the Status of Stateless Persons at this time due to the need for more comparable international information to quantify the costs and risks to New Zealand, and because, if they get here, genuine stateless persons can be allowed to remain in New Zealand using other existing mechanisms;

OR, OPTION B

- b. to direct officials to report back on becoming party to the 1954 Convention Relating to the Status of Stateless Persons without incorporating it into the proposed single determination procedure in the Immigration Bill, in line with the practices of other countries;

OR, OPTION C

- c. to incorporate an assessment of the 1954 Convention Relating to the Status of Stateless Persons into the proposed single determination procedure in the Bill, to be assessed following assessments of the other obligations in all cases, in line with the recommendations of the UNHCR, and
- d. to accede to the 1954 Convention Relating to the Status of Stateless Persons following treaty examination and passing of the Bill and to table the Convention and a National Interest Analysis for becoming party to the Convention in Parliament;

Deportation (Appendix B: Chapter Five)

- 25 **agree** that non-citizens should be liable for deportation when they come within the list of deportation criteria specified in the Bill;
- 26 **agree** that the Minister have a delegable power to cancel deportation liability where it was not considered appropriate to put a non-citizen through the deportation process;
- 27 **agree** that there would be robust consideration of every individual case to assess whether deportation is appropriate, but that the Minister or delegated officer would not be compelled to consider or make a deportation cancellation;
- 28 **agree** that the criteria that would make a non-citizen liable for deportation are:
 - a. visas granted in error
 - b. unlawful presence in New Zealand
 - c. temporary stay in New Zealand revoked
 - d. threat or risk to national or international security
 - e. new information relating to character, applicable at the time residence was granted, that indicates that the non-citizen would not have been granted residence if that information been available at that time
 - f. conviction for offences specified in the Bill
 - g. resident visa or permanent resident visa obtained by fraud
 - h. resident breached visa conditions, and
 - i. where a person who lost New Zealand citizenship and reverted to resident status was liable for deportation as a resident;
- 29 **agree** that the deportation liability for resident or permanent resident offenders would be triggered by an actual sentence of 5 years imprisonment during the first 10 years of residence, a conviction punishable by 24 months or more imprisonment during the first 5 years of residence, and a conviction punishable by 3 months or more imprisonment during the first 2 years of residence and any period before that;
- 30 **agree** that a system of graduated bans preventing deportees be established, ranging from no ban where a visa was granted in error to a permanent ban

for those deported for fraud, using a false identity, for being a threat or risk to national or international security;

Review and appeal (Appendix B: Chapter Six)

- 31 **agree** that Bill establish a single independent Immigration and Protection Tribunal, that replaces the current Residence Review Board, Removal Review Authority, Refugee Status Appeals Authority, and Deportation Review Tribunal;
- 32 **agree** that the Immigration and Protection Tribunal initially be supported by:
EITHER
a. the Department of Labour
OR
b. the Ministry of Justice;
- 33 **agree** that a person may have a single right of appeal to the Immigration and Protection Tribunal only, and that where a person is eligible for more than one appeal, all grounds must be lodged together;
- 34 **agree** that the functions of the Immigration and Protection Tribunal are to determine appeals against:
a. declined residence applications
b. deportation liability (on the facts and humanitarian grounds where applicable)
c. declined protection claims, and
d. deportation liability relating to refugees and protected persons;
- 35 **agree** that judicial review may be sought for a decision made under the Act, except where that person has a *de novo* appeal right to the Immigration and Protection Tribunal;
- 36 **agree** that:
a. a person may seek leave of the High Court to appeal a decision of the Immigration and Protection Tribunal on a point of law, within 28 days of notification of the tribunal decision
b. judicial review proceedings must be lodged within 28 days of the decision to be reviewed
c. the High Court must endeavour to determine appeals on points of law and judicial review together where possible, and
d. as with the status quo, the Crown would have the same rights of appeal as the applicant themselves;
- 37 **agree** that:
a. no complaints may be made under the Human Rights Act 1993 that relate to the content or application of immigration legislation, regulations or instructions, and the Human Rights Commission may not bring proceedings in relation to these matters;

- b. subject to recommendation 37(a) the Human Rights Commission may undertake all of its other functions including, but not limited to:
 - i. inquiring generally into any matter, or any practice, or any procedure, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights
 - ii. making public statements in relation to any matter affecting human rights
 - iii. receiving and inviting representations from members of the public on any matter affecting human rights
 - iv. reporting to the Prime Minister on any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human rights, or on the implications of any proposed legislation (including subordinate legislation) or proposed policy of the Government that the Commission considers may affect human rights;

Using classified information (Appendix B: Chapter Seven)

38 **agree** that:

EITHER, OPTION A:

- a. classified information may be used in immigration and protection decision-making with safeguards including non-classified summaries of information, special advocates, and appeals determined by a panel of up to three Judges on the Immigration and Protection Tribunal, as set out in detail in the technical recommendations

OR, OPTION B:

- b. the status quo be retained, that is, the Department does not use non-disclosed classified information in standard immigration decision-making

OR, OPTION C:

- c. decisions on the use of classified information in decision-making be deferred to the review of Part 4A of the Immigration Act 1987;

39 **agree**, in addition to either Option A, B or C above, that:

EITHER

- a. officials report back on the review of Part 4A following the conclusion of Mr Zaoui's case,

OR

- b. officials report back on Part 4A prior to finalising the draft Bill for introduction to Parliament in April 2007;

Third parties (Appendix B: Chapter Eight)

40 **agree** to continue current employer obligations so an employer must not either knowingly or without reasonable excuse, employ (or maintain the employment of) a non-citizen who is not entitled to work and that holding an Inland Revenue Department tax code declaration IR330 form would no longer constitute a reasonable excuse;

- 41 **agree** that the Bill:
EITHER, Option A
- a. enable the Department to disclose that an identifiable, non-citizen prospective employee is entitled to work, and the duration of that entitlement with a potential employer (without explicit consent from the prospective employee)
- OR, Option B**
- b. retain the status quo, whereby the Department requires the explicit consent of a non-citizen to disclose if they are entitled to work, and the duration of that entitlement;
- 42 **agree** that that an education provider must not either knowingly or without reasonable excuse, enrol (or maintain the enrolment of) a non-citizen who is not entitled to study but that an education provider does not commit an offence for enrolling, or maintaining the enrolment of a non-citizen child in compulsory education;
- 43 **agree** that the offence of, without reasonable excuse, enrolling a non-citizen who is not entitled to study would result in a maximum fine of \$30,000 on conviction and that the offence of knowingly enrolling or continuing to enrol a non-citizen who is not entitled to study would result in a maximum fine of \$50,000 on conviction;
- 44 **agree** to introduce an instant fine system for strict liability offences where carriers fail to comply with obligations to check immigration documentation, comply with the Advance Passenger Processing system and provide Passenger Name Record data and that:
- a. that for failure to check prescribed immigration documentation where the security of the border is not compromised there is a fine of \$1,000 for a person in charge of a craft or for a carrier
 - b. that for failure to check prescribed immigration documentation where the security of the border is compromised there is a fine of \$2,500 for a person in charge of a craft, or \$5,000 for a carrier, and
 - c. for failure to comply with other APP system and PNR data related obligations there is a fine of \$2,500 for a person in charge of a craft or \$5,000 for a carrier;
- 45 **agree** that the Bill:
EITHER, Option A
- a. continue data-matching provisions with the agency responsible for the administration of the Social Security Act 1964 with amendments to enable the chief executive of the Department to supply:
 - i. information on the date of deportation, in relation to those non-citizens deported from New Zealand, and
 - ii. the outcome of a protection claim determination, and any determination of a protection appeal for protection claimants.
- OR, Option B**
- b. continue data-matching provisions with the agency responsible for the administration of the Social Security Act 1964 as per the status quo;

46 **agree** that the Bill include specific provisions to enable the Department to disclose immigration status information about an identifiable non-citizen to publicly funded service providers who require this information to determine eligibility (without explicit consent from the non-citizen);

Compliance and enforcement (Appendix B: Chapter Nine)

47 **agree** that the Bill enable designated officers or determination officers to require address information to locate people who are liable, or who may be liable, for deportation from New Zealand;

48 **agree** that powers of entry and search contained within the Immigration Act 1987 be carried over into the Bill as powers designated by the chief executive;

49 **agree** that this power be activated by Order in Council, made once the chief executive had satisfied the Minister of Immigration that all necessary training, systems and procedures were in place;

50 **agree** that the Bill establish the power for designated officers to enter and search buildings and premises to serve and/or execute a deportation notice or order;

51 **agree** that designated officers may enter and search buildings, premises and craft in border areas to locate people who may be committing an immigration offence, unlawfully present in New Zealand, refused entry to New Zealand, or to detect or prevent an immigration offence;

52 **agree** that powers of entry and inspection contained within the Immigration Act 1987 be carried over into the Bill as powers designated by the chief executive;

53 **agree** that powers of entry and inspection (where these are additional to those existing in the Immigration Act 1987) be activated by Order in Council made once the chief executive has satisfied the Minister of Immigration that all necessary training, systems and procedures were in place;

54 **agree** to introduce a power of entry for designated officers to Immigration Control Areas (discussed in *Chapter Two: Visas*), and craft within those areas, to undertake immigration duties and to search for travel and identity documentation;

55 **agree** that the Bill provide for the Department to require from airport management companies the provision of space for operational purposes;

56 **agree** that operational spaces used by the Department not be subject to charges;

Detention (Appendix B: Chapter Ten)

57 **agree** that the Bill enable the Department to decide an appropriate form of management for non-citizens who are liable for detention including:

- a. agreeing to reporting and residency requirements outside the warrant process, or
- b. requesting the courts to order a non-citizen's release on conditions, or authorise their detention under a warrant;

- 58 **agree** that the Bill enables a non-citizen to be detained for an initial period of up to 96 hours (four days), after which the system of warrants would continue to allow the courts to release a non-citizen on conditions, or to detain them considering the:
- a. individual circumstances of their case
 - b. level of risk the non-citizen represents, and
 - c. need to ensure a high level of compliance with immigration law;
- 59 **agree** that 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 six months, the courts may not issue any further warrants for secure immigration detention except where a direct or indirect reason for the non-citizen failing to depart is due to some action or inaction by the non-citizen themselves;
- 60 **agree** that the Bill allow non-citizens to be monitored or detained where they fail to comply with the requirements of the immigration system, and represent or are suspected of representing a risk to New Zealand, where:
- a. they are refused entry at the border
 - b. their identity is unknown
 - c. they are a risk or threat to national or international security
 - d. they are liable for deportation, or
 - e. they have been issued with a deportation order;
- 61 **agree** that the Bill incorporate a statutory power, that will be activated by Order in Council subject to further Cabinet agreement, for designated officers to detain non-citizens for immigration purposes:
- a. for up to four hours, OR
 - b. until police officers give effect to the detention, OR
 - c. until the non-citizen is detained in a place of detention, whichever occurs first;
- 62 **agree** that the provisions in the Immigration Act 1987, which enable the Department to manage open detention at Mangere, be incorporated in the Bill without limiting them to refused entry non-citizens, allowing their application to all non-citizens liable for detention;
- 63 **direct** the Department to develop terms of reference to undertake a whole of government scoping exercise that considers options for undertaking secure immigration detention, supported by appropriate resources;

Biometric information (Appendix B: Chapter Eleven)

- 64 **agree** that the Bill enable the following biometric information to be required from non-citizens for immediate use and for storage for future use:
- a. photographs,
 - b. fingerprints, and
 - c. iris scans;
- 65 **agree** that the Bill enable photographic biometric information to be required from people arriving as New Zealand citizens for immediate use;

Detailed and technical recommendations

66 **agree** to the detailed and technical recommendations in Appendix A;

Financial implications

67 **note** that the implementation of the Bill will incur the costs for the Department of Labour and, depending on decisions, the Ministry of Justice;

68 **note** that agreement to policy recommendations is being sought in advance of agreement to funding in order to allow the Bill to be drafted;

69 **note** that some of these costs can be met from immigration fees, however additional Crown funding and capital funding will be required;

70 **note**, in respect of the administration of the Immigration and Protection Tribunal,

EITHER

a. the following projected maximum costs for the Ministry of Justice and the Department of Labour if the Ministry of Justice administers the Immigration and Protection Tribunal

	\$m - increase/(decrease)							
	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
Net operating impact		0.105	0.894	0.525	0.527	0.527	0.527	3.105
Net Capital impact		1.200	0.800	0	0	0	0	2.000
Vote Justice								
Net operating impact		2.074	1.968	2.716	1.872	0.786	0.786	10.202
Net Capital impact		0.486	2.279					2.765
TOTAL OPERATING		2.179	2.862	3.241	2.399	1.313	1.313	13.307
TOTAL CAPITAL		1.686	3.079	0	0	0	0	4.765

OR

b. the following projected maximum costs for the Department of Labour for the administration of the Immigration and Protection Tribunal;

	\$m - increase/(decrease)							
	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
Net operating impact	0	2.175	2.587	2.895	1.768	0.840	0.431	10.696
Net Capital impact	0	2.753	0	0	0	0	0	2.753
TOTAL OPERATING	0	2.175	2.587	2.895	1.768	0.840	0.431	10.696
TOTAL CAPITAL	0	2.753	0	0	0	0	0	2.753

71 **note** the following projected maximum costs for the Department of Labour, which exclude the costs relating to the administration of the Immigration and Protection Tribunal:

	\$m - increase/(decrease)							
	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
Net operating impact	0	0.460	1.070	1.085	0.967	0.375	0.375	4.332
Net Capital impact	0	0	0	0	0	0	0	0
TOTAL OPERATING	0	0.460	1.070	1.085	0.967	0.375	0.375	4.332
TOTAL CAPITAL	0	0	0	0	0	0	0	0

- 72 **invite** the Minister of Immigration to submit a bid to Budget 2007 to be considered alongside all other priorities, with drawdown of any agreed implementation funding to be subject to a further report back to Cabinet with a detailed business case by the end of 2007;
- 73 **agree** that all of the decisions in this paper are subject to additional funding being agreed through Budget 2007;
- 74 **note** that implementation costs of \$0.189 million (GST exclusive) will be incurred by the Department of Labour in 2006/07, of which \$0.142 million cannot be met from within existing baselines, however these costs can appropriately be funded from immigration fees;
- 75 **approve** the following change to appropriations to fund implementation costs to be incurred in 2006/07 by the Department of Labour, with no impact on the operating balance:

Vote Immigration Minister of Immigration	\$m – increase/(decrease)				
	2006/07	2007/08	2008/09	2009/10	2010/11& Outyears
Departmental Output Expense: Services to Increase the Capacity of New Zealand Through Immigration (funded by revenue Other)	0.142	-	-	-	-
Total Operating	0.142	-	-	-	-

- 76 **agree** that \$0.142 million will be charged against the Immigration Memorandum Account;
- 77 **agree** that the changes in appropriations for 2006/07 above be included in the 2006/07 Supplementary Estimates and that, in the interim, these expenses be met from Imprest Supply;

Next steps and legislation

- 78 **note** that the priority ranking for this Bill is Category 5 (instructions to the Parliamentary Counsel Office to be provided in the year), with a view to introducing legislation to the House in April 2007, following Cabinet agreement to the 2007 Budget package;
- 79 **agree** that the Bill be binding on the Crown;
- 80 **invite** the Department to issue drafting instructions to Parliamentary Counsel in accordance with decisions made after consideration of this paper;
- 81 **agree** that decisions on technical issues that might arise in the course of drafting be delegated to the Minister of Immigration;
- 82 **note** that if issues of substance arise in the course of drafting, these will be referred back to the Cabinet Policy Committee by the Minister of Immigration, following consultation with other relevant Ministers;

Publicity

- 83 **agree** that, should Cabinet agree to the recommendations in this paper, the Minister of Immigration will release a media statement, this paper, the

summary of public submissions, and the Regulatory Impact Statement and Business Compliance Cost Statement.

Hon David Cunliffe
Minister of Immigration

REGULATORY IMPACT STATEMENT – IMMIGRATION ACT REVIEW

BACKGROUND

In March 2005, Cabinet directed the Department of Labour (the Department) to begin a fundamental review of the Immigration Act 1987 (the 1987 Act). In April 2006, Cabinet agreed to release a discussion paper, *Immigration Act Review: Discussion paper*, on the review for public consultation.

The Immigration Act review is part of the broader Immigration Change Programme which aims to improve the immigration system to ensure that New Zealand has the skills, talent and labour it needs, now and in the future, New Zealanders are confident of the security of our border, and that migrants and refugees settle well and integrate into communities.

This is an aggregate Regulatory Impact Statement (RIS) and Business Compliance Cost Statement (BCCS) of the overall review of the Immigration Act 1987. Individual RIS/BCCSs on each of the chapters have been prepared and are available on the Department's website at www.dol.govt.nz.

STATEMENT OF THE NATURE AND MAGNITUDE OF THE PROBLEM AND THE NEED FOR GOVERNMENT ACTION

Significant global changes have taken place since the 1987 Act was enacted. There are greater flows of people around the world resulting in greater competition for skills, talent, and labour, and heightened risks and pressures on the border. The 1987 Act is inflexible in places, lacks transparency and simplicity and creates complex and inefficient processes, for example, limiting the use of automated decision-making for low risk, high value decisions such as student permit renewals. This limits the ability of the government to attract the temporary and permanent migrants that New Zealand wants and needs. In places the 1987 Act creates insufficient powers for compliance enforcement, or obligations on third parties, limiting the ability of the government to maintain the integrity of the immigration system and appropriately manage its risks.

STATEMENT OF THE PUBLIC POLICY OBJECTIVE

The policy objectives of the Immigration Act review are to ensure that New Zealand's interests are protected and advanced, ensure compliance with international obligations, establish fair, firm and fast decision-making processes, and modernise and simplify the legislation. The proposals aim to create a system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

STATEMENT OF FEASIBLE OPTIONS (REGULATORY AND/OR NON-REGULATORY) THAT MAY CONSTITUTE MEANS FOR ACHIEVING THE DESIRED OBJECTIVES

STATUS QUO

The 1987 Act provides a framework for the immigration system. It requires non-citizens to have authorisation to be in New Zealand through a system of visas for travel to New Zealand, permits for stay, and exemptions. It includes a role for the Minister in decision-making. There is no ability to use classified information in decision-making, with the exception of Part 4A of the 1987 Act which is outside the scope of this review.

The 1987 Act provides for permit revocation, removal and deportation and for an independent appeals system with four different independent appeals bodies relating to different appeal rights. There are a number of core obligations on third parties in the 1987 Act, such as those for employers and education providers to only employ or enrol

persons who are entitled to work to study. The existing powers for compliance, enforcement and detention broadly work well but are limited in places.

PREFERRED OPTIONS

Like the 1987 Act, it is proposed that the Bill be largely framework legislation, with detail generally contained in regulations or Immigration Instructions certified by the Minister. In some instances, particularly where there are potential impacts on an individual's rights, prescription in the legislation is necessary. Proposals for change include:

Chapter 1: A purpose statement, and broadening the criteria that may exclude a person from New Zealand.

Chapter 2: A simplified visa system that combines the current visa, permit and exemption system, and allows interim visas to be granted where a temporary entrant is applying for a further visa.

Chapter 3: Greater delegation of the Minister's decision-making powers, providing a legislative foundation for temporary and residence sponsorship and allowing organisations to be sponsors, allowing the use of *Expressions of Interest* (EOI) and *Invitations to Apply* (ITA) to be applied to all applications, and automated, electronic decision-making.

Chapter 4: A single protection determination procedure that incorporates New Zealand's core immigration-related international obligations.

Chapter 5: A streamlined deportation process that clearly establishes liability for deportation, standardising the different definitions and broadening some criteria, and enabling suspension or cancellation of that liability.

Chapter 6: A single appeals tribunal that hears residence, protection and deportation appeals, with only one appeal allowed (within timeframes that largely mirror the status quo). Deportation appeals will have hearings unless the person is a temporary entrant where hearings will be at the discretion of the tribunal. Judicial review will continue, but appeals on points of law will only be heard by the High Court with leave.

Chapter 7: Classified information may be used in decision-making without disclosure to the applicant, balanced by a set of safeguards including a non-classified summary of the information, appeals to be heard by up to three judges on the tribunal, and the non-citizen having access to a special advocate.

Chapter 8: Employers and education providers will be required to take 'reasonable steps', as stated in the Business Compliance Cost Statement, to confirm a non-citizen's entitlement to work or study. Increased penalties provided for education providers and an instant fines system for carriers who fail to meet obligations. Work entitlement information may be shared with employers, and immigration status information may be shared with publicly funded service providers.

Chapter 9: Powers to require address information of a person possibly liable for deportation from companies within broad industry groups, powers to immigration officials of entry and search without the presence of Police, airports providing space free of charge to the Department to undertake immigration functions, the ability of the Department to certify, rather than prove, some evidence from third parties, particularly overseas parties.

Chapter 10: Liability for deportation could result in liability for detention and immigration detainees would be able to access legal aid in some circumstances. Monitoring

agreements could be established outside the detention regime. When detained, initial detention without a warrant of commitment (warrant) could occur for four days and the Courts could issue a warrant for up to 28 days for up to six months only unless the detainee hindered their departure. A limited power of detention for designated officers would be created along with greater provision to detain immigrants outside of Police and Corrections facilities.

Chapter 11: The ability to collect, store, and use biometric information for identity verification purposes that includes photographs/facial recognition, fingerprints, and iris scans for non-citizens, and photographs/facial recognition for citizens.

STATEMENT OF THE NET BENEFIT OF THE PROPOSAL, INCLUDING THE TOTAL REGULATORY COSTS (ADMINISTRATION, COMPLIANCE AND ECONOMIC COSTS) AND BENEFITS (INCLUDING NON-QUANTIFIABLE BENEFITS) OF THE PROPOSAL AND OTHER FEASIBLE OPTIONS

GOVERNMENT

All of the proposals, particularly the visa, decision-making, deportation, protection and appeals proposals, will benefit government by creating a system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness. They will help the government achieve the goal of a fair, fast and firm immigration system. The proposals relating to deportation, classified information, third parties, compliance and enforcement, detention, and biometric information will help government to better manage risk, balancing the rights of those engaged in the immigration system and those of the government.

The classified information proposals would strengthen government’s ability to choose who may enter and stay in New Zealand and help prevent undesirable non-citizens from gaining residence or protection status in New Zealand. There is a risk that the government will face criticism for the classified information proposals, which may be mitigated by the broad range of safeguards proposed.

The greatest cost to the government of the review will be establishing the single appeals tribunal, either supported by the Ministry of Justice or the Department of Labour.

Net cost comparison of Justice or Labour supporting tribunal (\$m)

	Justice (\$m)	Labour (\$m)
Maximum capital over first five years (net)	\$4.765	\$2.753
Maximum operating over first five years (net)	\$13.307	\$10.696
Cost in outyears per annum (net)	\$1.313	\$0.431

All other funding required (additional to fees and current baselines) to implement this review related to implementation, protection proposals and compliance proposals and are summarised below:

Department of Labour costs for all other proposals

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	Total
Vote Immigration								
TOTAL OPERATING	0.047	0.413	1.070	1.085	0.967	0.375	0.375	4.332
TOTAL CAPITAL	0	0	0	0	0	0	0	0

All information technology (IT) changes that are required to support the new Act (such as changes resulting from the new visa system) have been integrated into the new business model IT change programme. Additional funding for the Act review would be required if the new business model proposals are not agreed.

NON-CITIZENS

The proposed exclusion criteria are broadened and may result in a small additional number of persons who present a clear risk being excluded from New Zealand.

The new visa system will be simpler and more easy to use for both temporary and permanent migrants and there should be no costs to them resulting from this proposal. Increased delegation of immigration decision-making along with automated, electronic decision-making would increase the timeliness of decisions for some applicants. Risks of incorrect or inconsistent decision-making will be managed through the systems that are put in place to administer these provisions.

The new provisions may allow for more effective use of sponsors and bonds to allow an application to be approved where it may otherwise be declined, depending on the development of Immigration Instructions certified by the Minister. Where Cabinet agrees to the use of EOIs and ITAs, applicants will benefit from the staggering of the application process. For example, an applicant could wait until they received an ITA before committing to the expense of a health exam that was required with their application.

The protection proposals will benefit persons in need of international protection by providing a system that is more transparent and easier to use. Where protection is granted, the claimant will benefit through gaining protection in New Zealand.

The deportation proposals will create a system that is more transparent and easier to understand for non-citizens, and that will be more efficient as unnecessary decision-making steps will be removed. Non-citizens may be able to remain lawfully in the country during any appeals. The system will benefit appellants by ensuring that all appeals are heard earlier, because all grounds for appeal would be heard at once, rather than separately. This would require appellants to put forward all grounds for appeal at one time, as they often do in each individual hearing. A small number of residents liable for deportation on the grounds of fraud will have to meet a higher threshold humanitarian test than currently. Some non-citizens may be restricted from appealing on points of law if the High Court does not give leave. The classified information proposals may make it more difficult for a small number of persons to appeal against an adverse immigration or protection decision.

There is a risk that removing the IR 330 form as a reasonable excuse for employers could increase discrimination against persons who employers think may be non-citizens.

Enabling immigration status information to be shared with some publicly funded services providers may create a concern that access to these services will result in a negative immigration outcome, especially for those unlawfully in New Zealand. Information on non-citizens will not be captured for immigration purposes as a safeguard against these concerns. There may be privacy concerns for non-citizens who think entitlement information is personal and should not be shared.

Enabling a greater range of evidence to be certified for particular matters that will be presumed to be evidence before a court or tribunal should not have a significant impact on non-citizens who retain the right to contest all evidence brought before a court or tribunal as is currently the case.

The detention proposals do not limit a non-citizen's access to the courts and access to legal aid will ensure they have robust representation. Non-citizens may be detained for longer periods without a warrant review unless they present new circumstances to the courts but there will be a maximum limit on detention in most cases. Less frequent reviews will enable the courts to more robustly consider each case, and reduce the stress

and physical impact of attending a warrant hearing. Proposals requiring carriers to remove non-citizens will result in decreased overall detention time. There may be benefits to non-citizens from enabling the government to explore alternatives to using Police or Corrections facilities for immigration detention.

The biometrics proposals will help facilitate immigration processing for the vast majority of travellers. Privacy and/or cultural considerations would be taken into account in implementing this proposal.

SOCIETY

All the benefits to government outlined above (particularly of the deportation, protection and appeals proposals) will also benefit New Zealand society. The proposals will benefit society by creating more flexible and responsive systems (such as the new visa system) that will encourage temporary and permanent migrants to come to New Zealand.

The third party proposals will benefit New Zealanders by minimising the problems caused by unlawful work (such as driving down wages and working conditions).

INDUSTRY

There will be compliance costs for businesses detailed in the business compliance cost statement. The proposal to allow organisations to sponsor may assist employers in filling vacancies, if they choose to take on the responsibility and potential cost of sponsoring. There may be a loss of revenue for some airports resulting from the proposals to require airports to provide space free of charge. [Information withheld under sections 9(2)(i) and 9(2)(j) of the Official Information Act 1982],

IMMIGRATION LAWYERS AND ADVISERS

There will be compliance costs for immigration lawyers and advisers relating to the time and resources taken to understand the new Immigration Act, particularly the new appeals system.

To mitigate the costs associated with the new Act, the Department will prepare written explanatory materials and will conduct a nationwide roadshow with 20 meetings.

STATEMENT OF CONSULTATION UNDERTAKEN

Stakeholder Consultation: A public discussion paper was released in April 2006. Officials held public meetings in May and June 2006 to outline the proposals, which were attended by more than 650 people. The Department received 3,985 written submissions in response to this 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.

All submissions received through the public process have been considered in preparing the proposals for change and a detailed summary of submissions has been publicly released. Concerns relating to specific proposals are set out in the detailed RIS available on the internet.

Concern was expressed over the proposal to withhold potential prejudicial information (PPI) and reasons from decision from offshore applicants due to reasons of administrative and natural justice. This concern has been addressed in the proposal to retain the status quo and provide PPI and reasons to all applicants. Similar concerns were raised by some submitters in relation to the use of classified information in decision-making, which have

been addressed by increasing the safeguards being proposed to ensure that rights are not diminished.

Reservations about the proposals for deportation were mostly on the basis that different terms currently used (removal and deportation) reflected the differing reasons for expulsion and the varying seriousness of types of case. The proposed term "expulsion" was not favoured and "deportation" generally received support on the basis that it was more transparent and understandable.

Some concern was expressed about the compliance cost for employers and carriers if changes were made to their obligations. Specific proposals have been developed to reduce the cost on employers. There will be no impact on carriers who continue to meet their obligations (which remain unchanged).

Submitters considered that immigration officers should continue to work with the Police and Customs in undertaking entry and search functions. There appeared to be some misunderstanding about the difference in roles of compliance officers compared with visa and permit officers, resulting in a concern that all immigration officers would exercise these powers. This concern was also evident in submissions on the proposed limited power of detention and has been addressed by creating provisions to limit the use of the powers to trained and experienced officers with special designation.

Government Departments/Agencies Consultation: The following agencies were consulted paper: the Departments of Prime Minister and Cabinet and Internal Affairs, the Ministries of Foreign Affairs and Trade (MFAT), Health, Education, Economic Development, Transport, Justice (MoJ), and Pacific Island Affairs, the New Zealand Qualifications Authority, the Tertiary Education Commission, the New Zealand Defence Force, Police, Customs Service, and Security Intelligence Service, the Inland Revenue Department, the Office for Disability Issues, Crown Law, the Legal Services Agency and the Treasury. Te Puni Kōkiri was also informed of the proposals. The chairs of the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board, the Deportation Review Tribunal, the Privacy Commissioner, the Office of the Ombudsmen and the Human Rights Commission were also consulted.

Concerns relating to specific proposals are set out in the detailed Regulatory Impact Statements available on the internet.

MFAT were concerned about the impact of the universal visa system on the entry and stay of Australia citizens. These concerns have been addressed through provisions that enable visa-free travel, and applications for visas to be deemed to have been made.

MFAT and MoJ were concerned that New Zealand should not breach its international obligations by excluding any persons from protection who are protected under the Convention Against Torture or the International Covenant on Civil and Political Rights. This concern has been addressed in the streamlined protection system being proposed.

Concern was expressed by a range of stakeholders about the proposal to use classified information. Many commented that robust safeguards were required and these have been built into the proposal.

MoJ was not supportive of unlimited immigration detention provided for under the 1987 Act. The proposal is now to limit immigration detention to six months unless the detainee obstructs the removal process.

BUSINESS COMPLIANCE COST STATEMENT

EMPLOYERS

There may be compliance costs for some employers relating to the new requirements to take reasonable steps to check a person's entitlement to work. Guidance on what constitutes reasonable steps will be developed by the Department in consultation with business and employer stakeholders. This approach will be responsive to a range of different employment scenarios so employers will be able to use a variety of mechanisms to determine a person's entitlement, including those which they already do. For example:

- In the fruit picking industry, a recruitment or contracting agency could include a check box about entitlement to work on registration forms and request proof of that status from a prospective employee. They could hold that proof on file.
- Where an employee presented a resume with details of continuous educational qualifications and previous employment in New Zealand, an employer could check qualifications and references, and keep a record of this on file.
- Retaining a copy of a New Zealand birth certificate, passport or citizenship paper would generally be evidence of reasonable steps to establish a person was a citizen.

To further minimise compliance costs for business, a facilitative system to enable access to work entitlement information will be developed.

To mitigate the costs associated with the new Act, the Department will prepare written explanatory materials and will conduct a nationwide roadshow with 20 meetings.

BUSINESSES PROVIDING INFORMATION FOR IMMIGRATION COMPLIANCE PURPOSES

There may be minor compliance costs for businesses required to provide address information for immigration compliance purposes. It is estimated that the time to look up a customer record on an electronic customer database and confirm identity would be less than five minutes per person. The Department currently locates approximately 2,500 people per annum but the number of queries per annum that this number is derived from is not known. It is expected that the number of queries will not rise significantly, as the Department has limited funding to undertake compliance operations, but given the greater ability to access information, the number of successful results would rise.

Businesses will be required to provide records related to their own and/or an employee's compliance with immigration obligations or conditions of entry and stay in New Zealand. The cost of providing this information will vary considerably depending on the ability to access and the method of storage of records. As with the other proposals to expand access to information for immigration investigations, it is not expected that the number of queries or requests will significantly rise, but the success of immigration investigations may increase.