

Immigration (Mass Arrivals) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Immigration Act 2009 (the **principal Act**) to enable New Zealand to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and to ensure that in doing so the rights of all involved are protected.

This Bill makes changes to the immigration regime to enable the management of irregular migrants, by—

- providing more time for the District Court to consider an application for a mass arrival warrant of commitment and allowing migrants to be detained until an application is determined. An application will have to be made within 96 hours of initial arrest and detention, and the court must determine the application as soon as is reasonably practicable and within 7 days. If the court considers that it is not reasonably practicable to determine the application within 7 days, the application can be adjourned and must be determined within 28 days of the application; and
- clarifying the responsibilities of members of a mass arrival group to apply for entry permission and a visa.

Extending the time for the District Court to consider an application for a mass arrival warrant of commitment allows more time for members of a mass arrival group to be afforded their rights to natural justice, including obtaining legal representation. It would not be possible for this to happen under the current 96-hour deadline for the court to determine a mass arrival warrant application.

Clarifying the entry requirements for members of a mass arrival group enables immigration officers to process them effectively and provides a decision-making process most consistent with refugee rights. Detention would be minimised for each individual. Any detention must be for the least possible time and in the least restrictive facility that is commensurate with achieving the lawful purposes for which people are

detained. Choices available to immigration officers will include granting entry permission and a visa, offering accommodation in a low or no security facility, or releasing into the community on conditions (such as reporting conditions) or without conditions. Clarifying the entry requirements also enables an immigration officer to require a person to undertake an interview, provide further information, and undergo a medical examination. The medical examination will mean the migrants can be provided with the medical treatment they may require and any public health risks can be managed.

Finally, an amendment to the definition of passenger will make clear that this excludes any member of a mass arrival group. This will carve out members of a mass arrival group from any provisions in the principal Act or regulations that deem certain passengers to hold entry permission or a visa on arrival in New Zealand.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2023&no=214>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 3 June 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/dmsdocument/25818-regulatory-impact-statement-warrant-of-commitment-proactiverelase-pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that this Bill will commence on the day after it is given Royal assent.

Clause 3 provides that the Bill amends the Immigration Act 2009.

Part 1

Applications for visas and entry permission

Clause 4 amends the definition of passenger in section 4 to exclude a person who is a member of a mass arrival group for the purposes of any provision that deems a person to hold a visa and to have been granted entry permission.

Clause 5 amends section 79 to provide that the people who may apply for a temporary visa include members of a mass arrival group with the responsibility of applying for a visa under *new section 103(1)(daa)*.

Clause 6(1) inserts *new section 103(1)(daa)*, which obliges a member of a mass arrival group who is not the holder of a visa to apply for a visa and entry permission on the person's first presentation to an immigration officer.

Clause 6(2) inserts *new section 103(2A)*, which requires a person who does not comply with *new section 103(1)(daa)* to be treated as if they have complied.

Part 2

Mass arrival warrants of commitment

Clause 7 amends section 311 to consequentially reflect the amendments to section 313 made by *clause 8*.

Clause 8 amends section 313 to change the period for which a constable may detain members of a mass arrival group without a warrant. The current period of detention is no longer than 96 hours. The power of detention may be exercised only for a purpose set out in section 310. Those purposes relate to a person who—

- is liable for turnaround or deportation:
- may be a threat or risk to security:
- has breached certain residence and reporting requirements or conditions of release.

The amendment made by *clause 9* enables a member of a mass arrival group to be detained for a purpose in section 310 until an application for a mass arrival warrant has been determined. The application must have been made within 96 hours of the member's arrest and detention. The amendments in *clause 8* therefore have the effect of enabling detention for up to 7 days, or potentially 28 days, because of the amendment made by *clause 9*.

Clause 9 inserts *new section 317AB*, which requires an application for a mass arrival warrant to be determined as soon as is reasonably practicable and within 7 days. However, the Judge can adjourn the proceeding if satisfied that it is not reasonably practicable to determine the application within 7 days, as long as the determination is made within 28 days.

Hon Michael Wood

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Immigration (Mass Arrivals) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Immigration Act 2009.

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Part 1**Applications for visas and entry permission****4 Section 4 amended (Interpretation)**

In section 4, replace the definition of **passenger** with:

passenger, in relation to a craft,—

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(a) means a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier, or the person in charge, of the craft; but

(b) for the purpose of any provision in this Act or secondary legislation made under this Act that deems certain passengers to hold a visa and to have been granted entry permission, does not include a person who is a member of a mass arrival group

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5 Section 79 amended (Who may apply for temporary visa)

After section 79(1)(c), insert:

(d) a person who is a member of a mass arrival group and has the responsibility of applying for a visa under **section 103(1)(daa)**.

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6 Section 103 amended (Obligations on persons arriving in New Zealand)

(1) After section 103(1)(d), insert:

(daa) if the person is a member of a mass arrival group and is not the holder of a visa (whether or not the person also has the responsibility in paragraph (c)), to apply in any prescribed manner for a visa and entry permission on the person's first presentation to an immigration officer:

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(2) After section 103(2), insert:

(2A) If a member of a mass arrival group does not comply with **subsection (1)(daa)**, the person must be treated as if they have applied for a visa and entry permission on the person's first presentation to an immigration officer.

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Part 2

Mass arrival warrants of commitment

- 7 Section 311 amended (Implications of liability to arrest and detention)**
- In section 311(b), replace “for a period not exceeding 96 hours by a constable in accordance with section 313” with “by a constable in accordance with section 313 for no longer than 96 hours (or, for a member of a mass arrival group, no longer than allowed by **section 313(2)(b)(ii)**)”.
- 8 Section 313 amended (Initial period of detention for up to 96 hours without warrant)**
- (1) In the heading to section 313, delete “**for up to 96 hours**”.
- (2) Replace section 313(2) with:
- (2) A person arrested and detained under this section may be detained—
- (a) only as long as necessary to achieve the purpose of the arrest and detention without further authority than this section; and
- (b) no longer than—
- (i) 96 hours; or
- (ii) for a member of a mass arrival group in relation to whom an application for a mass arrival warrant has been made within 96 hours of the member’s arrest and detention, the time it takes for that application to be determined. (*See also section 317AB, which limits the time for an application to be determined.*)
- 9 New section 317AB inserted (Limited period for decision on mass arrival warrant)**
- After section 317A, insert:
- 317AB Limited period for decision on mass arrival warrant**
- (1) An application for a mass arrival warrant must be heard by a District Court Judge—
- (a) as soon as is reasonably practicable; and
- (b) within 7 days after the application was made.
- (2) However,—
- (a) the Judge may, within 7 days after the application was made, adjourn the proceeding if satisfied that it is not reasonably practicable to determine the application within 7 days; and
- (b) if the Judge adjourns the proceeding, the Judge must determine the application within 28 days after the application was made.

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