

Immigration Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

The Immigration Act 2009 (the **principal Act**) was passed in order to establish a stronger, more flexible, and enduring legislative foundation for New Zealand's immigration system. The principal Act modernised and simplified the immigration system, ensured New Zealand's interests were better protected and advanced, ensured compliance with New Zealand's international obligations in a more transparent way, and established fair, firm, and fast decision-making processes.

Purpose of the Bill

The amendments in this Bill will further ensure that New Zealand's immigration system is robust, support the security of our borders, and ensure the integrity of the immigration system. The Bill will ensure the immigration system operates more effectively by—

- addressing gaps identified in the compliance regime:
- responding to opportunities provided by new technology:
- introducing measures to address the exploitation of migrant workers:
- clarifying provisions in the principal Act:

- addressing minor drafting issues.

Summary of substantive provisions

Enhanced search powers for immigration officers

The Bill extends the powers of immigration officers so they have the powers they need to effectively enforce the principal Act. The Bill will enable immigration officers to—

- undertake a personal search at the border:
- search a property or place for identity documents in order to facilitate a deportation or turnaround:
- enter and search an employer’s premises in order to search for unlawful workers, check documents and interview employees to ascertain whether the employees and employer are complying with the principal Act:
- apply for and execute a search warrant.

Biometric information

The Bill makes changes to the way biometric information is collected to address gaps in identity management capability, enable faster identification of individuals, and improve the Government’s ability to manage risk. The amendments will—

- enable biometric information to be collected from persons already known to be liable for deportation or turnaround:
- where a person is liable for deportation, enable a compulsion order to be sought to require that person to allow their biometric information to be taken:
- where a compulsion order is made, enable Police to use reasonable force to take the biometric information:
- enable biometric information to be collected from non-citizens arriving in New Zealand, either before or after they have been granted entry permission, while they are still within an Immigration Control Area.

Further measures to address the exploitation of migrant workers

The Bill makes the exploitation of migrants on temporary entry class visas with work conditions an offence, and makes employers who

hold residence class visas liable for deportation if they exploit migrant workers or knowingly employ migrant workers without work rights. These amendments will provide greater protection for migrant workers.

Electronic notifications

The Bill will help ensure the principal Act can support the increased use of technology when the new immigration service delivery model is in place. Amendments will expressly allow the Ministry to send notices electronically and allow the use of electronic communications in Immigration and Protection Tribunal proceedings.

Border security

The Bill makes changes to the way information on passenger name records is provided, in order to improve the identification of travellers who may pose a risk or require further intervention, and to improve airline compliance.

Immigration system funding

The Bill changes the way in which the immigration system is funded so that the funding is sustainable into the future. It will broaden the scope and funding base of the migrant levy (renamed the immigration levy).

Decisions made using absolute discretion

The Bill clarifies that the ability to request personal information under the Privacy Act 1993 does not apply to reasons for decisions made using absolute discretion (as defined in section 11 of the principal Act).

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. It provides access to information about the policy development of the Bill and identifies 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=2013&no=156&>.

Regulatory impact statement

The Ministry of Business, Innovation and Employment produced the following regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill:

- Protecting Migrant Workers from Exploitation, Ministry of Business, Innovation and Employment, 27 May 2013, available at <http://www.mbie.govt.nz/about-us/publications/ris/protecting-migrant-workers-from-exploitation.pdf>
- Immigration Funding Review, Ministry of Business, Innovation and Employment, 2 July 2013, available at <http://www.mbie.govt.nz/about-us/publications/ris/immigration-funding-review.pdf>

The regulatory impact statements can also be found at <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. Most sections of the Act come into force the day after the date of Royal assent. However,—

- *clause 69*, which replaces the existing provision providing for warrants to enter and search, comes into force on **1 July 2014**:
- *clauses 4(3) and (4), 21 to 24, 29(1), 35, and 96*, which are about transit passengers, come into force 6 months after the date of Royal assent:
- *clause 94*, which is about the migrant levy, comes into force 1 year after the date of Royal assent:
- *clause 61* (providing a new power of entry and search) and *clause 65* (providing a new power to search persons coming into New Zealand) come into force by Order in Council, or 2 years after the date of Royal assent at the latest. Entry into force by Order in Council is necessary to allow operational policies to be developed and for immigration officers to be

trained in the use of the new powers, and the time required for this cannot be accurately predicted.

Clause 3 provides that the principal Act amended by this Bill is the Immigration Act 2009.

Part 1

Amendments to Parts 1 to 7

Subpart 1—Amendments to Part 1 (Preliminary provisions)

Clause 4 amends the definitions of chief executive, New Zealand, and transit period in section 4 of the principal Act. It repeals the definition of New Zealand address and inserts definitions of address for service and contact address. It also inserts a new definition of transit passenger, which is currently in section 86 of the principal Act.

Clause 5 makes consequential amendments to section 5 of the principal Act, which describes how notifications must be made, to reflect *new sections 386A to 387A*.

Clause 6 amends section 8 of the principal Act to provide that a visa is granted as a result of an administrative error if it is granted for a period that exceeds the maximum period specified in regulations for visas of that type.

Clause 7 amends section 9 of the principal Act to clarify that the calculation of when a person starts to be unlawfully in New Zealand can commence on the expiry or revocation of a permit granted under the former Act.

Clause 8 amends section 11 of the principal Act to provide that, where a person purports to apply for a matter or decision that is in the absolute discretion of the decision maker, the reasons for any decision made in relation to the purported application may not be accessed via privacy principle 6 of the Privacy Act (which provides for access to personal information held by agencies).

Subpart 2—Amendments to Part 2 (Core provisions and matters in relation to decision making)

Clause 9 amends section 15 of the principal Act, which provides that certain convicted or deported persons are not eligible to re-enter New Zealand. The amendment clarifies that a person is not necessarily prohibited from re-entering if, despite previously being deported, that person is not, or is no longer, subject to a period of prohibition on entry.

Clause 10 amends section 19 of the principal Act to clarify that notices communicating the obligation of persons unlawfully in New Zealand to leave New Zealand only need to be in places where they can be seen by arriving temporary entrants (rather than by all arriving entrants, some of whom cannot be unlawfully in New Zealand because they are New Zealand citizens).

Clause 11 amends section 22 of the principal Act, which describes the matters that can be dealt with by immigration instructions. The clause adds words to section 22(5)(b). This provision currently provides that immigration instructions can include rules or criteria for determining the eligibility of a person for a visa or entry permission, being rules or criteria relating to the “circumstances of that person”. The amendment clarifies the intention that the “circumstances of a person” may include the circumstances of a third party who is relevant to applicants. For instance, a person applying for a visa to do seasonal work may require a job offer from a certain kind of employer, and the immigration instructions may require that kind of employer to have some sort of approval from the department. The employer’s circumstances are therefore relevant to the circumstances of the applicant for the visa.

Clause 12 inserts *new section 29A* into the principal Act to allow an automated system to be used to confirm a person’s status as a New Zealand citizen. *New section 29A* requires that there be at least 1 alternative method of confirming citizenship (which must involve a person).

Subpart 3—Amendments to Part 3 (Visas)

Clause 13 makes a minor correction to section 49 of the principal Act (to reflect the fact that visa conditions are imposed by section 55

of the principal Act, not imposed by the Minister or an immigration officer under that section).

Clause 14 amends section 55 of the principal Act by inserting *new subsection (2A)*. *New subsection (2A)* provides that a sponsorship condition applying to a residence visa applies for the period, which may not exceed 10 years, specified in immigration instructions or by the Minister or an immigration officer.

Clause 15 makes a consequential amendment to section 56 of the principal Act, relating to *new section 386A*.

Clause 16 amends section 57 of the principal Act, which sets out requirements for applications for visas. The provisions of this section about giving addresses are replaced to reflect the default rules in *new sections 386A to 387A* (about serving and giving notices and addresses for service and contact addresses).

Clause 17 recasts section 58(5) of the principal Act, which currently uses the phrase “concealment of relevant information” to refer to a failure to advise of material changes in circumstances. That phrase is not used consistently throughout the principal Act, so the provision is recast to give effect to the intention without using that phrase. Equivalent amendments are made in a number of other clauses of the Bill.

Clause 18 amends section 61 of the principal Act to clarify that the Minister cannot grant a visa to a person who is subject to a removal order made under the Immigration Act 1987.

Clause 19 amends section 64 of the principal Act to provide that a visa is cancelled on the day after the date on which a deportation order may be served on the person holding the visa.

Clause 20 consequentially amends section 65(2) of the principal Act as a result of *new section 5(4)*. Notification under that section must be to a contact address.

Clause 21 repeals section 86(7) of the principal Act as a result of moving the definition of transit passenger to section 4 of the principal Act (*see clause 4*).

Clause 22 inserts a *new section 86A* into the principal Act to give clearer effect to the existing policy intention that a person ceases to be a transit passenger if he or she ceases to be on the craft concerned, or in an immigration control area, or in the custody of the police.

At present, this intention is partially given effect to by way of the definition of transit passenger in section 86(7) of the principal Act.

Clause 23 replaces section 88 of the principal Act, which is about the currency of a transit visa. *New section 88* continues the existing subsection (2), with one minor correction. Subsection (1) is omitted because it duplicates a power contained in section 401 of the principal Act.

Clause 24 replaces section 91 of the principal Act, which allows an immigration officer to grant a transit visa-holder an extension of their transit visa or a visa and entry permission. *New section 91* continues the effect of the existing section 91 and extends its application to transit passengers to whom a visa waiver applies.

Clause 25 amends section 92 of the principal Act, which is about how to submit an expression of interest. The provisions of this section about giving addresses are repealed because the general rules in *new sections 386A to 387A* will apply instead.

Clause 26 amends section 93(6) of the principal Act to avoid using the phrase “concealment of relevant information”.

Subpart 4—Amendments to Part 4 (Arrivals and departures)

Clause 27 amends section 96 of the principal Act to require a carrier, or a person in charge, of a commercial craft to provide to the chief executive a description of the location of the information (for example, an Internet site) that the carrier or person is required to provide.

Clause 28 replaces section 102 of the principal Act. *New section 102* requires carriers, and persons in charge, of commercial craft to provide certain information (prescribed in regulations) about every passenger who intended to board a craft travelling to New Zealand (whether or not they actually boarded). This is different from the existing section 102, which only requires this information to be provided on request.

Clause 29 makes a consequential amendment to section 103 of the principal Act to reflect the revised definition of transit passenger (*see clause 4*). It also amends section 103 of the principal Act to provide that persons arriving in New Zealand are required to produce, on demand by an immigration officer, their passports or certificates of identity and any travel tickets they hold.

Clause 30 amends section 109 of the principal Act to correct an incorrect cross-reference.

Clause 31 inserts *new section 109A*, which prescribes the manner in which entry permission must be granted.

Clause 32 amends section 110 of the principal Act, which is about how applicants for entry permission provide addresses. The section is simplified because the general rules in *new sections 386A to 387A* will apply.

Clause 33 replaces section 111 of the principal Act, which requires an applicant for entry permission to allow biometric information to be collected from him or her. *New section 111* requires a person applying for entry permission to provide biometric information. This may be required at the time of applying for entry permission, or after entry permission has been granted or refused if the person is still in the immigration control area (or other prescribed area) where the application was made or where they arrived in New Zealand.

Clause 34 amends section 112 of the principal Act to avoid using the phrase “concealment of relevant information”.

Clause 35 amends section 115 of the principal Act to provide that transit passengers (including those to whom a visa waiver applies) are unlawfully in New Zealand from the time their transit period expires.

Clause 36 replaces section 118(2)(a)(i) of the principal Act, which requires a carrier to provide passage from New Zealand of any person who arrives on a craft operated by that carrier without a visa and is not granted a visa and entry permission in New Zealand. *New section 118(2)(a)(i)* extends this requirement to cover persons who are granted a visa and entry permission, but then have that entry permission revoked.

Subpart 5—Amendments to Part 5 (Refugee and protection status determinations)

Clause 37 amends section 133 of the principal Act, which is about how claims for recognition as a refugee or protected person are made. The provision about the requirement for addresses is replaced because the general rules in *new sections 386A to 387A* will apply instead.

Clause 38 makes a minor correction to section 149 of the principal Act.

Subpart 6—Amendments to Part 6 (Deportation)

Clause 39 amends section 154 of the principal Act, which allows a person who is unlawfully in New Zealand to appeal against his or her liability for deportation. The amendment provides that this appeal right excludes persons who—

- (a) are unlawfully in New Zealand following the cancellation of their visa under *new section 64(1)(ab)* (as such persons will have already been served with a deportation liability notice setting out any available appeal rights); or
- (b) have already had access to an appeal right (whether exercised or not).

Clause 40 amends section 155 of the principal Act, which provides that a person is liable for deportation if the person's visa is granted in error. One reason that a visa may be granted in error is if it is granted to a person who is prohibited from entering New Zealand. The amendment clarifies that the right to appeal against liability for deportation under this section does not extend to a person whose visa was granted in error because the person was prohibited from entering New Zealand.

Clause 41 amends section 157 of the principal Act to adjust a reference to concealing relevant information.

Clause 42 amends section 158 of the principal Act to provide that a residence class visa holder is liable for deportation if it is established that any information provided in relation to their visa application was fraudulent or misleading, or that relevant information was concealed. This is a change from the existing section, where liability for deportation only arises if it is established that the visa was obtained on the basis of the fraudulent or misleading information, or the concealment of relevant information. *New subsection (1A)* clarifies that liability for deportation arises whether or not the person holding the residence class visa was the person who provided the fraudulent or misleading information, or concealed the relevant information.

Clause 43 amends section 161 of the principal Act to provide that a person holding a residence class visa is liable for deportation if he or she is convicted of an offence against section 350(1)(a) or 351 of the principal Act within the first 10 years of holding that visa. Sections 350(1)(a) and 351 relate to the employment of persons who are not entitled under the principal Act to do the work for which they

are employed, and the exploitation of those persons (for example, through insufficient remuneration).

Clause 44 amends section 169 of the principal Act. The amendment clarifies that section 169(3), which provides that the processing of a person's application for a visa must be suspended if the person is liable for deportation, does not apply to an application that the Tribunal has referred back to the Minister or the chief executive for further consideration.

Clause 45 amends section 170(3) of the principal Act, about deportation liability notices, to reflect the *new sections 386A to 387B*. *Clause 45* also inserts *new section 170(4)*, which clarifies that, for the purposes of section 170, a deportation liability notice includes a copy of a deportation liability notice.

Clause 46 amends section 172 of the principal Act, which allows the Minister, in his or her absolute discretion, to cancel or suspend a person's liability for deportation. This amendment clarifies that this power may be exercised if a person provides good reason, under section 155(2), 156(2)(b), or 157(2), why he or she should not be deported.

Clause 47 amends section 175 of the principal Act to clarify when a deportation order may be served against a person who has been allowed 14 days to provide good reason why they should not be deported and also has a right to appeal against deportation. This person may be served with a deportation order on the date on which it would be able to be served on a person who has been allowed 14 days to provide good reason (under subsection (1)(b)) or the date on which it would be able to be served on a person who has an appeal right (under subsection (1)(c)), whichever date is the later. The purpose of the amendment is to ensure that a deportation order may not be served before a determination has been made in relation to any reasons provided by the person liable for deportation. *Subclause (4)* inserts *new paragraph (ea)* into subsection (1) to provide that a deportation order may be served at any time on a person who was unlawfully in New Zealand at the time that section 175 came into force and continues to be unlawfully in New Zealand. Other amendments in this clause reflect the new default rules about service in *new sections 386A to 387*.

Clause 48 consequentially amends section 176(1)(b), which requires a deportation order to specify that the person named in the order

will have their visa cancelled, to reflect the insertion of *new section 64(1)(ab)* (see *clause 19*). The clause also consequentially amends section 176(1)(g) of the principal Act, which refers to deportation costs, to reflect the amendments made by *clause 93* to section 398 of the principal Act.

Clause 49(1) consequentially amends section 179 of the principal Act to reflect amendments made by *clause 42* to section 158 of the principal Act. *Subclause (2)* amends section 179(2) to limit the circumstances in which a person liable for deportation is exempted from a period of prohibition on entry. The exemption continues to apply to persons who leave voluntarily before they are served with a deportation order, but only if the person is liable for deportation solely on the grounds that they are unlawfully in New Zealand.

Subpart 7—Amendments to Part 7 (Appeals, reviews, and other proceedings)

Clause 50 repeals section 187(6) and (7) of the principal Act, which are about when notices are treated as being received, because these provisions are covered by the general rules in *new section 386A*.

Clause 51 makes a minor correction to section 194(1)(e) of the principal Act, and also clarifies the procedure relating to lodging humanitarian appeals.

Clauses 52 and 53 make amendments to terminology used in section 196 and 197 of the principal Act.

Clause 54 amends section 198 of the principal Act, which sets out the procedure that the Immigration and Protection Tribunal must follow when determining an appeal against a decision by a refugee and protection officer to decline to recognise, or to cease or cancel recognition of, a person as a refugee or protected person. The amendment relates to appeals against cancellation of recognition on certain grounds. The amendment provides that the Tribunal must only consider whether to recognise the person as a refugee or protected person if it first determines that the grounds for cancellation were sound. If the Tribunal does not determine this, it must allow the appeal. *Clause 54* also makes amendments to terminology used in section 198.

Clause 55 makes consequential amendments to section 202 to reflect amendments made by the Bill to section 158 (see *clause 42*).

Clause 56 amends section 206 of the principal Act to identify in 1 place those persons that may not appeal to the Tribunal on humanitarian grounds.

Clause 57 inserts *new section 224A* to provide that the chair of the Tribunal must provide an annual report on the performance of the Tribunal's functions under the principal Act to the Ministers of Justice and Immigration, and the Minister for Courts.

Clause 58 consequentially amends section 225 of the principal Act, which is about how appeals and matters are lodged in the Tribunal, to reflect the new default rules in *new sections 386A to 387A*.

Subpart 8—Amendment to related enactments

Clause 59 makes consequential amendments to the Immigration (Carriers' Information Obligations) Regulations 2010 to reflect changes made to section 102 of the principal Act (*see clause 28*).

Part 2 Amendments to Parts 8 to 11

Subpart 1—Amendments to Part 8 (Compliance and information)

Clause 60 amends section 277 of the principal Act, which is about the powers of immigration officers to enter a place to look for employment records of employers. Section 277(1) identifies the purposes for which the powers may be exercised. The purpose in paragraph (b) is to determine whether an employer is complying with his or her obligations under the principal Act. Sections 350 and 351 of the principal Act create offences relating to the exploitation of workers by employers but do not specifically impose obligations on employers. The amendment in *clause 60(1)* clarifies that the reference to complying with obligations includes a reference to not committing an offence. This will remove any ambiguity about whether immigration officers can use the powers in this section to check employers for compliance with sections 350 and 351.

Clause 60(2) adds a further purpose, which is to determine whether a person who is working for an employer is entitled to work in New Zealand.

Clause 60(3) and (4) clarify that references to premises in this section are not limited to business premises but include dwellinghouses.

Clause 61 inserts a *new section 277A* into the principal Act. The new section gives immigration officers powers, for any purpose referred to in section 277(1), to enter and search an employer's premises. The section relates to 2 kinds of workers: specified persons and specified employees. A specified person is a person who an immigration officer believes is either not allowed to work in New Zealand or is not complying with any work-related conditions on his or her visa. A specified employee is an employee of an employer who an immigration officer believes may be committing an offence under section 350 or 351. The section allows immigration officers to enter the employer's premises and require specified persons to answer questions and produce various identity documents, and require specified employees to answer questions.

Power to require production of documents, etc

Clause 62 inserts a *new section 279A* into the principal Act. This section defines "identity document" for the purpose of sections 280 to 281B and says what can be done with identity documents obtained under those sections.

Clause 63 amends section 280(1) of the principal Act. This provision allows an immigration officer to require a person to identify themselves, and to produce various documents, if the immigration officer has good cause to suspect that the person is liable for deportation or turnaround. The subsection is recast so that it refers to identity documents.

Clause 64 replaces section 281 with 3 new sections. Section 281 currently allows immigration officers to require a person to give the officer written authority to obtain identity documents from a third party, and to produce travel tickets or cash held in lieu of travel tickets. It also describes how any identity document, etc, so obtained may and must be treated after an immigration officer has obtained it.

New section 281 recasts section 281 to make it consistent with amendments to section 280.

New section 281A sets out the obligations of third parties to surrender identity documents, and confirms their protection from suit by the person whose documents are surrendered.

New section 281B gives immigration officers entry and search powers in relation to a person who is liable for deportation or turnaround and who has refused to produce or surrender an identity document. The places that can be searched include any place where the person is currently located, the person's abode, and any premises or vehicle owned by, or under the control of, the person. Any identity documents of the person that are found can be seized by the immigration officer. The powers in this section will not be able to be exercised until *new section 285A* is in force. That section will be brought into force by Order in Council (*see clause 2*).

Clause 65 inserts *new section 285A* into the principal Act. *New section 285A* allows immigration officers to conduct a search of a person who the officer has reasonable grounds to believe is not a New Zealand citizen who, on arriving in New Zealand, has failed to comply with a demand to produce the person's passport, certificate of identity, or travel tickets. The search can be a rub-down search, a search of the person, or both. The searches must be done in accordance with the relevant provisions of the Search and Surveillance Act 2012.

Clause 66 makes 2 minor corrections to section 286 of the principal Act, including making a specific reference to removal orders (under the former Act).

Clause 67 replaces sections 287 to 290 of the principal Act, which are about the collection of biometric information, with 5 new sections. The repealed sections dealt generally with the same matters as the new sections, but a new power is added (in *new section 290A*) to allow a person who is subject to a compulsion order to be arrested so that required biometric information can be collected by force, if necessary.

New section 287 defines "special biometric information", which is distinct from ordinary biometric information as defined in section 4 of the principal Act. Special biometric information is information that is or may be required in order to meet the entry or transit requirements of any country to which or through which a person is to travel. It includes palm-prints, measurements, and photos of the whole person.

New section 288 sets out the 2 grounds on which biometric information may be required from a person. The first is that the person is liable for deportation or turnaround, in which case special biometric

information may also be required. The second is that an immigration officer has good cause to suspect certain things and needs the biometric information to determine whether they are true. The things are that the person—

- is liable for deportation or turnaround:
- is not complying with, or is materially breaching, his or her visa conditions:
- is undertaking work or a course of study that he or she is not entitled to under the principal Act:
- has obtained a visa under a fraudulent identity.

New section 289 provides for an immigration officer to apply to a District Court Judge for a compulsion order if a person has refused to allow biometric information or special biometric information to be collected from him or her.

New section 290 provides for a District Court Judge to make a compulsion order requiring a person to allow biometric information or special biometric information to be collected from him or her.

New section 290A provides for the arrest of a person who refuses to comply with a compulsion order for the purpose of allowing required biometric information to be collected from him or her, by force if necessary.

Clause 68 consequentially amends section 293 of the principal Act to reflect the changes made by *clause 69*.

Clause 69 replaces section 293A of the principal Act with a new provision authorising the issue of warrants to search and enter places. The new section aligns this provision with the standard provisions in the Search and Surveillance Act 2012.

Clause 70 amends section 298 of the principal Act to refer to persons removed under the former Act (and not just to those deported under the principal Act).

Subpart 2—Amendments to Part 9 (Detention and monitoring)

Clause 71 amends section 317 of the principal Act to refer to persons removed under the former Act (and not just to those deported under the principal Act).

Clause 72 amends section 328 of the principal Act, which gives a power to search persons in detention. Subsections (2) to (5), which set out details about the conduct of a search, are replaced by a provision that acts as a signpost to the relevant provisions of the Search and Surveillance Act 2012 that apply already to searches under section 328.

Clause 73 clarifies the meaning of “justified” as it is used in section 329(3) of the principal Act, and corrects an error.

Clauses 74 and 75 amend sections 331 and 332 of the principal Act to provide that only persons who are under the age of 18 and are neither married nor in a civil union can be detained in CYPF residences.

Clause 76 corrects 2 minor errors in section 339 of the principal Act.

Subpart 3—Amendments to Part 10 (Offences, penalties, and proceedings)

Clause 77 amends section 343(3) of the principal Act, which describes (for certain purposes) what unlawful entry into New Zealand means. It aligns the provision with changes made to section 158 of the principal Act.

Clause 78 amends section 344 of the principal Act by amending an offence provision that currently only applies to people in an immigration control area. The amendment extends the provision so that it applies also to people in any other prescribed place.

Clause 79 consequentially amends section 349(1) of the principal Act to recast the offences relating to failing to provide information under section 102, to reflect changes made to that section.

Clause 80 amends section 351 of the principal Act, which describes offences relating to the exploitation of employees by employers. At present, the section applies in relation only to unlawful employees, who are people who an employer knows are not entitled under the principal Act to work in the employer’s service. The amendment extends the prohibited conduct so it applies also to “temporary workers”. Temporary workers are those who an employer knows hold a temporary entry class visa. By this amendment, employers will be prohibited from certain forms of exploitation of temporary workers.

Clause 81 replaces section 355(5) of the principal Act, which provides a general penalty (a fine not exceeding \$5,000) for offences for which no other specific penalty is provided. The provision is recast

to be of more general application, but keeps the penalty at the same level.

Clause 82 amends section 361 of the principal Act to allow immigration officers to require carriers and persons in charge of craft to provide an electronic address for service.

Clause 83 amends section 362 of the principal Act, which is about infringement notices sent to carriers and persons in charge of craft. The amendment omits the specific rules about how infringement notices are served on carriers and persons in charge, because these are now set out in *new section 365A*.

Clause 84 consequentially amends section 365 of the principal Act as a result of the insertion of *new section 365A*.

Clause 85 inserts *new section 365A* into principal Act. This sets out the rules about service of infringement notices, reminder notices, and revocations of infringement notices. These are different to the default rules applying to service under *new sections 386A and 387*. The application of certain other enactments is modified to ensure that service as provided for in this section is effective.

Clause 86 amends section 366(2) of the principal Act to include a provision relating to removal under the former Act, and to make a consequential amendment relating to the change to section 102.

Subpart 4—Amendments to Part 11 (Miscellaneous provisions)

Clause 87 amends section 381 of the principal Act to allow for the approval of forms relating to “matters” (as defined in section 183 of the principal Act) in the Immigration and Protection Tribunal, and not just to appeals.

Clause 88 amends section 386 of the principal Act, which sets out rules about how notices, etc, are served and supplied to the Minister, officials, and other people. The amendment repeals the provisions that apply to other people, because these are dealt with in *new section 386A*.

Clause 89 inserts a *new section 386A* into the principal Act. This sets out the default rules about the service of notices, etc, on, and the

giving of notices, etc, to, people other than the Minister and officials. The rules are—

- that service must be effected either by personal service or by registered post to the person's address for service; and
- that notices, etc, that are required to be sent must be sent to the recipient's contact address, which may be either a physical address or an electronic address.

The section also prescribes the times at which notices served or sent are presumed to be received by the recipient, and provides for when the presumption about the receipt of notices sent or served by registered post can be displaced.

Clause 90 replaces section 387 of the principal Act (which defines New Zealand address) with 3 new sections.

New section 387 identifies a person's address for service. It must be a physical address of the person or of a lawyer or an agent of the person or, if those addresses will not be effective for service, can be the person's contact address. Specific rules are provided to identify the address for service of people in custody or required to reside at a particular address, and for people under the age of 18.

New section 387A identifies a person's contact address. A contact address may be one provided by the person himself or herself or, if that address is known to be wrong, a contact address obtained by an immigration officer exercising certain search powers. Specific rules are provided to identify the contact address of people in custody or required to reside at a particular address, and for people under the age of 18. The key new element is that a person is allowed to provide an electronic address as a contact address. If a person's contact address is an electronic address, the person will be deemed to have consented to receive notices, etc, at that address.

New section 387B provides that *new sections 386A to 387A* are default rules, but they can be modified or replaced in respect of specific situations or circumstances by the principal Act or regulations made under it. (For example, *new section 365A* sets out special rules in relation to the service of infringement notices.)

Clause 91 makes consequential amendments to section 388(3) of the principal Act, which sets out some of the powers of immigration officers.

Clause 92 amends section 393(1) of the principal Act, which gives examples of when fees can be prescribed by regulations made under section 400. The clause adds a further example. Under the immigration instructions, applicants for certain kinds of visas require something from certain other people. Those other people may need some kind of status or approval from the department (*see clause 11*). For instance, a person applying for a visa to do seasonal work may require a job offer from an approved employer. This amendment clarifies that regulations may prescribe fees payable by such employers in relation to getting and retaining that approval.

Clause 93 amends section 398 of the principal Act, which is about the costs of deportation and repatriation. The section provides that costs incurred by the Crown are recoverable as a debt due to the Crown. The amendments clarify that costs may be estimated either by a court or by an immigration officer. A new provision provides that if the actual costs of a deportation or repatriation are less than the estimated costs, and those estimated costs have been received from a person, then the difference must be refunded to the person, on application.

Clause 94 amends section 399 of the principal Act, which is about the migrant levy that may be imposed by regulations. The amendment renames the levy the “immigration levy”, and allows for it to be imposed on applicants for a visa (and not just on those granted a visa). It expands the purpose of the levy to include the following purposes:

- funding the infrastructure required for, and the operation of, the immigration system;
- attracting migrants to New Zealand;
- funding the Immigration Advisers Licensing Authority.

The clause also inserts a *new section 399(3A)* that provides for the Minister, by special direction, to exempt persons from paying some or all of the levy, and to make refunds.

Clause 95 amends section 400 of the principal Act, which is the general regulation-making power. The section is amended by—

- allowing regulations to identify visa applications that must be made electronically, and requiring a list of those to be maintained and publicly available;
- increasing the maximum penalty for breaches of regulations from \$2,000 to \$5,000:

- providing specifically for the replacement or modification of the default rules in *new sections 386A to 387A* as they apply in specific circumstances.

Clause 96 consequentially amends section 401 of the principal Act to reflect that transit periods will apply both to holders of transit visas and to people to whom a transit visa waiver applies.

Clause 97 repeals section 403(b) of the principal Act, because that provision is replaced by the more general provision inserted by *clause 95(3)*, about addresses.

Clause 98 inserts a *new section 403A* into the principal Act. It provides that regulations made under this Part may be made only on the recommendation of the Minister, other than regulations made under identified provisions. Regulations made under those provisions must be made on the recommendation of the Minister for Courts, after consultation with the Minister. The relevant provisions are those to do with procedures under Parts 5 (refugee and protection status determinations) and 7 (appeals, reviews, and other proceedings), and fees and offences.

Subpart 5—Related amendments to other enactments

Clauses 99 to 101 provide for amendments to the Immigration (Certificate and Warrant Forms) Regulations 2010 to include in those regulations the form (set out in *Schedule 1*) required by immigration officers when seeking the surrender of identity documents from a third party, as provided for in *new section 281A* (as inserted by *clause 64*).

Clause 102 amends the Schedule of the Search and Surveillance Act 2012 for consistency with *new sections 285A and 293A*, as inserted by *clauses 65 and 69* respectively. These amendments are set out in *Schedule 2*.

Hon Michael Woodhouse

Immigration Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Immigration Amendment Act (No 2) **2013**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in **subsections (2) to (5)**.
- (2) **Section 69** comes into force on **1 July 2014**. 5
- (3) **Sections 4(3) and (4), 21 to 24, 29(1), 35, and 96** come into force on the date that is 6 months after the date on which this Act receives the Royal assent.
- (4) **Section 94** comes into force on the date that is 1 year after the date on which this Act receives the Royal assent. 10
- (5) **Sections 61 and 65** come into force on—
- (a) a date or dates appointed by the Governor-General by Order in Council (and 1 or more Orders in Council may be made appointing different dates for different sections); or 15
- (b) if not brought into force by such an Order in Council by the date that is 2 years after the date on which this Act receives the Royal assent, on that date.

3 Principal Act

This Act amends the Immigration Act 2009 (the **principal Act**). 20

Part 1

Amendments to Parts 1 to 7

Subpart 1—Amendments to Part 1 (Preliminary provisions) 25

4 Section 4 amended (Interpretation)

- (1) In section 4, definition of **chief executive**, paragraph (b), after “Director of Security,”, insert “the Chief of Defence Force, the General Manager of the Aviation Security Service,”.
- (2) In section 4, definition of **New Zealand**, paragraph (c), replace “and 77(4)(a)” with “77(4)(a), 277, **277A**, and 382(1)”. 30
- (3) In section 4, insert in its appropriate alphabetical order:
“**transit passenger** means a person who arrives in New Zealand from another country while in transit to another

overseas destination, not intending to enter or remain in New Zealand”.

- (4) In section 4, replace the definition of **transit period** with:
 “**transit period** means the period prescribed in accordance with **section 401(d)** for the purpose of **section 86A**”. 5
- (5) In section 4, repeal the definition of **New Zealand address**.
- (6) In section 4, insert in their appropriate alphabetical order:
 “**address for service** has the meaning given to it by **section 387**
 “**contact address** has the meaning given to it by **section 387A**”. 10

5 Section 5 amended (Notifications)

Replace section 5(3) and (4) with:

- “(3) Where this Act or any regulations under this Act provide that any notice or other document must be served on a person other than the Minister or a person referred to in subsection (2), the notice or other document must be served in accordance with **section 386A(2)**. 15
- “(4) Where this Act or any regulations under this Act provide that any notice or other document must be supplied, notified, or in any other way given to a person other than the Minister or a person referred to in subsection (2), the notice or other document must be sent to the person in accordance with **section 386A(3)**. 20
- “(5) Subsections (1) to (4) are subject to sections 386(8) and **387B**.” 25

6 Section 8 amended (Meaning of granting visa or entry permission as result of administrative error)

In section 8(1)(d), after “specified in”, insert “regulations or”.

7 Section 9 amended (Meaning of unlawfully in New Zealand (in relation to person who is not New Zealand citizen)) 30

After section 9(2)(b), insert:

“(ba) as starting on the day after the date on which a permit granted to the person under the former Act expired or was revoked without another permit being granted under that Act; or”.

8 Section 11 amended (Meaning of absolute discretion of the decision maker) 5

(1) After section 11(c)(i), insert:

“(ia) privacy principle 6 (which relates to access to personal information and is set out in section 6 of the Privacy Act 1993) does not apply to any reasons for any decision relating to the purported application; and”.

(2) In section 11, insert as subsection (2):

“(2) Subsection (1)(c)(**ia**) applies to any decision made in relation to a purported application, whether the decision was made before or after the commencement of that subparagraph.”

Subpart 2—Amendments to Part 2 (Core provisions and matters in relation to decision making)

9 Section 15 amended (Certain convicted or deported persons not eligible for visa or entry permission to enter or be in New Zealand) 20

Replace section 15(3)(c) with:

“(c) was deported under this Act but is not, or is no longer, subject to a period of prohibition on entry under section 179 or 180; or”.

10 Section 19 amended (Duty of chief executive to communicate obligation to leave New Zealand)

In section 19(2)(c), after “arriving”, insert “temporary”.

11 Section 22 amended (Immigration instructions) 30

In section 22(5)(b), after “that person”, insert “or of any other person (a **third party**) whose circumstances are relevant to the person’s eligibility, including (without limitation) rules and

criteria about how any status or approval may be obtained or lost by the third party”.

12 New section 29A inserted (Use of automated system to confirm New Zealand citizenship)

After section 29, insert:

5

“29A Use of automated system to confirm New Zealand citizenship

“(1) An automated electronic system that applies criteria predetermined by the chief executive may be used, for the purposes of this Act, to confirm a person’s status as a New Zealand citizen.

10

“(2) The automated electronic system may only be used to confirm a person’s status as a New Zealand citizen if there is available at least 1 other way of confirming the person’s status, and that other way involves confirmation by a person.

“(3) A determination made using an automated electronic system must for all purposes be treated as a determination made by a person who is authorised to make the determination under this Act.”

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Subpart 3—Amendments to Part 3 (Visas)

13 Section 49 amended (Visas may be subject to conditions)

20

(1) In section 49(1)(e), replace “54, or 55” with “or 54”.

(2) After section 49(1)(e), insert:

“(ea) imposed by section 55:”.

14 Section 55 amended (Condition that visa holder have sponsor)

25

After section 55(2), insert:

“(2A) Where a condition under this section applies to a resident visa, the condition applies for the period, which may not exceed 10 years, specified—

“(a) in immigration instructions, in relation to any type of resident visa; or

30

“(b) by the Minister or an immigration officer, in relation to any particular visa.”

- 15 Section 56 amended (Visa holder must comply with conditions)**
In section 56(4), replace “section 386” with “**section 386A**”.
- 16 Section 57 amended (Applications for visas)**
Replace section 57(2) to (4) with: 5
“(2) The applicant must provide his or her contact address and address for service.”
- 17 Section 58 amended (Obligation on applicant to inform of all relevant facts, including changed circumstances)**
Replace section 58(5) with: 10
“(5) For the purposes of sections 157 and 158, an applicant is treated as having concealed relevant information if he or she fails to comply with the obligation in subsection (3).”
- 18 Section 61 amended (Grant of visa in special case)**
(1) In section 61(1)(b), after “in force”, insert “; and”. 15
(2) After section 61(1)(b), insert:
“(c) is not a person in respect of whom a removal order is in force.”
- 19 Section 64 amended (Cancellation of visa on triggering event)** 20
After section 64(1)(a), insert:
“(ab) on the day after the first date on which a deportation order may be served on the person under section 175, whether the visa was issued before or after this paragraph came into force:”. 25
- 20 Section 65 amended (Cancellation of resident visa before holder first arrives in New Zealand as holder of visa)**
In section 65(2), replace “, in writing, at the address supplied under section 57(2)” with “in writing”.
- 21 Section 86 amended (Who must obtain transit visa)** 30
Repeal section 86(7).

22 New section 86A inserted (Obligation of transit passenger)

After section 86, insert:

“86A Obligation of transit passenger

- “(1) During the transit period applying to a transit passenger, the transit passenger must remain— 5
- “(a) on the craft concerned; or
 - “(b) in an immigration control area; or
 - “(c) in the custody of the police.
- “(2) If a transit passenger fails to comply with **subsection (1)**, the relevant transit period immediately expires (and **section 115(1)(f)** therefore applies).” 10

23 Section 88 replaced (Currency and nature of transit visa)

Replace section 88 with:

“88 Currency of transit visa

A transit visa is current for the period or until the date specified in it, and may be expressed to be effective for any number of journeys to New Zealand in that period or until that date. 15

“Compare: 1987 No 74 s 14E(3)”.

24 Section 91 replaced (Expiry of transit period)

Replace section 91 with: 20

“91 Expiry of transit period

At any time before the transit period of a transit passenger expires, an immigration officer may, in his or her absolute discretion,—

- “(a) extend the transit passenger’s transit period; or 25
- “(b) grant the transit passenger a visa and entry permission.”

25 Section 92 amended (Expressions of interest)

Replace section 92(2) to (4) with:

- “(2) A person submitting an expression of interest must provide a contact address and an address for service.” 30

- 26 Section 93 amended (Obligation to inform of all relevant facts, including changed circumstances)**
 In section 93(6), replace “amounts to **concealment of relevant information**” with “must be treated as concealing relevant information”. 5
- Subpart 4—Amendments to Part 4 (Arrivals and departures)
- 27 Section 96 amended (Responsibilities of carrier, and person in charge, of commercial craft before it departs from another country to travel to New Zealand)** 10
 Replace 96(2)(b) with:
 “(b) provide to the chief executive, by means of an approved system,—
 “(i) the information prescribed for the purposes of this subsection; and 15
 “(ii) a description of the location of the information (including, if applicable, the electronic address for the information).”
- 28 Section 102 replaced (Obligations of carriers, and persons in charge, of craft to provide information)** 20
 Replace section 102 with:
“102 Obligations of carriers, and persons in charge, of craft to provide information
 “(1) The purpose of this section is to facilitate—
 “(a) the exercise or performance of powers, functions, or duties under this Act: 25
 “(b) the prevention, detection, investigation, prosecution, and punishment of immigration offences:
 “(c) the protection of border security.
 “(2) A person (being a carrier, or a person in charge, of a craft) to whom section 96 applies must provide the chief executive with information of the prescribed kind about every person who intended to board a craft for the purpose of travelling to New Zealand, even if he or she did not in fact board the craft for any reason (including, but not limited to, because of a decision made by the chief executive under section 97). 30 35

- “(3) Information provided under **subsection (2)**—
- “(a) must be provided in a form and manner approved by the chief executive:
- “(b) must be provided on the date, or at the time, specified by the chief executive: 5
- “(c) may be retained by the chief executive for any of the purposes listed in **subsection (1)**.
- “(4) To avoid doubt, information retained under **subsection (3)(c)** may be further dealt with as permitted by the Privacy Act 1993.” 10
- 29 Section 103 amended (Obligations on persons arriving in New Zealand)**
- (1) Replace section 103(1)(d)(iv) with:
- “(iv) the person is a transit passenger who holds a transit visa or is subject to a transit visa waiver.” 15
- (2) After section 103(1)(d), insert:
- “(da) to produce, on demand by an immigration officer, the person’s passport or certificate of identity and any travel tickets held by the person.”
- 30 Section 109 amended (Decisions on entry permission in relation to temporary entry class visa holders)** 20
- In section 109(6), replace “Subsection (4)” with “Subsection (5)”.
- 31 New section 109A inserted (Form of entry permission)** 25
- After section 109, insert:
- “109A Form of entry permission**
- “(1) Entry permission is granted by being entered and retained in the records (whether electronic or physical) of the Department in a manner determined by the chief executive.
- “(2) Entry permission may (but need not) be evidenced by an endorsement in a passport or certificate of identity. 30
- “(3) To avoid doubt, no electronic or physical record is required to be created for entry permission that is deemed to be granted by or under this Act.”

32 Section 110 amended (Applicant for entry permission to provide address)

- (1) In section 110, replace “permission—” with “permission must provide a contact address and an address for service.”
- (2) Repeal section 110(a) to (c). 5

33 Section 111 replaced (Applicant for entry permission to allow collection of biometric information)

Replace section 111 with:

“111 Collection of biometric information

- “(1) An immigration officer may require a person who applies for entry permission (irrespective of whether the application is still being considered, or whether entry permission has been granted or refused) to provide biometric information— 10
- “**(a)** at any time before he or she leaves the immigration control area, designated place, or prescribed place at which the application is made; and 15
- “**(b)** if the application is not made in New Zealand, at any time before he or she leaves the immigration control area or prescribed place at which he or she arrives in New Zealand. 20
- “(2) If a person refuses to allow the biometric information to be collected, the Minister or an immigration officer may—
- “**(a)** refuse to grant entry permission; or
- “**(b)** revoke any entry permission already granted.
- “(3) Entry permission may be revoked at any time before the person leaves the immigration control area, designated place, or prescribed place. 25
- “(4) A revocation under this section is made by entry on the records of the department, and takes effect immediately.
- “(5) This section does not apply to persons who, in accordance with regulations made under section 400(1), are exempt from providing biometric information. 30
- “(6) In this section, **designated place** means a place designated by the chief executive under section 383.”

- 34 Section 112 amended (Obligation to inform of all relevant facts, including changed circumstances)**
 In section 112(5), replace “amounts to **concealment of relevant information**” with “must be treated as concealing relevant information,”. 5
- 35 Section 115 amended (Arrest, detention, and turnaround of persons)**
 Replace section 115(1)(f) with:
 “(f) is a transit passenger who holds a transit visa or is subject to a transit visa waiver, and the transit period concerned has expired.” 10
- 36 Section 118 amended (Obligations of carriers, and persons in charge, of craft)**
 Replace section 118(2)(a)(i) with:
 “(i) who was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand and did not hold a visa permitting travel to New Zealand and who, on arrival in New Zealand, was—
 “(A) refused a visa and entry permission; or 15
 “(B) granted a visa and entry permission, but then had that entry permission revoked; or”. 20
- Subpart 5—Amendments to Part 5 (Refugee and protection status determinations) 25
- 37 Section 133 amended (How claim made)**
 Replace section 133(5) with:
 “(5) A claimant must provide a refugee and protection officer with a contact address and an address for service.”
- 38 Section 149 amended (Powers of refugee and protection officers)** 30
 In section 149(1)(d), after “his or her”, insert “or its”.

Subpart 6—Amendments to Part 6
(Deportation)

- 39 Section 154 amended (Deportation liability if person unlawfully in New Zealand)**
- (1) In section 154(3), after “subsection (4)”, insert “or (5)”. 5
- (2) After section 154(4), insert:
- “(5) A person is not entitled to an appeal under subsection (2) if—
- “(a) the person is unlawfully in New Zealand following the cancellation of the person’s visa under **section 64(1)(ab)**; or 10
- “(b) the person has already had an opportunity (whether exercised or not) to appeal against his or her liability for deportation.”
- 40 Section 155 amended (Deportation liability if person’s visa granted in error)** 15
- After section 155(4), insert:
- “(5) However, subsection (4) does not apply if the person is liable for deportation under this section because the person re-entered New Zealand while he or she was subject to a period of prohibition on entry.” 20
- 41 Section 157 amended (Deportation liability of temporary entry class visa holder for cause)**
- In section 157(5)(d), replace “concealment of” with “concealing”.
- 42 Section 158 amended (Deportation liability of residence class visa holder if visa or citizenship obtained or held by fraud, forgery, etc)** 25
- (1) In the heading to section 158, replace “if visa or citizenship obtained or held by” with “due to”. 30
- (2) Replace section 158(1) with:
- “(1) A residence class visa holder is liable for deportation if—
- “(a) the person is convicted of an offence where it is established that—
- “(i) any of the information provided in relation to the person’s application for a residence class visa or 35

- entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or
- “(ii) any of the information provided in relation to the person’s application for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed; or 5
- “(b) the Minister determines that—
- “(i) any of the information provided in relation to the person’s application for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or 10
- “(ii) any of the information provided in relation to the person’s application for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed. 15
- “(1A) **Subsection (1)** applies— 20
- “(a) whether or not the person holding the residence class visa is the person who—
- “(i) provided the information that is established or determined to be fraudulent, forged, false, or misleading; or 25
- “(ii) concealed the relevant information that is established or determined to have been concealed; and
- “(b) whether the visa was granted before or after this subsection came into force.”
- 43 Section 161 amended (Deportation liability of residence class visa holder convicted of criminal offence) 30**
- (1) In section 161(1)(c), after “visa”, insert “; or”.
- (2) After section 161(1)(c), insert:
- “(d) of an offence against section 350(1)(a) or 351, if the offence was committed not later than 10 years after the person first held a residence class visa, and whether that visa was granted before or after this paragraph comes into force.” 35

(3) In section 161(3), replace “and (c)” with “(c), and **(d)**”.

44 Section 169 amended (Effect of being liable for deportation)

After section 169(3), insert:

“(3A) However, nothing in subsection (3) prevents the processing 5
of any application referred back to the Minister or the chief
executive by the Tribunal under section 188(1)(d) or (e).”

45 Section 170 amended (Deportation liability notice)

Replace section 170(3) with:

“(3) If a deportation liability notice is served by way of personal 10
service, it may be served only by an immigration officer or
another person on behalf of an immigration officer.

“(4) In this section, **deportation liability notice** includes a copy of
a deportation liability notice.”

46 Section 172 amended (Minister may cancel or suspend liability for deportation) 15

After section 172(2), insert:

“(2A) The Minister may exercise his or her powers under this section
whether or not the person who is liable for deportation—

“(a) has given good reason under section 155(2), 156(2)(b), 20
or 157(2) why the person should not be deported; or

“(b) has purported to apply to the Minister for any other rea-
son.”

47 Section 175 amended (When deportation order may be served) 25

(1) In section 175(1)(b), delete “the earlier of”.

(2) In section 175(1)(c), after “deportation,”, insert “but is not a
person to whom **paragraph (ca)** applies.”

(3) After section 175(1)(c), insert:

“(ca) where the person has been served with a deportation li- 30
ability notice that allows the person 14 days from the
date of service to give good reason why deportation
should not proceed, and the person also has a right to

appeal under this Act against liability for deportation, on or after the later of—

“(i) the first day on which a deportation order would be able to be served under paragraph (b) if the person did not have an appeal right against liability for deportation; and 5

“(ii) the first day on which a deportation order would be able to be served under paragraph (c) if the person had not been served with a deportation liability notice allowing the person 14 days to give good reason why deportation should not proceed.” 10

(4) After section 175(1)(e), insert:

“(ea) in the case of a person who was unlawfully in New Zealand before 2 am on 29 November 2010 and continues to be unlawfully in New Zealand under this Act, and who has no right of appeal under this Act against liability for deportation, at any time.” 15

(5) Replace section 175(2) with:

“(2) A deportation order may be served on a person outside New Zealand only if the person still holds a visa. 20

“(2A) If a deportation order is served by way of personal service, it may be served only by an immigration officer or another person on behalf of an immigration officer.”

(6) After section 175(3), insert: 25

“(4) In this section, **deportation order** includes a copy of a deportation order.”

48 Section 176 amended (Content of deportation order)

(1) Replace section 176(1)(b) with:

“(b) that any visa held by the person has been, or will be, cancelled in accordance with **section 64(1)(ab)**; and” 30

(2) Replace section 176(1)(g) with:

“(g) that the person is required to repay the actual or (if an estimate of costs is specified in the deportation order) the estimated costs of deportation.” 35

- 49 Section 179 amended (Deported person may not enter New Zealand during period of prohibition on entry)**
- (1) In section 179(1), item relating to section 158, replace “(convicted of gaining residence class visa by fraud, forgery, etc)” with “(fraud, forgery, etc, in an application)”. 5
- (2) Replace section 179(2) with:
- “(2) A person who is liable for deportation is not subject to any period of prohibition on entry if the person—
- “(a) is liable for deportation only on the grounds that the person is unlawfully in New Zealand; and 10
- “(b) leaves New Zealand voluntarily before he or she is served with a deportation order.”
- Subpart 7—Amendments to Part 7 (Appeals, reviews, and other proceedings)
- 50 Section 187 amended (Rights of appeal in relation to decisions concerning residence class visas)** 15
- Repeal section 187(6) and (7).
- 51 Section 194 amended (Right of appeal in relation to decisions concerning refugee or protection status (other than subsequent claims))** 20
- (1) In section 194(1)(e), replace “on a ground under section 145(b)” with “under section 145”.
- (2) In section 194(6)(a), delete “(however, the person may lodge a humanitarian appeal subsequently if his or her claim for recognition is declined)”. 25
- (3) After section 194(6), insert:
- “(6A) If the Tribunal dispenses (under subsection (6)(a)) with the consideration of a person’s humanitarian appeal lodged at the same time as an appeal under subsection (1)(a) or (b), the person may subsequently lodge a humanitarian appeal only if it is 30
- lodged, as required by subsection (6), at the same time as an appeal under subsection (1)(c).”

- 52 Section 196 amended (Determination of appeal against decision declining to accept for consideration claim in light of international arrangement or agreement)**
- (1) In section 196(2), replace “uphold or reverse the decision of the refugee and protection officer” with “dismiss or allow the appeal”.
- (2) In section 196(3), replace “reverses the decision” with “allows the appeal”.
- (3) In section 196(3)(b), replace “decision” with “appeal”.
- 53 Section 197 amended (Determination of appeal against decision declining to accept for consideration certain claims for recognition as refugee)**
- (1) In section 197(3), replace “uphold or reverse the decision of the refugee and protection officer” with “dismiss or allow the appeal”.
- (2) In section 197(4), replace “reverses the decision” with “allows the appeal”.
- (3) In section 197(4)(b), replace “decision” with “appeal”.
- 54 Section 198 amended (Determination of appeal against declining of claim for recognition, cancellation of recognition, or cessation of recognition)**
- (1) In section 198(1), replace “section 194(1)(c) or (d)” with “section 194(1)(c), (d), or (e)”.
- (2) Replace section 198(2) with:
- “(2) However, if the appeal is brought under section 194(1)(e) and relates to a decision to cancel recognition on the grounds that section 145(b)(i) or (iii) (or both) apply, the Tribunal must—
- “(a) determine the matter de novo; and
- “(b) determine whether either or both of the following apply:
- “(i) recognition of the person as a refugee or a protected person may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
- “(ii) the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by a refugee and

- protection officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and
- “(c) if it finds that either or both of the matters under **paragraph (b)** do apply, determine the matters described in subsection (1)(b) and (c); and 5
- “(d) if it does not find that either of the matters described in **paragraph (b)** applies, allow the appeal.”
- (3) In section 198(3), replace “uphold or reverse the decision of the refugee and protection officer” with “dismiss or allow the appeal”. 10
- (4) In section 198(4), replace “reverses a decision” with “allows an appeal”.
- (5) In section 198, repeal the compare note. 15
- 55 Section 202 amended (Grounds for determining appeal on facts)**
- Replace section 202(c) with:
- “(c) in the case of an appellant liable for deportation under **section 158(1)(b)(i)**, the Tribunal is satisfied, on the balance of probabilities, that none of the information provided in relation to the person’s application for a residence class visa or entry permission was fraudulent, forged, false, or misleading, and no relevant information was concealed: 20 25
- “(ca) in the case of an appellant liable for deportation under **section 158(1)(b)(ii)**, the Tribunal is satisfied, on the balance of probabilities, that none of the information provided in relation to the person’s application for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, and no relevant information was concealed.”. 30
- 56 Section 206 amended (Who may appeal to Tribunal on humanitarian grounds)**
- (1) In section 206(2)(b), replace “section 210(2)” with “section 115, **154(5)**, 210(2)”. 35

- (2) In section 206(2)(c), after “section 163”, insert “; or”.
- (3) After section 206(2)(c), insert:
- “(d) if he or she holds a limited visa and is liable for deportation under section 155, 156, or 157; or
- “(e) if the person is liable for deportation under section 155 because he or she re-entered New Zealand while subject to a period of prohibition on entry.” 5
- 57 New section 224A inserted (Annual report on performance of Tribunal’s functions)**
- After section 224, insert: 10
- “224A Annual report on performance of Tribunal’s functions**
- “(1) The chair of the Tribunal must, in each year, provide a report to the Minister of Justice, the Minister of Immigration, and the Minister for Courts on the performance of the Tribunal’s functions under this Act in respect of the financial year ending in that year. 15
- “(2) The report must include details of both the number of determinations and the nature of determinations made by the Tribunal in the period to which the report relates.
- “(3) The Minister of Justice must present a copy of the report to the House of Representatives as soon as practicable after it is provided to that Minister.” 20
- 58 Section 225 amended (How appeal or matter lodged)**
- (1) Replace section 225(2)(a) with:
- “(a) provide the Tribunal with a contact address and an address for service; and” 25
- (2) Repeal section 225(3) and (4).
- Subpart 8—Amendment to related enactment
- 59 Amendment to Immigration (Carriers’ Information Obligations) Regulations 2010** 30
- (1) This section amends the Immigration (Carriers’ Information Obligations) Regulations 2010.
- (2) Replace regulation 6(1) with:

- “(1) For the purposes of section 102(2) of the Act, a person (being a carrier, or a person in charge, of a commercial craft) to whom section 96 of the Act applies must provide the information described in subclause (2) to the chief executive.”

Part 2

5

Amendments to Parts 8 to 11

Subpart 1—Amendments to Part 8 (Compliance and information)

- 60 Section 277 amended (Powers of entry and inspection relating to records of employers)** 10
- (1) In section 277(1)(b), after “employer’s obligations”, insert “(which, to avoid doubt, includes the obligation not to commit an offence)”.
- (2) After section 277(1)(c), insert:
 “(d) determining whether a person who is working for an employer in New Zealand is entitled to work in New Zealand.” 15
- (3) In section 277(2)(a), delete “business”.
- (4) After section 277(4), insert:
- “(5) In this section, **premises** includes a dwellinghouse.” 20
- 61 New section 277A inserted (Powers of entry and search for employees on employers’ premises)**
- After section 277, insert:
“277A Powers of entry and search for employees on employers’ premises 25
- “(1) In this section,—
 “**premises** means any premises, including a dwellinghouse and any ship or other vessel or vehicle
 “**specified employee** means a person who an immigration officer believes on reasonable grounds is or may be an employee 30
 of an employer who the immigration officer believes on reasonable grounds is committing an offence under section 350 or 351

- “**specified person** means a person who an immigration officer believes on reasonable grounds is or may be a person who—
- “(a) is not entitled under this Act to work in New Zealand; or
 - “(b) is not complying with 1 or more work-related conditions of his or her visa. 5
- “(2) An immigration officer may, for any purpose listed in section 277(1), exercise any 1 or more of the powers in **subsection (3)** of this section if the officer believes on reasonable grounds that a specified person or a specified employee is at premises— 10
- “(a) owned, occupied, or used by an employer; and
 - “(b) at which the officer believes on reasonable grounds that work is being done.
- “(3) An immigration officer may—
- “(a) enter any part of the premises; and 15
 - “(b) search for any specified person or specified employee at the premises; and
 - “(c) require any specified person at the premises to answer questions put by the immigration officer in order to ascertain— 20
 - “(i) whether the person is entitled to work in New Zealand; and
 - “(ii) whether the person is complying with the work-related conditions of his or her visa (if any); and
 - “(d) require any specified person at the premises to produce 25 for inspection—
 - “(i) any documentary or other evidence of the person’s identity; and
 - “(ii) the person’s passport or certificate of identity (whether or not it also relates to any other person); and 30
 - “(e) require anyone at the premises who has access to copying facilities to provide copies of any documents or things provided under **paragraph (d)**; and
 - “(f) require any specified employee at the premises to answer 35 questions put by the immigration officer in order to ascertain whether the specified employee’s employer is complying with the employer’s obligations under this Act.

- “(4) An immigration officer may retain any original documents or things produced under **subsection (3)(d)**, and any copies provided under **subsection (3)(e)**, and may check them against any wages and time records, or any other documents relating to the remuneration or employment conditions of any employees, obtained by the officer under section 277(3). 5
- “(5) The powers in **subsection (3)** may be exercised at any reasonable time during which work is being carried out at the premises, or they are open for business, whether by day or by night, without a warrant or any other authority than this section. 10
- “(6) Any original documents or things produced under this section may be retained and used by an immigration officer until the immigration officer has determined whether the person to whom they relate is liable for deportation or turnaround, and then,— 15
- “(a) if the person is liable for deportation or turnaround, or becomes liable for deportation following the exercise of the immigration officer’s powers under this section, the documents or things may be retained and used by the Crown towards effecting the person’s deportation or departure from New Zealand; or 20
- “(b) if the person is not liable for deportation or turnaround, and does not become liable for deportation following the exercise of the immigration officer’s powers under this section, the documents or things must be returned to the person as soon as possible.” 25

62 New section 279A inserted (Treatment of identity documents and other things)

After section 279, insert:

“279A Treatment of identity documents and other things

- “(1) In this section and sections 280 to **281B**, **identity document**, in relation to a person, means all or any of the following: 30
- “(a) documentary or other evidence of the person’s identity:
- “(b) any passport or certificate of identity relating or purporting to relate to the person, whether or not it also relates to any other person: 35

- “(c) any passport or certificate of identity relating to a dependent child of the person (but only in circumstances where there is good cause to suspect that the child is liable for deportation or turnaround).
- “(2) Any identity documents or things surrendered or obtained under sections 280 to **281B** may be used by the Crown toward effecting the person’s deportation or departure from New Zealand. 5
- “(3) To the extent that any identity documents or things surrendered or obtained under sections 280 to **281B** are not used or required for the person’s deportation or departure from New Zealand, they must be returned to the person— 10
- “(a) on the person’s departure from New Zealand or on the person being granted a visa and entry permission; or
- “(b) when the person’s liability for deportation is cancelled or suspended, or ceases for any reason.” 15

63 Section 280 amended (Power of immigration officer to request information and documents where liability for deportation or turnaround suspected)

Replace section 280(1) with: 20

- “(1) If an immigration officer has good cause to suspect that a person is liable for deportation or turnaround, the officer may, for the purpose of establishing whether that is the case, request the person to do 1 or more of the following things: 25
- “(a) supply the person’s full name (or names, if the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address: 25
- “(b) produce any identity documents for inspection:
- “(c) surrender any identity document produced under **paragraph (b)**: 30
- “(d) if the person does not currently have in his or her possession an identity document requested by the officer, give details to the officer of where it can be found or who is holding it.”

64 Section 281 replaced (Powers on deportation or turnaround) 35

Replace section 281 with:

“281 Power to require information from person liable for deportation or turnaround

Where a person is liable for deportation or turnaround, an immigration officer may require the person to—

- “(a) do any of the things in **section 280(1)**; and 5
- “(b) produce and surrender any travel tickets, or cash or security in lieu of travel tickets, held by the person.

“281A Obligation of third parties to surrender identity documents

“(1) A person (**person A**) must surrender an identity document relating to another person (**person B**) to an immigration officer if— 10

- “(a) person B—
 - “(i) has failed to produce or surrender the identity document when required to do so under **section 280 or 281**; or 15
 - “(ii) has told an immigration officer where the identity document may be found or who is holding it; and
- “(b) the immigration officer has good cause to suspect that person A is in possession of the identity document; and 20
- “(c) the immigration officer gives person A a certificate in the prescribed form that requires person A to surrender the identity document.

“(2) No action lies against person A in any court if, pursuant to a requirement or purported requirement under this section by an immigration officer, person A surrenders an identity document relating to person B to the immigration officer. 25

“281B Power of entry and search for identity documents

“(1) An authorised immigration officer may, in order to facilitate the deportation or turnaround of a person, exercise the powers in **subsection (2)** if— 30

- “(a) the person is liable for deportation or turnaround; and
- “(b) the person has refused a requirement under **section 281** to produce or surrender an identity document required under that section; and 35

- “(c) the immigration officer has reasonable grounds to suspect that the identity document is at the place to be entered and searched; and
- “(d) the place proposed to be entered and searched is—
- “(i) the place (which may include a vehicle) where the person is currently located; or 5
- “(ii) the person’s abode; or
- “(iii) any premises or vehicle owned by, or under the control of, the person.
- “(2) An immigration officer may at any reasonable time, without a warrant or any other authority than this section, do either or both of the following: 10
- “(a) enter and search a place referred to in **subsection (1)(d)**:
- “(b) seize any identity document that a person has been required to produce or surrender and that is found at the place. 15
- “(3) However, an immigration officer must not exercise any power under this section until on or after the date on which **section 285A** (as inserted by the **Immigration Amendment Act (No 2) 2013**) comes into force.” 20

65 New section 285A inserted (Search of persons)

After section 285, insert:

“285A Search of persons

- “(1) An immigration officer may search a person who arrives in New Zealand from another country if— 25
- “(a) the immigration officer has demanded, under **section 103(1)(da)**, the production of the person’s passport or certificate of identity and any travel tickets held by the person; and 30
- “(b) the person has failed to comply with that demand; and
- “(c) the immigration officer believes on reasonable grounds that the person is not a New Zealand citizen; and
- “(d) the immigration officer has reasonable cause to suspect that some or all of the required documents are hidden on or about the person or in any baggage under the immediate control of the person. 35

- “(2) A search under this section may include a rub-down search (as defined in the Search and Surveillance Act 2012), a search of the person, or both.
- “(3) If, as a result of a search under this section, the person’s passport or certificate of identity or any travel tickets are found,— 5
 “(a) the documents may be retained by the immigration officer for the purpose of administering this Act (unless the person is found to be a New Zealand citizen or a person who has a visa and entry permission); and
 “(b) the documents must be returned to the person— 10
 “(i) if the person is granted a visa and entry permission; or
 “(ii) on the person’s departure from New Zealand.
- “(4) Sections 123 to 126, and subpart 7 of Part 4, of the Search and Surveillance Act 2012 apply in respect of any immigration officer exercising a power under this section, and, if the search is a rub-down search, sections 85 and 86 of that Act apply as well.” 15
- 66 Section 286 amended (Powers of entry and search relating to deportation)** 20
- (1) In section 286, replace “or executing a deportation order” with “, deportation order, or removal order, or executing a deportation order or removal order”.
- (2) In section 286(b), replace “or execute the deportation order” with “or order, or execute the deportation order or removal order”. 25
- 67 Sections 287 to 290 replaced**
 Replace sections 287 to 290 with:
- “**287 Special biometric information** 30
 For the purposes of **sections 288 to 290A**, **special biometric information** means, in relation to any person, any of the following that are or may be required in order to meet the entry or transit requirements of any country to which or through which the person is to travel:
 “(a) the person’s palm-prints: 35
 “(b) the person’s footprints:

“(c) measurements of the whole person:

“(d) photographs of the whole person.

“**288 Requirement to allow collection of biometric information and special biometric information**

“(1) If a person is liable for deportation or turnaround, an immigration officer may require the person to allow biometric information, special biometric information, or both to be collected from him or her. 5

“(2) An immigration officer may require a person to allow biometric information to be collected from him or her if the immigration officer has good cause to suspect any of the following matters, and the immigration officer requires the biometric information in order to determine any of those matters: 10

“(a) that the person is liable for deportation or turnaround; or 15

“(b) that the person is not complying with, or is materially breaching, the conditions of the person’s visa; or

“(c) that the person is undertaking work or a course of study but is not entitled to undertake that work or study under this Act; or 20

“(d) that the person has obtained a visa under a fraudulent identity.

“(3) Any biometric information or special biometric information obtained from a person under **subsection (1)**, or under a compulsion order made under **section 290** on an application under **section 289(1)** after this subsection comes into force, must be destroyed if the person’s liability for deportation is cancelled or suspended, or if the person is granted a visa and entry permission. 25

“**289 Application for order authorising collection of biometric information** 30

“(1) An immigration officer may apply, in writing and on oath, to a District Court Judge for a compulsion order in any case where a person has refused to allow biometric information, special biometric information, or both, to be collected from him or her in response to a requirement by an immigration officer under 35

section 288(1), in which case the application must set out the following:

- “(a) the facts relied on to show that the person is liable for deportation or turnaround; and
 - “(b) evidence that the person has refused to allow biometric information or special biometric information to be collected from him or her in accordance with a requirement under **section 288(1)**; and 5
 - “(c) if special biometric information was required, the facts relied on for believing that any of the things referred to in **section 287** are necessary in order to meet the entry or transit requirements of any country to which or through which the person is to travel. 10
- “(2) An immigration officer may apply, in writing and on oath, to a District Court Judge for a compulsion order in any case where a person has refused to allow biometric information to be collected from him or her in response to a requirement by an immigration officer under **section 288(2)**, in which case the application must set out the following: 15
- “(a) the facts relied on to show that there is good cause to suspect that any matter in **section 288(2)** applies to the person; and 20
 - “(b) evidence that the person has refused to allow biometric information to be collected from him or her in accordance with a requirement under **section 288(2)**; and 25
 - “(c) the reasons why it is considered necessary to obtain a compulsion order in relation to the person, including the facts relied on to show that there are reasonable grounds to believe that biometric information collected from the person would tend to confirm whether or not any matter in **section 288(2)** applies to him or her. 30
- “(3) For the purposes of **subsection (1)(a)**, it is sufficient if (but not essential that) an immigration officer includes a copy of a deportation liability notice or deportation order with the application. 35
- “(4) If an application is made under this section,—
- “(a) an immigration officer must serve a copy of the notice of the application on the respondent; and

- “(b) both the immigration officer and the respondent may appear and may offer evidence at the hearing of the application.
- “(5) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be otherwise admissible in a court of law. 5
- “**290 Judge may authorise biometric information and special biometric information to be collected**
- “(1) On the hearing of an application for a compulsion order, a District Court Judge may make a compulsion order requiring the respondent to allow specified biometric information, special biometric information, or both to be collected from him or her, if the Judge is satisfied that,— 10
- “(a) in the case of an application relating to a refusal of a requirement under **section 288(1)**,— 15
- “(i) the respondent is liable for deportation or turnaround; and
- “(ii) the respondent has refused to allow the biometric information, special biometric information, or both to be collected from him or her following a requirement under **section 288(1)**; and 20
- “(iii) if special biometric information was required, there are reasonable grounds to believe that any of the things referred to in **section 287** are necessary in order to meet the entry or transit requirements of any country to which or through which the respondent is to travel; and 25
- “(iv) in all the circumstances, it is reasonable to make the order: 30
- “(b) in the case of an application relating to a refusal of a requirement under **section 288(2)**,—
- “(i) there is good cause to suspect that any matter in **section 288(2)** applies to the respondent; and
- “(ii) there are reasonable grounds to believe that biometric information collected from the respondent would tend to confirm or disprove that any mat- 35

- ter in **section 288(2)** applies to the respondent; and
- “(iii) the respondent has refused to allow biometric information to be collected from him or her following a requirement under **section 288(2)**; and 5
- “(iv) in all the circumstances, it is reasonable to make the order.
- “(2) In considering whether to make a compulsion order, the Judge must have regard to any matter the Judge considers relevant, including— 10
- “(a) any reasons given by the respondent for opposing the making of the order; and
- “(b) in relation to an application under **section 289(1)**, where special biometric information is sought, any evidence regarding the necessity of obtaining from the respondent any of the things referred to in **section 287** that are required in order to meet the entry or transit requirements of any country to which or through which the person is to travel; and 15
- “(c) in relation to an application under **section 289(2)**, any evidence regarding the importance, to the investigation of the relevant matter, of obtaining biometric information from the respondent. 20
- “(3) A person served with a compulsion order must allow the biometric information or special biometric information specified in the order to be collected from him or her. 25
- “290A Obtaining biometric information by compulsion**
- “(1) If, after a compulsion order is served on a person, the person refuses to allow the biometric information or special biometric information specified in the order (the **required biometric information**) to be collected from him or her, a constable may— 30
- “(a) arrest the person; and
- “(b) remove the person to, and detain him or her in, a suitable place where the required biometric information can be collected; and 35
- “(c) collect, as soon as practicable, the required biometric information from the person, by force if necessary.

- “(2) If force is used under **subsection (1)(c)**, it must be reasonable and no more than is necessary to collect the required biometric information from the person.
- “(3) The person must be released from detention as soon as the required biometric information has been collected, unless the person’s continued detention is authorised under any other provision of this or any other Act.” 5
- 68 Section 293 amended (Police to have powers of immigration officers)**
In section 293, replace “292” with “**293A**”. 10
- 69 Section 293A replaced (Immigration officer may apply for search warrant)**
Replace section 293A with:
- “293A Warrant to enter and search**
- “(1) An immigration officer may apply for a search warrant to search any place or thing. 15
- “(2) The application must be made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012 to an issuing officer (within the meaning of section 3 of that Act).
- “(3) An issuing officer may issue a search warrant to an immigration officer if the issuing officer is satisfied that there are reasonable grounds— 20
- “(a) to suspect that any relevant offence specified in the application has been committed, is being committed, or will be committed; and 25
- “(b) to believe that the search will find evidential material in respect of the offence in or on the place or thing specified in the application.
- “(4) In this section, **relevant offence** means an offence against— 30
- “(a) this Act or any regulations made under it; or
- “(b) the former Act or any regulations made under it; or
- “(c) any other enactment, if the offence relates directly to matters concerning immigration.
- “(5) The provisions of Part 4 of the Search and Surveillance Act 2012 apply, except that sections 118 and 119 apply only if 35

the warrant is executed (as provided for in section 293) by a constable.”

70 Section 298 amended (Information matching to verify social security benefit matters)

In section 298(4)(g), after “(whether under this Act or the former Act)”, insert “or removed under the former Act”. 5

Subpart 2—Amendments to Part 9
(Detention and monitoring)

71 Section 317 amended (Decision on application for warrant of commitment) 10

In section 317(5)(d)(i), after “deportation order”, insert “or with a removal order under the former Act”.

72 Section 328 amended (Additional powers relating to detention by immigration officer)

Replace section 328(2) to (5) with: 15

- “(2) By virtue of section 82 of the Search and Surveillance Act 2012, sections 85 to 87 of that Act (about rub-down searches) apply to this section, and by virtue of section 89(1)(e) of that Act, Part 4 of that Act (and in particular sections 124 to 126 (about searches of the person)) also applies.” 20

73 Section 329 amended (Arresting or detaining officer may seek assistance)

- (1) In section 329(3), after “justified”, insert “(as defined in section 2 of the Crimes Act 1961)”.
(2) In section 329(3), after “arrest”, insert “or detention”. 25

74 Section 331 amended (Form of custody of persons detained without warrant overnight)

- (1) In section 331(a), after “18 years of age”, insert “who is not married or in a civil union”.
(2) In section 331(a)(ii), delete “if the person is not married or in a civil union.”. 30

- 75 Section 332 amended (Form of custody of persons detained under warrant of commitment)**
- (1) In section 332(a), after “18 years of age”, insert “who is not married or in a civil union”.
 - (2) In section 332(a)(ii), delete “if the person is not married or in a civil union,”. 5
- 76 Section 339 amended (During epidemic certain warrants and extensions to have effect for 28 days)**
- (1) In the heading to section 339, delete “and extensions”.
 - (2) In section 339, renumber the first subsection (3) as subsection (2A). 10
- Subpart 3—Amendments to Part 10
(Offences, penalties, and proceedings)
- 77 Section 343 amended (Aiding and abetting)**
- Replace section 343(3)(c) to (e) with: 15
- “(c) arrives in New Zealand as the holder of a visa, or is granted a visa on arrival in New Zealand, but—
- “(i) the visa was or is granted in a false identity; or
 - “(ii) any of the information provided in relation to the person’s application for the visa was fraudulent, forged, false, or misleading, or relevant information was concealed; or 20
- “(d) is granted entry permission but—
- “(i) the entry permission was or is granted on the basis of a visa granted in a false identity; or 25
 - “(ii) any of the information provided in relation to the person’s application for the entry permission was fraudulent, forged, false, or misleading, or relevant information was concealed; or”.
- 78 Section 344 amended (Obstruction or failing to meet requirements)** 30
- Replace section 344(c) with:
- “(c) fails to remain in an immigration control area or other prescribed place when required to do so, or to follow an

immigration officer's instructions while in an immigration control area or other prescribed place; or".

- 79 Section 349 amended (Offences relating to carriers, and persons in charge, of craft)**
 Replace section 349(1)(d) and (e) with: 5
- “(d) fails, without reasonable excuse, to—
- “(i) provide the chief executive with the information required under **section 102(2)**; or
- “(ii) provide that information as required by **section 102(3)**.” 10
- 80 Section 351 amended (Exploitation of persons not legally entitled to work)**
- (1) In the heading to section 351, replace “**persons not legally entitled to work**” with “**unlawful employees and temporary workers**”. 15
- (2) In section 351(1), after “unlawful employee”, insert “or temporary worker” in each place.
- (3) In section 351(1), after “the employee”, insert “or worker” in each place.
- (4) Replace section 351(8) with: 20
- “(8) In this section, in relation to an employer,—
- “**temporary worker** means a person who the employer knows holds a temporary entry class visa
- “**unlawful employee** means a person who the employer knows is undertaking work that, under this Act, he or she is not entitled to do.” 25
- 81 Section 355 amended (Penalties: general)**
 Replace section 355(5) with:
- “(5) A person convicted of an offence against this Act, or against any regulations made under this Act, for which no specific 30
 penalty is provided in the Act or regulations is liable to a fine not exceeding \$5,000.”

82 Section 361 amended (Immigration officer may require information)

After section 361(e), insert:

“(f) an electronic address for service for the carrier:

“(g) an electronic address for service for the person in charge of the craft.” 5

83 Section 362 amended (Infringement notices)

Replace section 362(3) and (4) with:

“(3) Every infringement notice must be served on the carrier, or person in charge, of the craft who appears to have committed the infringement offence.” 10

84 Section 365 amended (Revocation of infringement notices)

In section 365, replace “by written notice to the person to whom the notice was issued” with “by written notice served on the person to whom the infringement notice was issued”. 15

85 New section 365A inserted (Service of notices)

After section 365, insert:

“365A Service of notices

“(1) This section applies to the following notices: 20

“(a) an infringement notice served under section 362: 20

“(b) a reminder notice referred to in section 363:

“(c) a notice served under section 365 that revokes an infringement notice.

“(2) Every notice to which this section applies must be served by way of— 25

“(a) sending it to the electronic address for service of the recipient, in which case it is deemed to be received by the recipient on the date on which it was sent; or

“(b) personal service on the recipient; or

“(c) sending it by registered post to the recipient’s last known place of residence or business, in which case it is deemed to be received by the recipient on the date on which it was posted. 30

“(3) **Subsection (2)** applies despite anything in section 24 of the Summary Proceedings Act 1957, and— 35

- “(a) if service is effected in accordance with **subsection (2)**, the recipient is deemed to have consented to service in that way (despite sections 16 and 20(1)(b) of the Electronic Transactions Act 2002); and
- “(b) in any case, for the purpose of sections 387 and 389 of the Companies Act 1993, the service is deemed to have been service by way of leaving the notice at the recipient’s address for service.”
- 86 Section 366 amended (Evidence in proceedings: certificates in relation to persons)** 10
- (1) After section 366(2)(13), insert:
“(13A) the person was removed from New Zealand on a specified date; or”.
- (2) In section 366(2)(24), delete “or supply access to”.
- Subpart 4—Amendments to Part 11 15
(Miscellaneous provisions)
- 87 Section 381 amended (Chief Executive may approve forms)**
- In section 381(3), after “appeals”, insert “or matters (as defined in section 183) in the Tribunal”. 20
- 88 Section 386 amended (Giving notice, service of notice, etc)**
- (1) Replace the heading to section 386 with “**Serving and giving notices, etc, to Minister and officers**”.
- (2) Repeal section 386(3) to (7).
- 89 New section 386A inserted (Serving and giving notices, etc, to other people)** 25
- After section 386, insert:
- “386A Serving and giving notices, etc, to other people**
- “(1) This section applies where, under this Act or any regulations made under it, a written notice or other document is required to be served on, or supplied, notified, or in any other way given to a person other than a person referred to in section 386(1) or (2). 30

- “(2) A notice or other document that is required to be served on a person must be served by way of—
- “(a) personal service on the person; or
 - “(b) sending it by registered post to the person’s address for service; but if the address for service is the address of a lawyer or agent, service is effected only if the lawyer or agent signs a memorandum stating that he or she accepts service of the notice or document on behalf of the person. 5
- “(3) If a written notice or other document is required to be supplied, notified, or in any other way given to a person, the notice or other document must be sent to the person’s contact address, and— 10
- “(a) if the address is a physical address, it must be sent by registered post to that address; and 15
 - “(b) if the address is an electronic address, it must be sent by electronic means to that address.
- “(4) A notice or document served or sent by registered post is deemed to be received by the person to whom it is addressed,— 20
- “(a) if the address is in New Zealand, 7 days after the date on which it was sent; and
 - “(b) if the address is outside New Zealand, 14 days after the date on which it was sent.
- “(5) A notice or other document sent to an electronic address is deemed to be received by the person to whom it is addressed 25
3 working days after the date on which it was sent.
- “(6) **Subsection (4)** applies unless the intended recipient proves that he or she did not receive the notice or document and the failure to receive it was not a result of fault on his or her part, and— 30
- “(a) he or she is—
 - “(i) the holder of a residence class visa; or
 - “(ii) a person described in section 187(1)(a) to (c); or
 - “(b) the address to which the notice or document was sent is an address outside New Zealand.” 35

90 Section 387 replaced (New Zealand address)

Replace section 387 with:

“387 Address for service

- “(1) A person’s address for service is, unless any of **subsections (2) to (4)** apply, either of the following provided by the person:
- “(a) the person’s physical address (whether in or outside New Zealand): 5
 - “(b) a physical address in New Zealand of a lawyer or other person acting as an agent for the person and who is authorised by the person to accept service on his or her behalf.
- “(2) If the address provided by the person as his or her address for service is known not to be an address at which service can properly be effected, and if **subsections (3) and (4)** do not apply, the person’s address for service is the person’s contact address, if that address is a postal address. 10
- “(3) If a person is aged under 18 years and is not married or in a civil union, the person’s address for service is,— 15
- “(a) if, in the notice or other document that is being sent, the person is named as a dependent child of another person, the address for service of that other person; or
 - “(b) if a responsible adult has been determined or nominated under section 375 (or under section 141B of the former Act) to represent the person’s interests, the address supplied by the responsible adult under section 375(7) (or under section 141B of the former Act). 20
- “(4) If a person is detained in custody, or is required under an enactment to reside at a particular address, the person’s address for service is the postal address of the place where the person is detained or required to reside. 25
- “(5) A person who has provided an address for service may at any time substitute a different address for service by giving written notice of the new address to an immigration officer, a refugee and protection officer, or the Tribunal, as the case requires. 30

“387A Contact address

- “(1) A person’s contact address is whichever of the following addresses the person has designated as his or her contact address, unless any of **subsections (2) to (4)** apply: 35
- “(a) the person’s postal address:
 - “(b) an electronic address for the person:

- “(c) the postal address of a lawyer or other person acting as an agent for the person.
- “(2) If a person’s designated contact address is known not to be an address at which the person can be contacted, and if **subsections (3) and (4)** do not apply, the person’s contact address is 5 whichever of the following addresses is considered most likely to be the address at which the person can be contacted:
- “(a) any other address referred to in **subsection (1)** that has been provided by the person:
- “(b) any address for the person that is obtained, after this 10 section comes into force, as a result of the exercise by an immigration officer or constable of any of the powers under section 274, 276, 277, 278, or 280.
- “(3) If a person is aged under 18 years and is not married or in a civil union, the person’s contact address is,— 15
- “(a) if, in the notice or other document that is being sent, the person is named as a dependent child of another person, the contact address of that other person; or
- “(b) if a responsible adult has been determined or nominated under section 375 (or under section 141B of the former 20 Act) to represent the person’s interests, the address supplied by the responsible adult under section 375(7) (or under section 141B of the former Act).
- “(4) If a person is detained in custody, or is required under an enactment to reside at a particular address, the person’s contact 25 address is the postal address of the place where the person is detained or required to reside.
- “(5) If a person’s contact address is an electronic address, the person is deemed to have consented to receive at that address all notices or other documents required to be supplied, notified, 30 or in any other way given to the person, but only if the person provides the address after this section comes into force.
- “(6) A person who has designated an address as a contact address may at any time substitute a different contact address by written notice to an immigration officer, a refugee and protection 35 officer, or the Tribunal, as the case requires.

“387B Departures from sections 386A to 387A

Sections 386A to 387A are default rules that apply subject to any other provision of this Act, or any regulations made under it, that replace or modify those rules as they apply to a specific situation or circumstance.”

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91 Section 388 amended (Designation of immigration officers)

- (1) In section 388(3)(b), after “277,”, insert “**277A**.”
- (2) In section 388(3)(c), replace “and 288” with “**281A**, and **281B**”.
- (3) In section 388(3)(d), replace “and 285” with “285, and **285A**”.
- (4) Replace section 388(3)(f) with:
 - “(f) the power to require biometric information, special biometric information, or both under **section 288**.”

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92 Section 393 amended (Fees and how they may be prescribed for purposes of section 400)

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After section 393(1)(c), insert:

- “(d) the regulations may prescribe fees payable by a third party (not being an applicant for, or a holder of, a visa or entry permission) in connection with a status or approval that, under the immigration instructions, the third party requires, or wishes to obtain or keep, where that status or approval is relevant to applicants for a visa or entry permission.”

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93 Section 398 amended (Costs of deportation or repatriation)

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Replace section 398(4) to (6) with:

- “(4) The costs incurred by the Crown in deporting or repatriating a person are recoverable as a debt due to the Crown, and those costs include (without limitation) costs incurred—
 - “(a) in locating, detaining, transporting, and maintaining the person pending his or her deportation or repatriation; and
 - “(b) in paying for travel for the person outside New Zealand.

30

- “(5) The costs recoverable by the Crown may be the actual costs (determined after the deportation or repatriation has been effected), or an estimate of those costs determined by,—
- “(a) in the case of deportation costs only, an immigration officer, in which case the estimate must be noted on the deportation order along with a statement requiring those costs to be paid; or 5
- “(b) in the case of either deportation costs or repatriation costs, a court of competent jurisdiction, on application by the Minister or an immigration officer. 10
- “(6) Where the estimated costs of deportation or repatriation are recovered from a person, if the amount recovered exceeds the actual costs of the deportation or repatriation, the excess must, on application by the person in the prescribed manner, be refunded to the person. 15
- “(6A) If the person deported or repatriated is under the age of 18 years and not married or in a civil union, the costs of his or her deportation or repatriation are recoverable from the person’s parent or guardian.”
- 94 Section 399 amended (Migrant levy) 20**
- (1) In the heading to section 399, replace “**Migrant**” with “**Immigration**”.
- (2) In section 399(1), replace “a migrant levy on persons who are granted a visa” with “an immigration levy on applicants for a visa”. 25
- (3) In section 399(2)(b), after “immigration”, insert “; and”.
- (4) After section 399(2)(b), insert:
- “(c) the infrastructure required for, and the operation of, the immigration system, including (without limitation) for the following purposes: 30
- “(i) establishing and verifying the identity of persons:
- “(ii) managing risk to the integrity of the immigration system:
- “(iii) managing immigration risk to the safety and security of New Zealand: 35
- “(iv) managing compliance with the immigration system; and

- “(d) attracting migrants to New Zealand; and
“(e) funding the Immigration Advisers Licensing Authority, to the extent that it is not otherwise funded.”
- (5) Replace section 399(3)(a) with:
“(a) specify the categories or classes of applicants who are liable to pay the immigration levy.” 5
- (6) In section 399(3)(c), replace “migrant” with “applicants”.
- (7) After section 399(3), insert:
“(3A) The Minister may, by special direction,—
“(a) exempt any person or persons from the obligation to pay all or part of the levy; or 10
“(b) refund all or part of a levy paid.”
- (8) In section 399(5), replace “migrant” with “immigration” in each place.
- 95 Section 400 amended (Regulations generally) 15**
- (1) After section 400(a), insert:
“(ab) providing that the chief executive may require that certain applications for visas must be made electronically, in which case the chief executive must maintain a list of such requirements and the regulations must prescribe how that list is to be publicly available.” 20
- (2) In section 400(j), replace “\$2,000” with “\$5,000”.
- (3) After section 400(k), insert:
“(ka) providing for the replacement or modification of all or any of the default rules in **sections 386A to 387A** (relating to the service and giving of notices and other documents) as they apply to specific situations or circumstances.” 25
- 96 Section 401 amended (Regulations relating to visas and expressions of interest) 30**
- Replace section 401(d) with:
“(d) prescribe 1 or more transit periods, and different periods may be prescribed for the holders of transit visas and persons to whom a transit visa waiver applies.”

- 97 Section 403 amended (Regulations in respect of refugee and protection matters)**
Repeal section 403(b).
- 98 New section 403A inserted (Regulations made on recommendation of Minister)** 5
After section 403, insert:
- “403A Regulations made on recommendation of Minister**
- “(1) Regulations made under this Part may be made only on the recommendation of the Minister, except as provided in **sub-section (2)**.” 10
- “(2) Any regulations made under the following provisions may, if they relate to appeals or other matters in the Tribunal, be made only on the recommendation of the Minister for Courts, after consultation with the Minister:
- “(a) section 400(d): 15
“(b) section 400(e):
“(c) section 400(f):
“(d) section 400(i).”
- Subpart 5—Related amendments to other enactments 20
- 99 Amendments to Immigration (Certificate and Warrant Forms) Regulations 2010**
Sections 100 and 101 amend the Immigration (Certificate and Warrant Forms) Regulations 2010.
- 100 New regulation 5A inserted (Certificate requiring surrender of documents held by third party)** 25
After regulation 5, insert:
- “5A Certificate requiring surrender of documents held by third party**
- A certificate given by an immigration officer for the purpose in **section 281A(1)(c)** of the Act (for the surrender of a document by a third party) must be in **form 2A** of the Schedule.” 30

101 New form 2A inserted in Schedule

In the Schedule, after form 2, insert the form set out in **Schedule 1** of this Act.

102 Amendment to Search and Surveillance Act 2012

(1) This section amends the Search and Surveillance Act 2012. 5

(2) In the Schedule, after the item relating to the Human Tissue Act 2008, insert the item set out **Schedule 2** of this Act.

Schedule 1
New form 2A for Immigration
(Certification and Warrant Forms)
Regulations 2010

s 101

Form 2A

r 5A 5

Request for surrender of document from third
party

Section 281A, *Immigration Act 2009*

To: [*name of person or organisation, address*]

I, [*name*], an immigration officer, have good cause to suspect that you are in possession of a passport/certificate of identity/or other documentary evidence of identity* relating to [*name*], who is, or who I have good cause to suspect is, liable for deportation or turnaround under the Immigration Act 2009. 10

*Delete as applicable.

If you are in possession of the above document(s), then, pursuant to **section 281A** of the Immigration Act 2009, I require you to surrender it/them* by— 15

- giving it/them* to me now; or
- delivering it/them* personally to the address below within 7 days of the date of this certificate; or 20
- posting it/them* by registered post to the address below within 7 days of the date of this certificate.†

*Delete as applicable.

†Note: If you use registered post, you must keep evidence that you have posted the document(s).

Attention of: [*name of immigration officer*]

at: [*office*]

at: [*address*] 25

If you are in possession of the above document(s) and you do not surrender it/them* to me in accordance with this certificate, you are liable to prosecution and a fine under section 344(a) of the Immigration Act 2009.

*Delete as applicable.

Surrendering a document in accordance with this certificate does not expose you to any legal liability. This is because, under **section** 30

Form 2A—*continued*

281A(2) of the Immigration Act 2009, no action lies in any court in respect of the surrender of a document that you are required by this certificate to surrender.

Date:

Signature:

5

Name:

(Immigration officer)

Schedule 2 **s 102**
**Amendment to Schedule of Search and
Surveillance Act 2012**

Immigration Act 2009	285A	Immigration officer may perform search of person coming into New Zealand from another country	Sections 123 to 126 and subpart 7
	293A	Immigration officer may apply for and execute search warrant	All (except that sections 118 and 119 apply only if warrant is executed by a constable)