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3 May 2021

Legislative Statement: Immigration (COVID-19 Response) Amendment Bill

This legislative statement supports the second reading of the Immigration (COVID-19 Response) Amendment Bill.

Overview

In May 2020, Parliament unanimously supported the passage of the Immigration (COVID-19 Response) Amendment Act 2020 (the 2020 Amendment Act). That legislation amended the Immigration Act 2009 by establishing eight administrative powers to allow the government to respond in an effective and efficient way to issues arising due to the COVID-19 global pandemic. The powers are automatically repealed at the close of 15 May 2021.

The purpose of the Immigration (COVID-19 Response) Amendment Bill (the Bill) is to extend the period during which those powers can be exercised, by two years, to 16 May 2023. It also proposes to extend the maximum duration of the regulations which can be made under one of the powers, from the existing three months to six months. The Bill does not propose to amend the scope of any of the powers.

The Education and Workforce Committee has considered the extension of the powers' timeframe and has reported the Bill unamended back to the House. The Committee received 168 submissions on the Bill.

The Bill reflects the continuing uncertain global climate

The 2020 Amendment Act temporarily filled a gap, in that the Immigration Act otherwise has limited ability to assist people as a class or group of individuals. While visa application requirements can be waived, and conditions on visas varied, this is generally only on an individual basis. Individual decision making is not practicable when large numbers of people are involved.

Global travel has not returned to pre-COVID conditions and the pandemic and its variants continue to impact on visa holders (in New Zealand and offshore) and people who would like to apply for visas. In particular, New Zealand's borders are still effectively closed, reflecting the fact that the pandemic is still infecting and killing large numbers of people, and New Zealand's elimination strategy. The arguments for continuing to maintain:

- flexibility, with regard to control over applications from offshore for temporary entry class visas, and
- an ability to amend visa settings for whole classes of visa holders, when doing so is reasonably necessary due to the impacts of COVID-19,

will remain until border restrictions are lifted.

The 2020 Amendment Act created eight time-limited powers which this Bill seeks to extend

In the order they appear in the Immigration Act 2009, these are the powers to:

1. vary or cancel conditions for classes of resident visa holders
2. impose, vary or cancel conditions for classes of temporary entry class visa holders
3. waive any regulatory requirements for certain classes of application (that is, waive any prescribed requirements to make an application)
4. grant visas to certain individuals and classes of people in the absence of an application
5. extend the expiry dates of visas for classes of people
6. waive the requirement to obtain a transit visa in an individual case or suspend a transit visa waiver provided by regulations in any individual case
7. certify immigration instructions under which an immigration officer may revoke the entry permission of a person who has been deemed under regulations made under the Act to have been granted entry permission, and
8. through regulations, suspend the ability to make applications for visas or submit expressions of interest in applying for visas by classes of people.

They enable the government to amend visa conditions for groups of people, extend the visas of groups of people for varying periods of time, and stop people overseas from making applications while it is not possible to travel to New Zealand due to border restrictions, and enable the revocation of entry permission of people with deemed entry permission while border restrictions are in place.

The powers are subject to a range of safeguards

Most of the powers (those relating to classes of person) can only be exercised by special directions, which in this case are disallowable instruments made by the Minister of Immigration, and must be presented to the House of Representatives. One of the powers (the ability to suspend applications) requires an Order in Council and therefore must be made by regulations. The powers which may affect classes of persons can only be exercised by the Minister of Immigration and cannot be delegated to immigration officers. This is the first of the safeguards.

Secondly, the decision maker must be satisfied in most cases that the exercise of the power (such as the making of the special direction) is reasonably necessary to manage the effects, or deal with the consequences, of: the outbreak of COVID-19, or measures under enactments to contain or mitigate the outbreak of COVID-19 or its effects, or other measures (in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.

Finally, six of the eight powers can only be exercised to benefit (or at minimum not disadvantage) visa holders or people offshore who do not hold a visa. The major exception to this, the power to suspend the ability of certain offshore persons from making temporary entry class visa applications, has the further safeguard noted above, in that the power must be exercised through regulations. The other exception is the ability to revoke the entry permission of a person who has been deemed under regulations made under the Act to have been granted entry permission.

The change proposed under this Bill to the regulation-making power, extending the maximum duration of the regulations from three to six months, is also subject to a policy safeguard. Should circumstances change and the border reopen, the regulations (which suspend the ability of most people offshore to apply for a temporary entry class visa) can be revoked, in whole or in part, by Ministers with Power to Act.

The two year timeframe is practical

It is not certain that the impacts of COVID-19 will be over by mid-May 2022, so a one year extension would be likely to imply that the government would be prudent to introduce a further Bill during this year to enable the powers to be continued if necessary later into 2022. This may not be an efficient use of the House's time.

If COVID-19 is overcome earlier, the requirement that the exercise of the powers must be reasonably necessary to address the impacts of COVID-19 means that those powers would effectively expire at that point.

The 2020 Amendment Act and this Bill complement existing policy making and immigration decision powers and the border exceptions policy settings

The powers enable changes to be made for classes of people who hold visas, or who are offshore and do not hold visas. They complement the existing range of options for addressing issues related to the general border closure. These include:

- the government approving policy changes (implemented through the Minister of Immigration certifying new immigration instructions) – these apply to new applications for visas
- the government making decisions about which groups of people qualify for border exceptions to travel to New Zealand and enter MIQ
- the Minister of Immigration (and in some cases delegated officials) making decisions on individual visas and applications (this can include amending existing visa conditions).