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Immigration Amendment Act 2015

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Commencement see section 2

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Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Immigration Amendment Act 2015.

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 (4).
- (2) Sections 28, 64, 85, and 109 come into force on the date that is 1 month after the date on which this Act receives the Royal assent.
- (3) Sections 4(5) and (6), 22 to 25, 29(1), 35, and 104 come into force on the date that is 6 months after the date on which this Act receives the Royal assent.

- (4) Sections 66, 71, and 102 come into force on the earlier of—
- (a) the 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
 - (b) the date that is 1 year after the date on which this Act receives the Royal assent.

Section 2(4)(a): section 102 brought into force, on 7 December 2015, by the Immigration Amendment Act 2015 Commencement Order 2015 (LI 2015/273).

3 Principal Act

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

Part 1 Amendments to Parts 1 to 7

Subpart 1—Amendments to Part 1 (Preliminary provisions)

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 **deportation liability notice**, after “section 171”, insert “, and, for the purposes of serving a notice, includes a copy of the notice”.
- (3) In section 4, definition of **deportation order**, after paragraph (a), insert:
 - (ab) for the purposes of serving or executing an order described in paragraph (a), includes a copy of the order; and
- (4) In section 4, definition of **New Zealand**, paragraph (c), replace “and 77(4)(a)” with “77(4)(a), 277, 277A, and 382(1)”.
- (5) 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
- (6) 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
- (7) In section 4, repeal the definition of **New Zealand address**.
- (8) 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

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).
- (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 given or sent to the person in accordance with section 386A(3).
- (5) Subsections (1) to (4) are subject to sections 386(8) and 387B.

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))

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 10 amended (Meaning of deported)

In section 10(3)(a)(i), replace “175” with “175A”.

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

- (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 subsection.

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

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

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

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

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

12 Section 22 amended (Immigration instructions)

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”.

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

After section 29, insert:

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.
- (2) The automated electronic system may be used to confirm a person’s status as a New Zealand citizen only 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.

Subpart 3—Amendments to Part 3 (Visas)

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

- (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:

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

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

16 Section 56 amended (Visa holder must comply with conditions)

In section 56(4), replace “section 386” with “section 386A”.

17 Section 57 amended (Applications for visas)

Replace section 57(2) to (4) with:

- (2) The applicant must provide his or her contact address and address for service.

18 Section 58 amended (Obligation on applicant to inform of all relevant facts, including changed circumstances)

Replace section 58(5) with:

- (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).

19 Section 61 amended (Grant of visa in special case)

- (1) In section 61(1)(b), after “in force”, insert “; and”.
- (2) After section 61(1)(b), insert:
 - (c) is not a person in respect of whom a removal order is in force.

20 Section 64 amended (Cancellation of visa on triggering event)

- (1) 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 175A, whether the visa was issued before or after this paragraph came into force:
- (2) After section 64(2), insert:
- (3) To avoid doubt, if a person’s visa is cancelled under subsection (1)(ab), the grant of a new visa to the person does not cancel the person’s liability for deportation.

21 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”.

22 Section 86 amended (Who must obtain transit visa)

Repeal section 86(7).

23 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—
 - (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).

24 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.

Compare: 1987 No 74 s 14E(3)

25 Section 91 replaced (Expiry of transit period)

Replace section 91 with:

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 beyond the transit period prescribed under section 401(d); or
- (b) grant the transit passenger a visa and entry permission.

26 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.

27 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”.

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

28 Section 102 replaced (Obligations of carriers, and persons in charge, of craft to provide information)

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;
 - (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 the information prescribed for the purposes of this subsection about every person who intended to board the craft for the purpose of travelling to New Zealand, including persons who did not in fact board the craft for any reason (including because of a decision made by the chief executive under section 97).
- (3) The chief executive may, in writing, exempt a person to whom section 96 applies from providing some or all of the information required under subsection (2) in all or any specified circumstances.
- (4) A person granted an exemption under subsection (3) must, despite that exemption, comply with any request made by the chief executive, not more than 14 days before or after the arrival of a craft in New Zealand, for some or all of the information prescribed for the purposes of subsection (2).
- (5) Information required under subsection (2) or (4) must be provided, or otherwise made available,—
 - (a) in a form and manner approved by the chief executive; and
 - (b) on the date, or at the time, specified by the chief executive; and
 - (c) for the period, if any, specified by the chief executive.
- (6) Information provided or otherwise made available to the chief executive under this section may be retained by the chief executive for any of the purposes listed in subsection (1).

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 a person to whom a transit visa waiver applies:

(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)

In section 109(6), replace "Subsection (4)" with "Subsection (5)".

31 New section 109A inserted (Form of entry permission)

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.
- (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).

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—
 - (a) at any time before the person leaves the immigration control area, designated place, or prescribed place at which the application is made; and
 - (b) if the application is not made in New Zealand, at any time before the person leaves the immigration control area or prescribed place at which he or she arrives in New Zealand.
- (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.
- (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.
- (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)

- (1) In section 112(5), replace “amounts to **concealment of relevant information**” with “must be treated as concealing relevant information”.
- (2) In section 112(6), replace “decline” with “refuse”.

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 a person to whom a transit visa waiver applies, and the transit period concerned has expired.

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
 - (B) granted a visa and entry permission, but then had that entry permission revoked; or

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

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)

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)”.
- (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
 - (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)

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.

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)

- (1) In the heading to section 158, replace “if visa or citizenship obtained or held by” with “due to”.
- (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, or purported application, for a residence class visa or 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, or any other person’s, application, or purported 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
 - (b) the Minister determines that—

- (i) any of the information provided in relation to the person's application, or purported application, for a residence class visa or 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, or any other person's, application, or purported 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.
- (1A) Subsection (1) applies—
- (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
 - (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)

- (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.
- (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 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 service, it may be served only by an immigration officer or by another person on behalf of an immigration officer.

46 Section 171 amended (Contents of deportation liability notice)

In section 171(a), delete “or provisions”.

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

(1) 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), or 157(2) why the person should not be deported; or
- (b) has purported to apply to the Minister for any other reason.

(2) In section 172(3)(b), replace “section 175(1)(e)” with “section 175A(4)”.

48 Section 175 replaced (When deportation order may be served)

Replace section 175 with:

175 Service of deportation order

- (1) A deportation order may be served on a person who is liable for deportation on or after the date or time specified in section 175A.
- (2) However, a deportation order may be served on an earlier date, if requested by the person liable for deportation.
- (3) A deportation order may only be served by an immigration officer (or by another person on behalf of an immigration officer) or a constable.
- (4) A deportation order may only be served on a person outside New Zealand if the person still holds a visa.

175A Time when deportation order may be served

- (1) Where a person has a right to give good reason why deportation should not proceed, the first day on which a deportation order may be served on the person is,—
 - (a) if the person does not provide submissions as to good reason why deportation should not proceed, the day that is 15 days after the date of service of a deportation liability notice on the person; or
 - (b) if the person provides submissions as to good reason why deportation should not proceed, and the person to whom the submissions are provided determines that deportation should continue, the day after the person is notified of that determination.
- (2) Where a person has a right to appeal under this Act against liability for deportation, the first day on which a deportation order may be served on the person is—

- (a) the day after the expiry of the period for lodging an appeal, if the person has not lodged an appeal:
 - (b) where the person has lodged an appeal to the Tribunal,—
 - (i) if the appeal is withdrawn, the day after the withdrawal:
 - (ii) if the liability for deportation is upheld, the day that is 28 days after the Tribunal determines the appeal (but subject to paragraph (c)):
 - (c) where the person has applied under section 245 for leave to appeal to the High Court,—
 - (i) if the application for leave is withdrawn, the day after the withdrawal:
 - (ii) if the High Court refuses leave to appeal, on the day after the expiry of the period for lodging an application for leave to the Court of Appeal in accordance with the rules of the Court of Appeal (but subject to subparagraph (iii)):
 - (iii) if the person applies to the Court of Appeal for leave and leave is refused, the day after the person is notified of the Court of Appeal's refusal:
 - (iv) if the application for leave is granted but the appeal is withdrawn, the day after the withdrawal:
 - (v) if the application for leave is granted and the person's liability for deportation is upheld, the day after the person is notified of the determination of the appeal.
- (3) Where a person has both a right to give good reason why deportation should not proceed and a right to appeal under this Act against liability for deportation, the first day on which a deportation order may be served on the person is the later of—
- (a) the first day on which the deportation order may be served under subsection (1); and
 - (b) the first day on which a deportation order may be served under subsection (2).
- (4) Where a person has breached the conditions stated in a notice or order suspending his or her liability for deportation under section 172(2) or 212(1), the first day on which a deportation order may be served on the person is the later of—
- (a) the day that is 28 days after service of a deportation liability notice on the person under section 172(3) or 212(3)(a), as the case may be; and
 - (b) any applicable day determined under subsection (2).
- (5) A deportation order may be served immediately on a person in the following circumstances:

- (a) where the person has been served with a deportation liability notice and the person does not have—
 - (i) a right to give good reason why deportation should not proceed; or
 - (ii) a right of appeal against liability for deportation:
 - (b) where an Order in Council under section 163 has been made in respect of the person:
 - (c) where the person—
 - (i) was unlawfully in New Zealand before 2 am on 29 November 2010; and
 - (ii) continues to be unlawfully in New Zealand under this Act; and
 - (iii) has no right of appeal under this Act against liability for deportation:
 - (d) where the person was the holder of a limited visa that has expired (unless that person has been served with a deportation liability notice under paragraph (a), in which case paragraph (a) applies).
- (6) In this section, a **right to give good reason why deportation should not proceed** means a right, stated in a deportation liability notice served on a person liable for deportation, to give good reason, not later than 14 days after the date of service of that notice, as to why deportation should not proceed.

49 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
- (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.

50 Section 177 amended (Deportation order may be cancelled)

After section 177(4)(a), insert:

- (ab) 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

51 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 relation to an application)”.

- (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
 - (b) leaves New Zealand voluntarily before he or she is served with a deportation order.
- (3) For the purposes of subsection (1), the relevant provision for determining why the person was deported is—
- (a) the provision under which the person became liable for deportation, as stated in the last deportation order served on the person; or
 - (b) if no deportation order was served on the person, the provision under which liability for deportation arose, as stated in the last deportation liability notice served on the person.

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

52 Section 187 amended (Rights of appeal in relation to decisions concerning residence class visas)

Repeal section 187(6) and (7).

53 Section 194 amended (Right of appeal in relation to decisions concerning refugee or protection status (other than subsequent claims))

- (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)”.
- (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 lodged, as required by subsection (6), at the same time as an appeal under subsection (1)(c).

54 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”.

55 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”.

56 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
 - (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”.
- (4) In section 198(4), replace “reverses a decision” with “allows an appeal”.
- (5) In section 198, repeal the compare note.

57 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, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, and no relevant information was concealed:

- (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, or any other person's, application, or purported 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:

58 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),".
- (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.

59 New section 224A inserted (Annual report on performance of Tribunal's functions)

After section 224, insert:

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.
- (2) The report must include details of both the number of determinations and the nature of the 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.

60 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
- (2) In section 225(2)(b), replace "any" with "either".

- (3) Repeal section 225(3) and (4).

61 Section 245 amended (Appeal to High Court on point of law by leave)

- (1) After section 245(1), insert:
- (1A) A decision by the Court of Appeal to refuse leave to appeal to the High Court is final.
- (2) In section 245(2), replace “Every appeal under this section must be brought” with “An application to the High Court under this section for leave to appeal must be made”.

62 Section 247 amended (Special provisions relating to judicial review)

Replace section 247(1) and (2) with:

- (1) Any review proceedings in respect of a statutory power of decision arising out of or under this Act must be commenced not later than 28 days after the date on which the person concerned is notified of the decision, unless—
- (a) the High Court decides that, by reason of special circumstances, further time should be allowed; or
- (b) leave is required, under section 249(3), before proceedings may be commenced (in which case section 249(4) applies).

63 Section 249 replaced (Restriction on review)

Replace section 249 with:

249 Restriction on judicial review of matters within Tribunal’s jurisdiction

- (1) No review proceedings may be brought in any court in respect of a decision where the decision (or the effect of the decision) may be subject to an appeal to the Tribunal under this Act unless an appeal is made and the Tribunal issues final determinations on all aspects of the appeal.
- (2) No review proceedings may be brought in any court in respect of any matter before the Tribunal unless the Tribunal has issued final determinations in respect of the matter.
- (3) Review proceedings may then only be brought in respect of a decision or matter described in subsection (1) or (2) if the High Court has granted leave to bring the proceedings or, if the High Court has refused to do so, the Court of Appeal has granted leave.
- (4) An application to the High Court for leave to bring review proceedings must be made—
- (a) not later than 28 days after the date on which the Tribunal’s determination in respect of the decision or matter to which the review proceedings relate is notified to the person bringing the proceedings; or
- (b) within such further time as the High Court may allow on application made before the expiry of that 28-day period.

- (5) A decision by the Court of Appeal to refuse leave to bring review proceedings in the High Court is final.
- (6) In determining whether to grant leave for the purposes of this section, the court to which the application for leave is made must have regard to—
 - (a) whether review proceedings would involve issues that could not be adequately dealt with in an appeal against the final determination of the Tribunal; and
 - (b) if paragraph (a) applies, whether those issues are, by reason of their general or public importance or for any other reason, issues that ought to be submitted to the High Court for review.
- (7) A court that grants leave under subsection (3) to bring review proceedings must state the issue or issues to be determined in the proceedings.
- (8) Nothing in this section limits any other provision of this Act that affects or restricts the ability to bring review proceedings.

249A Applications for appeal and judicial review of Tribunal decision to be lodged together

- (1) This section applies if a person intends to both appeal against a determination of the Tribunal under this Act and bring review proceedings in respect of that same decision.
- (2) The person must—
 - (a) lodge the application for leave to appeal and the application for leave to bring review proceedings together; and
 - (b) if both applications for leave are granted, lodge the application for appeal and the application for judicial review together.
- (3) The High Court must, unless it considers it impracticable in the particular circumstances of the case to do so,—
 - (a) endeavour to determine both applications for leave together; and
 - (b) if both applications for leave are granted, endeavour to hear the appeal and the review proceedings together.

249B Appeal to Court of Appeal against judicial review of matters within Tribunal's jurisdiction

- (1) This section applies in respect of judicial review proceedings for which leave was granted under section 249(3).
- (2) Any party to the proceedings who is dissatisfied with any determination of the High Court in the proceedings may, with the leave of the High Court (or, if the High Court refuses leave, with the leave of the Court of Appeal), appeal to the Court of Appeal. Section 66 of the Judicature Act 1908 applies to any such appeal.

- (3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to whether the issue involved in the appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision.

Subpart 8—Amendment to related enactment

64 Amendment to Immigration (Carriers' Information Obligations) Regulations 2010

- (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) and (4) 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, or otherwise make available, to the chief executive the information described in subclause (2).

Part 2

Amendments to Parts 8 to 11

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

65 Section 277 amended (Powers of entry and inspection relating to records of employers)

- (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.
- (3) In section 277(2)(a), delete “business”.
- (4) After section 277(4), insert:
- (5) In this section, **premises** includes a dwellinghouse.

66 New sections 277A to 277C inserted

After section 277, insert:

277A Powers of entry and search for employees on employers' premises

- (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 of an employer who the immigration officer has good cause to suspect 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.
- (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—
- (a) that are 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
 - (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—
 - (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 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
 - (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 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) 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.
- (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,—
 - (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 toward effecting the person's deportation or departure from New Zealand; or
 - (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.

277B Department must review and report on entry and search powers under section 277A

- (1) The Department must, not later than 3 years after the commencement of section 277A,—
 - (a) review the exercise by immigration officers of the entry and search powers conferred by section 277A(3)(a) and (b); and
 - (b) prepare a report on the review for the Minister.
- (2) The report must include recommendations to the Minister on whether any amendments to the Act concerning the powers under section 277A(3)(a) or (b), or both, are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of the report to the House of Representatives.

277C Departmental annual report to record exercise of entry and search powers under section 277A

- (1) The chief executive must include in every annual report prepared by the chief executive for the purposes of section 43 of the Public Finance Act 1989—
 - (a) the number of occasions during the period covered by the report on which immigration officers exercised the powers conferred by section 277A(3)(a) or (b), or both; and
 - (b) the number of persons charged during the period covered by the report with an offence under section 350 or 351, if the collection of evidence

relevant to the offence was significantly assisted by the exercise of the powers under section 277A(3)(a) or (b), or both.

- (2) To avoid doubt, this section does not require the chief executive to include in any annual report information about an entry or a search undertaken by consent.

67 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:
- (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;
 - (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.
- (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—
- (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.

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

Replace section 280(1) with:

- (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:
- (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;
 - (b) produce any identity documents for inspection:

- (c) surrender any identity document produced under paragraph (b):
- (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.

69 Section 281 replaced (Powers on deportation or turnaround)

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
- (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—
 - (a) person B—
 - (i) has failed to produce or surrender the identity document when required to do so under section 280 or 281; or
 - (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
 - (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.

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—
 - (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
 - (c) the immigration officer has reasonable grounds to believe 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
 - (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:
 - (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.
- (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 2015) comes into force.

70 Section 285 amended (Power of entry and search at border place)

- (1) In section 285(2), omit "has good cause to believe that".
- (2) Replace section 285(2)(a) and (b) with:
 - (a) has good cause to suspect that an offence against this Act is likely to be, or is being, committed; or
 - (b) believes on reasonable grounds that a person to whom subsection (1)(b) applies is in the place.

71 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—
 - (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
 - (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.
- (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,—
- (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—
 - (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 to 87 of that Act also apply.

72 Section 286 amended (Powers of entry and search relating to deportation)

- (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”.

73 Sections 287 to 290 replaced

Replace sections 287 to 290 with:

287 Special biometric information

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:
- (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.
- (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:

- (a) that the person is liable for deportation or turnaround:
 - (b) that the person is not complying with, or is materially breaching, the conditions of the person's visa:
 - (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:
 - (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.

289 Application for order authorising collection of biometric information

- (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 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
 - (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.
- (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:
- (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
 - (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
 - (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.

- (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.
- (4) If an application is made under this section,—
 - (a) an immigration officer must serve a copy 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.

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,—
 - (a) in the case of an application relating to a refusal of a requirement under section 288(1),—
 - (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
 - (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
 - (iv) in all the circumstances, it is reasonable to make the order:
 - (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 matter 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
 - (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—
 - (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
 - (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.
- (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.

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—
 - (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
 - (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.

74 Section 293 amended (Police to have powers of immigration officers)

In section 293, after “292”, insert “and 293A”.

75 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.
- (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(1) 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—
 - (a) to suspect that any relevant offence specified in the application has been committed, is being committed, or will be committed; and
 - (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—
 - (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 the warrant is executed (as provided for in section 293 of this Act) by a constable.

76 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”.

Subpart 2—Amendments to Part 9 (Detention and monitoring)**77 Section 317 amended (Decision on application for warrant of commitment)**

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

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

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

- (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.

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

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

80 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,”.

81 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,”.

82 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).

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

83 Section 343 amended (Aiding and abetting)

Replace section 343(3)(c) to (e) with:

- (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
- (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
 - (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

84 Section 344 amended (Obstruction or failing to meet requirements)

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

85 Section 349 amended (Offences relating to carriers, and persons in charge, of craft)

Replace section 349(1)(d) and (e) with:

- (d) fails without reasonable excuse to comply with any of the carrier's or the person's obligations under section 102(2), (4), or (5).

86 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**".

- (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(7) with:

- (7) For the purposes of this section, an employer is treated as knowing—
 - (a) that an employee is not entitled under this Act to do any particular work if, at any time in the preceding 12 months (whether before or after the commencement of this subsection) the employer has been informed of that fact in writing by an immigration officer; and
 - (b) that a worker holds a temporary entry class visa if, at any time in the preceding 12 months (whether before or after the commencement of this subsection) the employer has been informed of that fact in writing by an immigration officer.

- (5) Replace section 351(8) with:

- (8) In this section, in relation to an employer,—

temporary worker means a person—

- (a) who the employer knows holds a temporary entry class visa; or
- (b) who holds a temporary entry class visa and in respect of whom the employer is reckless as to whether or not the person holds a temporary entry class visa

unlawful employee means a person who undertakes work for the employer that—

- (a) the employer knows, under this Act, the person is not entitled to undertake; or

- (b) the person is, under this Act, not entitled to undertake and in respect of which the employer is reckless as to whether or not the person is entitled to undertake the work.

87 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 penalty is provided in the Act or regulations is liable to a fine not exceeding \$5,000.

88 Section 357 amended (Penalties: employers)

Replace section 357(3) with:

- (3) A person convicted of an offence against section 351(1) is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both, if the offence relates to—
 - (a) a temporary worker within the meaning of paragraph (a) of the definition of temporary worker in section 351(8); or
 - (b) an unlawful employee within the meaning of paragraph (a) of the definition of unlawful employee in section 351(8).
- (4) A person convicted of an offence against section 351(1) is liable to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000, or both, if the offence relates to—
 - (a) a temporary worker within the meaning of paragraph (b) of the definition of temporary worker in section 351(8); or
 - (b) an unlawful employee within the meaning of paragraph (b) of the definition of unlawful employee in section 351(8).

89 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.

90 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.

91 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”.

92 New section 365A inserted (Service of notices)

After section 365, insert:

365A Service of notices

- (1) This section applies to the following notices:
 - (a) an infringement notice served under section 362;
 - (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—
 - (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.
- (3) Subsection (2) applies despite anything in section 24 of the Summary Proceedings Act 1957, and,—
 - (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.

93 Section 366 amended (Evidence in proceedings: certificates in relation to persons)

- (1) After section 366(2)(13), insert:

(13A) the person was removed from New Zealand on a specified date; or
- (2) Replace section 366(2)(24) with:

(24) the person did not provide, or otherwise make available, to the chief executive the information prescribed for the purposes of section 102(2);
or

Subpart 4—Amendments to Part 11 (Miscellaneous provisions)**94 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”.

95 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).

96 New section 386A inserted (Serving and giving notices, etc, to other people)

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 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).
- (2) A notice or other document that is required to be served on a person must be in writing and must be served by—
 - (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.
- (3) If a 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 in writing and must be either given to the person personally or sent to the person’s contact address, in which case,—
 - (a) if the address is a physical address, it must be sent by registered post to that address; and
 - (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,—
 - (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 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—

- (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.

97 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):
 - (b) a physical address in New Zealand of a lawyer or other person who is acting as an agent for the person and is authorised by the person to accept service on his or her behalf.
- (2) If the address provided by a 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.
- (3) If a person is under 18 years of age and is not married or in a civil union, the person's address for service is,—
 - (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).
- (4) If a person is detained in custody or is required under an enactment to reside at a particular address, and if subsection (3) does not apply, the person's address for service is the postal address of the place where the person is detained or required to reside.
- (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.
- (6) Subsection (7) applies if the latest address provided by a person was provided before section 97 of the Immigration Amendment Act 2015 came into force.
- (7) Despite subsection (1), the person's address for service is the person's New Zealand address (within the meaning of the Act as in force before section 97 of

the Immigration Amendment Act 2015 came into force), unless any of subsections (2) to (4) applies.

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) applies:
 - (a) the person's postal address:
 - (b) an electronic address for the person:
 - (c) the postal address or electronic address of a lawyer or other person who is 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 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 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 under 18 years of age and is not married or in a civil union, the person's contact address is,—
 - (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 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, and if subsection (3) does not apply, the person's contact 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, 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 officer, or the Tribunal, as the case requires.

- (7) Subsection (8) applies if the latest address provided by a person was provided before section 97 of the Immigration Amendment Act 2015 came into force.
- (8) Despite subsection (1), the person's contact address is the person's New Zealand address (within the meaning of the Act as in force before section 97 of the Immigration Amendment Act 2015 came into force), unless any of subsections (2) to (4) applies.

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 provide requirements for the manner of service or giving of notices and other documents in specific situations or circumstances.

98 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:

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

- (1) 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.
- (2) In section 393(10), replace "Crown Bank Account" with "Departmental Bank Account".

100 Section 394 amended (Other charges)

- (1) In section 394(4), replace "Crown Bank Account" with "Departmental Bank Account".
- (2) In section 394(8), replace "Crown Bank Account" with "Departmental Bank Account".

101 Section 398 amended (Costs of deportation or repatriation)

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.
- (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
 - (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.
- (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.
- (6A) If the person deported or repatriated is under 18 years of age 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.

102 Section 399 amended (Migrant levy)

- (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”.
- (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:
 - (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:
 - (iv) managing compliance with the immigration system; and
 - (d) activities aimed at attracting migrants to New Zealand; and
 - (e) the Immigration Advisers 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:
- (6) In section 399(3)(c), replace “migrant” with “applicants”.
- (7) In section 399(3)(e), delete “pending the grant of a visa”.
- (8) 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
- (b) refund all or part of a levy paid.
- (9) In section 399(5), replace “migrant” with “immigration” in each place.
- (10) After section 399(6), insert—
- (7) In this subsection and subsection (8),—
- commencement date** means that date on which section 102 of the Immigration Amendment Act 2015 came into force
- migrant levy** means the levy payable under this section immediately before the commencement date
- relevant person** means a person who, immediately before the commencement date, was a person who—
- (a) had applied for, but had not yet been granted, a visa; and
- (b) would have been liable to pay the migrant levy if the visa had been granted before the commencement date.
- (8) On and after the commencement date,—
- (a) a relevant person is not liable to pay, in respect of an application for a visa made before the commencement date, the immigration levy imposed by regulations that apply after the commencement date; but
- (b) if the relevant person is granted a visa on the basis of that application, he or she is liable to pay the migrant levy that would have been payable if section 102 of the Immigration Amendment Act 2015 had not come into force.

103 Section 400 amended (Regulations generally)

- (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:
- (2) In section 400(j), replace “\$2,000” with “\$5,000”.

(3) After section 400(k), insert:

(ka) providing requirements, which may differ from the requirements of sections 386A to 387A, for the manner of service or giving of notices and other documents in specific situations or circumstances:

(4) In section 400(l), replace “biometric data” with “biometric information”.

104 Section 401 amended (Regulations relating to visas and expressions of interest)

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:

105 Section 402 amended (Regulations relating to procedures and requirements in relation to arrivals in and departures from New Zealand)

Replace section 402(b) with:

(b) prescribe the information that must be provided to the chief executive for the purposes of section 96(2)(b), which may include, without limitation,—

(i) a description of the location of the information prescribed for the purposes of section 102(2); and

(ii) if applicable, the electronic address for the information referred to in subparagraph (i):

106 Section 403 amended (Regulations in respect of refugee and protection matters)

Repeal section 403(1)(b).

107 New section 403A inserted (Regulations made on recommendation of Minister)

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 subsection (2).
- (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):
 - (b) section 400(e):
 - (c) section 400(f):

(d) section 400(i).

108 Section 463 amended (Immigration officers who may make and cancel removal orders under former Act)

After section 463(1), insert:

- (1A) 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 made by an immigration officer under section 58 of the former Act.

Subpart 5—Related amendments to other enactments

109 Amendments to Immigration (Carriers’ Infringement Offences, Fees, and Forms) Regulations 2012

- (1) This section amends the Immigration (Carriers’ Infringement Offences, Fees, and Forms) Regulations 2012.
- (2) In Schedule 1, replace the items relating to section 349(1)(d) and (e) of the Act with:

349(1)(d)	Failing without reasonable excuse to comply with obligations under section 102(2), (4), or (5)	1,000	500
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110 Amendments to Immigration (Certificate, Warrant, and Other Forms) Regulations 2010

Sections 111 and 112 amend the Immigration (Certificate, Warrant, and Other Forms) Regulations 2010.

111 New regulation 5A inserted (Certificate requiring surrender of documents held by third party)

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.

112 New form 2A inserted in Schedule

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

113 Amendment to Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010

- (1) This section amends the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.
- (2) In regulation 16, delete “(as defined in section 86(7) of the Act)”.

114 Amendment to Search and Surveillance Act 2012

- (1) This section amends the Search and Surveillance Act 2012.
- (2) In the Schedule, after the item relating to the Human Tissue Act 2008, insert the item set out in Schedule 2 of this Act.

Schedule 1
**New form 2A for Immigration (Certificate, Warrant, and Other
Forms) Regulations 2010**

s 112

Form 2A
Request for surrender of document from third party

r 5A

Section 281A, Immigration Act 2009

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

- 1 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 [*full name*], who is, or who I have good cause to suspect is, liable for deportation or turnaround under the Immigration Act 2009.

*Omit as applicable.

- 2 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—
- 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
 - posting it/them* by registered post to the address below within 7 days of the date of this certificate.†

*Select one.

†**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*]

- 3 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.

*Select one.

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

Name:

(Immigration officer)

Schedule 2
Amendment to Schedule of Search and Surveillance Act 2012

			s 114
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 constable)

Reprints notes

1 *General*

This is a reprint of the Immigration Amendment Act 2015 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Immigration Amendment Act 2015 Commencement Order 2015 (LI 2015/273)