



Immigration Amendment Act (No 2) 2003

Public Act 2003 No 47
Date of assent 8 September 2003
Commencement see section 2

Contents

1	Title	10	Residence visas
	Part 1	11	Persons who may apply for residence permits
	Preliminary provisions	12	New section 18B substituted 18B Residence Review Board
2	Commencement	13	Appeals to Board against refusal of residence visa or permit
3	Objects of Act	14	Temporary permits to be subject to conditions
	Part 2	15	Obligation to inform all relevant facts, including changed circumstances
	Amendments to principal Act	16	Release or extended detention if craft unavailable, etc, within 72-hour period
4	Interpretation	17	Offences
5	Grant of visa a matter of discretion	18	Evidence in proceedings
6	New section 10A inserted	19	Migrant levy
	10A Issue of invitation to apply for residence a matter of discretion		
7	Government residence policy		
8	New section 13BB inserted		
	13BB Lapsing of applications for visas and permits		
9	New heading and sections 13D and 13E inserted		
	<i>Residence by invitation</i>		
	13D Expressions of interest in residence		
	13E Invitation to apply for residence		

Schedule
Amendments consequential on renaming of Residence Appeal Authority as Residence Review Board

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Immigration Amendment Act (No 2) 2003.
- (2) In this Act, the Immigration Act 1987 is called “the principal Act”.

Part 1

Preliminary provisions

2 Commencement

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

3 Objects of Act

The objects of this Act are to—

- (a) establish a legislative framework, particularly in respect of Government residence policy, where New Zealand's interests are paramount, as opposed to the present entitlement model, while still providing transparency and certainty of residence policy to maintain the international credibility of New Zealand's immigration system; and
- (b) provide greater control over, and more effective management of, the quality and number of applications for residence visas and residence permits; and
- (c) allow for Government residence policy that will better enable the selection and active recruitment of migrants who can make the best possible contribution to New Zealand and settle well in New Zealand.

Part 2

Amendments to principal Act

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing paragraph (a) of the definition of **Authority**.
- (2) Section 2(1) of the principal Act is amended by inserting, after the definition of **Authority**, the following definition:
“**Board** means the Residence Review Board referred to in section 18B”.
- (3) Section 2(1) of the principal Act is amended by inserting, after the definition of **internationally ticketed passenger**, the following definition:
“**invitation to apply for residence** has the meaning and effect described in section 13E(1) and (2)”.

5 Grant of visa a matter of discretion

Section 10 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) No review proceedings may be brought in any court in respect of—
- “(a) any refusal or failure to issue a visa, except a refusal or failure to issue a returning resident’s visa on application made under section 14C(1); or
 - “(b) any decision by the Residence Review Board in relation to a refusal or failure to issue a visa.”

6 New section 10A inserted

The principal Act is amended by inserting, after section 10, the following section:

“10A Issue of invitation to apply for residence a matter of discretion

- “(1) No person is entitled as of right to an invitation to apply for residence.
- “(2) The question whether or not to issue such an invitation, or to revoke such an invitation once issued, is a matter for the discretion of the Minister or, subject to any special direction given under this Act, the appropriate visa officer or immigration officer.
- “(3) No appeal lies against the decision of the Minister or visa officer or immigration officer on any such question, whether to any court or to the Board or to the Minister or otherwise.
- “(4) No review proceedings may be brought in respect of any refusal or failure of the Minister or a visa officer or an immigration officer to issue an invitation to apply for residence or to revoke such an invitation once issued.
- “(5) A decision by the Minister or a visa officer or an immigration officer to refuse to issue an invitation to a person to apply for residence, or to revoke an invitation once issued, is not to be treated as a refusal to grant an application for a residence visa or a residence permit for the purposes of section 18C (which relates to appeals to the Residence Review Board).
- “(6) To avoid doubt, the discretion referred to in subsection (2) includes—
- “(a) use by the Minister or visa officer or immigration officer of an automated electronic system that applies

criteria predetermined by Government residence policy; and

- “(b) adoption of any result of that process for issuing or in determining whether or not to issue an invitation to apply for residence.”

7 Government residence policy

- (1) Section 13B(3) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) any general or specific objectives of Government residence policy:

“(b) any rules or criteria for determining the eligibility of a person for the issue of a residence visa or the grant of a residence permit, being rules or criteria relating to the circumstances of that person:

“(ba) any indicators, attributes, or other relevant information or matters that may or must be taken into account in assessing a person’s eligibility:”.

- (2) Section 13B of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) Any rules or criteria under subsection (3)(b) may, in respect of any 1 or more specified classes or categories of person who wish to apply for a residence visa or a residence permit,—

“(a) include a requirement that persons of that class or category may so apply only if invited to do so by the Minister or a visa officer or an immigration officer:

“(b) set or indicate rules, criteria, or other relevant matters of the kinds specified in subsection (3)(a) to (e) that will or may apply for the purpose of determining whether or not an invitation to apply for residence should be issued to any such person:

“(c) stipulate any period for which an expression of interest will remain current:

“(d) stipulate any time frame (or any method for determining the time frame) within which the relevant application must be made following the issue of an invitation to apply for residence.”

8 New section 13BB inserted

The principal Act is amended by inserting, after section 13BA, the following section:

“13BB Lapsing of applications for visas and permits

- “(1) The Minister must, from time to time, publish in accordance with section 13A(2) the policy of the Government (if any) in relation to rules or criteria for the lapsing of applications in respect of which no decision to issue a visa or grant a permit has been made, or is likely to be made,—
- “(a) within any stipulated period or by any stipulated date; or
 - “(b) by the date on which any relevant quota or limit set under Government immigration policy or Government residence policy for any particular period is reached; or
 - “(c) by any other date on which some other specified event occurs or, as the case may be, has not occurred.
- “(2) Rules and criteria published under this section—
- “(a) may differ for different classes or categories of applications:
 - “(b) may specify any stage of processing of an application that must be reached within any stipulated period or by any stipulated date if the application is not to lapse.
- “(3) The question whether or not an application meets any rules or criteria for lapsing published under this section is a matter for the discretion of an immigration officer or a visa officer, and—
- “(a) no appeal lies against the decision of the officer concerned, or the lapsing of the application, whether to the Board, an Authority, the Tribunal, the Minister, any court, or otherwise; and
 - “(b) no review proceedings may be brought in any court in respect of—
 - “(i) the lapsing of an application for a visa under rules or criteria published under this section; or
 - “(ii) the lapsing of an expression of interest in obtaining an invitation to apply for residence.
- “(4) Any decision to lapse an application for a residence visa or a residence permit must be made in accordance with the rules and criteria applicable at the time the application was made.
- “(5) The effect of lapsing an application is that no further processing or decision in respect of that application is required.

- “(6) Where any application is lapsed in accordance with rules and criteria published under this section, the chief executive must refund any application fee paid in respect of the application to the person who paid it, or a person authorised by that person to receive it.
- “(7) Nothing in this Act or in any other law or enactment entitles a person whose application has lapsed to recover from the Minister or the Department or any visa officer or immigration officer any costs associated with the application, other than the application fee refundable under subsection (6).
- “(8) Subsection (4) overrides section 13C.
- “(9) In this section (except subsection (6)), **application** includes an expression of interest under section 13D in obtaining an invitation to apply for residence.”

9 New heading and sections 13D and 13E inserted

The principal Act is amended by inserting, after section 13C, the following heading and sections:

“Residence by invitation

“13D Expressions of interest in residence

- “(1) A person who, by virtue of rules or criteria set under section 13B(3A), is of a class or category of person that may apply for a residence visa or residence permit only if invited to do so by the Minister or a visa officer or an immigration officer may notify his or her interest in obtaining such an invitation in the prescribed manner.
- “(2) It is the responsibility of the person submitting an expression of interest to ensure that all information, evidence, and submissions that the person wishes to have considered in support of the expression of interest are provided when the expression of interest is submitted, and the Minister or visa officer or immigration officer considering the expression of interest—
- “(a) is not obliged to seek any further information, evidence, or submissions; and
- “(b) may determine whether or not to issue an invitation to apply for residence on the basis of the information, evidence, and submissions provided.
- “(3) Nothing in subsection (2) prevents the Minister or visa officer or immigration officer from taking into account any information, evidence, or submissions provided by the person at any

time before the decision whether to issue the invitation is made.

“13E Invitation to apply for residence

- “(1) An invitation to apply for residence is a statement by or on behalf of the Minister or a visa officer or an immigration officer, whether made electronically or in writing, that the person to whom it is made is authorised to make an application for a residence visa or a residence permit (whichever is appropriate).
- “(2) No person may apply for a residence visa or residence permit without such an invitation if the person is of a class or category of person that, by virtue of rules or criteria set under section 13B(3A), may apply for such a visa or permit only if invited to apply for residence.
- “(3) If such an invitation is required by Government residence policy for the person to be able to apply for the residence visa or residence permit, the statement of the invitation is sufficient authority for the making of the application (unless the invitation is subsequently revoked).
- “(4) Despite anything in this section or in any rules or criteria or other matters of a kind referred to in section 13B(3A), the Minister may, by special direction, issue an invitation to apply for residence to a person whether or not the person has expressed his or her interest in the manner required by section 13D.
- “(5) In ranking expressions of interest, and in issuing or in determining whether or not to issue an invitation to apply for residence, the Minister or a visa officer or immigration officer may—
- “(a) use an automated electronic system that applies criteria predetermined in accordance with Government residence policy; and
- “(b) apply any result of that process as an adequate basis for decision.
- “(6) An invitation to apply for residence may at any time be revoked by the Minister or a visa officer or an immigration officer. A revocation takes immediate effect.
- “(7) Section 13C does not apply in relation to a decision as to whether or not to issue an invitation to apply for residence,

and such a decision may be made having regard to Government residence policy applicable at the time of the decision, even if that differs from Government residence policy applicable at the time of notification of the relevant expression of interest.

- “(8) In a case where Government residence policy relating to residence by invitation changes between the date of issue of an invitation to apply for residence and the date on which a person’s application for a residence visa or a residence permit is made in response to that invitation, the decision on that application must be made in terms of the Government residence policy applicable at the time the application was made (and not at the time the invitation was issued), and any discretion exercised must be in terms of that policy.”

10 Residence visas

Section 14B of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) Despite subsection (1),—
- “(a) no person who is of a class or category of person that, by virtue of rules or criteria set under section 13B(3A), may apply for a residence visa or residence permit only if invited to apply for residence, may apply for a residence visa without such an invitation; and
 - “(b) no person may apply for a residence visa in response to an invitation to apply for residence if the application is not made within any relevant time frame stipulated by or under rules or criteria set under section 13B(3A)(d).”

11 Persons who may apply for residence permits

Section 17 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) Despite subsection (1),—
- “(a) no person who is of a class or category of person that, by virtue of rules or criteria set under section 13B(3A), may apply for a residence visa or residence permit only if invited to apply for residence, may apply for a residence permit without such an invitation; and
 - “(b) no person may apply for a residence permit in response to an invitation to apply for residence if the application

is not made within any relevant time frame stipulated by or under rules or criteria set under section 13B(3A)(d).”

12 New section 18B substituted

- (1) The principal Act is amended by repealing section 18B, and substituting the following section:

“18B Residence Review Board

- “(1) For the purposes of this Act there is a board called the Residence Review Board. The Board is the same body as the Residence Appeal Authority that existed immediately before the commencement of the Immigration Amendment Act (No 2) 2003.
- “(2) The function of the Board is to hear appeals brought under section 18C against the refusal of a visa officer or an immigration officer to grant an application for a residence visa or a residence permit.
- “(3) The Board consists of such number of members as the Governor-General determines from time to time on the advice of the Minister.
- “(4) The members are appointed by the Governor-General on the recommendation of the Minister.
- “(5) No immigration officer, and no person who has at any time within the previous 5 years been an immigration officer, may be appointed as a member of the Board.
- “(6) For the purposes of any matter within its jurisdiction the Board consists of 1 member.
- “(7) The provisions set out in Schedule 3A apply in relation to the Board.”
- (2) The principal Act is consequentially amended in the manner indicated in Part 1 of the Schedule of this Act.
- (3) The enactments specified in Part 2 of the Schedule are amended in the manner indicated in that schedule.
- (4) The Residence Review Board is the same body as the Residence Appeal Authority that existed immediately before the commencement of this Act, and—
- (a) references to the Residence Appeal Authority in any enactment, regulations, instrument, or other document are to be read as references to the Residence Review Board; and

- (b) references to the Residence Review Board in any enactment, regulations, instrument, or other document include, if appropriate in respect of matters occurring before the commencement of this Act, references to the Residence Appeal Authority; and
- (c) to avoid doubt,—
 - (i) the persons who, immediately before the date of commencement of this Act, were members of the Residence Appeal Authority continue as members of the Residence Review Board on the same terms and conditions as applied before that date:
 - (ii) the person who, immediately before the commencement of this Act, was chairperson of the Residence Appeal Authority continues as chairperson of the Residence Review Board for the period specified in that person's notice of appointment as chairperson.

13 Appeals to Board against refusal of residence visa or permit

Section 18C of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) No appeal lies under this section in respect of—

- “(a) any refusal or failure of the Minister or a visa officer or an immigration officer to issue an invitation to apply for residence; or
- “(b) any refusal or failure of the Minister or a visa officer or an immigration officer to issue a residence visa or grant a residence permit to a person who has been invited to apply for residence if a ground for the refusal or failure is that the Minister or officer is satisfied that the person,—
 - “(i) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for residence submitted false or misleading information, or withheld relevant information that was potentially prejudicial to the person; or
 - “(ii) did not ensure that a visa officer or immigration officer was informed of any material change in circumstances between the time of expressing

interest and the time of the person's application for the relevant visa or permit; or

“(c) any lapse of an application for residence or of an expression of interest in obtaining an invitation to apply for residence; or

“(d) any revocation of an invitation to apply for residence.”

14 Temporary permits to be subject to conditions

Section 27(1) of the principal Act is amended by adding to paragraph (b) the expression “; or”, and by adding the following paragraph:

“(c) stipulated in Government immigration policy published under section 13A, being the policy applicable at the time the decision is made to grant the relevant permit.”

15 Obligation to inform all relevant facts, including changed circumstances

(1) Section 34G of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Every person expressing an interest in obtaining an invitation to apply for residence under section 13E has the obligation to inform a visa officer or an immigration officer of any relevant fact, including any material change in circumstances that occurs after the expression of interest is notified, if that fact or change in circumstances—

“(a) may affect the decision to issue an invitation to apply for residence; or

“(b) may affect a decision to issue a residence visa or grant a residence permit as a consequence of the invitation to apply for residence.”

(2) Section 34G of the principal Act is amended—

(a) by omitting from subsection (2) the expression “subsection (1)”, and substituting the expression “subsections (1) and (1A)”;

(b) by inserting in subsection (3), after the expression “Subsection (1)”, the expression “or subsection (1A)”.

(3) Section 34G of the principal Act is amended by adding the following subsection:

“(4) It is sufficient ground for the Minister or a visa officer or immigration officer to decline to issue a visa or grant a permit

to a person if the Minister or officer is satisfied that the person,—

- “(a) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for residence submitted false or misleading information, or withheld relevant information that was potentially prejudicial to the issue of the invitation; or
- “(b) did not ensure that a visa officer or immigration officer was informed of any material change in circumstances between the time of expressing interest and the time of the person’s application for the relevant visa or permit; or
- “(c) whether personally or through an agent, in applying for the visa or permit submitted false or misleading information or withheld relevant information that was potentially prejudicial to the issue of the visa or the grant of the permit; or
- “(d) did not ensure that a visa officer or immigration officer was informed of any material change in circumstances between the time of making the application and the time of a decision on the application.”

16 Release or extended detention if craft unavailable, etc, within 72-hour period

- (1) Section 60(2) of the principal Act is amended by omitting the words “A warrant”, and substituting the words “Subject to any extension of it under subsection (4) or subsection (6A), a warrant”.
- (2) Section 60(4) of the principal Act is amended by inserting, after the words “subsections (2) and (3)”, the words “(and, if appropriate, subsection (6A))”.
- (3) Section 60 of the principal Act is amended by repealing subsections (6) and (7), and substituting the following subsections:
 - “(6) Unless the Judge considers that there are exceptional circumstances that justify the person’s release, a Judge may not order the release of a person under subsection (5) if—
 - “(a) the person is currently a refugee status claimant who claimed refugee status only after the removal order was served; or

- “(b) a direct or indirect reason for the person being unable to leave New Zealand is or was some action or inaction by the person occurring after the removal order was served.
- “(6A) Where a Judge determines not to order the release of a person to whom subsection (6) applies, the Judge may—
- “(a) extend the warrant of commitment for a further period of up to 30 days, in which case—
- “(i) the warrant authorises the detention of the person named in it for the period specified in the extension of the warrant; and
- “(ii) subsections (3) to (6) and this subsection apply at the expiry of the extension of the warrant; and
- “(b) make any orders and give any directions that the Judge thinks fit.
- “(7) No person may be detained under 1 or more warrants of commitment under this Part for a consecutive period of more than 3 months, unless the person is a person to whom subsection (6) applies.”
- (4) To avoid doubt, a person upon whom a removal order has been served may be arrested and detained in accordance with sections 59 and 60 of the principal Act (as amended by this section) notwithstanding that the person may, before the commencement of this Act, have been released from detention under a warrant of commitment by virtue of the application of section 60(7) of the principal Act (as in force before its amendment by this section).

17 Offences

- (1) Section 142(1) of the principal Act is amended—
- (a) by inserting in paragraph (a)(i), after the words “visa or permit”, the words “, or any expression of interest in residence under section 13D”:
- (b) by inserting in paragraph (d), in each case after the expression “permit,”, where it twice occurs, the words “invitation to apply for residence,”:
- (c) by inserting in paragraph (e), in each case after the expression “permit,”, where it twice occurs, the words “invitation to apply for residence,”.
- (2) Section 142(1) of the principal Act is amended by repealing paragraph (j), and substituting the following paragraph:

- “(j) wilfully misleads any person or acts negligently or unprofessionally (including charging excessively) while assisting a person, for financial reward, in any application for a permit or visa, or in any expression of interest in residence under section 13D, or in any proceedings before the Removal Review Authority or the Residence Review Board, or in any claim for refugee status.”

18 Evidence in proceedings

Section 143(1) of the principal Act is amended by inserting, after paragraph (e), the following paragraphs:

- “(ea) an invitation to apply for residence was or was not issued to the person, or was or was not revoked (including the date of issue or revocation, where appropriate); or
- “(eb) a decision whether or not to issue or grant any visa or permit has been made; or
- “(ec) an immigration officer or a visa officer was or was not satisfied as to any relevant specified matter; or
- “(ed) whether or not a particular stage of processing an application had been reached; or
- “(ee) an automated electronic system was or was not applying criteria predetermined in accordance with Government residence policy; or
- “(ef) the result of the process described in paragraph (ee) has or has not been applied as the basis for a decision; or”.

19 Migrant levy

- (1) Section 149B(1) of the principal Act is amended by omitting the word “residence” in both places where it occurs.
 - (2) Section 149B(4) of the principal Act is amended by omitting the word “residence” in both places where it occurs.
-

s 12(2), (3)

Schedule
Amendments consequential on renaming of
Residence Appeal Authority as Residence
Review Board

Part 1
Amendments to principal Act

Section 2(1)

Omit from paragraph (g) of the definition of **New Zealand address** the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Omit from paragraph (g)(i) of that definition the word “Authority” and substitute the word “Board”.

Section 13BA

Insert in subsection (7)(a), after the words “an Authority,”, the words “the Board,”.

Section 18C

Omit from the section heading the word “**Authority**” and substitute the word “**Board**”.

Omit from subsection (1) the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Omit from subsections (3), (5), and (7) the word “Authority” and substitute in each case the word “Board”.

Section 18D

Omit from the section heading the word “**Authority**” and substitute the word “**Board**”.

Omit from subsections (1) to (5) the word “Authority” wherever it occurs and substitute in each case the word “Board”.

Section 18E

Omit from the section heading the word “**Authority**” and substitute the word “**Board**”.

Omit from subsections (1), (4), and (5) the word “Authority” and substitute in each case the word “Board”.

Section 18F

Omit from subsections (1) to (9) the word “Authority” wherever it occurs and substitute in each case the word “Board”.

Section 34D

Omit from subsection (2)(c) the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Part 1—*continued***Section 67**

Insert in subsection (1)(d), after the words “an Authority,”, the words “the Board,”.

Section 114G

Insert in subsections (2)(c), (3)(b), and (4)(c), before the words “the Tribunal”, the words “the Board,”.

Section 114K

Insert in subsection (3)(a), after the word “Authority,”, the words “the Board,”.

Insert in subsection (5), after the word “Authority,”, the word “Board,”.

Section 114L

Insert in subsections (2)(d) and (3)(a), after the word “Authority,”, the words “the Board,”.

Heading before section 115

Omit from the heading before section 115 the words “*Residence Appeal Authority*” and substitute the words “*Residence Review Board*”.

Section 115

Omit from the section heading the words “**Residence Appeal Authority**” and substitute the words “**Residence Review Board**”.

Omit from subsections (1) and (3)(b) the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Omit from subsections (1) and (2) the words “the Authority” wherever they occur and substitute in each case the words “the Board”.

Section 129U

Omit from subsection (2)(c) the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Section 141B

Insert in subsection (3), after the words “an Authority,”, the words “the Board,”.

Insert in subsection (7), after the words “an Authority”, the words “or the Board”.

Section 141C

Omit paragraph (a) and substitute:

- “(a) the responsible adult may appeal to an Authority or the Board or the Tribunal under any of Parts II, III, IV, and

Part 1—*continued*

Section 141C—*continued*

IVA, or to the High Court under section 115A, on the minor's behalf, and may make submissions to the Authority, Board, or Tribunal.”.

Section 142

Omit from subsection (1)(a)(iv) the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Section 143

Insert in subsections (1) and (1A), in each case after the words “or an Authority”, the words “or the Board”.

Insert in subsections (2) and (3), in each case after the word “Authority”, the words “or the Board”.

Insert in subsection (7), after the word “Authority,”, the word “Board,”.

Section 146A

Insert in subsection (2)(a), after the words “a decision of”, the words “the Board or”.

Section 150

Omit from paragraph (ca) the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Schedule 3A

Omit the words in the Schedule heading, and substitute the words “**Provisions relating to Residence Review Board**”.

Omit the word “Authority” wherever it appears in clauses 1 to 7 and substitute in each case the word “Board”.

Part 2

Amendments to other enactments

Electronic Transactions Act 2002 (2002 No 35)

Omit from item (14) of Part 4 of the Schedule the words “Residence Appeal Authority” and substitute the words “Residence Review Board”.

Immigration Amendment Act 2003 (2003 No 30)

Insert in sections 5(2) and 6(6), in each case after the words “an Authority,”, the words “the Board,”.

Legislative history

1 July 2003	Introduction, first reading, and referral to Foreign Affairs, Defence and Trade Committee (Bill 62–1)
17 August 2003	Reported from Foreign Affairs, Defence and Trade Committee (Bill 62–2)
28 August 2003	Second reading
2 September 2003	Committee of the whole House (Bill 62–3)
4 September 2003	Third reading
8 September 2003	Royal assent

This Act is administered in the Department of Labour.
