

Immigration Amendment Bill (No 3)

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Border Security Bill as reported from the Government Administration Committee. The committee of the whole House has further amended the bill and has divided it into the following bills:

- The Customs and Excise Amendment Bill comprising clauses 1 and 2 and Part 1
 - This bill comprising Part 2.
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Key to symbols used in reprinted bill

As reported from a select committee

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

Subject to this Act.

Words inserted by a majority

As reported from the committee of the whole House

Struck out

Subject to this Act,

Text struck out

New

Subject to this Act,

Text inserted

Subject to this Act.

Words inserted

Hon Rick Barker

Immigration Amendment Bill (No 3)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Immigration Amendment Act (No 3) **2004**.
- (2) In this Act, the Immigration Act 1987¹ is called “the principal Act”.

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¹ 1987 No 74

2 Commencement

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

28 Residence permit holders temporarily absent from New Zealand

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Section 18 of the principal Act is amended by repealing paragraph (b).

29 New sections 125AA to 125AE inserted

The principal Act is amended by inserting, before section 125, the following sections:

- “125AA **Responsibilities of carrier, and person in charge, of commercial craft before it departs from another country to travel to New Zealand** 5
- “(1) This section applies to a carrier, and a person in charge, of a commercial craft if—
- “(a) he or she is notified by the chief executive that—
- “(i) he or she is a person of a kind who must comply with the responsibilities specified in **subsection (2)** before a craft in relation to which he or she is the carrier or the person in charge departs from another country to travel to New Zealand; or 10
- “(ii) the craft in relation to which he or she is the carrier or the person in charge is a craft of a kind in relation to which he or she must comply with the responsibilities specified in **subsection (2)** before the craft departs from another country to travel to New Zealand; and 15
- “(b) it is proposed that the craft travel to New Zealand from another country (including in the course of a scheduled international service). 20
- “(2) A person to whom this section applies must do the following things before the craft in relation to which he or she is the carrier or the person in charge departs from another country to travel to New Zealand: 25
- “(a) obtain the following information from every person who intends to board the craft for the purpose of travelling to New Zealand: 30
- “(i) name:
- “(ii) date of birth:
- “(iii) nationality:
- “(iv) sex:
- “(v) passport, or certificate of identity, number (if any): 35
- “(vi) passport, or certificate of identity, expiry date (if any):
- “(vii) the issuer of the certificate of identity, if it is not the person’s country of nationality (if any): 40

New (majority)

- “(viii) the person’s status as a traveller (including, but not limited to, whether the person is a member of the crew of the craft, a passenger whose destination is New Zealand, or a passenger whose destination is other than New Zealand): 5
- “(b) provide the following information to the chief executive by means of an approved system:
- “(i) the information obtained under **paragraph (a)**; and
- “(ii) if the person to whom this section applies intends to board the craft himself or herself for the purpose of travelling to New Zealand, information about himself or herself of the kind specified in **paragraph (a)**; and 10
- “(iii) information identifying the craft and its intended movements; and 15
- “(iv) in relation to a person referred to in **paragraph (a)**, the location of information about that person of the kind specified in **section 125AD(5)** (including, if applicable, the electronic address for the information). 20
- “(3) The chief executive may, in writing, exempt a person to whom this section applies from complying with some or all of his or her responsibilities under this section in all or any specified circumstances.
- “(4) Every <person> <carrier, or person in charge, of a commercial craft> who fails, without reasonable excuse, to comply with any of his or her responsibilities under this section commits an offence and is liable on conviction,— 25

Struck out

- “(a) to imprisonment for a term not exceeding 3 months; and
- “(b) in the case of a carrier, to a fine not exceeding \$20,000; and 30
- “(c) in the case of a person in charge, to a fine not exceeding \$10,000.

New

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| <p>“(a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or</p> <p>“(b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.</p> | 5 |
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“(5) In this section and **sections 125AB to 125AD**,—

“**approved system** means a system, including an electronic system, approved by the chief executive for the purpose of—

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| “(a) providing information to the chief executive under this section; or | 10 |
| “(b) notifying a person to whom this section applies of a decision of the chief executive under section 125AB(1) | |

“**commercial craft** means a craft that travels for a commercial purpose or as part of a commercial operation

“**scheduled international service** means a series of flights or voyages performed by a craft for the transport of passengers, cargo, or mail between New Zealand and 1 or more points in any other country or territory, if the flights or voyages are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and that are operated in a manner where each flight or voyage is open to use by members of the public

“**travelling to New Zealand** includes, but is not limited to, travelling to New Zealand from another country in transit to another destination.

“125AB **Chief executive may make decision about person boarding craft for purpose of travelling to New Zealand**

“(1) The chief executive may decide that a person in relation to whom information has been received under **section 125AA**—

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| “(a) may board a craft for the purpose of travelling to New Zealand; or | 30 |
| “(b) may not board a craft for the purpose of travelling to New Zealand; or | |

- “(c) may board a craft for the purpose of travelling to New Zealand only if he or she complies with conditions specified by the chief executive.
- “(2) The chief executive—
- “(a) must notify a person to whom **section 125AA** applies of a decision made under **subsection (1)**; and 5
- “(b) may do so in any form he or she thinks appropriate, including, but not limited to, by means of an approved system, which may contain code that represents the outcome of the decision; and 10
- “(c) may do so in any manner he or she thinks appropriate, including, but not limited to, by means of an automated electronic response to a decision made under **subsection (1)**.
- “(3) The chief executive— 15
- “(a) may make any decision under **subsection (1)** whether or not the person to whom the decision relates—
- “(i) holds a visa to travel to New Zealand; or
- “(ii) is exempt from the requirement to apply for and hold a visa to travel in New Zealand; or 20
- “(iii) is exempt from the requirement to hold a permit to be in New Zealand; but
- “(b) may not make a decision under **subsection (1)(b) or (c)** if the person to whom the decision relates is—
- “(i) a New Zealand citizen who holds a New Zealand passport; or 25
- “(ii) a person who holds a returning resident’s visa in a passport or certificate of identity, or who has a returning resident’s visa electronically entered and retained in the records of the Department of Labour under section 35AB, and who intends to travel to New Zealand during the currency of that visa; or 30
- “(iii) a person who—
- “(A) has been granted a pre-cleared permit that is entered and retained (either electronically or otherwise) in the records of the Department of Labour under section 35E; and 35
- “(B) intends to enter New Zealand during the currency of that pre-cleared permit on a 40

flight designated by the Minister as a pre-clearance flight under section 35C.

- “(4) To avoid doubt, section 141AA does not apply to the chief executive when he or she is notifying a person to whom **section 125AA** applies of a decision made under **subsection (1)**. 5
- “(5) To avoid doubt, the chief executive may make a decision under **subsection (1)** by means of an automated electronic system that analyses the information (if any) about a person that is held by the chief executive or to which the chief executive has access, using criteria predetermined by the chief executive. 10
- “(6) A person in relation to whom a decision is made under **subsection (1)** may not—
- “(a) appeal the decision to any court, the Tribunal, the Minister, or any other body or person; or 15
- “(b) bring review proceedings in relation to the decision.
- “(7) Despite **subsection (6)(b)**, a person in relation to whom a decision is made under **subsection (1)** may bring review proceedings, but may only do so on the grounds that he or she is a person in relation to whom that decision should not have been made because he or she is a person to whom **subsection (3)(b)** applies. 20
- “(8) The chief executive is not obliged to give reasons for a decision made under **subsection (1)** other than that **subsection (1)** applies. 25
- “(9) Section 23 of the Official Information Act 1982 does not apply in respect of a decision made under **subsection (1)**.
- “125AC **Offences relating to <compliance> <non-compliance> with decision made by chief executive under section 125AB** 30
- “(1) Every <person> <carrier, or person in charge, of a commercial craft> commits an offence who allows a person to travel to New Zealand before a decision has been made by the chief executive under **section 125AB(1)**.
- “(2) Every <person> <carrier, or person in charge, of a commercial craft> commits an offence who— 35
- “(a) is notified under **section 125AB(2)** of a decision made by the chief executive under **section 125AB(1)(b) or (c)**; and

“(b) without reasonable excuse, fails to ensure that the decision is complied with by the person to whom the decision relates.

“(3) Every *<person>* *<carrier, or person in charge, of a commercial craft>* who commits an offence against **subsection (1) or subsection (2)** is liable on conviction,— 5

Struck out

“(a) to imprisonment for a term not exceeding 3 months; and	
“(b) in the case of a carrier, to a fine not exceeding \$20,000; and	
“(c) in the case of a person in charge, to a fine not exceeding \$10,000.	10

New

“(a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or	
“(b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.	15

“125AD **Person to whom section 125AA applies must provide further information if requested, and must provide access to further information** 20

“(1) If the circumstances in **subsection (2)** exist, a person to whom **section 125AA** applies must provide the chief executive with information of the kind specified in **subsection (5)** about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft (including, but not limited to, if he or she did not board the craft as a result of a decision made by the chief executive under **section 125AB(1)**). 25

“(2) The circumstances are that the chief executive has made the request for the information within 24 hours of the arrival in New Zealand of the craft on which the person to whom the information relates intended to, or did, travel to New Zealand. 30

- “(3) A person to whom **section 125AA** applies must ensure that the chief executive has access to information of the kind specified in **subsection (5)** about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft (including, but not limited to, if he or she did not board the craft as a result of a decision made by the chief executive under **section 125AB(1)**). 5
- “(4) A person to whom **subsection (3)** applies must ensure that the chief executive has access to the information— 10
- “(a) in an approved form and manner; and
- “(b) for 24 hours after the arrival in New Zealand of the craft on which the person to whom the information relates intended to, or did, travel to New Zealand.
- “(5) The information referred to in **subsections (1) and (3)** is information held by a person to whom **section 125AA** applies, or to which a person to whom **section 125AA** applies has access, about the following matters: 15
- “(a) where the person booked the intended travel:
- “(b) on what date the person booked the intended travel:
- “(c) with whom, if anyone, the person intended to travel: 20
- “(d) with whom a person has previously travelled:
- “(e) whether or not the person paid for his or her own intended travel, and the manner of payment:
- “(f) the person’s travel movements before the intended travel: 25
- “(g) whether the route of the person’s previous travel has changed from the way that he or she originally booked the travel and, if so, in what way:
- “(h) whether the person failed to undertake intended travel on a previous occasion: 30
- “(i) whether the person has checked baggage.
- “(6) Information collected or accessed by the chief executive under **subsections (1) and (3)** may only be retained by the chief executive if any of the following circumstances apply: 35
- “(a) the chief executive decided under **section 125AB(1)(b)** that the person may not board a craft for the purpose of travelling to New Zealand:
- “(b) the person has been refused, on arrival, a permit or exemption to be in New Zealand:
- “(c) the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (for example, a record that a person was interviewed on arrival): 40

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“(d) the information gives the chief executive good cause to suspect that a risk to border security exists.

“(7) In this section, **approved form and manner** means a form and manner (for example, an electronic form and manner) approved by the chief executive for the purpose of providing him or her with access to information under **subsection (3)**. 5

“125AE **Offence relating to failure to provide information, or failure to provide access to information, under section 125AD**

“(1) Every <person> <carrier, or person in charge, of a commercial craft> commits an offence who fails, without reasonable excuse, to provide the chief executive with information the chief executive requested under **section 125AD(1)**. 10

“(2) Every <person> <carrier, or person in charge, of a commercial craft> commits an offence who fails, without reasonable excuse, to provide the chief executive with access to information under **section 125AD(3)**. 15

“(3) Every <person> <carrier, or person in charge, of a commercial craft> who commits an offence under **subsection (1) or subsection (2)** is liable on conviction,— 20

Struck out

“(a) to imprisonment for a term not exceeding 3 months; and
“(b) in the case of a carrier, to a fine not exceeding \$20,000; and
“(c) in the case of a person in charge, to a fine not exceeding \$10,000. 25

New

“(a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or
“(b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.” 30

30 Responsibilities of carrier and person in charge of any craft

Section 125 of the principal Act is amended by adding to the heading the words “en route to New Zealand”.

New (majority)

30A Police to have powers of immigration officers

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Section 139 of the principal Act is amended by omitting the expression “and 138”, and substituting the expression “, 138, and 138A”.

31 Evidence in proceedings

Section 143(1) of the principal Act is amended by inserting, after paragraph (k), the following paragraphs: 10

- “(l) the person travelled to New Zealand on a certain commercial craft at a certain time; or
- “(m) the person travelled to New Zealand before a decision was made by the chief executive under **section 125AB(1)**; 15
or
- “(n) the person travelled to New Zealand contrary to a decision made by the chief executive under **section 125AB(1)(b) <or (c)>**; or
- “(o) the person did not provide information requested by the chief executive under **section 125AD(1)**; or 20
- “(p) the person did not provide the chief executive with access to information under **section 125AD(3),—**”.

Legislative history

17 June 2004

Divided from Border Security Bill (Bill 53–2) as
Bill 53–3B