

Reprint
as at 29 November 2010

Immigration Amendment Act 1999

Public Act 1999 No 16
Date of assent 1 April 1999

Immigration Amendment Act 1999: repealed, at 2 am on 29 November 2010,
pursuant to section 404 of the Immigration Act 2009 (2009 No 51).

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Department of Labour

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An Act to—

- (a) Improve the effectiveness of the removal regime for persons unlawfully in New Zealand by streamlining the procedures involved, so ensuring—**
- (i) A higher level of compliance with immigration laws; and**
 - (ii) That persons who do not comply with immigration procedures and rules are not advantaged in comparison with persons who do comply; and**
- (b) Create a statutory framework for determining refugee status under the Refugee Convention; and**
- (c) Provide for a special security regime to protect sensitive security information that is relevant to immigration matters; and**
- (d) Introduce limited purpose permits and visas; and**
- (e) Provide a new statutory cost-recovery framework for immigration matters; and**
- (f) Otherwise amend the Immigration Act 1987 and make related amendments to other Acts**

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Immigration Amendment Act 1999, and is part of the Immigration Act 1987 (the principal Act).**
- (2) Part 3 (which relates to special procedures in cases involving security concerns) and sections 53 and 63 (which relate to ju-**

ditional review of immigration decisions) come into force on the day on which this Act receives the Royal assent.

- (2A) The following provisions come into force on 16 June 1999:
- (a) Sections 37 to 39 (which relate to the detention and departure of persons refused permits, or persons whose eligibility for a permit is not immediately ascertainable):
 - (b) Sections 45(3) and 46 (which contain provisions relating to custody):
 - (c) Sections 50(2) and 52(2) (which relate to the offence of wilfully aiding or assisting other persons to arrive in New Zealand otherwise than in compliance with requirements of the principal Act).
- (3) The remainder of this Act comes into force on 1 October 1999.
- Subsection (2A) was inserted, as from 16 June 1999, by section 2 Immigration Amendment Act (No 2) 1999 (1999 No 71).

2 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of **Authority**, and substituting the following definition:
- “**Authority** means, as the case may require,—
- “(a) The Residence Appeal Authority referred to in section 18B; or
 - “(b) The Removal Review Authority referred to in section 49; or
 - “(c) The Refugee Status Appeals Authority referred to in section 129N.”
- (2) Section 2(1) of the principal Act is amended by inserting, after the definition of **certificate of identity**, the following definitions:
- “**Chief executive** means the chief executive of the Department of Labour
- “**Claim**, and **claimant**, in relation to a claim to be recognised as a refugee, have the meanings given by section 129B”.
- (3) The definition of **execute** in section 2(1) of the principal Act is amended by omitting from paragraph (a) the expression “section 67 or section 68 or section 69 of this Act”, and substituting the expression “section 59”.

- (4) Section 2 of the principal Act is amended by repealing the definition of **New Zealand address**, and substituting the following definitions:
- “**New Zealand address**,—
- “(a) In relation to a permit holder, means the last known of the following addresses:
- “(i) The address for the time being nominated by that holder under section 37:
 - “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e):
- “(b) In relation to a person who is subject to any residence requirement in accordance with section 98, means the last known of the following addresses:
- “(i) The address at which the person has currently agreed to reside under that section:
 - “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e) or paragraph (f):
- “(c) In relation to a person who is subject to any residence condition imposed in accordance with section 60(5) (or the previous section 54 or section 57) or section 79 or section 101, means the last known of the following addresses:
- “(i) The current address specified under any of those sections:
 - “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e) or paragraph (f) or paragraph (h):
- “(d) In relation to a person who is in custody pursuant to a warrant of commitment issued under this Act, means—
- “(i) The place where that person is held in custody:
 - “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e):
- “(e) In relation to an unmarried person under 17 years of age named in a removal order or a deportation order, means—
- “(i) Where that person is named as a dependent child of another person named in the order, the New Zealand address of that other person:
 - “(ii) Where a responsible adult has been determined or nominated under section 141B (or the previous section 60) to represent the interests of that person, the latest ad-

dress supplied by that adult under section 141B(6) (or the previous section 60(6)):

- “(f) In relation to a person who has appealed to the Deportation Review Tribunal under section 22 or section 104, means—
- “(i) The address supplied to the Tribunal under section 22(3) or (as the case may be) section 104(3):
- “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e):
- “(g) In relation to a person who has appealed to the Residence Appeal Authority under section 18C, means—
- “(i) The address supplied to the Authority under subsection (5) of that section (whether or not that address is in New Zealand):
- “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e):
- “(h) In relation to a person who has appealed to the Removal Review Authority under Part II, means—
- “(i) The latest address supplied to the Authority under section 48 (or under the previous section 63A or 63B):
- “(ii) Where applicable, that person’s New Zealand address within the meaning of paragraph (e):”.
- (5) Section 2(1) of the principal Act is amended by repealing the definition of **permit**, and substituting the following definition:
- “**Permit** means a permit granted under this Act; and includes a residence permit and any type of temporary permit, pre-cleared permit, or limited purpose permit”.
- (6) Section 2(1) of the principal Act is amended by inserting, after the definition of **Refugee Convention**, the following definitions:
- “**Refugee status claimant** has the meaning given by section 129B
- “**Refugee status officer** has the meaning given by section 129B”.
- (7) The definition of **removal order** in section 2(1) of the principal Act is amended by omitting the expression “section 50 of this Act”, and substituting the expression “section 54”.
- (8) Section 2(1) of the principal Act is amended by inserting, after the definition of **special direction**, the following definition:
- “**Subsequent claim**, for the purposes of Part VIA, has the meaning given by section 129B”.

- (9) The definition of **visa officer** in section 2(1) of the principal Act is amended—
- (a) By adding the expression “; or” to subparagraph (ii) of paragraph (b):
 - (b) By inserting in paragraph (b), after subparagraph (ii), the following subparagraph:
“(iii) Other member of the staff (including locally engaged staff) of an overseas branch office of the Department of Labour,—

Part 1

Amendments to Part 1 of principal Act—exemptions, visas, and permits

3 Requirements for undertaking employment in New Zealand

Section 5(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) The holder of a limited purpose permit granted for purposes of employment; or”.

4 Requirements for undertaking course of study or training in New Zealand

Section 6(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) The holder of a limited purpose permit granted for purposes of study or training; or”.

5 Certain persons not eligible for exemption or permit

Section 7(1)(d) of the principal Act is amended by repealing subparagraphs (ii) and (iii), and substituting the following subparagraph:

- “(iii) From New Zealand at any time, pursuant to an order for deportation made under section 22 of the Immigration Act 1964; or”.

6 Grant of residence permit a matter of discretion

Section 8(1) of the principal Act is amended by inserting, after the expression “sections 18 and 18E”, the expression “and 52”.

7 Grant of temporary permit a matter of discretion

Section 9(1) of the principal Act is amended by omitting the expression “section 63E(c)”, and substituting the expression “section 52”.

8 Grant of limited purpose permit a matter of discretion

The principal Act is amended by inserting, after section 9, the following section:

“9A

(1) No person is entitled as of right to a limited purpose permit, and any question whether or not—

“(a) To grant a limited purpose permit to any person and (if so) for what purpose and for what period; or

“(b) To impose any condition on a limited purpose permit (other than a condition imposed by section 27(1)); or

“(c) To vary or cancel any condition of a limited purpose permit; or

“(d) To revoke any limited purpose permit—
is a matter for the discretion of the Minister or the appropriate immigration officer, subject to any special direction given under this Act.

“(2) No appeal lies against the decision of the Minister or immigration officer on any such question, whether to any court or to the Tribunal or to the Minister or otherwise.

“(3) Nothing in subsection (2) limits or affects the right of any person to bring review proceedings.”

9 Grant of visa a matter of discretion

Section 10(1)(b)(ii) of the principal Act is amended by inserting, after the words “residence visa”, the words “and section 14DA(2) in the case of a limited purpose visa”.

10 Types of visa

Section 14 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) Limited purpose visas.”

11 Meaning and effect of visa

- (1) Section 14A(1) of the principal Act is amended by inserting, after the words “or certificate of identity,” where they first occur, the words “or, in the case of a visa issued electronically, an entry made and retained in the records of the Department of Labour in accordance with section 35AB,”.
- (2) Section 14A(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
“(ca) Be granted a limited purpose permit, where the visa is a limited purpose visa; or”.
- (3) Section 14A(4) of the principal Act is amended by inserting, after the word “where”, the words “a visa is not granted electronically in accordance with section 35AB and”.

12 Temporary visas

Section 14D of the principal Act is amended by adding the following subsections:

- “(4) Nothing in this section—
 - “(a) Requires a person to apply for a temporary visa if that person instead applies for a limited purpose visa:
 - “(b) Prevents a visa officer from issuing a limited purpose visa, to a person who has applied for a temporary visa, if the circumstances specified in section 14DA(2) apply.
- “(5) It may be a precondition to the issue of a temporary visa that a bond be paid in accordance with section 148B.
- “(6) In the case of a bond of a kind that is intended to manage the risk of an applicant remaining in New Zealand beyond the expiry of his or her permit, the relevant visa officer or immigration officer may impose such a bond if, and only if,—
 - “(a) The officer identifies such a risk in the particular case; and
 - “(b) The officer considers that the imposition of the bond is necessary in the particular case to manage that risk.”

13 Limited purpose visas

The principal Act is amended by inserting, after section 14D, the following section:

“14DA

- (1) If a person who is outside New Zealand applies in the prescribed manner for a limited purpose visa, a visa officer may issue a limited purpose visa if the person—
 - “(a) Wishes to come to New Zealand for an express purpose; and
 - “(b) Will not be exempt from the requirement to hold a permit to be in New Zealand.
- “(2) If a person who is outside New Zealand applies in the prescribed manner for a temporary visa (rather than a limited purpose visa), a visa officer may issue a limited purpose visa rather than the temporary visa applied for if, and only if,—
 - “(a) The person is of a kind described by subsection (1)(a) and (b): and
 - “(b) The visa officer identifies a risk in the particular case that the person will remain in New Zealand beyond the expiry of his or her permit; and
 - “(c) The visa officer considers that the issue of a limited purpose visa rather than a temporary visa is necessary in the particular case to manage that risk.
- “(3) A holder of a limited purpose visa who arrives in New Zealand during the currency of that visa may on arrival apply only for a limited purpose permit.
- “(4) It may be a precondition to the issue of a limited purpose visa that a bond be paid in accordance with section 148B, being a bond imposed for purposes other than the management of the risk that the person concerned may remain in New Zealand beyond the expiry of the permit granted on the basis of the visa.”

14 Transit visas

- (1) Section 14E(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:
 - “(a) Is classified by regulations made under this Act, or by a special direction of the Minister made in accordance with this section, as a person of a type who requires a transit visa; and”.

- (2) Section 14E(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) Expire at the expiry of 3 calendar years from the date on which they were made, unless sooner revoked.”
- (3) Section 14E of the principal Act is amended by inserting, after subsection (2), the following subsections:
- “(2A) Nothing in subsection (2) prevents regulations being made under subsection (1) that replicate in whole or in part regulations that have expired.
- “(2B) Any special direction classifying persons as persons who require transit visas for the purpose of this section—
- “(a) Must be published in the *Gazette*, and notified in writing to the appropriate diplomatic or consular representative of any country concerned:
- “(b) Expires at the end of the period of 3 months following the day on which the special direction was made, unless sooner cancelled by the Minister by a further special direction, or by regulations:
- “(c) Is to be treated for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989) as if it were a regulation within the meaning of that Act.
- “(2C) Subsection (2)(a) applies to any special direction under this section as if it were a regulation.
- “(2D) A special direction under this section may not be effectively continued in force by the making of a further special direction to the same or similar effect.”

15 Requirements may be imposed on grant of residence permit

Section 18A of the principal Act is amended by inserting, after subsection (3), the following subsections:

- “(3A) Requirements imposed under this section may include the posting of a bond that is refundable in whole or in part if other requirements under this section are met, and section 148B applies in relation to any such bond.
- “(3B) The fact that a bond has been forfeited in whole or in part does not affect other action taken, or that may be taken, in

respect of a failure to meet requirements imposed under this section, including revocation of a residence permit or returning resident's visa under section 20 or section 20A.”

16 Provisions applying to appeals

Section 18F of the principal Act is amended by repealing subsection (4), and substituting the following subsections:

- “(4) Subject to subsections (4A) to (7), the Authority, in determining the appeal,—
- “(a) May seek and receive such information as it thinks fit, and consider information from any source; but
 - “(b) May not consider any information or evidence adduced by the appellant that was not provided to the visa officer or immigration officer before the time at which that officer made the decision on the application for the residence visa or residence permit that is the subject of the appeal.
- “(4A) The Authority may consider information or evidence not provided by the appellant to the relevant officer before the time of the relevant decision if—
- “(a) The Authority is satisfied that—
 - “(i) The information or evidence existed at the time the decision to refuse the visa or permit was made, and would have been relevant to the making of that decision; and
 - “(ii) The appellant could not, by the exercise of reasonable diligence, have placed that information or evidence before the visa officer or immigration officer at the time at which the officer made the decision on the application; and
 - “(iii) In all the circumstances it is fair to consider the information or evidence; or
 - “(b) The Authority considers that it is necessary for it to have the information or evidence for the purpose of considering whether or not to make a determination under section 18D(1)(f).”

17 Revocation of residence permit by immigration officer

Section 19(4) of the principal Act is amended by adding to paragraph (d)(iii) the expression “; or”, and also by adding the following paragraph:

- “(e) It is granted on the basis of an administrative error (of any of the types referred to in this subsection) in determining an earlier application for a visa or permit.”

18 Revocation of residence permit by Minister

Section 20(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) That the permit (including any permit deemed by section 44(2) to be a residence permit) was granted to a person who was, but is no longer, recognised as a refugee in New Zealand, that earlier recognition having been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.”.

19 Revocation of returning resident’s visa by Minister

Section 20A(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) That the visa was granted to a person who was, but is no longer, recognised as a refugee in New Zealand, that earlier recognition having been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.”.

20 Appeal on humanitarian grounds to Tribunal against revocation of residence permit

Section 22 of the principal Act is amended by adding the following subsections:

- “(10) Where a person has appealed under this section and the Tribunal confirms the revocation of the permit,—
- “(a) The person has no right to appeal to the Removal Review Authority under section 47; and
- “(b) Unless the Tribunal directs that a temporary permit be granted under subsection (7), the person is liable to removal from New Zealand in accordance with the other provisions of Part II.

- “(11) If the Tribunal has directed that a temporary permit be granted under subsection (7) to an unsuccessful appellant, and the person is subsequently in New Zealand unlawfully,—
- “(a) The person has no right to appeal to the Removal Review Authority under section 47; and
 - “(b) The person is liable to removal from New Zealand in accordance with the other provisions of Part II at any time after the expiry of the period of 7 days from when the person became unlawfully in New Zealand.”

21 Temporary permits to be subject to conditions

Section 27 of the principal Act is amended by inserting, after subsection (1), the following subsections:

- “(1A) It may be a precondition to the grant of a temporary permit that a bond be paid in accordance with section 148B.
- “(1B) In the case of a bond of a kind that is intended to manage the risk of an applicant remaining in New Zealand beyond the expiry of his or her permit, the relevant visa officer or immigration officer may impose such a bond if, and only if,—
- “(a) The officer identifies such a risk in the particular case; and
 - “(b) The officer considers that the imposition of the bond is necessary in the particular case to manage that risk.
- “(1C) The fact that a bond has been forfeited in whole or in part does not affect other action taken, or that may be taken, in respect of a failure to comply with a condition imposed under this section, including revocation of a permit under section 32 or section 33.”

22 Further temporary permit

Section 30 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) If a further temporary permit is granted on an application made under this section, it comes into force on the earlier of—
- “(a) The date of the expiry of the current permit (whether before or after the date of the grant of the new permit); or
 - “(b) A date specified by the Minister.”

23 Reconsideration where application for another temporary permit declined

(1) Section 31(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) That person is not liable to be removed under Part II.”

(2) Section 31 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

“(5) If the decision to decline the original application is confirmed and no permit is granted following reconsideration under this section, an immigration officer must inform the applicant, in writing, of—

“(a) The decision; and

“(b) In the case of a person who still holds a permit, the date on which the person will have an obligation to leave New Zealand; and

“(c) In the case of a person who no longer holds a permit, the fact that the person is already obliged to leave New Zealand; and

“(d) The period within which the applicant may bring an appeal under section 47 against the obligation to leave New Zealand, and the date from which the period runs.”

24 Revocation of temporary permit by immigration officer

(1) Section 32(4) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

“(da) It is granted contrary to Government policy (in terms of section 13A(1)) that is applicable at the relevant time; or”.

(2) Section 32(4) of the principal Act is amended by adding to paragraph (e) the expression “; or”, and also by adding the following paragraph:

“(f) It is granted on the basis of an administrative error (of any of the types referred to in this subsection) in determining an earlier application for a visa or permit.”

25 New heading and sections inserted

The principal Act is amended by inserting, after section 34, the following heading and sections:

*“Limited purpose permits***“34A Limited purpose permits**

A limited purpose permit is a permit granted to allow its holder to be in New Zealand for an express purpose only.

“34B Applications for limited purpose permits

“(1) The following persons may apply for a limited purpose permit:

“(a) A holder of a limited purpose visa who arrives in New Zealand during the currency of that visa:

“(b) A person in New Zealand who is the holder of a current limited purpose permit, if further time is required to achieve the purpose for which that permit was granted.

“(2) An application for a limited purpose permit must be made in the prescribed manner.

“(3) No person who is unlawfully in New Zealand, and no person who is lawfully in New Zealand otherwise than pursuant to a limited purpose permit, may apply for a limited purpose permit. If such a person purports to apply for a limited purpose permit—

“(a) The Minister or appropriate immigration officer is under no obligation to consider the application; and

“(b) Whether the application is considered or not,—

“(i) The Minister or immigration officer is not obliged to give reasons for any decisions relating to the application, other than the reason that this subsection applies; and

“(ii) Section 36 of this Act and section 23 of the Official Information Act 1982 do not apply in respect of the application.

“34C Currency of limited purpose permit

“(1) Subject to a special direction to the contrary, a limited purpose permit may be granted for such period as—

“(a) Is appropriate to achieve the express purpose for which the permit is granted; and

“(b) Does not exceed the period (if any) prescribed in respect of limited purpose permits of that category by regulations made under this Act.

- “(2) Every limited purpose permit must state the latest date on which it will expire.
- “(3) If the express purpose for which a limited purpose permit was granted is achieved before the latest date on which it will expire, or if at any time it becomes apparent that the purpose is no longer achievable or has been abandoned by the permit holder,—
 - “(a) An immigration officer may give the holder of the permit a notice specifying an earlier expiry date for the permit (which date may in no case be sooner than 14 days after that notice is given to the holder); and
 - “(b) The permit then expires on that new expiry date.
- “(4) The holder of a limited purpose permit who applies for a further limited purpose permit may be granted the further permit only if further time is required to achieve the express purpose for which the original permit was granted.

“34D Limitations and conditions on holders of limited purpose permits

- “(1) The holder of a limited purpose permit must leave New Zealand no later than the day that the permit expires.
- “(2) The holder of a limited purpose permit may not, whether before or after the expiry of the permit,—
 - “(a) Apply for a permit of a different type while in New Zealand; or
 - “(b) While in New Zealand, request a special direction, or a permit under section 35A; or
 - “(c) Bring any appeal under this Act, whether to the Removal Review Authority, the Residence Appeal Authority, the Tribunal, or the High Court.
- “(3) Every limited purpose permit is to be granted subject to conditions relating to its purpose, and section 27 applies in respect of limited purpose permits, with any necessary modifications, as if—
 - “(a) References in that section to temporary permits were references to limited purpose permits; and
 - “(b) A limited purpose permit granted for the purpose of employment were a work permit; and

- “(c) A limited purpose permit granted for the purpose of study or training were a student permit.

“34E Application of certain temporary permit provisions to limited purpose permits

The following provisions apply in respect of limited purpose permits, with any necessary modifications, as if references in those provisions to temporary permits were references to limited purpose permits:

- “(a) Sections 32 and 33 (which relate to revocation of permits):
- “(b) Section 34 (persons not to remain in New Zealand after expiry of permit):
- “(c) Section 35 (grant of permits):
- “(d) Section 37(2) (applicant to supply address for communications):
- “(e) Section 38 (evidence of permit to be retained):
- “(f) Section 41 (permit deemed to have expired on departure from New Zealand).

“34F Consequences of remaining in New Zealand after expiry of limited purpose permit

A person who is in New Zealand unlawfully following the expiry of a limited purpose permit—

- “(a) May not appeal to the Removal Review Authority under section 47; and
- “(b) Is immediately liable to removal under Part II.”

26 Obligation to inform all relevant facts, including changed circumstances

The principal Act is amended by inserting, immediately before section 35 (but after the heading “*General Provisions*”), the following section:

“34G

- (1) Every person who applies for any type of visa, permit, or exemption under this Act has the obligation to inform an immigration officer of any relevant fact, including any material change in circumstances that occurs after

the application is made, if that fact or change in circumstances—

“(a) May affect the decision on the application; or

“(b) May affect a decision to grant a permit in reliance on the visa for which the application is made.

“(2) Without limiting the scope of the expression ‘material change in circumstances’ in subsection (1), such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to the applicable policy.

“(3) Failure to comply with the obligation set out in subsection (1)—

“(a) Amounts to ‘concealment of relevant information’ for the purposes of sections 20(1)(b) and (c) and 20A(1)(b) and (c); and

“(b) Renders any visa or permit granted subject to cancellation or revocation.”

27 Grant of permits

(1) Section 35 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Despite subsection (1), a limited purpose permit may not be granted to a refugee status claimant or a refugee unless that person is at the time the holder of a limited purpose visa or a current limited purpose permit.”

(2) Section 35(3) of the principal Act is amended by inserting in paragraph (b), after the words “pre-cleared permit” the words “or a permit granted electronically”.

(3) Section 35(3) of the principal Act is amended by adding the expression “; and” to paragraph (c), and also adding the following paragraph:

“(d) In the case of a permit granted electronically, be entered and retained in the records of the Department of Labour in accordance with section 35AB.”

28 Grant of permit in special case

Section 35A(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) Does not hold a permit to be in New Zealand; and”.

29 Visas and permits may be issued or granted electronically

The principal Act is amended by inserting, after section 35A, the following section:

“35AB

- (1) Any type of visa or permit may be issued or granted by being electronically entered and retained in the records of the Department of Labour.
- “(2) Every such entry must specify the following information:
 - “(a) The name of the visa or permit holder:
 - “(b) The passport number of the visa or permit holder or, where the holder is accepted without a passport, the holder’s date of birth and nationality (if known):
 - “(c) The date on which the visa or permit is issued or granted:
 - “(d) Either the date on which the visa or permit will expire, or the period for which it is granted:
 - “(e) Such other matters, including conditions, as may apply in respect of the visa or permit.
- “(3) Where a visa or permit is issued or granted in the manner set out in subsection (1), then in the absence of evidence to the contrary the information so entered and retained in the records of the Department of Labour is to be presumed to be correct for the purposes of this Act, notwithstanding any differences between that information and any information contained in any copy of the permit later given to the permit holder.
- “(4) A person who holds a permit granted electronically may request a copy of the permit in the prescribed manner, and is entitled on such a request made in New Zealand to receive a copy of the permit in an approved form.
- “(5) A person is not entitled to be given a copy of a permit under subsection (4) at any time before the person has left the arrival hall at the Customs place at which the person arrives in New Zealand.

“(6) A permit that is granted electronically may be revoked in the same manner as a pre-cleared permit, and section 35F applies accordingly as if references in that section to pre-cleared permits included references to permits granted electronically.”

30 Pre-cleared permits

Section 35B(1) of the principal Act is amended by inserting, after the words “or a residence permit”, the words “or a limited purpose permit”.

31 Revocation of pre-cleared permit by immigration officer

Section 35F(1)(b) of the principal Act is amended by inserting, after the words “pre-cleared temporary permit”, the words “or a pre-cleared limited purpose permit”.

32 Evidence of permit or exemption to be retained

Section 38(1) of the principal Act is amended by inserting, after the words “other than a pre-cleared permit”, the words “or a permit granted electronically in accordance with section 35AB”.

33 Spent transitional provisions repealed

Sections 42 and 43 of the principal Act are repealed.

Part 2

New Part 2 substituted in principal Act

34 New Part substituted

The principal Act is amended by repealing Part 2, and substituting the following Part:

“Part II**“Persons in New Zealand unlawfully***“Obligation of persons unlawfully in New Zealand to leave***“45 Obligation of persons unlawfully in New Zealand to leave New Zealand**

- “(1) From the moment that a person is in New Zealand unlawfully until that person leaves New Zealand, he or she has an obligation to leave New Zealand unless subsequently granted a permit.
- “(2) The obligation created by subsection (1) arises whether the person came to be in New Zealand unlawfully as a result of the expiry or revocation of a permit, their entry into New Zealand without a permit or exemption, ceasing to be exempt from the requirement to hold a permit, their loss of New Zealand citizenship, or otherwise.
- “(3) The obligation to leave created by subsection (1) arises whether or not the person is aware of the obligation, or of the implications of not meeting it, and—
- “(a) That obligation, and any liability of the person to removal or other action under this Part, is not affected by any failure or alleged failure of the chief executive to communicate the obligation and related implications under section 46 (or section 70(4)); but
- “(b) Nothing in paragraph (a) prevents any action from being brought in respect of such a failure or alleged failure in proceedings that are not directed towards preventing the removal of any person.

“46 Duty of chief executive to communicate obligation to leave New Zealand

- “(1) The chief executive of the Department of Labour must communicate to persons who are seeking visas to come to New Zealand or permits to be in New Zealand—
- “(a) The obligation to leave New Zealand created by section 45(1); and
- “(b) The implications for persons who fail to meet that obligation.

- “(2) Without limiting the means by which the chief executive may communicate those matters, he or she must provide the relevant information required by subsection (1)—
- “(a) At offices where visas or permits are issued or granted, by way of notices that can be readily seen by persons to whom it is likely to be of relevance:
 - “(b) On application forms for temporary visas and permits and limited purpose visas and permits:
 - “(c) In arrival halls at Customs places, by way of notices that can be readily seen by all arriving temporary entrants:
 - “(d) On informational material provided by the Department to persons who are interested in coming to New Zealand temporarily:
 - “(e) On any notice revoking a permit.
- “(3) The chief executive is to decide whether the information to be communicated under subsection (2) should be communicated in more than 1 language, and, if so, which languages should be used.
- “(4) Any temporary visa or permit or limited purpose visa or permit issued or granted to any person after the commencement of this Part (other than a visa or permit granted electronically) must contain the following words, or words to similar effect:
- “ ‘You must leave New Zealand before expiry of your permit, or face removal.’

“Appeal against requirement to leave, etc

“47 Appeal against requirement to leave New Zealand

- “(1) A person who is unlawfully in New Zealand may appeal to the Removal Review Authority against the requirement for that person to leave New Zealand.
- “(2) The appeal must be brought within 42 days after the later of—
- “(a) The day on which the person became unlawfully within New Zealand; or
 - “(b) The day on which the person received notification under section 31 of the confirmation of the decision to decline to issue a permit, in the case of a person who, while still lawfully in New Zealand, had lodged an application

under section 31 for reconsideration of a decision to decline another temporary permit.

- “(3) An appeal may be brought only on the grounds that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be removed from New Zealand, and that it would not in all the circumstances be contrary to the public interest to allow the person to remain in New Zealand.
- “(4) For the purposes of subsection (3), the mere fact that a person’s circumstances are such that the person would meet any applicable Government residence policy requirements for the grant of a residence permit does not in itself constitute exceptional circumstances of a humanitarian nature.
- “(5) The following persons may not appeal under this section:
- “(a) A person who is unlawfully in New Zealand by reason of having returned to New Zealand while a removal order is in force in respect of the person:
 - “(b) A person who is unlawfully in New Zealand by reason of the expiry of a limited purpose permit:
 - “(c) A person who is unlawfully in New Zealand following the revocation of their residence permit being confirmed by the Deportation Review Tribunal:
 - “(d) A person unlawfully in New Zealand to whom section 63 applies (which section relates to persons granted temporary permits for the purposes of the Mutual Assistance in Criminal Matters Act 1992); or
 - “(e) A person unlawfully in New Zealand to whom section 114K(4)(b) applies (which provision relates to a person in respect of whom a security risk certificate has been confirmed).

“48 How to appeal

- “(1) An appeal under section 47 must—
- “(a) Be made in the prescribed manner; and
 - “(b) Be brought within the 42-day period referred to in section 47(2); and
 - “(c) Be accompanied by the prescribed fee (if any).
- “(2) In the notice of appeal the appellant must—

- “(a) Set out all the grounds and the full circumstances on which the appeal is based; and
 - “(b) Include an address in New Zealand at which any communication relating to the appeal may be notified to the appellant; and
 - “(c) Include the address in New Zealand at which the appellant is physically residing.
- “(3) If an address included in the notice of appeal changes, the appellant must immediately notify the Authority in writing of the change of address. The Authority may rely on the latest address provided for the purpose of communications under this Part.
- “(4) The Authority must not consider an appeal under section 47 unless it has been made in the prescribed manner, been brought within the 42-day period referred to in section 47(2), and been accompanied by the prescribed fee (if any).
- “(5) An appeal under section 47 may at any time be withdrawn by notice in writing to the Authority.

“49 Removal Review Authority

- “(1) For the purposes of this Act there continues to be a Removal Review Authority.
- “(2) The function of the Authority is solely to determine appeals brought under section 47 against the requirement to leave New Zealand.
- “(3) The Authority consists of such number of members, being barristers or solicitors of the High Court who have held practising certificates for at least 5 years, 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 advice of the Minister.
- “(5) For the purposes of any appeal before it, the Authority consists of 1 member.
- “(6) The provisions set out in Schedule 3B apply in relation to the Authority.
- “(7) The persons who are members of the Authority immediately before the commencement of this section continue to be members of the Authority.

“50 Procedure in appeals

- “(1) An appeal to the Authority under section 47 is to be determined by the Authority on the papers and with all reasonable speed.
- “(2) On any such appeal—
- “(a) It is the responsibility of the appellant to ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are received by the Authority within the 42-day period for bringing the appeal; and
 - “(b) The Authority is not obliged to consider any information supplied by the appellant after that period, other than information provided by way of rebuttal or comment under subsection (6); and
 - “(c) The Authority may treat the material provided by the appellant as constituting the full appeal, and is not obliged to give the appellant an opportunity to develop the appeal further.
- “(3) On the lodging of an appeal under section 47,—
- “(a) The Authority must give to the chief executive a copy of the notice of appeal and any information, evidence, or submissions lodged by the appellant; and
 - “(b) The Authority must allow the chief executive a specified time to—
 - “(i) Lodge with the Authority any file relating to the appellant that is held by the chief executive; and
 - “(ii) Lodge such other information, evidence, and submissions in relation to the matter under appeal as the chief executive thinks fit.
- “(4) In determining the appeal, the Authority—
- “(a) May seek and receive such information as it thinks fit, and consider information from any source; but
 - “(b) May not consider any information which relates to matters arising after the date the appeal was lodged unless it is satisfied that there are exceptional circumstances that justify the consideration of such matters.
- “(5) The Authority must disclose to the appellant any material or information that the Authority proposes to take into account in determining the appeal if that material or information—
- “(a) Is or may be prejudicial to the appellant; and

“(b) Is material lodged with the Authority by the chief executive, or is information obtained by the Authority from a source other than the appellant.

“(6) The Authority must give the appellant an opportunity to rebut or comment on any material or information disclosed under subsection (5) within such reasonable time as the Authority specifies.

“(7) Subsections (5) and (6) do not require the Authority to disclose to the appellant any material or information whose disclosure would be likely to endanger the safety of any person, but the Authority must notify the appellant of the fact of any such non-disclosure.

“51 Decision on appeal

“(1) As soon as practicable after coming to a decision on an appeal, the Authority must notify both the appellant and the chief executive in writing of its decision and the reasons for that decision.

“(2) Except as provided in section 115A (which allows an appeal on a question of law), the decision of the Authority on an appeal is final.

“(3) Unless a court otherwise directs, the Authority has no jurisdiction to reconsider an appeal after the appellant has been notified of its decision.

“52 Where appeal allowed

“(1) Where the Authority decides that an appeal should be allowed, it may direct an immigration officer to take such steps as it considers necessary to give effect to its decision.

“(2) Without limiting subsection (1), the Authority may direct an immigration officer to grant the successful appellant—

“(a) A residence permit subject to such requirements (if any) as the Authority may determine; or

“(b) A temporary permit for such period and subject to such conditions (if any) as the Authority may determine.

“(3) For the avoidance of doubt, the Authority may direct an immigration officer to grant the successful applicant a permit, and an immigration officer must accordingly grant the permit, even

though the applicant is a person who would normally be prohibited from being granted a permit under section 7(1).

- “(4) The Authority may direct the imposition of any requirement on the grant of a residence permit that it thinks fit having regard to the reasons why the appellant was able to demonstrate exceptional circumstances of a humanitarian nature or why it was not contrary to the public interest to allow the appellant to remain in New Zealand, whether or not the requirement is of a kind authorised under Government residence policy at the time.
- “(5) Section 18A(4) to (7) applies to any requirement imposed under this section as if it were imposed under that section.
- “(6) The chief executive must ensure that the terms of a direction given under this section are complied with.

“Liability for removal

“**53 Liability for removal**

- “(1) A person unlawfully in New Zealand may be the subject of a removal order, and is liable to be removed from New Zealand under this Part, if—
- “(a) The person (not being a person who has an appeal pending under section 47 or section 115A) has been unlawfully in New Zealand—
- “(i) For a period of 42 consecutive days; or
- “(ii) In the case of a person who, while still lawfully in New Zealand, had lodged an application under section 31 for reconsideration of a decision to decline another temporary permit, for a period of 42 consecutive days following the day on which the person received notification under section 31 of the confirmation of the decision to decline to grant another temporary permit, if that day was later than the day on which the person became unlawfully in New Zealand; or
- “(b) An appeal under section 47 (including a further appeal, if any, to the High Court under section 115A or the Court of Appeal under section 116) has been determined against the person, and the person is still unlawfully in

- New Zealand 7 days after the decision has been notified to the person (or, if appropriate, 7 days after becoming unlawfully in New Zealand following the expiry or cancellation of any temporary permit directed to be granted under section 22(7)); or
- “(c) The person is unlawfully in New Zealand by reason of the expiry of a limited purpose permit; or
 - “(d) The person is in New Zealand while a previously executed removal order is still in force in respect of the person; or
 - “(e) The person is a person to whom section 63 applies (which section relates to persons granted temporary permits for the purposes of the Mutual Assistance in Criminal Matters Act 1992); or
 - “(f) The person is a person to whom section 114K(4)(b) applies (which provision relates to a person in respect of whom a security risk certificate has been confirmed).
- “(2) This section is subject to—
- “(a) Section 70 (which relates to persons unlawfully in New Zealand immediately before 1 October 1999); and
 - “(b) Section 129X (which relates to refugee status claimants).
- “(3) Nothing in this Part is to be construed as preventing voluntary departure from New Zealand at any time before a removal order is made and served.

“54 Making of removal orders

- “(1) The chief executive, or any immigration officer designated by the chief executive for the purposes of this section who is not disqualified under subsection (2), may make a removal order in the prescribed form in respect of any person if the chief executive or immigration officer is satisfied that section 53(1) or section 70(3) applies to that person.
- “(2) An immigration officer may not make a removal order in respect of a person if the officer has at any previous time been involved in determining an application by that person for a permit.
- “(3) A removal order in the name of any person may also name any dependent child of that person if the chief executive or

immigration officer is satisfied that section 53 or section 70(8) also applies to that dependent child. In any such case sections 141B to 141D apply.

- “(4) An immigration officer who was designated for the purposes of section 50 (as in force immediately before the commencement of this section) is to be treated as having been designated by the chief executive for the purposes of this section.

“**55 Content and effect of removal order**

- “(1) A removal order authorises any member of the Police to take into custody the person named in the order and to proceed to execute the order in accordance with section 59.
- “(2) A removal order must—
- “(a) Give notice to the person named in the order that he or she is in New Zealand unlawfully and is subject to removal under this Part; and
 - “(b) Inform the person that, since he or she has not responded voluntarily to the obligation to leave New Zealand, removal will be effected by the State; and
 - “(c) Inform the person that he or she may contact a solicitor or counsel or responsible adult designated or nominated under section 141B.

“**56 Service of removal order**

- “(1) Except where section 141C(d) applies, a removal order may be served by an immigration officer or member of the Police on the person named in the order by personal service only.
- “(2) A removal order may be served at any reasonable time by day or night.

“**57 Currency of removal order once served**

- “(1) A removal order is in force from the time at which it is served, and remains in force until the expiry of 5 years after the date the person named in it is removed from New Zealand, unless it is cancelled before then under section 58.
- “(2) Despite subsection (1), a removal order made in respect of a person who is under 17 years of age at the date the order is

made remains in force in respect of that person only until the person is removed from New Zealand.

“58 Cancellation of removal order

- “(1) An immigration officer who has been designated by the chief executive for the purpose of making removal orders under section 54 may, at any time while the person named in the removal order is still in New Zealand, cancel a removal order that has been served by endorsing a copy of the order accordingly, and personally serving that copy on the person named in the order.
- “(2) The cancellation endorsement serves as a direction to any person who may be detaining the person in custody in reliance on the order to release the person from custody immediately.
- “(3) An immigration officer who cancels a removal order must ensure that any person who is detaining the person named in the order in reliance on this Part releases the person immediately.
- “(4) In the case of a person who has already been removed from or has left New Zealand, an immigration officer of the type referred to in subsection (1) may cancel a removal order by sending the person named in it a notice to that effect in the prescribed form.
- “(5) Nothing in this section gives any person a right to apply to an immigration officer for the cancellation of a removal order, and where any person purports to so apply—
- “(a) The immigration officer is under no obligation to consider the application; and
- “(b) Whether the application is considered or not,—
- “(i) The immigration officer is under no obligation to give reasons for any decision relating to the application, other than the reason that this subsection applies; and
- “(ii) Section 23 of the Official Information Act 1982 does not apply in respect of the application.

“59 Execution of removal order

- “(1) Any member of the Police may arrest without warrant a person on whom a removal order has been served and detain that person in accordance with this section.

- “(2) The purpose of arrest and detention under this section is to execute the removal order by placing the person on a craft that is leaving New Zealand.
- “(3) A person arrested and detained under this section may be detained for up to 72 hours without further authority than this section pending their placement on a craft that is leaving New Zealand.
- “(4) Once the person has been placed on a craft that is leaving New Zealand, a member of the Police may make appropriate arrangements to ensure that the person does not leave the craft before it leaves New Zealand, and may continue to detain the person on board the craft for that purpose.
- “(5) Where an unmarried person who is under 17 years of age is to be removed from New Zealand otherwise than in the company of a parent or guardian, an immigration officer must make all reasonable efforts to contact a parent or guardian of the person and to agree on suitable travelling arrangements for the person.
- “(6) If no such agreement is arrived at, in making the travelling arrangements for the person the immigration officer must consult with and have regard to the advice of—
- “(a) The responsible adult nominated in respect of that person in accordance with section 141B; or
 - “(b) If that is not possible or practicable, the Director-General of Social Welfare.

“**60 Release or extended detention if craft unavailable, etc, within 72-hour period**

- “(1) Where a person is arrested and detained under section 59 and it becomes apparent that—
- “(a) No craft will be available within the 72-hour period specified in that section; or
 - “(b) A craft that was available is no longer available; or
 - “(c) It is not practicable for the person to be placed on a craft within the 72-hour period; or
 - “(d) For some other reason the person is unable to leave New Zealand within the 72-hour period,—
- then, unless the person is released, an immigration officer must arrange for the person to be brought before a District Court Judge for the purpose of obtaining a warrant of commitment.

- “(2) A warrant of commitment issued under this section authorises the detention of the person named in it for a period of 7 days or such shorter period as the Judge thinks necessary to enable the execution of the removal order.
- “(3) A Judge may issue a warrant of commitment on the application of an immigration officer if satisfied on the balance of probabilities that the person in custody is the person named in the removal order and that any of the following applies:
- “(a) A craft is likely to be available, within the proposed period of the warrant of commitment, to take the person from New Zealand:
 - “(b) The practical difficulties that meant that the person could not be placed on an available craft within 72 hours are continuing and are likely to continue, but not for an unreasonable period:
 - “(c) The other reasons the person was not able to leave New Zealand within the 72-hour period are still in existence and are likely to remain in existence, but not for an unreasonable period:
 - “(d) In all the circumstances it is in the public interest to make a warrant of commitment.
- “(4) If at the expiry of a warrant of commitment made under this section the person has still not left New Zealand, then, unless released, the person must be again brought before a Judge for an extension of the warrant of commitment, in which case subsections (2) and (3) apply.
- “(5) If a person is brought before a Judge under subsection (4) for a second or subsequent time the Judge may, where it seems likely that the detention may need to be extended a number of times, and where satisfied that the person is unlikely to abscond otherwise than by leaving New Zealand, instead of extending the warrant of commitment for a further period of up to 7 days, order that the person be released subject to—
- “(a) Such conditions as to the person’s place of residence or as to reporting at specified intervals to an office of the Department of Labour or a Police station as the Judge think fits; and

- “(b) Such other conditions as the Judge may think fit to impose for the purpose of ensuring compliance with the residence and reporting conditions.
- “(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; but
- “(b) The claim was made only after the removal order was served.
- “(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.
- “(8) In making any decision under this section a Judge is to seek to achieve an outcome that ensures a high level of compliance with immigration laws.
- “(9) No release of a person under this section in any way affects their liability for later detention and removal.
- “**61 Release from prison into immigration detention**
If a person who has been served with a removal order—
- “(a) Is held in a penal institution undergoing imprisonment; and
- “(b) Is due to be released from that imprisonment,—
then, on the request of any member of the Police who indicates an intention to execute the removal order under section 59, the person responsible for the person’s detention must, at the time the release is due, release the person into the custody of the member of the Police, and section 59 then applies.
- “**62 Form of custody**
- “(1) Every person who is placed in custody under section 59 and is to be detained overnight is to be detained—
- “(a) In the case of an unmarried person who is under 17 years of age, in—
- “(i) Any residence (within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989) or other premises under the

control of, or approved by, the Director-General of Social Welfare; or

“(ii) Any other premises agreed to by an immigration officer and by the parent or guardian of the person, or the adult nominated under section 141B to represent the interests of the person; or

“(b) In any other case, in—

“(i) Premises approved by the chief executive; or

“(ii) A Police station.

“(2) Every person who is to be detained in custody pursuant to a warrant of commitment made under section 60 is to be detained—

“(a) In a penal institution; or

“(b) In any other premises approved for the purpose by the Judge before whom the person is brought.

“(3) A person detained in a penal institution under this Part is to be treated for the purposes of the Penal Institutions Act 1954 as if they were an inmate awaiting trial.

“63 Removal where temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992

“(1) This section applies to a person who is in New Zealand unlawfully by reason of the expiry of a temporary permit that was granted to the person subject to the condition under section 27A(2) that the holder has no right to apply for another temporary permit or a residence permit.

“(2) Such a person cannot appeal to the Removal Review Authority under section 47 against the requirement to leave New Zealand.

“(3) Unless a person to whom this section applies leaves New Zealand voluntarily within 7 days of becoming unlawfully in New Zealand, a removal order may be made, served, and executed in respect of that person at any time following the expiry of that 7-day period.

*“Powers of immigration officers in relation to
persons suspected of being in New Zealand
unlawfully*

**“64 Power to require production of certain information by
departments of State and other bodies**

- “(1) Where an immigration officer has good cause to suspect that—
- “(a) A particular person is in New Zealand unlawfully; or
 - “(b) Particular premises are being occupied or have been occupied (whether for residential purposes or otherwise) by a person who is in New Zealand unlawfully,—
- the officer may prepare a certificate in the prescribed form to that effect.
- “(2) A certificate prepared under subsection (1)(a) may, where the immigration officer believes that the person concerned may be using 1 or more aliases, include any such alias.
- “(3) On production by an immigration officer of a certificate prepared under subsection (1), an officer or employee of any department of State or other body specified in the first column of the First Schedule must produce for inspection by the immigration officer, and allow the immigration officer to copy, any record or other information held by and reasonably available to that department or other body that tends to establish—
- “(a) In the case of a certificate prepared under subsection (1)(a), the present whereabouts of the person named in the certificate or that person’s whereabouts at any time in the past; or
 - “(b) In the case of a certificate prepared under subsection (1)(b), the name of the present occupier or any of the present occupiers of the premises or the name of the occupier or any of the occupiers of the premises at any time in the past.
- “(4) Where, in respect of any department of State or other body specified in the first column of the First Schedule, the class of records or information to which an immigration officer may have access is specified in the second column of that schedule, nothing in subsection (3) applies to any other class of records or information held by that department of State or other body.
- “(5) Subsection (3) applies notwithstanding any enactment or rule of law to the contrary, and no person who provides a record or

information in compliance with that subsection is liable in any civil or criminal proceedings in respect of that action.

“65 Power to require surrender of documents from suspected person

- “(1) If an immigration officer has good cause to suspect that a person is in New Zealand unlawfully and is liable to be removed from New Zealand under this Part, the officer may, for the purpose of establishing whether or not that is the case, and after informing the person of that suspicion, request the person—
- “(a) To give their full name (or names, where the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address:
 - “(b) To provide to the officer—
 - “(i) Any passport or certificate of identity relating to the person, whether or not it also relates to any other person:
 - “(ii) Any documentary or other evidence of the person’s identity:
 - “(iii) Any passport or certificate of identity relating to any dependent child of the person who the immigration officer also has good cause to suspect is in New Zealand unlawfully:
 - “(iv) Any travel tickets, or cash or security in lieu of travel tickets, held by or on behalf of the suspect person:
 - “(c) If the person does not currently have in his or her possession the documents or other things referred to in paragraph (b), to give the officer details of where those things can be found and who is holding them.
- “(2) If the person refuses or fails without reasonable excuse to comply with any request under subsection (1) (other than a request to surrender travel tickets, or cash or security in lieu of travel tickets) the officer must warn the person that if the refusal or failure persists the person is liable to be detained under this Part.
- “(3) If the refusal or failure still persists, any member of the Police may arrest the person without warrant and place the person in custody.

“(4) If a person has been arrested and placed in custody under this section because the person failed to identify himself or herself or failed to produce relevant documents to confirm his or her identity, an immigration officer must ensure that, unless the person’s identity has been confirmed and the person removed from New Zealand under section 59 or released, the person is brought before a District Court Judge as soon as practicable so that the person can establish his or her identity to the satisfaction of the Judge.

“(5) The Judge may determine who the person is, and both before and after doing so may make such orders and give such directions as the Judge thinks fit.

“**66 Power to require surrender of documents from third party**

“(1) Where a person has refused or failed to surrender a passport or certificate of identity under section 65, or has under that section given the immigration officer details of where such a document can be found, an immigration officer may, if the officer has good cause to suspect that the person holds the document, and without further authority than this section, in the prescribed manner request any third party who holds such a document to surrender it to the officer.

“(2) A person who fails without reasonable excuse to comply with a request made under subsection (1) commits an offence against this Act

“(3) If the third party surrenders any document under this section then no action against that person lies in any court in respect of that surrender, notwithstanding anything in any other Act or rule of law.

“**67 Use and return of surrendered material**

“(1) Any document or other material surrendered to an immigration officer under section 65 or section 66 is to be used only for the following purposes:

“(a) Confirming the identity of the suspected person:

“(b) Confirming the immigration status of the suspected person:

- “(c) Effecting the removal of the suspected person from New Zealand if a removal order is made and served:
 - “(d) Proceedings before an Authority, the Tribunal, or a court.
- “(2) The document or other material must be returned to the suspected person or the person who surrendered it—
- “(a) If the immigration officer becomes satisfied that the suspected person is not unlawfully in New Zealand; or
 - “(b) The purpose for which it was surrendered has been served; or
 - “(c) On the removal of the person from New Zealand, to the extent that it has not been used in effecting that removal and is still available to be returned,—
- unless the document or other material is known to be the property of some third party, in which case the document or material may be provided to that third party.

“Transitional provisions

“68 Matters may be completed under former Part II

The repeal of the former Part II by section 34 of the Immigration Amendment Act 1999, and its replacement by this Part, does not affect the validity of anything done under the former Part II, and anything done under it that is only partially completed as at 1 October 1999 may be completed in accordance with section 69.

“69 Existing removal orders

- “(1) Where a removal order has been served on a person at any time before 1 October 1999,—
- “(a) The person may exercise any rights of appeal conferred on that person by sections 63A and 63B (as in force before that date) within the time limits specified in those sections; and
 - “(b) Those sections, and any other relevant sections as in force before that date, continue to apply to any such appeal as if they were still in force.
- “(2) Where a removal order has been served on a person at any time before 1 October 1999, and either—

- “(a) That person has not exercised or does not exercise any right of appeal conferred on that person by section 63A or section 63B (as in force before that date) within the time limits specified in those sections; or
 - “(b) That person has unsuccessfully exhausted any appeal rights under those sections,—
- the person is then liable to be removed from New Zealand under this Part (as enacted by section 34 of the Immigration Amendment Act 1999) as if that removal order had been made under this Part, but as if section 47 did not apply.

“70 Persons unlawfully in New Zealand as at 1 October 1999

- “(1) This section applies to any person who is in New Zealand unlawfully immediately before 1 October 1999 and in respect of whom a removal order is not in force at that time.
- “(2) This section ceases to apply to a person once the person leaves New Zealand.
- “(3) The provisions of this Part (as substituted by section 34 of the Immigration Amendment Act 1999) apply to a person to whom this section applies subject to the following modifications:
 - “(a) The person may appeal to the Removal Review Authority under section 47 at any time before 1 October 2000, despite having been in New Zealand unlawfully for more than 42 days, unless earlier required to appeal by virtue of a notice served under paragraph (b); and the provisions of this Part then apply accordingly with any necessary modifications:
 - “(b) If before 19 August 2000 an immigration officer serves a notice in the prescribed form on the person that the person is obliged to leave New Zealand or appeal to the Removal Review Authority under section 47 within 42 days, then—
 - “(i) The person may appeal under section 47 within 42 days of being served with the notice, despite having been unlawfully in New Zealand for more than 42 days; and
 - “(ii) If the person fails to appeal within 42 days after being served with the notice (or if any appeal

made is unsuccessful, and section 53(1)(b) applies), the person may be the subject of a removal order, and is liable to be removed from New Zealand under this Part, at the end of that period;—

and the provisions of this Part apply accordingly with any necessary modifications:

- “(c) At any time on or after 1 October 2000, the person may be the subject of a removal order, and is liable to be removed from New Zealand under this Part, unless—
 - “(ii) The person has at the time an appeal pending under section 47 (including any appeal to the High Court or Court of Appeal in respect of such an appeal); or
 - “(iii) The person is at the time no longer unlawfully in New Zealand.”
- “(4) The chief executive of the Department of Labour must communicate the obligation on persons to whom this section applies to leave New Zealand, and the implications for persons who do not meet the obligation, in such a way that a reasonable opportunity is created for all persons to whom this section applies to know about the obligation and its implications.
- “(5) Any notice given under subsection (3)(b) must inform the person of the implications of not leaving New Zealand or not appealing under section 47 within 42 days.”

Part 3

New Part 4A inserted in principal Act

35 New Part inserted

This section inserted Part 4A (comprising ss 114A to 114R) of the principal Act.

Part 4

Amendments to Part 5 of principal Act—appeals

- 36 Appeal against decision of Removal Review Authority on question of law**
- (1) Section 115A of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
“(3) On any such appeal the High Court is to determine the question or questions of law and do any 1 or more of the following things:
 - “(a) Confirm the decision in respect of which the appeal has been brought:
 - “(b) Remit the matter to the Removal Review Authority with the opinion of the High Court on it, together with any directions as to how the matter should be dealt with:
 - “(c) Make such other orders in relation to the matter as it thinks fit.”
 - (2) Section 115A of the principal Act is amended by repealing subsection (4).

Part 5

Amendments to Part 6 of principal Act—arrivals and departures

- 37 Detention and departure of persons refused permits, etc**
- (1) This subsection substituted s 128(9)(b) and (c) of the principal Act.
 - (2) This subsection substituted s 128(13), inserted s 128(13A) and (13B), substituted s 128(14), and inserted s 128(14A) of the principal Act.
- 38 Procedure under section 128 if review proceedings, etc, brought**
- (1) This subsection substituted s 128A(2)(a) of the principal Act.
 - (2) This subsection amended s 128A(2)(b) of the principal Act.
 - (3) This subsection substituted s 128A(3)(b) of the principal Act.
 - (4) This subsection inserted s 128A(10A) of the principal Act.
 - (5) This subsection amended s 128A(12) of the principal Act.

39 Detention of persons whose eligibility for permit is not immediately ascertainable

- (1) This subsection substituted s 128B(5)(a) of the principal Act.
- (2) This subsection inserted s 128B(11A) of the principal Act.

Part 6

New Part 6A inserted in principal Act

40 New Part inserted

The principal Act is amended by inserting, after section 129, the following Part:

“Part VIA

“Refugee determinations

“129A Object of this Part

The object of this Part is to provide a statutory basis for the system by which New Zealand ensures it meets its obligations under the Refugee Convention.

“129B Definitions

“(1) In this Part, unless the context otherwise requires:

“**Authority** means the Refugee Status Appeals Authority referred to in section 129N

“**Claim** means a claim in New Zealand to be recognised as a refugee in New Zealand

“**Claimant**, or **refugee status claimant**, means a person who has made a claim in New Zealand to be recognised as a refugee in New Zealand and whose claim has not been finally determined under this Act

“**Convention** means the Refugee Convention defined in section 2

“**Refugee status officer**, or **officer**, means an employee of the Department of Labour who is designated by the chief executive under section 129E to undertake refugee status determinations under this Act and is not disqualified from doing so by subsection (3) of that section

“**Subsequent claim** means a claim in New Zealand to be recognised as a refugee in New Zealand by a person who has

previously made such a claim in New Zealand that has been finally determined.

- “(2) For the purposes of this Part, a claim may not be treated as finally determined at any time before the expiry of the appropriate appeal period specified in section 129O(3).

“129C Refugee status to be determined under this Part

- “(1) Every person in New Zealand who seeks to be recognised as a refugee in New Zealand under the Refugee Convention is to have that claim determined in accordance with this Part.
- “(2) Every question as to whether a person in New Zealand should continue to be recognised as a refugee in New Zealand under the Refugee Convention is to be determined in accordance with this Part.

“129D Refugee Convention to apply

- “(1) In carrying out their functions under this Part, refugee status officers and the Refugee Status Appeals Authority are to act in a manner that is consistent with New Zealand’s obligations under the Refugee Convention.
- “(2) The text of the Refugee Convention is set out in the Sixth Schedule.

“Claims for refugee status

“129E Claim to be determined by refugee status officer

- “(1) Every claim to be recognised as a refugee in New Zealand is to be determined by a refugee status officer.
- “(2) The chief executive of the Department of Labour is from time to time to designate as refugee status officers such persons employed in the Department as the chief executive considers necessary for the purposes of this Part.
- “(3) No person may be designated as a refugee status officer, or act as a refugee status officer, at any time when the person is also currently employed in considering applications for permits under this Act or in administering the removal provisions in Part II.

“129F Functions of officers considering claims

- “(1) On receipt of a claim that is not a subsequent claim, it is the function of a refugee status officer to, as appropriate,—
- “(a) Determine whether the claimant is a refugee within the meaning of the Refugee Convention;
 - “(b) Determine whether the claimant should be excluded from the protection of the Convention because of the application of any of Articles 1D, 1E, and 1F of the Convention.
- “(2) On receipt of a subsequent claim, it is the function of an officer to—
- “(a) Determine whether, since the most recent claim by the person, circumstances in the claimant’s home country have changed to such an extent that the subsequent claim is based on significantly different grounds to the previous claim; and
 - “(b) Only if the officer is satisfied that circumstances have so changed, determine any matter specified in subsection (1).

“129G How claim made and handled

- “(1) A claim is made as soon as a person signifies his or her intention to seek to be recognised as a refugee in New Zealand to a representative of the Department of Labour or to a member of the Police.
- “(2) Once a claim is made, the claimant must, on request by a refugee status officer, confirm the claim in writing in the prescribed manner.
- “(3) A claimant must as soon as is possible endeavour to provide to an officer all information relevant to his or her claim, including—
- “(a) A statement of the grounds for the claim; and
 - “(b) An indication of whether any other members of the claimant’s immediate family who are in New Zealand are also seeking recognition as refugees and, if so, whether any such claim is on different grounds.
- “(4) A claimant must provide an officer with a current address in New Zealand to which communications relating to the claim may be sent and a current residential address, and must notify

the officer in timely manner of a change in either of those addresses. The officer may rely on the latest address so provided for the purpose of communications under this Part.

- “(5) It is the responsibility of the claimant to establish the claim, and the claimant must ensure that all information, evidence, and submissions that the claimant wishes to have considered in support of the claim are provided to the refugee status officer before the officer makes a determination on the claim.
- “(6) For the purpose of determining a claim, an officer—
- “(a) May seek information from any source; but
 - “(b) Is not obliged to seek any information, evidence, or submissions further to that provided by the claimant; and
 - “(c) May determine the claim on the basis of the information, evidence, and submissions provided by the claimant.
- “(7) Subject to this Part and to any regulations made under it, and to the requirements of fairness, an officer may determine his or her own procedures on a claim.

“**129H Powers of refugee status officers**

- “(1) In carrying out his or her functions under this Part, a refugee status officer may—
- “(a) Require a claimant to supply such information, and within such times, as the officer reasonably requires:
 - “(b) Require the claimant to produce such documents in the claimant’s possession or within the claimant’s ability to obtain as the officer requires:
 - “(c) Require the claimant to consent to the release by any other person of any relevant documents or information relating to the claimant:
 - “(d) If the officer has good cause to suspect that a person other than the claimant has in his or her possession or control any document of the claimant (including any passport or travel document), in the prescribed manner request the person to produce any such document:
 - “(e) Require the claimant to provide or allow the taking of such fingerprints or photographs of the claimant as are reasonably necessary for the purpose of ascertaining or confirming the claimant’s identity or nationality:

- “(f) Require the claimant to attend an interview.
- “(2) A person who is requested to produce a document under subsection (1)(d) is not entitled to refuse to comply with the request by reason only that the person has a lien over the document.
- “(3) If a claimant is detained in custody, a refugee status officer may require the relevant member of the Police, Superintendent or other officer in charge of the penal institution, or other person having custody of the claimant, to—
 - “(a) Provide the officer with access to the place where the claimant is being detained, and to the claimant; and
 - “(b) Produce the claimant for interview.
- “(4) The member of the Police, Superintendent, or other officer concerned must comply with any such requirement, and make appropriate facilities available for an interview.
- “(5) Where a claimant who is required to attend an interview fails to attend at the appointed time and place, the officer may determine the claim without conducting the interview.
- “(6) An officer may decide the order in which claims are to be handled, and no decision on a claim is to be called into question on the basis that it ought to have been handled earlier or later than any other claim or category of claim.

“129I Decisions on claims

- “(1) The decision of a refugee status officer on a claim is final, except insofar as it is overturned by the Refugee Status Appeals Authority on an appeal under section 129O.
- “(2) An officer must notify a claimant, in the prescribed manner, of—
 - “(a) The officer’s decision on the claim; and
 - “(b) The reasons for that decision; and
 - “(c) The claimant’s right of appeal to the Authority.
- “(3) Once the decision is made and notified to the claimant, the officer may not re-open the claim for further consideration.

“129J Limitation on subsequent claims for refugee status

- “(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee

status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.

- “(2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.

“129K Claim not to be accepted from holder of residence permit or New Zealand citizen

- “(1) A refugee status officer may not consider a claim for refugee status by a person who is—
- “(a) The holder of a residence permit; or
 - “(b) A New Zealand citizen; or
 - “(c) Exempt under section 12 from the requirement to hold a permit.
- “(2) This section does not affect the power of an officer to determine the question of such a person's continued refugee status arising under section 129L.

*“Additional functions of refugee status officers
in relation to continuation, etc, of refugee status*

“129L Additional functions of refugee status officers

- “(1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:
- “(a) Determining whether the Refugee Convention has ceased to apply to a person who has previously been recognised as a refugee by a refugee status officer (but not by the Refugee Status Appeals Authority) in terms of Article 1C of the Convention:
 - “(b) Determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, and determining

to cease to recognise the person as a refugee in such a case if appropriate:

- “(c) Determining whether a person already recognised as a refugee should subsequently be excluded from the protection of the Convention, in any case where the matters dealt with in Articles 1D, 1E, and 1F of the Convention may not have been able to be properly considered by a refugee status officer (but not by the Authority) for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information:
- “(d) Determining whether, in the light of any relevant international arrangement or agreement, a person who may have lodged a claim for refugee status in another country, or had the opportunity to lodge such a claim, may have a claim for refugee status accepted for consideration in New Zealand:
- “(e) Determining, in the case of a person who has already been recognised as a Convention refugee by a country other than New Zealand, whether that person may avail himself or herself of the protection of that country:
- “(f) Applying to the Refugee Status Appeals Authority for a determination as to whether—
 - “(i) The Convention has ceased to apply, in terms of Article 1C, to a person who has previously been recognised as a refugee by the Authority:
 - “(ii) The Authority should cease to recognise a person as a refugee, in any case where that recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:
 - “(iii) Any of Articles 1D, 1E, and 1F of the Convention should be applied to exclude a person from the protection of the Convention, in any case where the Authority has recognised the person as a refugee but the matters dealt with in those Articles may not have been properly considered by the Authority for any reason, including by reason

of fraud, forgery, false or misleading representation, or concealment of relevant information.

“(2) Refugee status officers also have the functions specified in paragraphs (a) to (c) of subsection (1), as if those paragraphs referred to recognition by the appropriate person or body rather than by a refugee status officer, in respect of—

“(a) Persons who, before 1 January 1991, were recognised as refugees following consideration of their claims by the Interdepartmental Committee on Refugees; and

“(b) Persons recognised as refugees outside New Zealand who have travelled to New Zealand as mandated refugees.

“**129M Procedures to be followed in carrying out additional functions**

When carrying out any function under section 129L—

“(a) A refugee status officer must take all reasonable steps to notify the person concerned in the prescribed manner of the matter that is being considered; and

“(b) Except in the case of a function described in section 129L(1)(f), sections 129G, 129H, and 129I(2) and (3) apply, with any necessary modifications, as if the matter being considered were a claim for refugee status and the person concerned were a claimant.

“Appeals to refugee status appeals authority

“**129N Refugee Status Appeals Authority**

“(1) For the purposes of this Part there continues to be a body called the Refugee Status Appeals Authority.

“(2) The main functions of the Authority are—

“(a) To hear appeals brought under section 129O from determinations by refugee status officers not to recognise a claimant as a refugee; and

“(b) To make determinations in relation to a person’s refugee status on applications made by refugee status officers under section 129L(1)(f).

“(3) The Authority is to consist of—

- “(a) Such number of members as the Governor-General determines from time to time on the advice of the Minister, being barristers or solicitors of the High Court who—
 - “(i) Have held practising certificates for at least 5 years; or
 - “(ii) Have other equivalent or appropriate experience (whether in New Zealand or overseas); and
 - “(b) One ex officio member who is the representative of the United Nations High Commissioner for Refugees.
- “(4) The members referred to in subsection (3)(a) are to be appointed by the Governor-General on the advice of the Minister.
- “(5) For the purposes of any matter before it the Authority is normally to consist of 1 member.
- “(6) The chairperson may direct that, because of the exceptional circumstances of any case, the case is to be heard and determined by more than 1 member. In any such case the chairperson must designate—
- “(a) The members who are to hear and determine the case; and
 - “(b) The member who is to be chairperson for the purposes of the hearing and determination.
- “(7) The ex officio member under subsection (3)(b) may hear and be involved in the determination of any case so long as the quorum required by subsection (5) or subsection (6) is achieved by the other members of the Authority.
- “(8) The provisions set out in Schedule 3C apply in relation to the Authority.

“129O Appeals to Refugee Status Appeals Authority

- “(1) A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.

- “(2) A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer’s decision.
- “(3) An appeal must be lodged with the Authority—
- “(a) Within 5 working days after the appellant is notified under section 129I of the refugee status officer’s decision, or within such further time as may be allowed under subsection (4), in the case of a person who is detained in custody at the time of notification; or
- “(b) Within 10 working days after receiving notification of the decision under that section, or within such further time as may be allowed under subsection (4), in any other case.
- “(4) The Authority may extend the time for lodging an appeal where satisfied that special circumstances warrant such an extension.

“129P Procedure on appeal

- “(1) It is the responsibility of an appellant to establish the claim, and the appellant must ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are provided to the Authority before it makes its decision on the appeal.
- “(2) The Authority—
- “(a) May seek information from any source; but
- “(b) Is not obliged to seek any information, evidence, or submissions further to that provided by the appellant; and
- “(c) May determine the appeal on the basis of the information, evidence, and submissions provided by the appellant.
- “(3) An appellant must provide the Authority with a current address in New Zealand to which communications relating to the appeal may be sent and a current residential address in New Zealand, and must notify the Authority in timely manner of a change in either of those addresses. The Authority may rely on the latest address so provided for the purpose of communications under this Part.

- “(4) In its consideration of an appeal or other matter under this Part, the Authority may request the chief executive of the Department of Labour to seek and provide relevant information.
- “(5) The Authority may dispense with an interview of the appellant or other affected person only if both—
- “(a) The appellant or other affected person has been interviewed by a refugee status officer in the course of determining the relevant matter at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and
- “(b) The Authority considers that the appeal or other contention of the person affected is prima facie manifestly unfounded or clearly abusive.
- “(6) Despite subsection (5), the Authority may determine an appeal or other matter without an interview if the appellant or other person affected fails without reasonable excuse to attend a notified interview with the Authority.
- “(7) If a summons is issued by the Authority under section 4D of the Commissions of Inquiry Act 1908 in respect of a person detained in custody, the Superintendent or other person in charge of the relevant penal institution or other approved premises, or other person having custody of the detained person, must produce, or allow the production of, the person as directed in the summons.
- “(8) The Authority may decide the order in which appeals or other matters are to be heard, and no decision on an appeal or other matter is to be called into question on the basis that the appeal or other matter ought to have been heard or decided earlier or later than any other appeal or matter or category of appeal or matter.
- “(9) In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding.

“129Q Decisions of Authority

- “(1) Where the Authority consists of more than 1 member on an appeal or other matter, the decision on that matter must be a majority decision.
- “(2) If the members are evenly divided, the matter must be determined in favour of the appellant or other person affected.
- “(3) A decision of the Authority must be given in writing, and include reasons both for the decision and for any minority view.
- “(4) The Authority must notify the appellant or other affected person of its decision, and provide a copy of the decision.
- “(5) A decision of the Authority is final once notified to the appellant or other affected person.

*“Functions of authority otherwise than on
appeals*

**“129R Functions of Authority in relation to continuation, etc,
of refugee status**

In addition to the function of hearing appeals from decisions of refugee status officers in relation to refugee status, the Authority also has the function of determining applications made by refugee status officers under section 129L(1)(f) as to whether—

- “(a) The Refugee Convention has ceased to apply, in terms of Article 1C, to a person who has previously been recognised as a refugee by the Authority; or
- “(b) The Authority should cease to recognise a person as a refugee, in any case where the earlier recognition by the Authority of the person as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or
- “(c) Any of articles 1D, 1E, and 1F of the Convention should be applied to exclude a person from the protection of the Convention, in any case where the Authority has recognised the person as a refugee and the matters dealt with in those Articles may not have been able to be properly considered by the Authority for any reason, including by reason of fraud, forgery, false or misleading misrepresentation, or concealment of relevant information.

“129S Procedures to be followed in carrying out non-appellate functions

When carrying out any function under section 129R—

- “(a) The Authority must take reasonable steps to notify the person concerned in the prescribed manner of the matter that is being considered; and
- “(b) Section 129P and any regulations made under this Part apply (unless the context otherwise requires, and with any necessary modifications) as if the matter being considered were an appeal under section 129O and the person concerned were an appellant.

“General provisions relating to claims, etc

“129T Confidentiality to be maintained

- “(1) Subject to this section, confidentiality as to the identity of the claimant or other person whose status is being considered under this Part, and as to the particulars of their case, must at all times, both during and subsequent to the determination of the claim or other matter, be maintained by refugee status officers, the Authority, other persons involved in the administration of this Act, and persons to whom particulars are disclosed under subsection (3)(a) or (b).
- “(2) Compliance with subsection (1) may in an appropriate case require confidentiality as to the very fact or existence of a claim or case, if disclosure of its fact or existence would tend to identify the person concerned, or be likely to endanger any person.
- “(3) Subsection (1) does not apply to prevent the disclosure of particulars—
 - “(a) To a person necessarily involved in determining the relevant claim or matters; or
 - “(b) To an officer or employee of a Government department or other Crown agency whose functions in relation to the claimant or other person require knowledge of those particulars; or
 - “(c) To the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or

- “(d) In dealings with other countries for the purpose of determining the matters specified in section 129L(d) and (e) (whether at first instance or on any appeal); or
 - “(e) To the extent that the particulars are published in a manner that is unlikely to allow identification of the person concerned, whether in a published decision of the Authority under clause 12 of Schedule 3C or otherwise; or
 - “(f) If there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure in the particular circumstances of the case.
- “(4) Nor does subsection (1) apply to prevent the disclosure of particulars in relation to a particular claimant or other person to the extent that the claimant or person has, whether expressly or impliedly by their words or actions, waived his or her right to confidentiality under this section.
- “(5) A person who without reasonable excuse contravenes subsection (1), and any person who without reasonable excuse publishes information released in contravention of subsection (1), commits an offence.

“129U Special provision relating to refugee status claimants granted temporary permits

- “(1) This section applies to any person who—
- “(a) Is a refugee status claimant to whom a temporary permit has been granted on or after 1 October 1999 (whether before or after the person became a claimant); or
 - “(b) Having been a person to whom paragraph (a) applies, ceases to be a refugee status claimant by virtue of having his or her claim under this Part to be recognised as a refugee declined.
- “(2) A person to whom this section applies may not, whether before or after the expiry of the temporary permit,—
- “(a) Apply for a further temporary permit or for a permit of a different type while in New Zealand; or
 - “(b) While in New Zealand, request a special direction, or a permit under section 35A; or
 - “(c) Bring any appeal under this Act to the Residence Appeal Authority.

- “(3) Despite subsection (2)(a), a claimant may apply for a further temporary permit for such period as may be required to maintain the claimant’s lawful status in New Zealand while the claim is determined.
- “(4) Nothing in this section prevents a person from bringing an appeal to the Removal Review Authority under Part II.
- “(5) This section ceases to apply to a person if and when his or her claim under this Part to be recognised as a refugee is successful.

“129V Effect of claimant leaving New Zealand

If a claimant leaves New Zealand, his or her claim or appeal is to be treated as withdrawn.

“129W Immigration matters not within functions of refugee status officers and Authority

The following are matters for the Minister and any appropriate immigration or visa officer only, and are not within the functions, powers, or jurisdiction of refugee status officers and the Authority:

- “(a) The grant or issue or giving under this Act of any visa, permit, exemption, or special direction:
- “(b) The revoking or cancellation under this Act of any visa, permit, exemption, or special direction:
- “(c) The conditions to be attached to any visa, permit, exemption, or special direction:
- “(d) The removal or deportation of any person from New Zealand:
- “(e) Any issue of a humanitarian nature that arises outside the context of a decision relating to the recognition of refugee status in New Zealand.

“129X Prohibition on removal or deportation of refugee or refugee status claimant

- “(1) No person who has been recognised as a refugee in New Zealand or is a refugee status claimant may be removed or deported from New Zealand under this Act, unless the provisions of Article 32.1 or Article 33.2 of the Refugee Convention allow the removal or deportation.

“(2) In carrying out their functions under this Act in relation to a refugee or refugee status claimant, immigration officers must have regard to the provisions of this Part and of the Refugee Convention.

“**129Y Regulations**

“(1) The Governor-General may from time to time, by Order in Council, make regulations—

“(a) Prescribing procedures to be followed for the purposes of this Part:

“(b) Providing for such other matters as are contemplated by or necessary for giving full effect to the Refugee Convention, and to the provisions of this Part and for its due administration.

“(2) Without limiting the generality of subsection (1), any such regulations may—

“(a) Specify the manner in which any claim, appeal, or other matter is to be made:

“(b) Provide for the manner of service of notices and documents, which may differ from the requirements of section 146, and provide for when they will be treated as having been received:

“(c) Provide for the availability and use of interpreters:

“(d) Provide for matters relating to communications with claimants and other affected persons:

“(e) Specify the information that must be supplied to claimants and other affected persons, including information concerning their rights and concerning procedures under this Part:

“(f) Make provision for the representation of minors:

“(g) Make provision for representation generally:

“(h) Specify the circumstances in which interviews must be held and when they need not be held:

“(i) Specify the periods, or minimum or maximum periods, within which or before or after which certain things must or may not be done:

“(j) Specify the obligations of claimants and other affected persons as to the provision of contact details, information, and documents:

- “(k) Specify the manner in which a claim or other matter may be withdrawn:
- “(l) Providing for any special matters relating to the handling of claims, appeals, or other matters when the claimant or other affected person is in custody:
- “(m) Specifying procedures to be followed in relation to claims, appeals, and other matters not completed before the commencement of this Part.

*“Claims and appeals completed before 1
October 1999*

“129Z Completed claims and appeals may not be challenged

No determination as to a person’s refugee status in New Zealand made before the commencement of this Part by an employee of the Department of Labour or by the Refugee Status Appeals Authority (as constituted before the commencement of this Part) may be challenged on the ground that the employee or the Authority had no legal or statutory authority to make the decision in question.

“Transitional provisions

“129ZA Uncompleted claims and appeals

- “(1) This Part applies on and from 1 October 1999 to any claim, appeal, or other matter relating to refugee status that had been made to the Department of Labour or to the Refugee Status Appeals Authority before that date but which had not been finally determined as at that date.
- “(2) Despite subsection (1),—
 - “(a) Where a person had an ongoing right to appeal a decision on a claim as at 1 October 1999, the period during which the appeal may be made is not affected by subsection (1):
 - “(b) Where any appeal was part-heard as at 1 October 1999, the rules relating to that appeal continue to be those that applied immediately before that date.

“129ZB Continuation of membership of Refugee Status**Appeals Authority**

- “(1) The persons who immediately before 1 October 1999 were members of the Refugee Status Appeals Authority continue as members of the Authority on the same terms and conditions as applied before that date.
- “(2) The person who immediately before 1 October 1999 was chairperson of the Refugee Status Appeals Authority continues as chairperson of the Authority.
- “(3) Where a member of the Authority to whom subsection (1) applies was appointed without a fixed duration for the appointment, that member is to be treated as having been appointed for a period of 4 years from 1 October 1999.”

Part 7**Amendments to Part 7 of principal
Act—miscellaneous provisions****41 Special directions**

- (1) Section 130(1) of the principal Act is amended by inserting, after the words “any other immigration officer”, the words “or to any visa officer”.
- (2) Section 130 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) The Minister may from time to time give in writing a special direction classifying persons who require transit visas for the purposes of section 14E, and section 14E(2B) applies in respect of any such direction.”

42 Delegation of powers of Minister

- (1) Section 131 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) The Minister may from time to time, by writing under the Minister’s hand, delegate to any immigration officer or any visa officer all or any of the powers conferred upon the Minister by this Act, except this power of delegation and the powers conferred by or referred to in Part IVA, or in any of sections 13B(1)(b), 13C(2), 14B(2), 17A(2), 18A(3), 18B(3) and (4), 18E(5), 20(1), 20A(1), 31(3), 49(3) and (4), 72, 73, 91, 92,

and 129N(3) and (4), or in any of clauses 1(2), 1A, and 1B of Schedule 3A, clauses 1(2), 1A, and 1B of Schedule 3B, and clauses 1(2), 2, and 3 of Schedule 3C.”

- (2) Section 131 of the principal Act is amended by inserting in both subsection (2) and subsection (6), in each case after the words “immigration officer”, the words “or visa officer”.

43 Designation of officers, etc, by chief executive

The principal Act is amended by inserting, after section 133, the following section:

“133A

(1) Every designation by the chief executive of a person as an immigration officer, visa officer, or refugee status officer, or for any other purpose under this Act, is revocable in writing at will.

“(2) Any such designation continues in force according to its tenor until it is revoked, notwithstanding that the chief executive by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive.”

44 Powers of entry and search

Section 137(1) of the principal Act is amended by inserting, after the words “under section 20(2)”, the words “or notice under section 34C(3)(a)”.

45 Special provisions relating to custody

- (1) Section 140(2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) A person on whom a removal order has been served is in custody under Part II; or”.

- (2) Section 140(4) of the principal Act is amended by omitting the expression “section 60 or section 62 of this Act”, and substituting the expression “section 141B”.

- (3) This subsection inserted s 140(5) of the principal Act.

46 Additional provisions relating to custody in approved premises

This section inserted s 140A of the principal Act.

47 Special powers of member of Police pending removal or deportation

Section 141 of the principal Act is amended—

- (a) By omitting from subsection (1) the words “Subject to subsection (2) of this section,”;
- (b) By repealing subsection (2).

48 Disclosure of immigration information to Department of Social Welfare

Section 141A(3)(b) of the principal Act is amended by inserting, after the words “temporary permit”, the words “or limited purpose permit”.

49 New sections inserted

The principal Act is amended by inserting, after section 141A, the following sections:

“141B Children to have responsible adult to represent their interests, etc

- “(1) In any matters of the kind referred to in subsection (2) that relate both to a dependent child who is under 17 years of age and unmarried (in this section and sections 141C and 141D referred to as a **minor**) and to 1 or more of that child’s parents,—
- “(a) The minor’s interests are to be represented by any such parent; and
 - “(b) The parent is the responsible adult for the minor for the purposes of this section and sections 141C and 141D.
- “(2) If a minor does not have a responsible adult to represent the minor’s interests by virtue of subsection (1), a responsible adult must be nominated in accordance with this section to represent the minor’s interests in relation to any of the following matters under this Act:
- “(a) The making, serving, and execution of a removal order or a deportation order in the minor’s name;
 - “(b) The revocation of the minor’s residence permit;
 - “(c) Any claim by the minor to be recognised as a refugee:

- “(d) Any appeal by the minor under this Act:
- “(e) Any detention of the minor under this Act.
- “(3) The responsible adult is to be nominated by an Authority, the Tribunal, an immigration officer, a refugee status officer, or a Judge, as the case may require.
- “(4) A person may be nominated as a responsible adult under subsection (2) only if—
 - “(a) The person is 20 years of age or more; and
 - “(b) Except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or the holder of a residence permit; and
 - “(c) The person is any of the following:
 - “(i) A parent, guardian, or relative of the minor; or
 - “(ii) A person suggested by the minor; or
 - “(iii) Any other person having responsibility for the minor or who is otherwise suitable to represent the minor’s interests; or
 - “(iv) If no other appropriate person is available under this subsection, a person designated by the Director-General of Social Welfare; and
 - “(d) Except in the case of a parent or guardian of the minor, the person agrees in writing to be nominated as a responsible adult.
- “(5) Should the need arise, and after such consultation as is reasonable in the circumstances, a substitute responsible adult may be nominated in accordance with the requirements of this section.
- “(6) The role of a responsible adult relates to those matters or proceedings in relation to which the nomination was made, and in any event the role finishes when the minor leaves New Zealand.
- “(7) A responsible adult who is representing the interests of a minor in any matter of a kind referred to in subsection (2) must supply to an immigration officer or refugee status officer, or to an Authority or to the Tribunal, as the case may require, an address in New Zealand at which any communication relating to the minor may be notified to that adult.

“141C Role and rights of responsible adult

The following provisions apply to any dealings under this Act with a minor who has a responsible adult to represent his or her interests:

- “(a) The responsible adult may appeal to an Authority or the Tribunal under any of Parts II, III, IV, and VIA, or to the High Court under section 115A, on the minor’s behalf, and may make submissions to the Authority or Tribunal:
- “(b) The responsible adult may appear and be heard in any District Court proceedings under this Act relating to the minor:
- “(c) To the extent practicable given the level of maturity and understanding of the minor, the responsible adult must attempt to elicit the views of the minor and make them known on behalf of the minor, where appropriate:
- “(d) Any document required to be served on or notified to the minor is instead to be served on or notified to the responsible adult, and such service or notification is deemed to be service on or notification to the minor.

“141D Views of minor to be considered

In any proceedings or process of a kind referred to in section 141B(2) in relation to a minor,—

- “(a) An opportunity must be given, so far as is practicable, for the minor to express his or her views on the matter, whether personally or through a responsible adult; and
- “(b) Due weight is to be given to those views having regard to the age and level of maturity and understanding of the minor.”

50 Offences

- (1) Section 142(c) of the principal Act is amended by inserting, after the words “immigration officer”, the words “or visa officer or refugee status officer”.
- (2) This subsection inserted s 142(fa) of the principal Act.
- (3) Section 142(h) of the principal Act is amended by inserting, after the words “immigration officer”—
 - (a) Where they first occur, the words “or a refugee status officer”:

- (b) Where they secondly occur, the words “or refugee status officer”.
- (4) Section 142 of the principal Act is amended by adding the word “; or” to paragraph (i), and adding the following paragraph:
 - “(j) Wilfully misleads any person or acts negligently or unprofessionally (including charging excessively) while assisting that person, for financial reward, in any application for a permit or visa or in any proceedings before the Removal Review Authority, the Residence Appeal Authority, or the Refugee Appeals Authority.”

51 Evidence in proceedings

- (1) Section 143(1) of the principal Act is amended—
 - (a) By omitting the words “or the Residence Appeal Authority or the Removal Review Authority”, and substituting the words “or an Authority”:
 - (b) By inserting in paragraph (c), after the words “a specified date,”, the words “or was granted for an express purpose,”:
 - (c) By inserting in paragraph (i), after the words “left New Zealand”, the words “, or was or was not in New Zealand or had or had not left New Zealand at any particular time or for or during any particular period”:
 - (d) By omitting from paragraph (j) the expression “section 63A or section 63B of this Act”, and substituting the expression “section 47”:
 - (e) By adding to paragraph (k) the expression “; or”.
- (2) Section 143 of the principal Act is amended by inserting, after subsection (1), the following subsection:
 - “(1A) In any proceedings relating to any matter under Part VIA, whether before any court or an Authority or the Tribunal, a certificate signed by an immigration officer or a refugee status officer and containing a statement in relation to any person to the effect that—
 - “(a) The person has or has not, as at any material time, claimed to be a refugee in New Zealand (or elsewhere);
or

- “(b) The person has or has not, as at any material time, been recognised as a refugee in New Zealand (or elsewhere); or
 - “(c) The person, while in New Zealand, produced or surrendered to an immigration officer or refugee status officer any passport, certificate of identity, or other document that was forged or obtained fraudulently; or
 - “(d) The person has, or has not, lodged an appeal under section 129O, or a matter is or is not before a refugee status officer under section 129L or the Refugee Status Appeals Authority under section 129R,—
is to be treated as proof of the truth of the statement in the absence of proof to the contrary established on the balance of probabilities.
- (3) Section 143(2) of the principal Act is amended by inserting, after the words “the Court or the Tribunal”, the words “or the Authority”.
- (4) Section 143(3) of the principal Act is amended by omitting the words “or the Residence Appeal Authority or the Removal Review Authority”, and substituting the words “or an Authority”.
- (5) Section 143(4B) of the principal Act is amended by omitting the expression “section 50 of this Act”, and substituting the expression “Part II”.
- (6) Section 143 of the principal Act is amended by adding the following subsection:
- “(7) For the purposes of any proceedings under this Act, section 6(2) of the Evidence Amendment Act 1952 (which contains presumptions as to documents executed outside New Zealand) does not apply, and the Court, Authority, Tribunal, or other person or body conducting or in charge of the proceedings may—
- “(a) If it considers it fair and equitable to do so, accept as evidence any statement, document, or information tendered in respect of a document to which that section 6(2) would otherwise apply, whether or not it would be normally admissible in a court of law; and

“(b) Determine the credibility or weight (if any) to be given in the proceedings to the document concerned and its contents.”

52 General penalty for offences

- (1) Section 144(1) of the principal Act is amended by omitting the expression “and 142(g)”, and substituting the expression “142(g), and 42(j)”.
- (2) This subsection inserted s 144(1A) of the principal Act.

53 Special provisions relating to judicial review of decisions under this Act

This section inserted s 146A of the principal Act.

54 New sections substituted

The principal Act is amended by repealing section 149, and substituting the following sections:

“148A Fees

- “(1) Without limiting the generality of the power to prescribe fees set out in section 150(b), fees may be prescribed under that section in relation to any matter or service under or arising from this Act, whether it be any 1 or more of the acceptance for processing, the processing, or the decision on any application, request, or appeal, whether it relates to a formal process or not, whether or not any other fee is payable in respect of some other aspect of the same matter, and whether it relates to a permit, visa, special direction, exemption, waiver, or other exercise of powers under this Act.
- “(2) Fees may apply to an individual person or application, or to a group of persons or applications, or otherwise.
- “(3) Fees may not be imposed on refugee status claimants for any matter relating to refugee status.
- “(4) Fees may be prescribed in a way, or at a level or levels, or using 1 or more methods of calculation, that reflects the variable nature of the costs or potential costs that give rise to the need for each fee, and the range of factors that influence those costs.
- “(5) Without limiting subsection (4), the fees prescribed may—

- “(a) Differ depending on whether or not a special or urgent service is provided:
 - “(b) Include more than 1 level of fee for the same service provided in different ways, or provided in or in respect of different places:
 - “(c) Differ for otherwise similar services provided in different ways:
 - “(d) Differ for otherwise similar services provided to different categories of person:
 - “(e) Differ depending on the amount of service required or the components of the service required for the particular person or class of person:
 - “(f) Differ depending on whether a group of people (including a family group) are requesting or obtaining the services in question:
 - “(g) Differ depending on whether an agent is used to deliver or help deliver the service concerned.
- “(6) Without limiting the way in which fees may be set, a fee may be set at a level or in a way that—
- “(a) Is determined by calculations that involve an averaging of costs or potential costs:
 - “(b) Takes into account costs or potential costs of services that are not directly to be provided to the person who pays the fee but which are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service.
- “(7) A fee is payable at such time as is prescribed in respect of a particular service, whether that time be before, during, or after completion of the relevant service.
- “(8) In the case of services to be provided outside New Zealand or in respect of a person outside New Zealand,—
- “(a) A fee may be set in New Zealand dollars or in a foreign currency; and
 - “(b) If the fee is set in New Zealand dollars, the method of determining the amount payable at any time in currency other than New Zealand dollars is to be determined from time to time by the chief executive of the Department of Labour.

- “(9) A fee may also be required by the regulations in question to be paid in New Zealand dollars only.
- “(10) All fees prescribed under this Act and received by the Department of Labour must be paid into the Departmental Bank Account.

“148B Bonds

- “(1) This section applies in any case where a bond may be imposed under this Act.
- “(2) The amount of any bond is to be at a level determined or authorised by—
 - “(a) Government residence policy under section 13B, in respect of bonds of a type required by that policy; and
 - “(b) Regulations made under this Act, in respect of other bonds.
- “(3) Different levels of bond, or different methods of determining levels of bond, may be determined or prescribed in respect of different categories of person, including categories of person determined by having regard to the different regions of the world where their countries of origin or nationality are situated and the costs of travel or repatriation to such regions or countries.
- “(4) A bond must specify—
 - “(a) The conditions in respect of which it is paid (which must relate to or be based on requirements of the relevant Government residence policy, if appropriate, or on other requirements and obligations imposed by or under this Act, including conditions attached to the relevant permit); and
 - “(b) The situations in which it may be refunded or forfeited, whether in whole or in part.
- “(5) Regulations made under this Act may—
 - “(a) Require any bond or class of bond to be paid in New Zealand dollars only;
 - “(b) Require any refund of a bond or class of bond to be made in New Zealand dollars only (whether or not the bond itself was required to be paid in New Zealand dollars).

- “(6) A bond required in respect of any type of matter is payable at the time prescribed for that class of matter in regulations, or in Government residence policy as the case may require, and may be payable either by the person concerned or by any other class of person specified in the regulations or policy. For the avoidance of doubt, a bond payable in relation to the grant of a permit may be required to be payable at the time of the issue of a visa that may lead to the grant of the permit.
- “(7) Forfeiture of a bond is at the discretion of the Minister or an immigration officer or a visa officer, who must exercise the discretion by taking into account—
- “(a) The reason the bond was imposed; and
 - “(b) The extent to which the conditions of the bond have been met or breached; and
 - “(c) Any explanation given as to the breach of the bond conditions; and
 - “(d) The estimated cost to the Crown of the breach.
- “(8) The person who is eligible for the refund of a bond must apply for the refund within 12 months of the bond becoming refundable, or the bond is forfeit to the Crown.
- “(9) A bond paid must be held in trust by the Department of Labour until refunded or forfeited.
- “(10) No interest is payable on a bond to the person who paid it. The chief executive of the Department of Labour may apply any interest towards the costs of administering the bond system, and any surplus interest must be paid into the Crown Bank Account.
- “(11) In the case of a bond imposed in relation to a temporary or limited purpose visa or permit, no refund may be made until the person in question either is no longer in New Zealand or, in the case of the holder of a temporary permit, is granted a residence permit.
- “(12) A refund of a bond must be paid either to the person who paid it or to a person authorised by that person to receive it.
- “(13) If all or any part of a bond is forfeited, the Department of Labour must pay the amount forfeited into the Crown Bank Account.

“(14) No bond may be imposed on any refugee status claimant for any matter relating to refugee status, and any bond imposed upon a person before that person became a refugee status claimant must be refunded if the person is subsequently determined under Part VIA to be a refugee.

“148C Other charges

- “(1) Nothing in section 148A or section 148B prevents the Department of Labour from charging persons for any of the services the Department provides in relation to the administration of this Act, other than services to which a fee applies under the other provisions of this Act.
- “(2) Without limiting subsection (1), and for the avoidance of doubt, the Department may—
- “(a) Operate a telephone information service for which each caller pays according to their usage or on some averaged basis:
 - “(b) Charge persons for the cost of mailing or couriering information to them, or the cost of moving, at the person’s request, the administration of a matter relating to the person from 1 office of the Department to another:
 - “(c) Charge for the cost of written material, unless that material is required by any Act or by regulations made under this Act to be provided free of charge:
 - “(d) Charge for access to any website, or for information or services provided by any website, operated by the Department:
 - “(e) Charge for access to any library or research services provided in relation to immigration or refugee matters:
 - “(f) Charge any person for services requested by (and provided to) that person in relation to immigration matters, other than services provided in a customs place:
 - “(g) Charge any person for the supply of forms to the person in quantity, where it is apparent that the forms are not for the person’s own personal use.
- “(3) All such charges received by the Department of Labour must be paid into the Departmental Bank Account.

“(4) Nothing in subsection (1) or subsection (2)(f) authorises the charging of any person who operates a customs place for services provided in relation to immigration or refugee matters.

“(5) Nothing in subsection (2)(f) affects the ability to recover costs under section 125 or section 148.

“149 Exemptions and refunds

“(1) Regulations made under this Act may provide for exemptions from or refunds of any fee or bond payable under this Act, in whole or in part, in any class of case.

“(2) The Minister may by special direction provide for an exemption from or refund of any prescribed fee or any bond, in whole or in part.”

55 Regulations

(1) Section 150 of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) Prescribing matters in respect of bonds that may be imposed under this Act.”

(2) Section 150 of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:

“(g) Prescribing the period of currency, or maximum period of currency, for temporary permits or limited purpose permits or for any type or class of temporary permit or limited purpose permit.”

Part 8

Amendments to schedules and to other acts

56 New Schedule 1 substituted

The principal Act is amended by repealing Schedule 1, and substituting Schedule 1 set out in Schedule 1 of this Act.

57 Schedule 3A amended

Schedule 3A of the principal Act is amended by inserting in clause 7(1), after the words “under this Act”, the words “in respect of the financial year ending in that year”.

58 Schedule 3B amended

- (1) Schedule 3B of the principal Act is amended—
- (a) By omitting from clause 3 the expression “section 50 of this Act”, and substituting the expression “section 54”:
 - (b) By inserting in clause 7(1), after the words “under this Act”, the words “in respect of the financial year ending in that year”.
- (2) Clause 7 of Schedule 3B of the principal Act is amended by repealing subclause (2), and substituting the following subclause:
- “(2) Any such report must include the following information:
- “(a) The number of appeals lodged with the Authority under section 47:
 - “(b) The number of cases in which an appeal against the requirement to leave New Zealand is upheld by the Authority:
 - “(c) The number and type of permits granted in accordance with directions given by the Authority under section 52(2):
 - “(d) The number of appeals withdrawn or not proceeded with.”

59 New Schedule 3C inserted

The principal Act is amended by inserting, after Schedule 3B, the Schedule 3C set out in Schedule 2 of this Act.

60 New Schedule 6 added

The principal Act is amended by adding Schedule 6 set out in Schedule 3 of this Act.

Amendments to other acts

61 Amendment to Social Security Act 1964

Section 74A(1)(b) of the Social Security Act 1964 is amended by inserting, after subparagraph (i), the following subparagraph:

- “(ia) A limited purpose permit; or”.

62 Amendments to Immigration Amendment Act 1991

- (1) Section 33(4) of the Immigration Amendment Act 1991 is amended by omitting the word “Repeal”, and substituting the word “Appeal”.
- (2) Section 33 of the Immigration Amendment Act 1991 is amended by adding the following subsection:
- “(5) No person may make an application under this section on or after 1 October 2000.”

63 Amendment to Judicature Act 1908

This section inserted s 56CA and the preceding heading of the Judicature Act 1908.

64 Amendments to Legal Services Act 1991

[Repealed]

Section 64 was repealed, as from 1 February 2001, by section 127(1)(d) Legal Services Act 2000 (2000 No 42).

Schedule 1

Section 56

New Schedule 1 substituted in principal Act**First Schedule**

Section 64

Departments and bodies from whom information may be required

Department or Body	Class of Records or Information
Housing New Zealand	
New Zealand Post Limited	Postal delivery records
Telecom Corporation of Zealand Limited	Telephone subscriber records, other than confidential listings
Department of Work and Income	
Department of Social Welfare	

Department or Body	Class of Records or Information
Land Transport Safety Authority	
Power supply authorities	Customer names and addresses
Local authorities	Customer names and addresses
Energy companies under the Energy Companies Act 1992	Customer names and addresses
Clear Communications	Telephone subscriber records, other than confidential listings

Schedule 2

Section 59

New Schedule 3C inserted in principal Act

Schedule 3C

Section 129N(8)

Provisions relating to refugee status appeals authority

1 Term of office

- (1) Every member of the Authority is to hold office for such period not exceeding 4 years as is fixed in the member's warrant of appointment.
- (2) Any member of the Authority may at any time be removed from office by the Minister for disability affecting the performance of his or her duties, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign the office by writing addressed to the Minister.
- (3) Notwithstanding that the term of office of a member of the Authority has expired or that a member of the Authority has resigned, the member is deemed to continue as a member of the Authority for the purpose of deciding any matter that was wholly heard before the expiry of the term of office or before the resignation took effect, as the case may be.

2 Chairperson

- (1) The Minister may from time to time, by notice in writing, designate 1 of the members of the Authority as the chairperson of the Authority for such period as the Minister thinks fit and specifies in the notice.
- (2) The chairperson is responsible for making such arrangements as are necessary or desirable to ensure the orderly and expeditious discharge of the functions of the Authority.
- (3) Any member holding the office of chairperson may—
 - (a) At any time be removed from the office of chairperson by the Minister:
 - (b) At any time resign the office of chairperson by notice in writing addressed to the Minister.
- (4) If the person holding the office of chairperson ceases to be a member of the Authority, he or she immediately vacates the office of chairperson.

3 Deputy chairperson

- (1) The Minister may from time to time designate a member or members of the Authority as deputy chairperson or chairpersons of the Authority, and may at any time revoke any such designation.
- (2) If the chairperson of the Authority is unable, by reason of illness, absence from New Zealand, or other sufficient cause, to act as chairperson, any person for the time being designated under subclause (1) is to act as the chairperson.
- (3) The fact that any person for the time being designated under subclause (1) acts as chairperson of the Authority is conclusive evidence of that person's authority to do so.

4 Fees and allowances

- (1) There is to be paid out of money appropriated by Parliament for the purpose to the chairperson (if any) and to the other members of the Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the Authority were a statutory Board within the meaning of that Act.

- (2) Without limiting subclause (1), the remuneration paid to the chairperson (or any person acting for the chairperson) may be at a rate which is different from the rate of remuneration paid to the other members of the Authority.

5 Staffing

The Authority is to be serviced by employees of the Department of Labour, not being employees who are also currently employed to consider applications for permits under this Act or employed to administer Part II or designated for the purpose of section 129E as refugee status officers, and the Department is to provide such other resources as may be necessary to enable the Authority to carry out its functions under this Act.

6 Authority to have seal

The Authority is to have a seal which is to be judicially noticed in all courts and for all purposes.

7 Authority to be Commission of Inquiry

The Authority has the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908 within the scope of its jurisdiction, and, subject to Part VIA and any regulations made under it, all the provisions of that Act except sections 11 and 12 (which relate to costs) apply to the Authority as if it were a Commission of Inquiry.

8 Procedure

- (1) Subject to this Act and to any regulations made under it, the procedure of the Authority is to be such as the Authority thinks fit.
- (2) Proceedings before the Authority may not be held bad for want of form.

9 Inquiries and evidence

- (1) For the purposes of any appeal under section 129O or other matter under section 129R, the Authority may make such inquiries and obtain such reports (if any) as it considers neces-

sary and is not bound by any rules of evidence but may inform itself in such manner as it thinks fit.

- (2) Subject to subclause (1) of this clause and to section 143(7), the Evidence Act 1908 applies to the Authority in the same manner as if the Authority were a court within the meaning of that Act.

10 Members of Authority not personally liable

No member of the Authority is personally liable for any act done or omitted to be done by the Authority or by any member of it in good faith in pursuance or intended pursuance of the powers and functions of the Authority.

11 Annual report

- (1) The chairperson of the Authority must in each financial year make a report to the Minister on the exercise of its functions under this Act in respect of the financial year ending in that year, and the Minister must present a copy of any such report to the House of Representatives within 20 sitting days after receiving it.
- (2) The report to the Minister must include the following information:
- (a) The membership of the Authority:
 - (b) The number of cases dealt with by the Authority (classified by type, where appropriate):
 - (c) The number of claims for refugee status upheld, withdrawn, and declined:
 - (d) The number of claims excluded on the basis of Article 1F of the Refugee Convention:
 - (e) A breakdown of the gender of claimants:
 - (f) The number of claimant children.

12 Publication of decisions for research purposes

Any publication for research purposes by the Authority of a decision made by it, other than publication to persons involved in the matter or in the administration of Part VIA, must be edited in such a way as to remove the name of the appellant or

other affected person, and any particulars likely to lead to the identification of the appellant or person.

Schedule 3 Section 60
New Schedule 6 added to principal Act
Sixth Schedule Section 129D(2)

**Convention Relating to the Status of
Refugees**

Done at Geneva on 28 July 1951¹

Entry into force: 22 April 1954, in accordance with Article 43

Text: United Nations Treaty Series No 2545, Vol 189, p 137

PREAMBLE

The High Contracting Parties

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms.

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement.

¹ The convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429(V) adopted by the General Assembly of the United Nations on 14 December 1950. For the text of this resolution, see Official Records of the General Assembly, Fifth Session, Supplement No 20 (A/1775) p 48

Convention Relating to the Status of
Refugees—*continued*

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner.

Have agreed as follows:

I

General Provisions

Article 1 Definition of the term “Refugee”

- A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:
- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization:
Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section:
 - (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

Convention Relating to the Status of
Refugees—*continued*
I—*continued*

particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country: or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B.

- (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in Article 1, Section A, shall be understood to mean either:
 - (a) “events occurring in Europe before 1 January 1951”; or
 - (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.²

² On acceding to Convention on 30 June 1960 the New Zealand Government declared, in accordance with Section B(1) of Article 1 of the Convention, that “for the purposes of the New Zealand Government’s obligations under the Convention, the words ‘events occurring before 1 January 1951’ in Section A of Article 1 shall be understood to mean ‘events occurring in Europe or elsewhere before 1 January 1951’”. See also Article I of the 1967 Protocol Relating to the Status of Refugees, as included in this schedule of this Act.

Convention Relating to the Status of
Refugees—*continued*
I—*continued*

- (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.
- C. This Convention shall cease to apply to any person falling under the terms of section A if:
- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
 - (2) Having lost his nationality, he has voluntarily re-acquired it; or
 - (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
 - (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
 - (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
 - (6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;
Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.
- D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other

Convention Relating to the Status of
Refugees—*continued*
I—*continued*

than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

- E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.
- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
 - (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
 - (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Convention Relating to the Status of
Refugees—*continued*
I—*continued*

Article 4 Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5 Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6 The term “in the same circumstances”

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7 Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity,

Convention Relating to the Status of
Refugees—*continued*
I—*continued*

rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this Article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9 Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

Convention Relating to the Status of
Refugees—*continued*
I—*continued*

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

II

Juridical Status

Article 12 Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13 Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circum-

Convention Relating to the Status of
Refugees—*continued*
II—*continued*

stances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15 Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16 Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Convention Relating to the Status of
Refugees—*continued*

III

Gainful Employment

Article 17 Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
 - (a) He has completed 3 years' residence in the country;
 - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
 - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Convention Relating to the Status of
Refugees—*continued*
III—*continued*

Article 19 Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

IV
Welfare

Article 20 Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

Convention Relating to the Status of
Refugees—*continued*
IV—*continued*

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23 Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
 - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

Convention Relating to the Status of
Refugees—*continued*
IV—*continued*

- (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State³.
3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.
4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

V

Administrative Measures

Article 25 Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose ter-

³ On acceding to the Convention on 20 June 1960 the New Zealand Government entered a reservation to Article 24(2) in the following terms: “the Government of New Zealand can only undertake to give effect to the provisions contained in paragraph (2) of Article 24 of the Convention so far as the law of New Zealand allows”.

Convention Relating to the Status of
Refugees—*continued*
V—*continued*

ritory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26 Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28 Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions

Convention Relating to the Status of
Refugees—*continued*
V—*continued*

of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29 Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Convention Relating to the Status of
Refugees—*continued*
V—*continued*

Article 31 Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32 Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Convention Relating to the Status of
Refugees—*continued*
V—*continued*

Article 33 Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34 Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

VI

Executory and Transitory Provisions

Article 35 Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the ap-

Convention Relating to the Status of
Refugees—*continued*
VI—*continued*

appropriate form with information and statistical data requested concerning:

- (a) the condition of refugees,
- (b) the implementation of this Convention, and
- (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36 Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37 Relation to previous Conventions

Without prejudice to Article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Article 38 Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39 Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 23 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

Convention Relating to the Status of
Refugees—*continued*
VI—*continued*

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40 Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

Convention Relating to the Status of
Refugees—*continued*
VI—*continued*

Article 41 Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those Articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States,
- (b) With respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment.
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42 Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16(1), 33, 36-46 inclusive.
2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Convention Relating to the Status of
Refugees—*continued*
VI—*continued*

Article 43 Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44 Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45 Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Convention Relating to the Status of
Refugees—*continued*
VI—*continued*

Article 46 Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in Article 39:

- (a) of declarations and notifications in accordance with Section B of Article 1;
- (b) of signatures, ratifications and accessions in accordance with Article 39;
- (c) of declarations and notifications in accordance with Article 40;
- (d) of reservations and withdrawals in accordance with Article 42;
- (e) of the date on which this Convention will come into force in accordance with Article 43;
- (f) of denunciations and notifications in accordance with Article 44;
- (g) of requests for revision in accordance with Article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE AT GENEVA, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of

Convention Relating to the Status of
Refugees—*continued*

which shall be delivered to all Members of the United Nations and to the non-member States referred to in Article 39.

**III Protocol Relating to the Status of
Refugees of 31 January 1967⁵**

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Entry into force: 4 October 1967, in accordance with Article VIII

Text: United Nations Treaty Series No 8791, Vol 606, p 267

Preamble

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

⁴ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

⁵ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

Convention Relating to the Status of
Refugees—*continued*
III Protocol Relating to the Status of Refugees of 31
January 1967⁴—*continued*

Article I General provision

1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ...” and the words “... as a result of such events”, in Article 1A(2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1B(1)(a) of the Convention, shall, unless extended under Article 1B(2) thereof, apply also under the present Protocol⁶.

Article II Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.
2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

⁶ For New Zealand’s declaration, see footnote to Article 1B(1) of the Convention as it appears in this schedule of this Act.

Convention Relating to the Status of
Refugees—*continued*
III Protocol Relating to the Status of Refugees of 31
January 1967⁴—*continued*

- (a) The condition of refugees:
- (b) The implementation of the present Protocol:
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative juris-

Convention Relating to the Status of
Refugees—*continued*
III Protocol Relating to the Status of Refugees of 31
January 1967⁴—*continued*

diction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States:

- (b) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII Reservations and declarations

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article I of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.

Convention Relating to the Status of
Refugees—*continued*
III Protocol Relating to the Status of Refugees of 31
January 1967⁴—*continued*

2. Reservations made by States Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under Article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraphs 2 and 3, and of Article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Convention Relating to the Status of
Refugees—*continued*
III Protocol Relating to the Status of Refugees of 31
January 1967⁴—*continued*

Article X Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating thereto.

Article XI Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above.

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Notes

1 General

This is an eprint of the Immigration Amendment Act 1999. The eprint incorporates all the amendments to the Act as at 2 am on 29 November 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

3 List of amendments incorporated in this eprint (most recent first)

Immigration Act 2009 (2009 No 51): section 404
