

Chair  
Cabinet Legislation Committee

## **IMMIGRATION BILL: APPROVAL FOR INTRODUCTION**

### **Purpose**

1. This paper seeks approval to introduce the Immigration Bill (the Bill) to the House on 20 June 2007.

### **Executive Summary**

2. In November 2006, The Cabinet Business Committee (CBC) (with the power to act) agreed to proposals to draft new immigration legislation to replace the Immigration Act 1987 (the 1987 Act) [CBC Min (07) 20/14]. Several of the core elements of the 1987 Act were to be retained. The key proposals for change include:
  - a. an ability to use classified information in a limited range of immigration and refugee and protection decision-making situations with special safeguards
  - b. the (future) ability to collect, store and use specified biometric information (photographs, fingerprints and iris scans) for identity verification purposes during engagement with the immigration system
  - c. a simplified visa system that provides for greater clarity and flexibility in managing non-citizens' travel to, entry and stay in New Zealand, including a universal visa system
  - d. a single refugee and protection determination system that incorporates New Zealand's core immigration-related international obligations
  - e. a streamlined deportation process that is more efficient while maintaining fairness
  - f. a robust independent appeals system, including a single Immigration and Protection Appeals Tribunal (the Tribunal)
  - g. enhanced incentives for third parties (employers, education providers and carriers) to comply with their obligations in the immigration system
  - h. more flexible powers to access information and areas to enable Immigration Officers to ensure compliance with immigration obligations and provide for integrity in the immigration system, and
  - i. more flexible and responsive monitoring and detention provisions that maintain a commitment to human rights.
3. In April and May 2007, Cabinet made further decisions on the classified information system and managing security risks, including to repeal Part 4A along with the 1987 Act on enactment of the new immigration legislation [CAB Min (07) 14/1A, CAB Min (07) 18/3]. Some further decisions resulting from drafting and consultation on the Bill were also made [CBC Min (07) 10/11].
4. The Department of Labour (the Department) has consulted widely during both the policy development phase and during the drafting of the Bill.

Immigration, and the immigration system, is, however, an area that attracts interest and a diverse range of views. There is often misunderstanding between the nature of the immigration legislation, as “framework legislation”, and the Government’s immigration policies which have a more direct impact on individuals engaging with the immigration system but are not of a legislative nature.

5. The aspects of the Bill that officials believe are most likely to be contentious are the:
  - a. (future) collection, storage and use of biometric information<sup>1</sup>
  - b. use of classified information
  - c. enhanced powers of entry and inspection, and entry and search
  - d. four hour power of immigration detention, and
  - e. changes to the “reasonable excuse” for employers
6. Two policy issues remain outstanding in the Bill and these will be addressed during the Select Committee stage:
  - a. the codification of New Zealand’s immigration-related obligations under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), and
  - b. the provisions relating to the role of the Human Rights Commission (HRC) in the immigration system.
7. As noted by CBC, when making further decisions for the Immigration Bill, earlier this month, further work on the “reasonable excuse” defence for the offence of knowingly providing false or misleading information is being contemplated by the Department [CBC Min (07) 10/11].
8. The Ministry of Justice (Justice) has worked closely with the Department during the policy development and drafting of the Bill to ensure that issues under both the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 have been taken into account. Justice advises that, overall, the provisions in the Bill achieve consistency with NZBORA and that it does not propose to recommend to the Attorney-General that a report be made to the House under section 7 NZBORA.
9. I propose that the Bill should be introduced on 20 June 2007 and passed by the end of the year. I propose that the Bill be referred to the Transport and Industrial Relations Select Committee.

## **Policy**

### ***Background***

10. In March 2005 Cabinet directed the Department to begin a fundamental review of the Immigration Act 1987 (the 1987 Act) [CAB Min (05) 10/4]. In May 2005, Cabinet agreed to terms of reference for the review and agreed its objective was to:
  - a. ensure New Zealand’s interests are protected and advanced
  - b. ensure compliance with international obligations, and
  - c. establish fair, firm, and fast decision-making [CAB Min (05) 18/7].

---

<sup>1</sup> Specified in the legislation as photographs, fingerprints and iris scans only.

11. In April 2006, Cabinet agreed to release a discussion paper, *Immigration Act Review: Discussion paper*, for public consultation [CAB Min (06) 11/13]. After the public consultation, Cabinet directed the Department to report back with proposals for change, with the intention of introducing a Bill to the House.
12. In November 2006, CBC (with the power to act) agreed to the Immigration Act review's proposals to draft the new Bill to replace the 1987 Act [CBC Min (07) 20/14]. Several of the core elements of the 1987 Act were to be retained. The key proposals for change include:
  - a. an ability to use classified information in a limited range of immigration, refugee and protection decision-making situations with special safeguards
  - b. the ability to collect, store and use specified biometric information (photographs, fingerprints and iris scans) for identity verification purposes during engagement with the immigration system
  - c. a simplified visa system that provides for greater clarity and flexibility in managing non-citizens' travel to, entry and stay to New Zealand, including a universal visa system
  - d. a single refugee and protection determination system that incorporates New Zealand's core immigration-related international obligations
  - e. a streamlined deportation process that is more efficient while maintaining fairness
  - f. a robust independent appeals system, including a single Immigration and Protection Appeals Tribunal (the Tribunal)
  - g. enhanced incentives for third parties (employers, education providers and carriers) to comply with their obligations in the immigration system
  - h. more flexible powers to access information and areas to enable Immigration Officers to ensure compliance with immigration obligations and provide for integrity in the immigration system, and
  - i. more flexible and responsive monitoring and detention provisions that maintain a commitment to human rights [CAB Min (06) 20/14].
13. In April and May 2007, Cabinet made further decisions on the classified information system and managing security risks, including to repeal Part 4A along with the 1987 Act on enactment of the new immigration legislation [CAB Min (07) 14/1A, CAB Min (07) 18/3]. Some further decisions resulting from drafting and consultation on the Bill were also made [CBC Min (07) 10/11].

### ***Possible contentious aspects of the Bill***

14. The Department has consulted widely during both the policy development phase and during the drafting of the Bill. Immigration, and the immigration system, is, however, an area that attracts interest and a diverse range of views. There is often misunderstanding between the nature of the immigration legislation, as "framework legislation", and the Government's immigration policies which have a more direct impact on individuals engaging with the immigration system but are not of a legislative nature.
15. The Bill will attract interest and scrutiny during the Select Committee phase. There will be interest in and scrutiny of how the Bill has been drafted, and also in the development of both immigration policy and operational instructions to give effect to the Bill in the future. The Bill will not result in significant changes to immigration policy.

16. The aspects of the Bill that officials believe are most likely to be contentious are discussed in detail below.

#### The (future) collection, storage and use of biometric information

17. As per the November 2006 CBC decisions, the Bill contains provisions that will require biometric information, including photographs, fingerprints and iris scans, from non-citizens during their engagement in the immigration system. It will also contain a provision that will require photographic biometric information from citizens seeking to enter New Zealand at the border. This will allow comparison with the biometric information contained in the New Zealand passport, or with Department of Internal Affairs' (DIA) databases, to determine whether the person is in fact a New Zealand citizen.
18. The Bill sets out that these provisions will come into force by Order in Council (OiC) once implementation details have been developed and agreed by Cabinet. It is anticipated that this will happen after the rest of the Bill is brought into force. The OiC process allows for implementation details to be worked through with key stakeholders such as the Ministry of Justice (Justice), DIA, and the Office of the Privacy Commissioner (OPC).
19. Identifying people is a crucial element in facilitating the entry of migrants and visitors to New Zealand and managing the potential risk of identity fraud. Improvements in document forgery and increasing identity theft has led to more opportunities for individuals or organised groups to circumvent New Zealand's border controls. For example, the Department has identified many cases of individuals lodging multiple refugee claims under different identities and non-citizens who have been removed from New Zealand returning under new false identities.
20. CBC agreed to the biometric proposals as traditional reliance on paper-based identity documents, and visual photo to face checks, is becoming increasingly inadequate to manage the risks of identity fraud to New Zealand. The Department cannot currently ensure that every non-citizen entering New Zealand with a visa is the same person that applied for that visa. Or, that a non-citizen previously removed or deported from New Zealand and who seeks to re-enter under a new fraudulent identity, is detected. Investigations may reveal identity fraud, but these investigations are time and resource intensive.
21. During the public consultation phase, submitters on the biometric proposals were predominantly positive. Some concern was expressed, particularly by refugee support organisations, around the use of biometric information, for example, that it might be shared with overseas organisations (this is not a feature of the Bill).
22. The Privacy Commissioner (the Commissioner) has noted that the Bill creates precedents for the compulsory collection of biometric information - this is consistent with the November 2006 CBC decisions. The Commissioner has indicated a preference for the Bill to include a threshold before Immigration Officers can exercise a discretion to request such information from individuals. Her detailed comments are noted in the consultation section beginning at paragraph 67.
23. The purposes for the collection, storage and use have been clearly defined in the Bill.

### The use of classified information

24. The Bill has been designed to give greater ability to use classified information in both immigration and refugee and protection decision-making<sup>2</sup> while creating natural justice protections for the applicant/appellant. It ensures that where classified information has been used, there is a robust process of independent scrutiny.
25. A balance has been sought between the rights of the Government to use and protect classified information where it is in the best interests of New Zealand, and the rights of the non-citizen. This will enable fair, fast and firm decision-making with safeguards where classified information is used. The key safeguards include:
  - a. the decision-maker must release a summary of the classified information to the non-citizen during the potential prejudicial information (PPI) process except to the extent that a summary would be likely to prejudice the interests referred to in the definition of classified information
  - b. the non-citizen must be informed that a decision has been made on the basis of classified information, and the broad reasons for the decision
  - c. the non-citizen must be advised of any appeal rights that are available and the availability of a special advocate who may access the classified information to represent them during any appeal
  - d. where the non-citizen appeals to the Immigration and Protection Tribunal (the Tribunal), the appeal may be heard by up to three specially warranted and security briefed District Court Judges (DCJ)
  - e. during any appeal the DCJs can assess both the immigration and/or refugee and protection decision made, along with the use and veracity of the classified information used in the decision-making process, and
  - f. the new legislation provides for a clearly and closely prescribed system for judicial review and appeal on points of law to the courts, where specially warranted judges may access any classified information used in the decision-making process and the non-citizen can be represented by their Special Advocate.
26. The Bill provides for an expanded use of classified information from the 1987 Act. This is because there are a small number of cases each year where this information could give clear and reliable reasons for making an immigration and/or refugee and protection decision, but where the high security threshold set by Part 4A of the 1987 Act is not met.
27. The Bill incorporates all the advantages of Part 4A, and seeks to overcome its disadvantages, through being a clearly and closely prescribed system. As agreed in May 2007 by Cabinet, Part 4A will be repealed along with the 1987 Act on enactment of the Bill.
28. Public consultation on the use of classified information received submissions from a wide range of stakeholders. Individual submitters tended to support the use of classified information, while organisations tended to oppose it. Many submitters suggested safeguards for use where classified information was used. Many of these safeguards have been incorporated into the Bill.

---

<sup>2</sup> In matters of threat or risk to national or international security, criminal conduct or significant impact on New Zealand's international reputation.

29. Of those who opposed the use of classified information, many indicated strong opposition on the grounds that it would contravene a non-citizen's right to a fair hearing, and the principles of administrative and natural justice. These submitters were of the view that all PPI should be fully disclosed to all applicants and appellants if it is to be used in decision-making.

#### The enhanced powers of entry and inspection, and entry and search

30. The Bill proposes a number of "entry and inspection" powers that allow Immigration Officers to enter premises and require the provision of documentation that allows the officer to investigate compliance with immigration obligations. This includes monitoring of the employers and employees, education providers and students, and enables the location of people unlawfully present in New Zealand or who are liable for deportation. The Bill also proposes a number of "entry and search" powers that allow officers to enter border areas for immigration purposes to locate people, detect offences, undertake immigration duties and search for travel and identity documentation.
31. The Bill sets out that, where these powers are new for Immigration Officers, they will not be available for their use until implementation details have been developed and agreed by Cabinet. As with the biometric provisions, they will come into force by OiC.
32. The entry and inspection, and entry and search powers in the Bill are required to ensure that those who benefit from the immigration system also comply with their obligations. For example, non-citizens are required to be in New Zealand lawfully and the Department must be able to locate unlawful non-citizens to enforce their obligation to leave (or to modify their status to make them lawful).
33. The Department expects that privacy advocates will be interested in increased powers of entry. Many of the entry and inspection powers are not intrusive, allowing officers to enter only at certain times, and without force, to request certain documents. There is only a limited expansion of the entry and inspection powers in the Bill.
34. The entry and search powers in the Bill enable the search of border areas for immigration purposes and enable the management of risk in the immigration system. Border areas are a heavily regulated environment designed so that a range of risks to New Zealand can be managed effectively by a number of government agencies with responsibilities in this area.
35. There were mixed submissions on entry and inspection, and entry and search provisions during the public consultation process. Most submitters supported the expansion to the powers of entry and inspection. There was some confusion around the current role of Immigration Officers and the entry and search provisions. Submitters did not understand what functions Immigration Officers currently had, compared with those which would be expanded.
36. A key point raised in the consultation process was that where powers of search and entry were exercised by Immigration Officers, they should be appropriately trained and have an awareness of human rights.

### The four hour power of immigration detention

37. The Bill incorporates a statutory detention power for specially trained and designated Immigration Officers (who may also be Customs Officers) to detain non-citizens who are liable for immigration detention for a four hour period. The four hour period is limited to where an Immigration Officer is seeking the assistance of the New Zealand Police (Police) to arrest and detain the non-citizen, where the Immigration Officer is deporting the non-citizen, or seeking their immigration detention under a warrant of commitment (warrant).
38. There are a range of situations where a non-citizen may be detained for immigration purposes. Requiring the Police to give effect to immigration detention in all situations limits the ability of the Department to fully and efficiently undertake its role in managing the immigration system, for example:
  - a. When a non-citizen at the airport is refused entry, an Immigration Officer must call for Police support if detention is required even for a short period prior to their departure being facilitated.
  - b. Where a non-citizen is in New Zealand unlawfully and located during the course of regular departmental business, the Department cannot compel them to remain at a place while the Police arrive to detain them, nor can the Department take them to the Police.
  - c. When a non-citizen is released from prison for the purposes of deportation, the Police must always deport them even if they are generally compliant.
39. It is intended that the four hour power could also enable designated officers to act as escorts where a non-citizen was being transferred from a place of detention to a warrant hearing. This would assist the Department in managing non-citizens separately from remand or criminal prisoners if required.
40. The four hour detention provision will be activated through an OiC. Once again, this will enable Cabinet to be assured that appropriate training is provided to Immigration Officers and appropriate operational instructions are developed to guide the use of the four hour power. Training and operational issues were raised during the public consultation process. Concern was also expressed during consultation that all Immigration Officers would be delegated this power - this is not the case.

### Changes to the "reasonable excuse" for employers

41. The Bill does not propose any change to the existing obligation for employers to not, either knowingly or without reasonable excuse, employ (or maintain employment of) a non-citizen who is not entitled to work. The change in the Bill relates to what would constitute a defence against possible prosecution in this area.
42. In November 2006, CBC agreed that holding an Inland Revenue Department (IRD) tax code declaration IR330 form would no longer constitute a reasonable excuse. Rather, an employer would have a reasonable excuse for employing a non-citizen without entitlement to work if they:
  - a. do not know that the non-citizen is not entitled, and
  - b. had taken reasonable steps to determine the non-citizen's entitlement.

43. "Reasonable steps" has been codified in the Bill as "reasonable precautions and due diligence". It will be a defence against the failure to comply with their obligations if an employer can show that they have taken reasonable precautions and exercised due diligence in the employment process.
44. This proposed change to the reasonable excuse defence is necessary because the tax code declaration has been a major impediment to pursuing prosecutions. Employers currently have little incentive to actively comply with their obligation to only employ those lawfully entitled to work. Unlawful workers undermine the immigration system and have the potential to undermine the pay and conditions of all workers in New Zealand.
45. In addition to the inability to pursue prosecutions because of the tax code declaration, there are other problems associated with the use of the IR330 form to determine a non-citizen's entitlement to work. The tax code declaration is a self-declaration. The Department's perspective is that self-declarations (without any requirement to provide documentary evidence in support of the declaration) are too low a threshold for establishing entitlement to work. A further concern is that the declaration is not responsive to changes in immigration status. A declaration of entitlement could be correct on the day it is made, and false the following day.
46. There has been considerable interest in the changes proposed for the reasonable excuse defence. The Department has been working with key stakeholders (Business New Zealand and the Council of Trade Unions) to explore possible guidance for employers on what could constitute 'reasonable steps' in this context. The Council of Trade Unions is supportive of the decision to remove the tax code declaration, but have some concerns about the practical implications of the 'reasonable steps' approach. Business New Zealand is not supportive of removing the tax code declaration and feel that the IRD should make the process more robust. They believe that the proposed changes will place compliance costs on employers.

### ***Need for legislation***

47. The Bill will provide the legislative framework for the immigration system. The Bill is required to update and future-proof the immigration legislation.

### ***Outstanding policy issues***

48. Two policy issues remain outstanding in the Bill and these will be addressed during the Select Committee stage:
  - a. the codification of New Zealand's immigration-related obligations under the CAT and the ICCPR, and
  - b. the provisions relating to the role of the HRC in the immigration system.
49. As noted by CBC, when making further decisions for the Immigration Bill, earlier this month, further work on the "reasonable excuse" defence for the offence of knowingly providing false or misleading information is being contemplated by the Department [CBC Min (07) 10/11].

### **Codification of the CAT and ICCPR**

50. In November 2006, CBC agreed to codify the CAT and ICCPR, and legislate the ability for a non-citizen to be protected in New Zealand where:



- a. as a result of deportation it is more likely than not that the person would be personally subjected to torture within the meaning of the CAT, or
  - b. as a result of deportation it is more likely than not that the person would personally be subjected to arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment if:
    - i. the person is unable or, because of the risk, unwilling to avail themselves of the protection of their country of nationality or former habitual residence
    - ii. the risk would be faced by the person in every part of their country and is not faced generally by other individuals in or from that country
    - iii. the risk is not inherent in or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
    - iv. the risk is not caused by the inability of that country to provide adequate health or medical care.
51. Advice on this codification, from Justice and the Ministry of Foreign Affairs (MFAT), received during drafting and consultation on the Bill is that the words "more likely than not" may be seen to narrow the obligations. These words have been changed in the Bill to "there are substantial grounds for believing".
52. Justice notes that the wording proposed for introduction is likely to be "read down" by the courts, meaning that they would interpret the provision so as not to derogate from New Zealand's international obligations. Nevertheless, there may be a perception that New Zealand is attempting to narrow the CAT and ICCPR tests which may cause uncertainty and criticism.
53. National and international jurisprudence needs to be further reviewed and closely considered to ensure that the words contained in the Bill are appropriate. The Department, Justice and MFAT have agreed to continue work in this area during the Select Committee phase to ensure that the codification of the CAT and ICCPR is appropriate. Advice on the appropriate codification of these obligations will be provided to the Select Committee.

### ***The provisions relating to the role of the Human Rights Commission***

54. In November 2006, CBC agreed to retain the existing provisions related to the HRC in the Bill. These provisions restrict the ability of a person to make a complaint regarding the content or application of immigration law or policy to the HRC on the basis that immigration matters inherently involve different treatment based on personal characteristics. The HRC has stated, however, that the provision is too limiting and has provided the Department with an alternative option. The option would allow the HRC to seek declaratory judgments, and to apply to the Human Rights Review Tribunal to remedy a complaint following an inquiry.
55. The HRC's option, and their role in the immigration system, was recently considered further by CBC who agreed that further work could be undertaken during the Select Committee phase of the Bill. CBC agreed that this process would include further engagement with the HRC and Justice and that the Minister of Immigration would report on the process to the Select Committee or the Committee of the Whole as appropriate [CBC Min (07) 05/11].

## Compliance

56. Justice has worked closely with the Department during the policy development and drafting of the Bill to ensure that issues under both the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 have been taken into account. Justice advises that, overall, the provisions in the Bill achieve consistency with NZBORA and that it does not propose to recommend to the Attorney-General that a report be made to the House under section 7 NZBORA.
57. Justice and the Department note that the justifications for some of the more contentious provisions in the Bill (for instance the (future) collection, storage and use of biometrics, and the use of classified information) are finely balanced and that the Justice advice is likely to be closely scrutinised and commented on during the Select Committee stage.
58. When passed, the Bill will facilitate the removal of the Government's reservation on Children Unlawfully in New Zealand, entered under the United Nations Covenant on the Rights of the Child.
59. The Bill also complies with other relevant international best practice and international obligations, however, as noted in paragraphs 50-53 above, further work will be undertaken to ensure that New Zealand's obligations under the CAT and ICCPR has been appropriately codified.
60. The Department advises that the Bill complies with each of the following:
  - a. the principles of the Treaty of Waitangi, and
  - b. the principles and guidelines set out in the Privacy Act 1993.
61. The Privacy Commissioner advised that she has yet to see complete a version of the clause which updates the information matching provision between the Department and the Ministry of Social Development which makes it difficult for her to determine whether it meets the principles of privacy protection. Her detailed comments are noted in the consultation section beginning at paragraph 67. Changes to this provision have been the subject of recent CBC and Cabinet decisions [CBC Min (07) 10/11 and CAB Min (7) 18/3]. As the Department advised CBC:

"A new Information Matching Impact Assessment for the information-match is currently being prepared by the Department, which will continue to consult with the Privacy Commission on the operation of this provision as [other] changes have [also] been agreed as a part of *The Family Sponsored Stream: Improving The Stream's Management And Ensuring Good Settlement Outcomes* agreed by Cabinet".
62. The levels of penalties for offences in the Bill do not comply with the Legislation Advisory Committee (LAC) Guidelines: *Guidelines on Process and Content of Legislation* which advise that penalties should be no more than five hundred dollars. As required, the Department has sought CBC and Cabinet agreement to either retain the level of penalties from the 1987 Act, or increase the penalties.

## Consultation

63. The following government departments and public agencies have been consulted on the Bill and were also consulted during the policy development stage: the departments of Prime Minister and Cabinet, Internal Affairs, Inland

Revenue and Corrections; the ministries of Defence, Economic Development, Education, Foreign Affairs and Trade, Health, Justice, Pacific Island Affairs, Social Development, Transport and Te Puni Kokiri; the New Zealand Customs Service, Police and Security Intelligence Service; the Government Communications Security Bureau; the Treasury; Crown Law; the New Zealand Qualifications Authority; the Office of Ethnic Affairs; Housing New Zealand Corporation; the Legal Service Agency; and the Privacy Commissioner.

64. The chairs of the Refugee Status Appeals Authority, the Removal Review Authority, the Residence Review Board, and the Deportation Review Tribunal were consulted as were the chief judges of the courts.
65. After the release of the Immigration Act review public Discussion paper in April 2006 my officials held public meetings to outline the options for new immigration legislation. These meetings were attended by more than 650 people across New Zealand. The Department then received 3,985 written submissions in response to the paper, of which 360 were unique. Submissions were received from private individuals and organisations, from government and non-government agencies.
66. Dialogues were held with stakeholders in Auckland, Hamilton, Napier, Wellington, Nelson, Christchurch, and Dunedin during April and May 2006 to discuss the detail of the Discussion paper. Cabinet decisions and proposals were made publicly available on the Department's website. In addition to this, officials met with significant stakeholders in a series of one-on-one meetings.

#### ***Privacy Commissioner comments***

67. The Commissioner notes that the Bill creates precedents for the compulsory collection of biometric information. The Commissioner says that significant changes to the clauses on biometric information have also been made at the eleventh hour. The Commissioner stated that in the last version of the Bill provided to the Office of the Privacy Commissioner (the Office) there was an inconsistent approach across these clauses. The Commissioner notes that some impose broad ranging obligations, potentially relating to all travellers and stating people "must allow" the collection of this form of personal information. At a minimum, the Commissioner would expect that these clauses include a threshold before Immigration Officers can exercise discretion to request such information from individuals. The Commissioner firmly recommends that this inconsistency is addressed during further drafting.
68. During the development of the immigration policy review and the Immigration Bill, the Privacy Commissioner has consistently voiced concerns over the provision for refugee and protection status decisions to be made on the basis of undisclosed classified (personal) information [CBC Min (06) 20/14]. The Commissioner strongly recommends that this does not proceed, in order to better accord with fair information handling, human rights, the practices of Canada, the United Kingdom, and Australia, and the submissions of the UN High Commissioner for Refugees. The Commissioner believes that the proposed safeguards are highly unlikely to prove sufficient for decision-making on refugee and protection status.
69. The Commissioner notes further concerns with the information matching provisions in the Bill. At this late stage, the Office has yet to see complete or technically correct versions of some clauses implementing information matching programmes. This makes it impossible for the Commissioner to determine whether they meet the principles of privacy protection.

70. The Bill proposes an additional role for the Privacy Commissioner to be consulted on agreements to share 'immigration status' information with providers of "publicly funded services" (a term which has been broadly defined). While the Commissioner is willing to undertake this role, it is unknown how many agreements there will be. The role could therefore have significant resource implications for the Office.

### **Binding on the Crown**

71. In November 2007, Cabinet agreed that the Bill should state that the Act will be binding on the Crown [CBC Min (06) 20/14].

### **Creating new agencies/amending law relating to existing agencies**

72. Not applicable.

### **Allocation of decision-making powers**

73. The Bill provides for the Minister of Immigration to have, in summary:
- a. the power to make Immigration Instructions regarding eligibility for residence class visas, temporary entry class visas and transit visas, and entry permission
  - b. the power to determine that classified information may be used in decision-making and to make decisions using classified information
  - c. the power to make decisions in relation to visas
  - d. the power to make decisions regarding deportation, and
  - e. the power to make special directions.
74. The Bill provides for the chief executive of the Department to, in summary:
- a. give general instructions in as to the order and manner of processing of applications for visas
  - b. make decisions in respect of advance passenger processing
  - c. designate immigration control areas for the processing of persons arriving in or departing from New Zealand
  - d. approve premises for the purposes of immigration detention
  - e. designate persons as Immigration Officers and to authorise them to exercise specified powers, and
  - f. designate persons as Determination Officers.
75. The Bill provides for Immigration Officers (who may also be Customs Officers) to have the powers they are authorised by the chief executive of the Department to have, and delegated by the Minister of Immigration which may include:
- a. the power to make decisions in relation to visas and entry permission
  - b. the power to carry out certain compliance activities, and
  - c. to detain persons for immigration purposes.
76. The Bill provides Determination Officers with the power to make decisions in relation to refugee status, and protection under other international conventions.

77. The Bill will establish the Tribunal to determine appeals brought under the immigration legislation.

### **Associated regulations**

78. Regulations required to bring the Bill into force will prescribe:
- a. the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act
  - b. other matters in respect of visas or expressions of interest
  - c. requirements and procedures in respect of arrivals in and departures from New Zealand
  - d. procedures to be followed for the purposes of determining a non-citizen's refugee or protected status
  - e. procedures and other matters in respect of reconsiderations, appeals, and reviews by the Tribunal
  - f. fees and charges and providing for exemptions from or refunds of any fees and charges
  - g. matters in respect of the migrant levy
  - h. infringement offences in the case of carriers or persons in charge of craft
  - i. setting the infringement fees payable in respect of infringement offences
  - j. forms, including the form of infringement notices and infringement offence reminder notices
  - k. offences and the maximum amounts of fines that may be imposed in respect of those offences (which maximum amounts may not exceed \$2,000)
  - l. transitional and related matters, and
  - m. other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.
79. It is expected that these regulations will be detailed.

### **Deemed regulations**

80. Not applicable.

### **Definition of Minister/Department**

81. The Bill contains a definition of Minister and Department that is consistent with current Parliamentary Counsel Office drafting standards.

### **Commencement of legislation**

82. The Bill provides for the staged implementation of this Act. With some provisions coming into force by OiC. A decision on commencement of the Act will be made during the Select Committee phase. It will be dependent on the passage of the Bill.
83. A decision on commencement of those provisions that will come into force by OiC will be sought from Cabinet.

## Parliamentary stages

84. The Bill has a Category 3 priority, to be passed, if possible in the year. As such, I propose that the Bill should be introduced on 20 June 2007 and passed by the end of the year. I propose that the Bill be referred to the Transport and Industrial Relations Select Committee.

## Publicity

85. There has been considerable public interest in the Immigration Act review. I propose to make a media release when the Bill has been introduced. I also propose to release this paper on the Department's website. Some sections may be withheld under the Official Information Act 1982.

## Recommendations

86. I recommend that the Committee:
1. **note** that two policy issues remain outstanding in the Immigration Bill and these will be addressed during the Select Committee stage:
    - 1.1.the codification of New Zealand's immigration-related obligations under the Convention Against Torture and the International Covenant on Civil and Political Rights; and
    - 1.2.the provisions relating to the role of the HRC in the immigration system;
  2. **note** that when making further decisions for the Immigration Bill, earlier this month, the Cabinet Business Committee noted further work on the "reasonable excuse" defence for the offence of knowingly providing false or misleading information is being contemplated by the Department [CBC Min (07) 10/11];
  3. **note** that the Ministry of Justice advises that, overall, the provisions in the Immigration Bill achieve consistency with the New Zealand Bill of Rights Act 1990 and that it does not propose to recommend to the Attorney-General that a report be made to the House under section 7 of that Act;
  4. **note** that the Immigration Bill holds a Category 3 priority, to be passed, if possible in the year;
  5. **note** that the Immigration Bill provides the legislative framework for the immigration system;
  6. **approve** for introduction the Immigration Bill, subject to the final approval of government caucuses;
  7. **agree** that the Immigration Bill be introduced on Wednesday 20 June 2007;
  8. **agree** that the Government propose that the Immigration Bill be:
    - 8.1.referred to the Transport and Industrial Relations Select Committee for consideration; and be
    - 8.2.enacted by the end of the year.

Hon David Cunliffe  
Minister of Immigration