



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Immigration
Title of Cabinet paper	Addressing legal risks to the safe and effective management of a mass arrival	Date to be published	28 March 2023

List of documents that have been proactively released

Date	Title	Author
June 2022	Addressing legal risks to the safe and effective management of a mass arrival	Office of the Minister of Immigration
1 June 2022	Addressing legal risks to the safe and effective management of a mass arrival DEV-22-MIN-0125 Minute	Cabinet Office
June 2022	Regulatory Impact Statement: Warrant of commitment	Ministry of Business, Innovation and Employment
December 2022	Immigration (Mass Arrivals) Amendment Bill	Office of the Minister of Immigration
8 December 2022	Immigration (Mass Arrivals) Amendment Bill LEG-22-MIN-0228 Minute	Cabinet Office

Information redacted

YES / **NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of maintenance of the law, national security or defence, international relations, legal professional privilege, and confidential advice to government.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Addressing Legal Risks to the Safe and Effective Management of a Mass Arrival

Portfolio Immigration

On 1 June 2022, the Cabinet Economic Development Committee:

Background

- 1 **noted** that there is a need to ensure New Zealand is able to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and that in doing so the rights of those involved are protected;
- 2 **noted** that risks have been identified that would compromise New Zealand's effective management of a maritime mass arrival response:
 - 2.1 a mass arrival warrant of commitment for the detention of irregular migrants is unlikely to be obtained within the 96 hours prescribed in legislation, unless the migrants are not represented, **Legal professional privilege**
 - 2.2 there is some doubt in current legislation (the Immigration Act 2009) regarding the responsibilities and ability of members of an irregular maritime arrival group to apply for entry permission and a visa on arrival, but that it is important that they do apply because this enables immigration officers to process them effectively;


Specific proposals

- 3 **agreed** that the current 96-hour deadline for deciding an application for a mass arrival warrant of commitment becomes a deadline for an application to be submitted, noting that this would provide time for:
 - 3.1 individual members of a mass arrival group to be afforded their rights to obtain legal representation; and
 - 3.2 a formal hearing of the warrant application;
- 4 **agreed** to provide for continued detention of the irregular migrants while that application for a warrant is before the Courts, noting that this will enable those migrants to be provided with timely medical care and safe accommodation;

5 **agreed** that:

- 5.1 an application for a mass arrival warrant must be heard in the District Court as soon as reasonably practicable, and in no case later than seven days from the date of the application;
- 5.2 if, having considered the application, the Judge is satisfied that it is not reasonably practicable to determine the application within the seven days referred to in paragraph 5.1 above, the Judge may adjourn the application subject to the longstop period in paragraph 5.3 below;
- 5.3 an application for a mass arrival warrant must be finally determined before the expiry of 28 days from the date of the application;

6 **Legal professional privilege**



7 **agreed** to clarify the obligation of members of a mass arrival group to apply for entry permission upon arrival, which will address the risk identified in paragraph 2.2 above;

8 **agreed** to establish an obligation on members of a mass arrival group to apply for a visa upon arrival, and to give them the ability to do so, which will also address the risk identified in paragraph 2.2 above;

9 **agreed** to:


- 9.1 amend the definition of ‘passenger’ in the Immigration Act 2009 to exclude the possibility that members of a mass arrival group are deemed to hold a temporary visa on arrival;
- 9.2 in the interim, address this issue through an amendment to Schedule 3 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010;

Legislative implications

10 **invited** the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office to:

- 10.1 draft an Immigration (Mass Arrivals) Amendment Bill to give effect to the above paragraphs;
- 10.2 implement the regulatory amendment referred to in paragraph 9.2 above;

Constitutional conventions



Financial implications

- 13 **noted** that the above proposals raise no immediate financial implications, although, in the case of a mass arrival eventuating, additional time-limited resourcing may be required across a range of Votes.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Michael Wood
Hon Dr David Clark
Hon Phil Twyford
Rino Tirikatene, MP
Dr Deborah Russell, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV