



COVERSHEET

Minister	Hon Erica Stanford	Portfolio	Immigration
Title of Cabinet paper	Progressing the Immigration (Mass Arrivals) Amendment Bill	Date to be published	15 May 2024

List of documents that have been proactively released

Date	Title	Author
March 2024	Progressing the Immigration (Mass Arrivals) Amendment Bill	Office of the Minister of Immigration
28 March 2024	LEG-24-MIN-0055 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 reason of legal professional privilege.

Restricted

Office of the Minister of Immigration

Cabinet Legislation Committee

Progressing the Immigration (Mass Arrivals) Amendment Bill within the Immigration Portfolio

Proposal

- 1 This paper seeks approval to proceed with the Immigration (Mass Arrivals) Amendment Bill (the Bill) within the Immigration portfolio.

Policy

- 2 Work undertaken during 2019, and later in 2022, identified three risks to New Zealand’s ability to manage an irregular maritime arrival, should one occur, in an orderly and safe manner, and in a way that protects the rights of all involved. The risks are:
 - 2.1 A mass arrival warrant of commitment for the detention of irregular migrants is unlikely to be obtained within the timeframe prescribed in legislation (within 96 hours) unless there is no formal hearing, meaning no legal representation for the migrants (i.e., the decision is made on an ex parte basis). Legal professional privilege

 - 2.2 There is some doubt in current legislation regarding the responsibilities of members of an irregular maritime arrival group to apply for entry permission, while on the other hand, those members also may not currently apply for a visa on arrival. It is important that they do apply for entry permission and a visa because this enables immigration officers to process them effectively and provides a decision-making process most consistent with refugee rights.
 - 2.3 There was some ambiguity regarding the status of those that have been deemed to be a “passenger”; members of a mass arrival group who may have been saved at sea or boarded a cruise or cargo ship arriving in New Zealand would be deemed to be a “passenger”, and therefore entitled to a limited-entry 28-day visa, which means they would not be able to be processed under the mass arrivals framework in the Act.
- 3 Therefore, in June 2022 the previous Cabinet agreed [DEV-22-MIN-0125 refers] to issue drafting instructions for a Bill to:
 - 3.1 provide more time for the District Court to consider an application for a group warrant of commitment, and enables a mass arrival group to be held in warrantless detention until a warrant is granted or denied;

RESTRICTED

- 3.2 clarify the obligation on members of a mass arrival group to apply for entry permission and a visa; and
 - 3.3 remove members of a mass arrival group from the definition of “passenger” in the Immigration Act 2009 (the Act) to ensure that a group can be processed appropriately.
- 4 The Bill was introduced on 29 April 2023 and referred to the Foreign Affairs, Defence and Trade Select Committee. The first aspect of the Bill, to provide more time for the District Court to consider an application for a group warrant of commitment, was contentious when the Bill underwent examination before the Committee. Many submitters asserted that it breached human rights or did not reflect New Zealand values.
 - 5 In May 2023, the previous Cabinet agreed to additional safeguards to address these concerns [DEV-23-MIN-0098], and an Amendment Paper was drafted. If incorporated into the Bill, its provisions will make human rights protections explicit, and also provide a Judge with the ability to order a change to any proposed location of detention within a warrant of commitment.
 - 6 The Bill returned to the House unamended on 31 July 2023 and is currently awaiting its Second Reading. I submitted this Bill for consideration on the legislative programme with a ranking of Category 4 (to be passed by the end of 2024 if possible). If Cabinet agrees, and at the appropriate time, I intend to progress this Bill and Amendment Paper.

Consultation

- 7 ACT, New Zealand First, and the National Party caucus were consulted. No feedback was received.

Timelines for progress

- 8 Timelines are subject to Cabinet decisions on the overall legislative programme. The Bill could have its Second Reading and progress through its remaining stages at any time.

Proactive Release

- 9 I intend to proactively release this paper in whole, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that the Immigration portfolio is responsible for the Immigration (Mass Arrivals) Amendment Bill, reinstated in the 54th Parliament;

IN CONFIDENCE

R E S T R I C T E D

- 2 note that the Immigration (Mass Arrivals) Amendment Bill:
 - 2.1 provides more time for the District Court to consider an application for a group warrant of commitment, and enables a mass arrival group to be held in warrantless detention until a warrant is granted or denied;
 - 2.2 clarifies the obligation on members of a mass arrival group to apply for entry permission and a visa; and
 - 2.3 removes members of a mass arrival group from the definition of “passenger” in the Immigration Act 2009 (the Act) to ensure that a group can be processed appropriately;
- 3 note that an Amendment Paper has been drafted which incorporates additional safeguards into the Bill and addresses concerns raised at the Select Committee stage;
- 4 agree that the Immigration (Mass Arrivals) Amendment Bill continue to progress through the House; and
- 5 agree that the Amendment Paper be introduced at the appropriate time.

Authorised for lodgement

Hon Erica Stanford
Minister of Immigration

I N C O N F I D E N C E