



# IMMIGRATION ACT REVIEW

**SUMMARY OF CABINET DECISIONS**

NOVEMBER 2006

The Act review seeks to develop a strong legislative foundation for New Zealand's immigration system. It will allow the government to facilitate the entry and stay of the people New Zealand wants and needs, and to manage risks to the integrity of the immigration system, and the safety and security of New Zealand, in a fair and balanced way.

Several of the core elements of the 1987 Act will be retained. The key elements of change include:

1. a simplified visa system that provides for greater clarity and flexibility in managing non-citizens' travel to and stay in New Zealand
2. providing for more responsiveness and efficiency by enabling the Minister of Immigration (the Minister) to delegate positive discretion in residence decision-making to officials, and enabling electronic decision-making
3. a single protection determination procedure that incorporates New Zealand's core immigration-related international obligations
4. a streamlined deportation process that is more efficient while maintaining fairness
5. a robust independent appeals system, including a single appeals tribunal
6. an ability to use classified information in a limited range of decision-making situations without disclosure, balanced by a set of special safeguards
7. enhanced incentives for third parties (employers, education providers and carriers) to comply with their obligations in the immigration system
8. more flexible powers for compliance and enforcement to provide for integrity in the immigration system
9. more flexible and responsive monitoring and detention provisions that maintain a commitment to human rights, and
10. the ability to collect and use specified biometric information for identity verification purposes.

### ***Public consultation***

The public discussion paper was released in April 2006. Officials held public meetings in May and June 2006, which were attended by more than 650 people, to outline the proposals. The Department received 3,985 written submissions in response to this paper, of which 360 were unique. Submissions were received from a wide range of individuals and organisations including employer organisations, law societies, refugee and migrant groups and communities, immigration consultants, carriers, government agencies, and education providers.

All submissions received through the public process have been considered in preparing the review and a detailed summary of submissions is available at [www.dol.govt.nz/actreview](http://www.dol.govt.nz/actreview).

### ***The Immigration Change Programme***

The Immigration Act review is part of the broader Immigration Change Programme focusing on skills, security and settlement. The programme aims to improve the immigration system to ensure that:

- New Zealand has the skills, talent and labour it needs, now and in the future
- New Zealanders are confident of the security of our border, and
- migrants and refugees settle well and integrate into communities.

The three interlocking components of the Immigration Change Programme are:

- developing a strong legislative foundation
- repositioning the policy framework, and

- implementing a new business model for service delivery.

The change programme as a whole will ensure that we have a modern immigration system, fit for the globally competitive environment of the 21st century. It will enable New Zealand to facilitate high-value, low-risk customers and effectively protect the border. Taken together, the change programme will further the government's goals of economic transformation, strong national identity, and security and opportunities for families.

### ***Rationale for the decisions***

Significant global changes have taken place since the 1987 Act was enacted. There are greater flows of people around the world and greater competition for skills, talent, and labour. There are heightened risks and pressures on the border. New Zealand needs to adapt to these changes to ensure that the best outcomes for the country are realised. Relevant, flexible and responsive legislation is an important tool to help achieve this.

The Immigration Act review is particularly focused on:

1. facilitating the entry and stay of people who meet New Zealand's needs, and
2. managing risks in a fair and balanced manner.

The new Bill will retain many of the core elements of the 1987 Act such as requiring non-citizens to have authorisation to be in New Zealand, a role for the Minister in individual decision-making, and an independent appeals system. In all cases the review has focused on creating a system that is more transparent and easier to use, and more efficient and flexible, while maintaining an appropriate level of fairness.

## Overview of key decisions

### Chapter One: Core provisions

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
1	Purpose statement establishes key goals of immigration: skills, security, settlement, and international obligations, as well as balancing individual rights and national interest.	No purpose statement in 1987 Act.	Carefully drafted purpose statement.	Support for purpose statement in Bill. Support for stating positive goals of immigration and importance of individual rights.
2	Non-citizens in NZ must have valid visa and comply with visa conditions.	Decision mirrors status quo (with terminology changes).	No specific comment sought.	No comment generated.
3	Bill to exclude non-citizens with serious convictions or risk to NZ, slightly broader than status quo. No health exclusion criteria to be in the Bill.	Grounds for character exclusion include criminal convictions, previous expulsion from a country and threats to public safety.	Provisions to exclude non-citizens from New Zealand who meet clear criteria relating to both character and health.	Strong reservations about health exclusion criteria. Transparency desirable for character exclusion criteria.

## Chapter Two: Visas

The current visa and permit system is fundamentally sound but technically complicated and somewhat inflexible. The new visa system will be simpler and more transparent, and will provide for more flexible levels of scrutiny and control.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
4	<p>Integrated visa system:</p> <ul style="list-style-type: none"> <li>• Visas for travel to and stay in NZ, and</li> <li>• Visas for travel to NZ may be waived.</li> </ul> <p>Those currently exempted from holding a permit will be granted visas, including Australians.</p>	<p>Visa, permit and exemption system.</p>	<p>Integrated visa system.</p>	<p>Strong support for integrated visa system.</p>
5	<p>High level visa types in Bill:</p> <ul style="list-style-type: none"> <li>• Permanent resident</li> <li>• Resident</li> <li>• Temporary entrant</li> <li>• Limited visitor</li> <li>• Transit passenger.</li> </ul> <p>Temporary visa types set in Immigration Instructions.</p>	<p>The 1987 Act creates residence visas, residents permits, returning resident's visas, temporary visas, temporary permits (work, visitor and student), limited purpose visas/permits, transit visas, and temporary and permanent visa and permit exemptions.</p>	<p>High level visa types in statute, with specific visa types in Immigration Instructions.</p> <p>No proposals on actual types.</p>	<p>No significant comment generated.</p>
6	<p>Visas available in interim when application lodged for further visa.</p>	<p>Applicants may become unlawful while awaiting a decision on an application for a further permit.</p>	<p>Visas available in interim when application lodged for further visa.</p>	<p>Strong support for interim visa (90% of 91 submitters and from public meetings).</p>
7	<p>Key border requirements in statute, others in regulations to allow flexibility.</p>	<p>Most border requirements currently in statute.</p>	<p>Not discussed.</p>	<p>No comment generated.</p>

### **Chapter Three: Decision-making**

There will be changes to the statutory immigration decision-making rules, for example, to enable the Minister to delegate the ability to exercise positive discretion in residence decision-making, and to facilitate electronic decision-making. This will provide for more responsiveness and efficiency in the system.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
8	Minister to certify Immigration Instructions containing the rules relating to visa applicants and applications for travel to, entry and stay in New Zealand.	Minister certifies Government immigration policy and Government residence policy to establish rules relating to visa applicants and applications.	Change in terminology was not included in the discussion paper.	The submissions highlighted confusion over the use of "policy" in the 1987 Act.
9	Legislation to refer to the ability to establish health criteria in Immigration Instructions. There will be no health exclusion criteria in the Bill.	Health is not specifically referred to in the 1987 Act but in policy.	Proposal to include health "exclusion" criteria similar to character exclusion criteria.	Most submitters responded negatively to health exclusion criteria in the legislation.
10	Minister retains all current powers but can delegate power to make positive exceptions to Residence Instructions.	Only the Minister can make exceptions to Government residence policy.	Minister may delegate power to make positive exceptions to residence decisions.	Proposals supported by approximately two-thirds of submitters who commented that the Minister should retain some power to intervene.
11	Retain the status quo for the provision of potentially prejudicial information (PPI) and reasons for decisions to all applicants.	The administrative practice of providing PPI and reasons for decisions is guided by the 1987 Act, the Official Information Act 1982, the Privacy Act 1993, and the principles of administrative law.	Withhold PPI and reasons from offshore applicants.	Discussion in the Department, between agencies, in the public meetings, and submissions supported PPI and reasons being given to all applicants.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
12	Enable electronic decision-making.	The Department uses available and affordable technology to support the application process but all final decisions are made by officers.	Enable electronic decision-making.	Approximately 75% of 60 organisations, and half the 47 individual submitters agreed. They commented that New Zealand needs to move with the times and make use of technology.

### **Chapter Four: Protection**

The new protection regime will ensure that all core immigration-related international conventions are provided for in domestic legislation and will require all claims for international protection to be assessed in a single procedure. This will build on the highly regarded refugee determination system and will keep New Zealand in line with best practice internationally. The new regime also clarifies how New Zealand can deal with a protected person who would otherwise be liable for deportation, particularly where they present a significant risk to New Zealand.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
13	Single protection procedure for claims under Refugee Convention, Convention Against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR).	Only refugee determination in 1987 Act. Other obligations assessed administratively or in humanitarian appeals.	Single protection procedure.	Support for single protection procedure.
14	CAT and ICCPR protected persons must be protected, even if serious criminal offender (but serious offending assessed and temporary status, prosecution, extradition to safe country may be possible).	CAT and ICCPR protected persons must be protected, even if serious criminal offender.	CAT and ICCPR protected persons must be protected, even if serious criminal offender.	Few submissions generated. Some strong views that serious offenders should be excluded.
15	NZ will not sign Stateless Persons Convention at this time due to unknown costs.	NZ not signed up to Stateless Persons Convention.	Question posed in discussion paper.	Support for signing Convention.

### **Chapter Five: Deportation**

The new deportation system will bring together numerous provisions regarding removal, revocation and deportation in a transparent framework that clearly sets out a non-citizen's rights and obligations. It will provide for more efficient deportation processes, but will also increase fairness by, in many cases, allowing people to continue to work or study during any appeals.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
16	Use a single term "deportation".	Various terms used: revocation, removal, deportation.	Single term "expulsion" proposed.	General support for single term "deportation", but not "expulsion". Some considered that different terms reflect differing levels of seriousness.
17	Deportation liability triggered by criteria in statute with ministerial or departmental discretion to intervene. Robust decision-making processes and appeals retained.	Removal liability currently triggered by criteria in statute, other action requires ministerial decision to proceed.	"Automatic" liability proposed when non-citizen comes within statutory criteria.	Approximately 50% support. Concerns include placing onus on the non-citizen and removal of Minister from the process.
18	Maintain non-citizens' lawful status during deportation appeals. Temporary entrants may apply for further visas during deportation appeals.	Residents retain status, temporary entrants do not.	Immigration status would expire on departure once all appeals exhausted.	No specific written responses, but strong support in public meetings.
19	Deportation liability where the Minister/ Department determine visa granted to a false identity. Person unlawful from date false identity visa issued.	Treated like other types of fraud.	The paper asked whether non-citizens obtaining their status by fraud should be treated the same as those unlawfully in New Zealand.	Approximately half of the 43 organisations commenting and 75% of 51 individuals agreed.
20	Non-citizens who are determined to be a threat or a risk to national or international security may be deported by Order in Council.	Two processes available: Order in Council for threats to national security and ministerial order for suspected terrorists.	A criterion of being a threat to national security, including a terrorist threat, was proposed in the discussion paper.	Some considered the proposal was too vague and open to abuse, with processes unclear.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
21	Residents, for the first five years, may be liable for deportation where new information relating to character, applicable at the time residence was granted, indicates that they would not have been granted residence.	There is no comparable provision in the 1987 Act.	This decision has arisen from interagency consultation subsequent to the public consultation process.	There were no submissions on this issue.
22	The threshold for liability in the first five years of residence includes conviction for an offence that is punishable by imprisonment for 24 months or more.	Current threshold is an actual sentence of 12 months or more, or capable of running for 12 months or more; or two offences punishable by imprisonment for 12 months or more for each.	There was no proposal to change the current thresholds.	Some submissions, mostly from private individuals, sought a hard line, with criminal offending by a non-citizen being sufficient for immediate deportation.
23	Deportation liability notices will advise non-citizens of their liability and appeal rights (except for overstayers and security deportations). 10 year time limit on deportation liability.	Deportation and revocation orders have similar effect to deportation liability notice. Deportation orders must be made within six months of release from prison.	No specific proposal for deportation liability notice.	Several submissions to the effect that non-citizens liable for deportation should be notified of this, and their rights.
24	The Minister or delegated official will be able to suspend deportation liability to give second chance.	No equivalent legal process.	Proposal not included in discussion document.	No submissions.
25	A system of graduated two year, five year and permanent re-entry ban periods as penalties after deportation.	Removed overstayers are banned for five years, deported former residents are banned permanently.	Two year, five year and permanent bans were proposed, varied according to the seriousness of the reason for deportation.	Differentiated ban periods received strong support.

### **Chapter Six: Review and appeal**

The Bill will establish a new single Immigration and Protection Tribunal (the tribunal), replacing the four existing appeals bodies. The tribunal will allow any non-citizen a single right of appeal that may include consideration of the facts of the matter, international obligations and humanitarian concerns, depending on the circumstances. The new appeals system will create greater efficiencies in the overall immigration system, while maintaining New Zealand's high standards of fairness and improving transparency for non-citizens.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
26	A single independent tribunal.	Four separate independent appeals bodies.	A single tribunal.	Mixed support – those who did not support were concerned that refugee expertise may be lost. This issue has been addressed by creating clear legislative framework for protection appeals.
27	Decision pending on location of tribunal.	Labour supports three appeals bodies. Justice supports one.	Justice indicated as preferred agency to support.	Submissions clearly favoured Justice.
28	Chair to be District Court Judge (DCJ) – requires DCJ cap to be lifted by one.	Chair not District Court Judge.	Chair and deputies to be District Court Judges.	Support for Chair and deputies to be District Court Judges.
29	A single appeal to tribunal – all grounds for appeal presented on lodgement.	Multiple appeals to separate tribunals.	Options presented including single appeal.	Mixed responses – support conditional on maintaining fairness.
30	All declined resident applicants may appeal.	All declined residence applicants may appeal.	Options presented including restricting residence applicants who may appeal.	Support for all declined residence applicants to have access to appeal.
31	Single deportation appeal opportunity on facts (to courts, Department or tribunal).	Inconsistent - single deportation appeal opportunity on facts in some cases, multiple in others.	Single deportation appeal opportunity on facts.	Support for single deportation appeal opportunity on facts conditional on maintaining fairness.
32	Humanitarian appeal for all liable for deportation within time limits.	Humanitarian appeal for all liable for deportation within time limits.	Options presented including limiting access to humanitarian appeals.	Support for humanitarian appeal for all liable for deportation within time limits.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
33	Judicial review and appeals on points of law to High Court must be lodged within 28 days and heard together if possible.	Judicial review must be lodged within 3 months. High Court appeals on points of law from three of four appeals bodies only – within 21 days. Must be heard together where possible.	No proposals made - views sought.	Support for having a High Court appeal on points of law from tribunal across the board.
34	Human Rights Commission cannot investigate individual cases relating to immigration law and policy but can exercise all other functions.	Human Rights Commission cannot investigate individual cases relating to immigration law and policy but can exercise all other functions.	No proposal for change.	Human Rights Commission considers this provision should be repealed.

### **Chapter Seven: Classified information**

The Bill will allow classified information to be used in certain types of decision-making and appeals, as a last resort, without disclosing the information to the person for comment. This will allow New Zealand to make appropriate decisions based on all available information. The Bill will build in special safeguards to the initial decision and appeal, including requiring a non-classified summary of the information to be disclosed where possible, appeals to be heard by a panel of up to three Judges on the tribunal, and special advocate provisions.

	<b>Decision</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
36	<p>Classified information only may be used in visa, protection and deportation decisions where national or international security, criminal conduct or significant international reputation issues for New Zealand may be an issue.</p> <p>Safeguards:</p> <ul style="list-style-type: none"> <li>• Non-classified summary to be provided if possible</li> <li>• Minister to make initial decisions (except protection decisions)</li> <li>• Reasons for decision to be given</li> <li>• All appeals to panel of 3 Judges on new tribunal</li> <li>• Appeals allowed when person would ordinarily have appeal, and</li> <li>• Special advocates.</li> </ul> <p>Officials will report back on Part 4A prior to finalising the draft Bill for introduction to Parliament in April 2007.</p>	<p>No provisions for use of classified information other than Part 4A (which is outside scope of this review).</p> <p>The Department does not use non-disclosed classified information in standard immigration decision-making.</p>	<p>Proposal that classified information may be used in visa and protection decisions. No limitations relating to the nature of the information as now proposed.</p> <p>Offshore decisions would have no appeal mechanisms.</p> <p>Onshore decisions would have standard appeal rights with special mechanisms:</p> <ul style="list-style-type: none"> <li>• Classified security information appeals to Inspector-General (except protection)</li> <li>• All other appeals to Judge on tribunal</li> <li>• Special advocates.</li> </ul>	<p>Mixed responses. Both those who supported and those who did not recommended summary of information and special advocate provisions, and having a panel of Judges hearing appeals.</p>

### Chapter Eight: Third parties

New Zealand benefits by allowing third parties such as employers and education providers to engage with the immigration system and this will continue. Third party engagement in the system comes with obligations to ensure that their actions are lawful. While the obligations on third parties will not change, the incentives to comply with them will be strengthened.

	Decisions	Status quo	Discussion paper	Submissions
37	An employer must not knowingly or without reasonable excuse, employ (or continue the employment of) a non-citizen who is not entitled to work. Holding a tax code declaration IR330 form <b>will not be a</b> reasonable excuse.	An employer must not knowingly or without reasonable excuse, employ (or continue the employment of) a non-citizen who is not entitled to work. Holding a tax code declaration IR330 form <b>is a</b> reasonable excuse.	Stronger legislative basis for employer responsibilities. Remove the IR330 form as a reasonable excuse.	65% of 62 organisations and 80% of 42 individuals supported providing a stronger legislative basis for employer obligations. 55% of 104 submitters supported removing the IR330 form. Business NZ did not support this. New Zealand Council of Trade Unions said "sighting of an employee's tax code declaration is too low a threshold".
38	Work entitlement information and duration may be shared with potential employers, with safeguards, without explicit consent.	Consent needed to share work entitlement information.	Facilitative systems to share work entitlement information.	Many commented that work entitlement information should be shared.
39	An education provider must not either knowingly or without reasonable excuse, enrol (or continue the enrolment of) a non-citizen who is not entitled to study. Increased fines for education providers who fail to comply with obligations.	Education providers must not knowingly enrol or continue the enrolment of a non-citizen who is not entitled to study. \$2,000 fine on conviction for knowingly enrolling a non-citizen without entitlement.	A flexible penalties regime including instant fines, immigration consequences and prosecution.	Over 3/4 of 76 submitters supported a flexible offences and penalties regime.
40	An instant fine system for strict liability offences where carriers fail to meet their obligations.	Fines on conviction rarely used, offences dealt with through voluntary system	An instant fine system for strict liability offences where carriers fail to meet their obligations.	Mixed views with little substantive comment. Not supported by airlines or airline representatives.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
		of penalty free infringement notices.		
41	Continue current information sharing and data matches and enable deportation and protection claim information to be shared with the agency responsible for the administration of Social Security.	The data match with the agency responsible for Social Security does not allow information to be shared on deportation, or outcomes of protection claims.	Not in discussion paper. Arose out of consultation with Ministry of Social Development.	Many submitters expressed the view that disclosing immigration status is necessary to ensure that health, welfare and other publicly funded services are only provided to those who are eligible for these services.
42	Disclose immigration status information to publicly funded service providers, with safeguards, to determine eligibility.	Consent needed to share immigration status information.	Disclose immigration status information to publicly funded service providers to determine eligibility.	65% of 95 submitters indicated support to ensure that health, welfare and other publicly funded services are only provided to those eligible.

### **Chapter Nine: Compliance and enforcement**

Ensuring integrity in the immigration system requires a balance between facilitating the entry and stay of non-citizens who comply with their obligations, and being able to manage those non-citizens who do not. The Bill will enable the Department to access the people, places and information required to ensure compliance with the immigration system, while maintaining human rights and privacy safeguards.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
43	Improved information sources for locating people who are or may be liable for deportation.	Address information can only be sought from a limited pool of businesses and only about overstayers.	Improved information sources for locating people who are or who may be liable for deportation.	70% of 94 submitters supported the proposal.
44	Enable the chief executive to designate entry and search powers. This power will be activated by Order in Council.	Only police may enter premises to serve a deportation or removal order. Only police and customs officers may enter border areas to locate people unlawfully present or to detect or prevent an immigration offence.	Aligning powers of immigration officers with the powers explicitly granted to police and customs officers to perform immigration functions.	Individual submissions (31) were split evenly on the issue. One-third of 49 organisations supported this proposal.
45	Enable the chief executive to designate entry and inspection powers. Powers additional to the 1987 Act will be activated by Order in Council.	Immigration officers exercise some powers of entry and inspection when monitoring compliance with visa conditions.	Aligning powers of immigration officers with the powers explicitly granted to police and customs officers to perform immigration functions.	Individual submissions (31) were split evenly on the issue. One-third of 49 organisations supported this proposal.
46	Increase the information that may be inspected when monitoring compliance with immigration obligations by non-citizens, education providers and employers.	Only time and wage information may be inspected, ruling out other information that may be held about an employee. There is no power to inspect records related to an employer or education provider not meeting immigration obligations.	Increase the information that may be inspected when monitoring compliance with immigration obligations by non-citizens. Proposals regarding obligations on education providers and employers noted that monitoring would be required.	70% of 38 organisations and 85% of 38 individuals supported the ability to inspect a wider variety of information to monitor compliance.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
47	Allow search in border areas for travel and identity documentation related to unlawful people or immigration offences.	Currently there is no power to search for identity or travel documentation when exercising the existing power to locate unlawful people in border areas or to detect or prevent immigration offences in those areas.	This was not discussed in the discussion paper as the proposal had not been considered at that time.	There were no submissions on this issue.
48	Statutory right of access to Immigration Control Areas for officers undertaking immigration functions.	Immigration officers do not have any legislated right to access border areas to undertake immigration functions.	This proposal was not developed at the time of the discussion paper so was not the subject of consultation.	There were no submissions on this issue.
49	Power to require the provision of operational passenger processing space at airports and to be exempt from charge for operational passenger processing space.	The Department currently pays rent at the metropolitan international airports for all space requirements. Other border agencies do not. All space is acquired through negotiation.	This issue was not consulted on through the discussion paper – it was consulted on with airport companies separately.	Airport companies have expressed concern at the prospect of increasing space requirements, possible duplication of functions and resources required with other border agencies and the possibility of losing income for expensive infrastructure.
50	Confirmation of existing powers, offences, penalties and procedural provisions related to offences with slight improvement in the way the timeframe to lay information is expressed to prevent people avoiding prosecution by hiding evidence.	Mirrors decisions. Current timeframe for laying information is unclear.	Did not propose change to remaining powers, offences, penalties or procedural provisions related to offences.	There were no submissions on these issues.

### **Chapter Ten: Monitoring and detention**

The new immigration monitoring and detention framework will align with New Zealand's national and international human rights obligations. The Bill will create a tiered system that allows for more flexible responses to risk, including a greater ability to use reporting conditions instead of secure detention and greater discretion for the courts in issuing warrants of commitment. A limited power for designated officers to detain will be activated by Order in Council once all systems and training are in place. The Bill will also introduce additional safeguards, such as legal aid for detainees.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
51	Legal aid for warrant of commitments (warrant) hearings.	Detained non-citizens are ineligible for legal aid unless they are refugee status claimants.	There was no proposal to extend provisions for legal aid in the discussion paper.	Many submitters, including from the New Zealand Law Society, considered legal aid should be available for detained non-citizens.
52	Monitoring agreements outside the court process.	Informal agreements made between the Department and non-citizens liable for detention.	Not in discussion paper.	Many submissions supported the use of alternatives to secure detention, including the Human Rights Commission.
53	Courts to issue warrants considering: <ul style="list-style-type: none"> <li>- individual circumstances of the non-citizens case</li> <li>- level of risk the non-citizen represents, and</li> <li>- need to ensure a high level of compliance with immigration law.</li> </ul>	Courts issue warrants considering a range of factors depending on the reason a warrant is required. Factors include the need to ensure high level of compliance with immigration law.	Not in discussion paper. Appropriate to provide some guidance to courts in warrant process while enabling discretion.	Public considered that reasons for detention need to be transparent.
54	Six month limit on immigration detention except where non-citizen deliberately obstructs departure.	No limits on detention except for three month limit on detention for non-citizens issued a removal order (who do not subsequently claim refugee status or hinder the removal process).	Extend the three month limit on detention for non-citizens issued a removal order where administrative difficulties prevented their departure being facilitated.	Numerous public submissions commented that detention should not be ongoing.

	<b>Decisions</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
55	Warrants may be issued for up to 28 days.	Warrants issued for up to seven, 28 or 30 days.	Warrants may be issued for up to 28 days.	Approximately 40% of 83 submitters agreed and 40% opposed the proposal.
56	No immigration warrants for criminal prisoners.	Warrants required for prisoners to retain "refused entry" status and not gain immigration appeals.	No immigration warrants for criminal prisoners.	Approximately 60% of submitters agreed but little substantive comment was made.
57	96 hours (4 days) detention without a warrant.	48 or 72 hours detention without a warrant. Not long enough to facilitate departure.	96 hours (4 days) detention without a warrant.	45% of submitters supported the proposal, 35% did not.  The Board of Airlines Representatives New Zealand confirmed difficulties in obtaining appropriate travel documents in 72 hours.
58	Non-citizens liable for deportation may be monitored or detained dependent on level of risk.	Non-citizens cannot generally be detained during immigration appeals or if they make a protection claim onshore.	Detention at the border and onshore for protection claimants.	Concerns that New Zealand was seeking to detain protection claimants on the basis of a claim being made.
59	4 hour power of detention for trained, designated officers.	Only police officers can detain for immigration purposes.	4 hour power of detention for designated officers.	Half supported a limited power of detention with approximately 40% opposed.
60	Enable the Department to manage detention.	Department can only manage open detention for refused entry non-citizens.	Immigration detention outside Police and Corrections facilities.	Only 15 out of 78 submitters were opposed. Some supported the status quo.

**Chapter Eleven: Biometrics**

The Bill will allow for a limited range of biometric information to be collected and stored electronically for identity verification purposes. This will enable the Department to use technological advances to help improve the integrity of the immigration system.

	<b>Decision</b>	<b>Status quo</b>	<b>Discussion paper</b>	<b>Submissions</b>
61	Power to require the collection, storage and use of biometric information from non-citizens when engaged with the immigration process and to collect and use limited biometric information from New Zealand citizens at the border.	Applicants for a visa or permit must provide sufficient information to allow an immigration officer to determine their identity. Immigration officers may demand an arriving person's passport or certificate of identity. Immigration officers may require evidence of identity where an offence is suspected or where a person is suspected of being in New Zealand unlawfully.	Mirrored decision. The Bill will provide more detail about the mechanics, safeguards, and consequences of failure to provide such information.	Just under half of 56 organisations indicated support for the proposal compared to almost 80% of 46 individual submitters. Over a third of the organisations that addressed this issue did not indicate support or opposition to the proposal, but commented on the safeguards that would need to be in place.