

## IMMIGRATION AMENDMENT ACT 2002

The Parliament of New Zealand enacts as follows:

### **1 Title**

(1) This Act is the Immigration Amendment Act 2002.

(2) In this Act, the Immigration Act 1987 is called "the principal Act".

### **2 Commencement**

(1) Section 4 comes into force on the earlier of---

(a) the day 12 months after the date on which this Act receives the Royal assent:

(b) a day appointed by the Governor-General by Order in Council.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

### **3 Interpretation**

Section 2(1) of the principal Act is amended by inserting, after the definition of conditions, the following definition:

"contiguous zone has the meaning given to it by section 8A(2) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977".

### **4 Responsibility of employers**

(1) Section 39 of the principal Act is amended by inserting, after subsection (1), the following subsections:

"(1A) Every employer commits an offence against this Act who, without reasonable excuse, allows a person who is not entitled under this Act to undertake employment in the employer's service to undertake that employment.

"(1B) For the purposes of subsection (1A), it is a reasonable excuse for allowing a person who is not entitled under this Act to undertake employment in an employer's service to undertake that employment that the employer concerned did not know that the person was not entitled to undertake that employment, and holds a tax code declaration---

"(a) that states that the person is entitled under the Immigration Act 1987 to undertake employment in the employer's service; and

"(b) that was signed by the person before or when that employment began.

"(1C) Except as provided in subsection (1B), for the purposes of subsection (1A), it is not a reasonable excuse for allowing a person who is not entitled under this Act to undertake employment in an employer's service that the employer did not know that the person was not entitled under this Act to undertake that employment."

(2) Section 39(2) of the principal Act is amended by omitting the words "subsection (1) of".

(3) Section 39(4) of the principal Act is amended by inserting, after the words "subsection (1)", the words "or subsection (1A)".

(4) Section 39 of the principal Act is amended by adding the following subsection:

"(5) A person who commits an offence against this section is liable,---

"(a) in the case of an offence against subsection (1), to a fine not exceeding \$50,000:

"(b) in the case of an offence against subsection (1A), to a fine not exceeding \$10,000."

## **5 New section 39A inserted**

The principal Act is amended by inserting, after section 39, the following section:

"39A Exploitation of people not legally entitled to work

"(1) Every employer commits an offence against this Act who,---

"(a) while allowing an unlawful employee to undertake employment in the employer's service,---

"(i) is responsible for a serious failure to pay to the employee money payable under the Holidays Act 1981; or

"(ii) is in serious default under the Minimum Wage Act 1983 in respect of the employee; or

"(iii) is responsible for a serious contravention of the Wages Protection Act 1983 in respect of the employee; or

"(b) while allowing an unlawful employee to undertake employment in the employer's service, takes an action with the intention of preventing or hindering the employee from---

"(i) leaving that employment; or

"(ii) leaving New Zealand; or

"(iii) ascertaining or seeking his or her entitlements under the law of New Zealand; or

"(iv) disclosing to any person the circumstances of his or her employment by the employer.

"(2) The following are examples of actions of the kinds referred to in subsection (1)(b):

"(a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets:

"(b) preventing or hindering a person from---

"(i) having access to a telephone; or

"(ii) using a telephone; or

"(iii) using a telephone privately; or

"(iv) leaving premises; or

"(v) leaving premises unaccompanied; or

"(c) preventing or hindering a labour inspector (within the meaning of the Employment Relations Act 2000) from entering or having access to any place or premises to which he or she is entitled to have access under any enactment.

"(3) Subsection (2) does not limit the generality of subsection (1)(b).

"(4) For the purposes of subsection (1)(a), the following are questions of fact:

"(a) whether a failure to pay to a person money payable under the Holidays Act 1981 is serious:

"(b) whether a default under the Minimum Wage Act 1983 in respect of a person is serious:

"(c) whether a contravention of the Wages Protection Act 1983 in respect of a person is serious.

"(5) For the purposes of subsection (1)(a), the following matters may be taken into account in deciding whether a failure, default, or contravention is serious:

"(a) the amount of money involved:

"(b) whether it comprises a single instance or a series of instances:

"(c) if it comprises a series of instances,---

"(i) how many instances it comprises:

"(ii) the period over which they occurred:

"(d) whether or not it was intentional:

"(e) whether the employer concerned has complied with the record-keeping obligations imposed by the Act concerned:

"(f) any other relevant matter.

"(6) An information alleging an offence against subsection (1) may specify any day on which it is alleged the person was in the employment of the employer, and it is not necessary to state the day on which that employment is alleged to have commenced.

"(7) For the purposes of this section, an employer must be treated as knowing that an employee is not entitled under this Act to undertake any particular employment if, at any time within the preceding 12 months, the employer has been informed of that fact in writing by an immigration officer.

"(8) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both.

"(9) In this section, unlawful employee, in relation to an employer, means a person whom the employer knows is not entitled under this Act to undertake employment in the employer's service."

## **6 Deportation of holders of residence permits following conviction**

Section 91(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

"(ca) is convicted of an offence against section 39(1) or section 39A(1) of this Act committed within 10 years after the person is first granted a residence permit; or".

## **7 Deportation of exempt persons following conviction**

Section 92(2) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

"(ca) is convicted of an offence against section 39(1) or section 39A(1) of this Act committed within 10 years after the person first arrives in New Zealand; or".

## **8 Responsibilities of persons arriving in or leaving New Zealand**

(1) Section 126(1)(c) of the principal Act is amended by omitting the words "within 72 hours", and substituting the word "forthwith".

(2) Section 126 of the principal Act is amended by adding the following subsection:

"(6) A member of the police may arrest a person, and present him or her to an immigration officer, if the member of the police has good cause to suspect that---

"(a) the person arrived in New Zealand from another country elsewhere than at a Customs place, and did not forthwith report to an immigration officer at a Customs place; or

"(b) the person recently arrived in New Zealand from another country elsewhere than at a Customs place, and will not forthwith report to an immigration officer at a Customs place."

## **9 Detention and departure of persons refused permits, etc**

(1) Section 128(3) of the principal Act is amended by omitting the words "the craft on which that person was travelling berths, lands, or otherwise arrives in New Zealand", and substituting the words "that person first reports or presents to an immigration officer after arriving in New Zealand from another country".

(2) Section 128 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(5) Subject to subsection (7), on the request of an immigration officer to a member of the police, any person to whom this section applies must be detained by a member of the police and placed in custody pending that person's departure from New Zealand on the first available craft."

(3) Section 128(9) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

"(c) the expiry of the period for which detention is then authorised by the warrant (as determined having regard to any extension or further extension of the warrant granted under subsection (13B) of this section, and to subsection (16) of this section, and, where appropriate, to---

"(i) section 128AA(12); and

"(ii) subsections (2)(a) and (12) of section 128A),---".

(4) Section 128(13) of the principal Act is amended by omitting the words "authorised by the warrant under subsection (9)(c)", and substituting the words "then authorised by the warrant (as determined having regard to the matters referred to in subsection (9)(c))".

(5) Section 128 of the principal Act is amended by repealing subsection (15), and substituting the following subsections:

"(15) A person who is detained under this section must not be granted bail, but may be released under section 128AA or section 128A.

"(16) The period for which detention is authorised by a warrant of commitment issued under subsection (7) must be reckoned exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 72 hours after the date on which the person is again taken into custody under this Act."

### **10 New sections 128AA to 128AD inserted**

The principal Act is amended by inserting, after section 128, the following sections:

"128AA Detained person may be conditionally released from detention in certain cases

"(1) This subsection applies to a person who is not a refugee status claimant (within the meaning of section 129B(1)) and---

"(a) is placed in custody under section 128(5); or

"(b) is the subject of a warrant of commitment issued under section 128(7).

"(2) This subsection applies to---

"(a) a refugee status claimant (within the meaning of section 129B(1)) who---

"(i) is placed in custody under section 128(5); or

"(ii) is the subject of a warrant of commitment issued under section 128(7):

"(b) a person who is the subject of an application under section 128(13)(a) for the extension or further extension of a warrant of commitment issued under section 128(7).

"(3) An immigration officer may apply to a District Court Judge for an order that a person to whom subsection (1) applies be conditionally released from custody.

"(4) An immigration officer or the person concerned may apply to a District Court Judge for an order that a person to whom subsection (2) applies be conditionally released from custody.

"(5) An application under subsection (3) or subsection (4) must be made on oath, and state why section 128 applies to the person to whom it relates.

"(6) On an application under subsection (3) or subsection (4), the Judge may make an order for the person's conditional release.

"(7) The order must state---

"(a) either a day on which it expires or an event upon the occurrence of which it expires; and

"(b) a location at which the person to whom it relates must give himself or herself up when it expires.

"(8) If the Judge does not make an order for the person's conditional release,---

"(a) in the case of an application made in respect of a person who is not already subject to a warrant of commitment issued under section 128(7), the Judge must issue a warrant of commitment authorising the person's detention for a period not exceeding 28 days in a penal institution or some other premises approved for the purpose by the Judge:

"(b) in the case of an application made in respect of a person who is the subject of an application under section 128(13)(a) for the extension or further extension of a warrant of commitment issued under section 128(7), the Judge may extend or further extend the warrant of commitment concerned---

"(i) for any period the Judge thinks necessary in the circumstances to allow all the persons in the group concerned to be properly dealt with, if the person detained under the warrant is a member of a group of people---

"(A) all of whom arrived in New Zealand on the same ship or aircraft; and

"(B) all or most of whom are people to whom section 128 applies; and

"(ii) for a further period not exceeding 7 days if the person detained under the warrant is not a member of such a group.

"(9) A warrant of commitment issued under subsection (8)(a) must be treated as a warrant of commitment issued under section 128(7).

"(10) On the day or (as the case may be) the occurrence of the event stated in it, an order under subsection (6) for a person's conditional release expires, and the person must deliver himself or herself up to an immigration officer at the location stated in it.

"(11) If a person delivers himself or herself up to an immigration officer under subsection (10),---

"(a) in the case of a person to whom subsection (1) or subsection (2) applied by virtue of his or her being placed in custody under section 128(5), if not released,---

"(i) the person must be treated as a person to whom section 128(5) continues to apply; and

"(ii) if the person is to be detained for more than 48 hours after delivering himself or herself up, an application must be made in accordance

with section 128(7):

"(b) in any other case, if not released, the person must again be taken into custody, and may be detained in custody under section 128 pending the person's departure from New Zealand on the first available craft.

"(12) The period for which detention is authorised by a warrant of commitment issued under section 128(7) must be reckoned exclusive of any period commencing on the date on which the person to whom the warrant relates is released pursuant to an order under subsection (6), and ending on the earlier of the following:

"(a) the expiration of 72 hours after the date on which the person is again taken into custody under this Act:

"(b) the extension or further extension of the warrant under section 128(13B).

"(13) If a permit is granted under this Act to a person to whom an order under subsection (6) relates,---

"(a) the order is cancelled; and

"(b) Part II applies to the person; and

"(c) section 128 and this section cease to apply to the person.

"128AB Conditions

"(1) An order under section 128AA(6)---

"(a) must be made subject to the condition that the released person---

"(i) must reside at a specified address; and

"(ii) must report to an office of the Department of Labour or to a police station at specified times and intervals, and in a specified manner:

"(b) if the released person is a refugee status claimant under Part VIA, must be made subject to a condition relating to attendance at any interview under that Part by a refugee status officer or the Refugee Status Appeal Authority:

"(c) may be made subject to any other conditions the Judge thinks fit to impose in the circumstances.

"(2) The conditions imposed on a released person under subsection (1)---

"(a) must be notified in writing to the person before his or her release; and

"(b) take effect on his or her release.



"(3) An immigration officer and the released person---

"(a) may agree to vary a condition imposed under paragraph (a) or paragraph (b) of subsection (1); and

"(b) if the order containing it so provides, or with the consent of a District Court Judge, may agree to vary a condition imposed under subsection (1)(c).

"(4) A variation of a condition---

"(a) takes effect immediately; but

"(b) must be reduced to writing, and notified to the released person, as soon as practicable.

"128AC Breach of condition or failure to deliver oneself up to immigration officer

"(1) This subsection applies to a person who has been released under section 128AA--  
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"(a) after the person breaches a condition imposed under section 128AB:

"(b) at any time between the time the person fails to deliver himself or herself up to an immigration officer as required by section 128AA(10) and the time (if any) when the person is granted a permit under this Act.

"(2) If subsection (1) applies, the person is liable to be arrested by any member of the police, without warrant, and placed in custody.

"(3) If arrested and placed in custody, the person must as soon as possible be brought again before a District Court Judge; and subject to subsection (4),---

"(a) in the case of a person to whom subsection (1) or subsection (2) of section 128AA applied by virtue of his or her being placed in custody under section 128(5), the Judge must decide whether to issue a warrant of commitment authorising his or her detention for a period not exceeding 28 days in a penal institution or some other premises approved for the purpose by the Judge, or again make an order for the person's conditional release under section 128AA:

"(b) in any other case, the Judge must decide whether to order that the person must again be taken into custody, or again make an order for the person's conditional release under section 128AA.

"(4) If a person brought before a District Court Judge under subsection (3) has breached a condition imposed under paragraph (a) or paragraph (b) of section 128AB(1), the Judge must (as the case may be) issue a warrant of commitment or make an order that the person must again be taken into custody, unless the Judge is satisfied that the person had a reasonable excuse for breaching the condition.

"(5) A warrant under subsection (3)(a) must be treated as if it has been issued pursuant to section 128(7).

"(6) If an order is made under subsection (3)(b) that a person must again be taken into custody, the person may be detained in custody under section 128 pending the person's departure from New Zealand on the first available craft.

"(7) If a person is released under section 128AA, whether or not he or she breaches a condition imposed under section 128AB or fails to deliver himself or herself up to an immigration officer as required by section 128AA(10),---

"(a) the person must continue to be treated as a person to whom section 128 applies who is being detained under that section; and

"(b) nothing in Part II applies to the person.

#### "128AD Cancellation of order for conditional release

"(1) An immigration officer may make an application to a District Court Judge for an order cancelling an order under section 128AA(6).

"(2) An application under subsection (1) must be made on oath, and state why the person to whom the order for release relates should no longer be released on conditions.

"(3) The District Court Judge may make or refuse to make an order, as he or she thinks fit.

"(4) If the District Court Judge makes an order,---

"(a) the person is liable to be arrested by any member of the police, without warrant, and placed in custody; and

"(b) if the person is arrested and placed in custody,---

"(i) in the case of a person to whom subsection (1) or subsection (2) of section 128AA applied by virtue of his or her being placed in custody under section 128(5),---

"(A) the person must be treated as a person to whom section 128(5) continues to apply; and

"(B) if that person is to be detained for more than 48 hours after delivering himself or herself up, an application must be made in accordance with section 128(7):

"(ii) in any other case, the person must again be taken into custody, and may be detained in custody under section 128 pending the person's departure from New Zealand on the first available craft."

## **11 Procedure under section 128 if review proceedings, etc, brought**

Section 128A(5)(a) of the principal Act is amended, as from the commencement of section 38 of the Immigration Amendment Act 1991, by omitting the word "retained", and substituting the word "detained".

## **12 Powers of entry and search**

Section 137 of the principal Act is amended by inserting, after subsection (2), the following subsections:

"(2A) This subsection applies to a person who, if he or she lands in New Zealand, will---

"(a) commit an offence against this Act; or

"(b) be in New Zealand unlawfully.

"(2B) A member of the police, or a customs officer undertaking immigration duties, who believes on reasonable grounds that there are on board a ship or any other form of sea-borne vessel that is within the contiguous zone or territorial sea of New Zealand people to whom subsection (2A) applies may, without a warrant or any authority other than this section,---

"(a) for the purpose of determining whether or not there are on board the ship or vessel people to whom subsection (2A) applies, enter and search it; and

"(b) if satisfied that there are on board the ship or vessel people to whom subsection (2A) applies, exercise any power he or she could exercise if it were within New Zealand.

"(2C) A person does not enter New Zealand lawfully by reason only of being brought into New Zealand---

"(a) by a member of the police or customs officer who is exercising or has exercised powers by virtue of subsection (2B)(b); or

"(b) on board a ship or vessel permitted or required to enter New Zealand by a member of the police or customs officer who is exercising or has exercised powers by virtue of subsection (2B)(b)."

## **13 New section 138A inserted**

(1) The principal Act is amended by inserting, after section 138, the following section:

"138A 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 Part II, or is a person to whom any provision of Part VI applies, 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 the person's 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, or is a person to whom Part VI applies:

"(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 any of the documents or other things referred to in paragraph (b), to give the officer details of where they 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 Act.

"(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, 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 any orders and give any directions the Judge thinks fit.

"(6) Anything that was done in the exercise of a power under former section 65 and that was in effect immediately before its repeal continues to have effect as if it had been done under this section."

(2) Section 65 of the principal Act is repealed.

#### **14 New sections 141AA and 141AB inserted**

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

"141AA Disclosure of information overseas

"(1) The chief executive may disclose any information specified in section 141AB(1) to an overseas agency, body, or person, whose functions include---

"(a) the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; or

"(b) the processing of international passengers; or

"(c) border security.

"(2) The disclosure of information under subsection (1) must be---

"(a) in accordance with an agreement between the chief executive and the agency, body, or person concerned that complies with subsections (3) and (4); or

"(b) in accordance with subsection (8).

"(3) The chief executive must not enter into an agreement for the purposes of subsection (2)(a) unless satisfied that it is justified to help prevent, identify, or respond to violations of New Zealand law or---

"(a) in the case of an agreement with an international agency or body, to help prevent, identify, or respond to actions of a kind whose prevention or identification, or responding to which, is among the functions of the agency or body:

"(b) in any other case, to help prevent, identify, or respond to violations of the law of the state concerned.

"(4) For the purposes of subsection (2)(a), an agreement---

"(a) must be in writing; and

"(b) must state criteria for the disclosure of information under it; and

"(c) must state, in respect of information to be disclosed,---

"(i) the use the agency, body, or person may make of it; and

"(ii) either---

"(A) that the agency, body, or person must not disclose it to any other agency, body, or person; or

"(B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and

"(d) may state---

"(i) the form in which information may be disclosed:

"(ii) the method by which information may be disclosed; and

"(e) may be varied from time to time.

"(5) The chief executive---

"(a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and

"(b) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and

"(c) as soon as practicable after conducting a review required to be undertaken under paragraph (b), must report the result to the Privacy Commissioner.

"(6) The Privacy Commissioner must not require the chief executive to undertake a review of an agreement under subsection (5)(b) within 12 months of last doing so.

"(7) This section does not limit the general powers of the chief executive to enter into agreements not related to the disclosure of information with any overseas agency, body, or person.

"(8) The chief executive may disclose information to an overseas agency, body, or person if---

"(a) the functions of the agency, body, or person include the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; and

"(b) the information is disclosed subject to conditions stating---

"(i) the use the agency, body, or person may make of it; and

"(ii) either---

"(A) that the agency, body or person must not disclose it to any other agency, body or person; or

"(B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and

"(c) the chief executive makes and keeps a record of---

"(i) the information that was disclosed; and

"(ii) the agency, body, or person to which it was disclosed; and

"(iii) the conditions subject to which it was disclosed.

"(9) The chief executive must not disclose any information under subsection (8) unless satisfied that it relates to a suspected violation of New Zealand law or,---

"(a) in the case of disclosure to an international agency or body, to a suspected action of a kind whose prevention or identification, or responding to which, is among the functions of the agency or body:

"(b) in any other case, to a suspected violation of the law of the state concerned.

"141AB Information that may be disclosed

"(1) The information that may be disclosed under section 141AA is---

"(a) airline passenger and crew lists:

"(b) craft movements (which may include passenger and crew lists):

"(c) past travel movements of specified people:

"(d) previous convictions of specified people:

"(e) general history of specified people (which may include associates and networks):

"(f) modus operandi of specified people:

"(g) known currency and other financial transactions of relevant interest, including involvement in money laundering:

"(h) intelligence analysis assessments and reports:

"(i) details of mail interceptions:

"(j) personal identification details (which may include photograph, distinguishing features, and details of identity or travel documents):

"(k) names and details of immigration personnel and transport personnel:

"(l) details of known or suspected involvement of people in illicit activities:

"(m) details of any visa or permit held by a person.

(2) Section 141AA does not prevent or limit any disclosure of information otherwise than under that section that may be required or authorised by or under law, or any treaty, agreement, or arrangement concluded by the Government of New Zealand."

## 15 Offences

(1) Section 142 of the principal Act is amended by repealing paragraphs (d) to (fa), and substituting the following paragraphs:

"(d) whether within or outside New Zealand, produces or surrenders or passes off a passport, certificate of identity, visa, permit, or certificate of citizenship, or anything purporting to be a passport, certificate of identity, visa, permit, or certificate of citizenship,---

"(i) as relating to that person when in fact, to that person's knowledge, it relates to some other person; or

"(ii) knowing it to be forged or to have been obtained fraudulently; or

"(e) whether within or outside New Zealand, sells, hires, lends, gives, or otherwise disposes of a passport, certificate of identity, visa, permit, or certificate of citizenship relating to that person (or anything purporting to be a passport, certificate of identity, visa, permit, or certificate of citizenship relating to that person) to any other person (the receiver)---

"(i) without necessarily knowing which, knowing that the receiver will---

"(A) produce it or pass it off as relating to the receiver or some other person; or

"(B) sell, hire, lend, give, or otherwise dispose of it; or

"(ii) without necessarily intending either in particular, intending the receiver to---

"(A) produce it or pass it off as relating to the receiver or some other person; or

"(B) sell, hire, lend, give, or otherwise dispose of it; or

"(ea) for a material benefit, aids, abets, incites, counsels, or procures any other person to be or to remain in New Zealand unlawfully or to breach any condition of a permit granted to the other person; or

"(eb) whether within or outside New Zealand and whether or not the other person in fact enters New Zealand, aids, abets, incites, counsels, or procures any other person to enter New Zealand unlawfully (whether by arriving in New Zealand in a manner that does not comply with section 126(1), by arriving in New Zealand without holding a visa where the other person requires a visa to travel to New Zealand, or otherwise howsoever)---

"(i) knowing that the person's entry into New Zealand is or would be unlawful; or



"(ii) reckless as to whether the person's entry into New Zealand is or would be unlawful; or

"(ec) whether within or outside New Zealand, aids, abets, incites, counsels, or procures any other person to complete an arrival card in a manner that the person aiding or assisting knows to be false or misleading in any particular; or

"(f) aids, abets, incites, counsels, or procures any other person to be or to remain in New Zealand unlawfully or to breach any condition of a permit granted to the other person under this Act; or".

(2) Section 142 of the principal Act is amended by adding, as subsections (2) and (3), the following subsections:

"(2) Every person commits an offence against this Act who, not being a visa officer, an immigration officer, or a refugee status officer,---

"(a) after the person to whom a form required to be completed for the purposes of this Act relates has signed it and declared its contents to be true,---

"(i) alters information entered on it; or

"(ii) enters further information on it; or

"(iii) alters any material attached to it; or

"(iv) attaches any material or further material to it; and

"(b) allows the form to leave his or her possession without writing on it and signing a statement of---

"(i) the information or material that has been altered, entered, or attached; and

"(ii) why and by whom the information or material has been altered, entered, or attached.

"(3) In subsection (1)(ea), for a material benefit has the same meaning as in section 2(1) of the Crimes Act 1961."

## **16 General penalty for offences**

Section 144 of the principal Act is amended by repealing subsections (1) and (1A), and substituting the following subsections:

"(1) A person who commits an offence against section 142(1)(c), section 142(1)(d), section 142(1)(e), section 142(1)(ea), or section 142(2) is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both.

"(1A) A person who commits an offence against section 142(1)(eb) or section 142(1)(ec) is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both, for each person in respect of whom the offence was committed.

"(1B) A person who commits an offence against section 126(4), section 142(1)(f), section 142(1)(g), or section 142(1)(j) is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding \$5,000, or both."

## **17 New section 145 substituted**

(1) The principal Act is amended by repealing section 145, and substituting the following section:

"145 Procedural provisions relating to offences

"(1) An offence against section 39A(1), section 142(1)(c), section 142(1)(d), section 142(1)(e), section 142(1)(ea), section 142(1)(eb), section 142(1)(ec), or section 142(2) is punishable on indictment.

"(2) Except as provided in subsection (1), every offence against this Act or any regulations made under it is punishable on summary conviction.

"(3) A prosecution for an offence against this Act or any regulations made under it cannot be commenced except on the information of an immigration officer, a member of the police, or some other person authorised for that purpose by the Minister.

"(4) An information for an offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.

"(5) Subsection (4)---

"(a) overrides section 14 of the Summary Proceedings Act 1957; but

"(b) does not limit or affect subsection (1)."

"(2) Part 2 of the First Schedule of the Summary Proceedings Act 1957 is amended by inserting, before the item relating to the Insolvency Act 1967, the following item:

The Immigration Act 1987 39A(1) Exploitation of people not legally entitled to work

142(1)(c) Using false or misleading document or information

142(1)(d) Using travel document that relates to another person, or is forged or fraudulently obtained

142(1)(e) Disposing of travel document

142(1)(ea) Assisting person to remain in New Zealand unlawfully, or breach permit conditions

142(1)(eb) Assisting person to enter New Zealand unlawfully

142(1)(ec) Assisting completion of arrival card in false or misleading manner

142(2) Modifying form after completion and signing

Amendment to Income Tax Act 1994

### **18 Amendment to Income Tax Act 1994**

The Income Tax Act 1994 is amended by inserting, after section NC 8, the following section:

"NC 8A Entitlement to undertake employment

"(1) The Commissioner must ensure that all tax code declaration forms provided by the Commissioner after 31 March 2003 contain a means for the employee concerned to state that he or she is entitled under the Immigration Act 1987 to undertake employment in the service of the employer concerned.

"(2) The Commissioner may before 1 April 2003 provide forms complying with subsection (1)."

Legislative history

11 June 2002 Divided from Transnational Organised Crime Bill (Bill 201-2), third reading