
Immigration (Mass Arrivals) Amendment Bill

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1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Immigration (Mass Arrivals) Amendment Bill (the **Bill**).
- 1.2 This submission has been prepared with input from the Law Society's Immigration and Refugee Law Committee and Human Rights and Privacy Committee.¹
- 1.3 The Law Society does not wish to be heard in relation to this submission.

2 Protections of rights in event of mass arrival

- 2.1 The Bill's explanatory note emphasises the purported benefits to individuals who would be the subject of a mass arrival warrant of commitment, noting that extending the timeframes for hearing an application would allow those individuals to be afforded their rights of natural justice.
- 2.2 In the Law Society's view, the timelines currently provided under the Act are likely to be a barrier to ensuring that rights guaranteed under the New Zealand Bill of Rights Act 1990 (the **Bill of Rights**) are protected in the event of a mass arrival. In addition to the right to natural justice referred to in the explanatory note, the Bill potentially engages the rights under s 23 of the Bill of Rights, which includes the right to consult and instruct a lawyer when detained under any enactment. As it currently stands, the 96-hour timeframe for determining a mass arrival warrant application is unlikely to be sufficient for the members of that group to obtain legal advice and for the Court to have sufficient time to hear and fully consider the application, particularly in the event of a large mass arrival.
- 2.3 However, while this limited timeframe would be a barrier, in the Law Society's view it is not the most significant one; even if the changes proposed by the Bill were put in place, it is doubtful that in the event of a mass arrival each of those individuals could be afforded their rights.
- 2.4 In 2022, the Government received the report arising from an independent review of processes and procedures relating to restriction of movement of asylum claimants, carried out by Victoria Casey KC (the **Casey report**).² This identified significant difficulties in asylum seekers obtaining legal representation when facing a warrant of commitment application. Many asylum seekers arrive in New Zealand with little to no resources, and so in many cases would be reliant on legal aid. However, there are limited legal aid providers who have experience and availability in this area – though they are more akin to a bail application in the criminal jurisdiction, warrant of commitment hearings are classified as civil proceedings requiring counsel with civil legal aid provider status. There are currently around 30 refugee and immigration law practitioners nationwide who hold the appropriate approvals to

¹ See the Law Society's website for more information about these Committees:

<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

² *Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment - Restriction of Movement of Asylum Claimants*, Victoria Casey KC, 23 March 2022.

provide unsupervised legal aid services.³ The Casey report also notes concerns with inadequacies in the amount of time that the Legal Services Agency will fund for warrant of commitment hearings.

- 2.5 Of note, the concerns raised in the Casey report were in the context of warrant of commitment applications made against individuals or small groups (given, as the Regulatory Impact Statement notes, there has never been a mass arrival in New Zealand). It follows that these deficiencies are likely to be exacerbated if 30 or more individuals required legal aid-funded advice on a mass arrival warrant of commitment.
- 2.6 The Casey report also raises concerns that the laws allowing for the detention of asylum seekers, and how these are applied, are inconsistent with New Zealand's international obligations. Given the Bill would allow for longer periods of detainment, these breaches of our international obligations are likely to be exacerbated in the event of a mass arrival.
- 2.7 In light of these issues, the reason for the Bill's focus on the timeframe for hearing an application is unclear. There does not appear to be a pressing need for this change, given New Zealand has never had a mass arrival event and is an unlikely target due to its isolation. While the regulatory impact statement notes that the experiences of other countries can be drawn upon as an example, it is important that New Zealand's approach to this issue reflects our own situation. Rather than proceed with the narrow changes proposed in the Bill, the Law Society considers it would be more appropriate to consider this as a part of wider reform in this area, as recommended by the Casey report.

3 Availability of residence and/or reporting requirements in event of mass arrivals

- 3.1 The explanatory note records that individuals who arrive in New Zealand as part of a mass arrival group would only be detained for the least possible time and in the least restrictive facility that is appropriate. It also notes the options available to an immigration officer for this purpose, including offering accommodation in a low or no security facility, or release into the community with or without conditions (such as reporting). It is not apparent how the Bill achieves this, as none of the proposed amendments provides for these outcomes.
- 3.2 It may be that this is a reference to the options available to an immigration officer under the current s 315, which acts as an alternative to detaining the individual under s 313 (which under the Bill would include the extended period for a court to determine a mass arrival warrant application) or applying for a warrant of commitment under s 316. If this is the case, we recommend that s 315 be clarified by including a reference to s 317A after the current reference to s 316.



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³ https://www2.justice.govt.nz/find-a-legal-aid-lawyer/results.aspx?Name=&Town=%25&Region=%25&Firm_Name=%25&Law=Refugee%20and%20Immigration&subcat=%25#/collapse1