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Chair, Education and Workforce Committee

By email: ew@parliament.govt.nz

Feedback on Parliamentary Paper J.24: proposed policy additions to the Immigration (Enhanced Risk Management) Amendment Bill

1 Introduction

- 1.1 I am writing to you on behalf of the New Zealand Law Society Te Kāhui Ture o Aotearoa to provide feedback on *Parliamentary Paper J.24: proposed policy additions to the Immigration (Enhanced Risk Management) Amendment Bill (Parliamentary Paper)*, which sets out seven proposals to amend the Immigration (Enhanced Risk Management) Amendment Bill (**Bill**) that is currently before the Education and Workforce Select Committee.
- 1.2 The Law Society has made a written submission on the Bill, and intends to appear before the Select Committee to speak to that submission. We are now writing to provide further feedback on the additional policy proposals in the Parliamentary Paper (which are not discussed in the Law Society's written submission on the Bill).
- 1.3 This feedback has been prepared with input from the Law Society's Immigration & Refugee Law Committee and Human Rights & Privacy Committee.¹

2 General comments

- 2.1 It is unusual to set out proposals to amend a Bill in a Parliamentary Paper at the time of its introduction. Public consultation on policy proposals is typically expected to occur prior to the introduction of the Bill, with all necessary amendments to the Immigration Act 2009 (**Act**) included in the Bill at the time it is introduced to the House.
- 2.2 The reasons for using the Parliamentary Paper process as a way to seek feedback on these changes rather than including them in the Bill, or in another Bill, have not been explained. The Law Society considers it is not good practice in terms of legislative reform, and respectfully suggests that it should not be used as a precedent for future legislative reform.
- 2.3 Seeking feedback on policy proposals (rather than on specific proposed amendments to the Act) at the select committee stage means:

¹ Information about these committees is available on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

- (a) The Ministry of Justice does not have any opportunity to assess whether the proposed amendments to the Act are consistent with the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**), as required under section 7 of that Act.²
- (b) The proposals are not supported or accompanied by a Departmental Disclosure Statement, Regulatory Impact Statement,³ or any other policy or cost-benefit analysis. As a result, it is difficult to determine whether, for example, the proposals address a legitimate policy problem, and whether the proposals will effectively and appropriately respond to that problem.
- (c) The Select Committee and the public will not have the opportunity to scrutinise and provide feedback on the drafting of any resulting amendments to the Act (and in particular, any consequences or issues arising specifically from the drafting of a particular amendment).

2.4 We also note there appears to be limited publicly-available evidence to show that these reform proposals respond to legitimate policy problems, or that they are an appropriate means of effectively addressing identified policy problems:

- (a) A Cabinet Paper relating to these proposals suggests the amendments respond to a recent increase in manifestly unfounded asylum claims which “pose a risk to the integrity of the asylum system by draining resourcing, allowing disingenuous claimants prolonged access to the labour market ... and other benefits, delaying determinations for genuine claimants, and undermining public confidence”.⁴
- (b) However, it goes on to state that Immigration New Zealand (**INZ**) does not collect data on the number of claims that are manifestly unfounded or clearly abusive,⁵ and that the proposals in the Parliamentary Paper are based on estimates.
- (c) It also offers no insights as to whether decisions to decline claims that are deemed to be manifestly unfounded are subsequently overturned on appeal to the Immigration and Protection Tribunal (**IPT**).
- (d) The Cabinet Paper also suggests these amendments are being proposed because “similar challenges are being faced globally” and “likeminded countries need to work together to protect the global asylum system”.⁶ However, it provides no evidence to show that the increase in asylum claim numbers in New Zealand is due to the same factors contributing to increased claim volumes in other countries.

² We note a Cabinet Paper notes these proposals “have no significant implications” for rights affirmed in the Bill of Rights Act (see: Office of the Minister of Immigration *Cabinet Paper: Proposed amendments to the Immigration Act 2009: Immigration (Enhanced Risk Management) Amendment Bill – additional decisions* (4 March 2026) (**Cabinet Paper**) at [54]).

³ The Ministry for Regulation has determined that the proposals in the Parliamentary Paper are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that these proposals have no or only minor economic, social, or environmental impacts (see: Cabinet Paper at [51]). However, we do not agree with the Ministry’s determination; some of these proposed amendments could have significant impacts on asylum claimants (and could result, for example, in asylum claimants having their refugee and protection claims declined, making them liable for deportation).

⁴ Cabinet Paper at [16].

⁵ Cabinet Paper at [16].

⁶ Cabinet Paper at [18].

- 2.5 The absence of evidence and policy analyses raises questions about whether these proposed reforms are an appropriate way of achieving the policy objective of reducing delays and backlogs within the overall asylum claim determination process.
- 2.6 If the reforms are to proceed, the Law Society recommends:
- (a) requesting from officials any evidence and policy analyses which show that these changes are necessary, and an appropriate means of addressing the stated policy objectives;
 - (b) obtaining advice from the Ministry of Justice on whether the proposed amendments are consistent with the Bill of Rights Act; and
 - (c) referring any draft provisions (for example, once an Amendment Paper is published) to a select committee so the committee can invite submissions on the draft provisions and consider whether they will achieve their underlying policy objectives, and whether further changes are desirable.
- 2.7 We now turn to issues relating to the following proposals in the Parliamentary Paper:
- (a) Proposal 1: creating a consequence for failure to engage in the biometric process;
 - (b) Proposal 2: amending the consequences of acting in bad faith;
 - (c) Proposal 4: removing the ability to bring late appeals to the IPT;
 - (d) Proposal 5: for second and subsequent appeals, enabling the IPT to find that the claimant's circumstances have not changed significantly, regardless of whether the Refugee and Protection Officer (**RPO**) declined the claim on that basis; and
 - (e) Proposal 6: providing that those who commit serious non-political crimes between entry into New Zealand and status determination are to be excluded from refugee status.

3 Proposal 1

- 3.1 This proposal seeks to enable RPOs to determine a claim without further information where the claimant has, without good reason, failed to engage with the biometric process.
- 3.2 It is unclear whether these amendments will clarify what constitutes a good reason. Claimants can miss appointments to provide biometric information, or hesitate to engage with the biometric process, for various reasons, including, for example:
- (a) matters outside of the claimant's control;
 - (b) a lack of understanding of the purpose and the importance of engaging in the biometric process (for example, because of language barriers); or
 - (c) fear of providing biometric information to a State department because of past experiences.
- 3.3 Language and cultural barriers can also impact a claimant's ability to provide good reasons for failing to engage with the biometric process (particularly where a claimant is unrepresented). Any amendments to the Act will therefore need to be drafted in a way that recognises that 'good reason' may arise in such circumstances.

- 3.4 Steps should also be taken to encourage claimants to participate in the biometric process. Lawyers who represent clients before the Refugee Status Unit (**RSU**) have observed that it is often most convenient to provide biometrics at the time their client attends the interview with an RPO, as this gives lawyers the opportunity to explain to the claimant what will occur during the biometric process, and help the claimant understand why they must engage with this process.
- 3.5 If Proposal 1 is enacted, claimants should continue to have the option of providing biometrics when they attend their interview with an RPO. While legislative amendments are not required to enable this, it may require an amendment to the RSU's Practice Note, which presently encourages claimants to provide biometrics *before* their interview date.⁷

4 Proposal 2

- 4.1 Proposal 2 seeks to change the consequences of acting other than in good faith, so that RPOs can refuse to consider the refugee claim but must consider the protection claim in order to uphold New Zealand's international obligations.
- 4.2 If such an amendment is to be made, it should expressly recognise that affected claimants will continue to have the ability to appeal to the IPT. While the Parliamentary Paper suggests this is likely the intention,⁸ this should be clearly reflected in the drafting of these amendments.

5 Proposal 4

- 5.1 Sections 194(3) and 195(4) of the Act currently enable the IPT to consider appeals that are filed out of time, where special circumstances exist which justify accepting the late appeal. Proposal 4 seeks to remove the IPT's ability to accept out of time appeals, even where special circumstances exist.
- 5.2 It is worth noting these amendments will play only a minor role in achieving the underlying policy objective of reducing the volume and backlog of IPT appeals, as only "a very small number of appeals (fewer than five in 2025) are made out of time".⁹ This raises questions as to whether the underlying policy objective could be met in some other way which does not prevent claimants from lodging out of time appeals where special circumstances exist.
- 5.3 Previous IPT decisions suggest special circumstances most often arise as a result of events or matters over which the claimant has no control – for example, where:
- (a) A claimant's representative fails to lodge the appeal in time;¹⁰ or
 - (b) A claimant fails to receive a copy of the RSU's determination of their claim, and is unaware of the need to lodge an appeal;¹¹ or

⁷ Refugee Status Unit *Practice Note (Refugee and protection status determination)* (October 2025) at [178].

⁸ The Parliamentary Paper states, at [19], that "if appealed, the IPT could determine the claim in full rather than being required to refer the case back to INZ".

⁹ Cabinet Paper at [32].

¹⁰ See, for example, *AQ (Somalia)* [2018] NZIPT 801323 at [2]; *AO (Egypt)* [2017] NZIPT 800992 [35 – 36]; *AL (South Korea)* [2016] NZIPT 800858 at [4].

¹¹ See, for example, *DH (Sri Lanka)* [2016] NZIPT 800861 at [5].

- (c) Issues with posting or couriering hard copies of appeal documents prevent the timely lodgement of the appeal.¹²
- 5.4 In such circumstances, the removal of the ability to lodge out of time appeals could result in disproportionately harsh consequences for claimants, particularly where:
- (a) the delay in lodgement arose out of matters over which the appellant had no control, or there was only a very short delay in lodging the application, and
 - (b) the substantive appeal appears to have merit.
- 5.5 These concerns are heightened where claimants face language or cultural barriers, which affect their understanding of obligations under the Act.
- 5.6 We also note that the alternative protections that will remain available to claimants (i.e., requests to the Minister to cancel or suspend liability for deportation, and the opportunity to give good reasons why deportation should not proceed) are inadequate safeguards.¹³ As we have explained in our submission in the Bill:¹⁴
- (a) Ministerial intervention would be in the Minister’s absolute discretion, and would not necessarily involve consideration of an individual’s humanitarian circumstances, or in cancellation of an individual’s liability for deportation.¹⁵ The Ministerial intervention process also lacks transparency and consistency in decision-making, and does not offer the same degree of independence and separation from the Executive branch of government. Furthermore, requests for Ministerial intervention are often considered by delegated decision-makers who are senior immigration officers. Decisions made in this way are less likely to constitute an independent review of the applicant’s circumstances.
 - (b) The alternative option of providing “good reasons” as to why a deportation should not proceed shifts the consideration of an individual’s circumstances from the IPT (a judicial body that is independent of the Executive) to an immigration compliance officer, who is part of the Executive. This prevents independent consideration of the facts and merits of the individual’s circumstances from the IPT to an immigration officer.
 - (c) Both this option, and the Ministerial intervention option discussed above, also prevent the IPT from maintaining independent judicial oversight of the exercise of Executive power during the deportation process. Judicial oversight helps to uphold the rule of law by reducing the potential for the arbitrary or inappropriate exercise of Executive powers. The removal of this oversight mechanism therefore has the potential to weaken the rule of law.
- 5.7 We urge the Select Committee to seek further advice from officials about these matters, and to consider whether these amendments are in fact necessary to reduce the volume and backlog of appeals in the IPT.

¹² See, for example, *BL (India)* [2015] NZIPT 800795 at [3 – 4].

¹³ At [23].

¹⁴ At [7.12] and

¹⁵ Section 172(5) of the Act.

6 Proposal 5

- 6.1 Proposal 5 seeks to enable the IPT, when determining second and subsequent appeals, to make findings that the claimant's circumstances have not changed significantly regardless of whether the RPO declined the claim on that basis.
- 6.2 Significant changes in the appellant's circumstances could include changes in their country of origin, as well as changes in the appellant's circumstances in New Zealand (for example, where an appellant has gone on to have a child in New Zealand, and this has significantly changed their risk profile). Any amendment must require the IPT to consider all changes in the appellant's circumstances (including those outside their country of origin) when determining whether there has been a significant change in circumstances.

7 Proposal 6

- 7.1 Proposal 6 seeks to redefine how New Zealand interprets Article 1F(b) of the Refugee Convention,¹⁶ so that claimants who commit serious non-political offences in New Zealand up until the point they receive refugee status are excluded from receiving refugee status.
- 7.2 It seems unlikely this proposal is targeted at reducing the RSU's claim volume – the Cabinet Paper refers to the number of claimants committing a serious crime after arriving in New Zealand as being “small”, and states that INZ is currently considering 14 claims from individuals who have committed “serious offences” after arrival. Its utility is therefore questionable – claimants who are recognised as having refugee or protection status are *eligible* to apply for residence, but the grant of residence is not automatic, and it is not guaranteed. Immigration Instructions explicitly contemplate that a person recognised as a refugee may not be granted residence due to character concerns.¹⁷ That is, the offending is already taken into account under the present process.
- 7.3 The Law Society therefore suggests this proposal is unnecessary. However, if it is to proceed, we make the below comment.
- 7.4 The Parliamentary Paper states that where there is a genuine protection need, claimants that have committed serious offences “may” still be eligible for protection status, and in such cases, the Minister of Immigration would determine immigration status and entitlements.¹⁸ In our view, any legislative changes should:
- (a) expressly confirm that claimants will remain eligible for protection status, and
 - (b) set out the process for seeking Ministerial consideration and determination of immigration status and entitlements in such circumstances (noting these decisions should not be made in the Minister's absolute discretion); and
 - (c) identify (perhaps by way of a non-exhaustive list in the Act) any factors which must inform Ministerial determinations regarding immigration status and entitlements; and

¹⁶ 1951 Convention Relating to the Status of Refugees.

¹⁷ Immigration Instruction C5.15.5.

¹⁸ At [32].

(d) require the Minister to provide written reasons for these determinations.

8 Next steps

8.1 We hope the Select Committee finds this supplementary submission useful. If the Committee has any questions regarding this feedback, please do not hesitate to get in touch via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage', is placed over a light grey dotted rectangular background.

Jesse Savage
Vice-President