



28 April 2026

Hon. Katie Nimon  
Chairperson  
Education and Workforce Committee

Dear Ms Nimon

### **Immigration (Enhanced Risk Management) Amendment Bill**

1. Thank you for the opportunity to briefly comment on some aspects of the Immigration (Enhanced Risk Management) Amendment Bill (the Bill).
2. As the Committee will be aware, the Ombudsman is an independent Officer of Parliament who forms part of the system of checks and balances on the exercise of public power within New Zealand's constitutional system.
3. My role includes (relevantly):
  - a. overseeing complaints about the administrative actions and decisions of Immigration New Zealand (INZ) under the Ombudsmen Act 1975 (OA); and
  - b. under the [Optional Protocol to the Convention Against Torture](#) (OPCAT), monitoring the conditions and treatment experienced by individuals detained in New Zealand for immigration purposes.<sup>1</sup>

### **Summary of my feedback**

4. It is for Parliament to determine the final scope of the Bill, and this involves some complex choices regarding New Zealand's immigration settings. It follows that I am not in a position to comment substantively on the merits of the proposals, or the underlying policy positions.
5. Instead, my feedback primarily focuses on the operational implications of removing the ability for all visitor visa holders, and for temporary visa holders who have committed criminal offences, to appeal their deportation liability to the Immigration and Protection Tribunal (IPT) on humanitarian grounds.
6. To assist the Committee's consideration of this proposed amendment, I have set out below:
  - a. my observations on the potential challenges affected temporary entrants may face navigating alternative pathways for having their humanitarian circumstances tested and considered;

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<sup>1</sup> Including refugee status/protected person status claimants (claimants), and any other detainees (non-claimants).

- b. information on my role in considering complaints against INZ, in contrast to the role of the IPT;
  - c. what the operational and legislative safeguards might be considered, should the proposal proceed.
7. Finally, I have provided brief comment on the proposal to remove the ability for asylum claimants to bring late appeals to the IPT.

**My general observations on the proposal to remove the ability for certain temporary entrants to appeal to the IPT on humanitarian grounds**

8. In the absence of a clear appeal avenue, I understand affected temporary entrants will be required to navigate a range of alternative pathways to have their humanitarian circumstances considered, or to subsequently challenge INZ's decisions.<sup>2</sup>
9. I note that New Zealand's deportation regime is complex, and these pathways arise at different stages of the deportation process and do not provide the same form of review as an appeal to an independent tribunal.
10. In this context my view is that there are advantages for temporary entrants having a clear pathway, in the form of a single, specialist body, to review their humanitarian circumstances and any applicable international obligations considered – particularly where those matters may be difficult to assess.<sup>3</sup> Reliance on other divergent pathways may also create risks for consistency in decision-making approaches and outcomes.
11. While I note that INZ officials have pointed to the refugee and protected person status claims process as an appropriate means of addressing New Zealand's international humanitarian obligations, this process does not necessarily provide a pathway for people who have humanitarian circumstances compelling them to *stay* in New Zealand<sup>4</sup> as opposed to those who have legitimate reasons for fearing a return to their home country.
12. In consultation with my Office on these matters, INZ officials have confirmed that, should the proposal proceed, they will consider what proactive communication may be needed to assist affected individuals so that they are aware the changes and their options.
13. INZ has also confirmed it will consider reviewing and strengthening operational guidance and decision-making frameworks for INZ's compliance officers who will retain primary

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<sup>2</sup> For example, officials have noted that affected individuals will retain the ability to give good reason why deportation should not proceed within 14 days of being served a Deportation Liability Notice (DLN) to INZ, during which time deportation cannot proceed, and may additionally pursue Judicial Review, lay a complaint to the Ombudsman or have their deportation liability cancelled by the Minister of Immigration or Delegated Decision Makers (DDM). Some of these opportunities arise and expire at different stages during the deportation process.

<sup>3</sup> I note that this view also aligns with Legislative Design Advisory Committee's (LDAC) [guidance](#) is that legislation should generally provide a right of appeal where an individual's rights are affected by an administrative decision, unless there are factors that would make an appeal inappropriate.

<sup>4</sup> For example, on family grounds under the United Nations Convention on the Rights of the Child or on health grounds under the United Nations Convention on the Rights of Persons with Disabilities

responsibility for considering the relevant humanitarian circumstances of those affected individuals who become liable for deportation.

14. In my view, these measures are important operational safeguards, if the proposal proceeds, given the potential consequences of removing access to an IPT appeal and the complexity in navigating alternative mechanisms. The Committee may wish to emphasise the importance of these operational safeguards in its report.
15. I have later suggested what further legislative safeguards may also be considered.

### **Role of the Ombudsman verses the IPT**

16. Officials note that removing the IPT appeal avenue for certain temporary entrants will likely increase the number and scope of complaints being made to my Office<sup>5</sup> about INZ's deportation actions and decisions.<sup>6</sup>
17. I am confident my Office could absorb this potential increase without a significant impact on our operations. However, I have briefly elaborated below why complaining to the Ombudsman is not a direct substitute for the IPT.
18. As mentioned above, and as the Committee will be aware, the IPT is the specialist and authoritative body for assessment of humanitarian circumstances in deportation appeals, with the power to make binding determinations, including cancelling deportation liability where warranted.
19. In contrast, the Ombudsman power to investigate a matter is discretionary and their opinions and recommendations are non-binding (although normally followed by INZ). While we have significant experience in immigration matters, we do not have the specialist expertise of the IPT. In further contrast to the IPT, the Ombudsman can look beyond just what is lawful and express a view on what is fair and reasonable.
20. For instance, where a complaint is made about the decision of INZ in relation to deportation (including the decision of a Delegated Decision Maker)<sup>7</sup>, we would typically investigate and consider whether the decision (and the process followed) was unreasonable or unlawful. This may include examining whether INZ has adequately considered any relevant humanitarian circumstances and applicable international obligations.
21. An Ombudsman can form a range of opinions if they consider that an agency has acted improperly, and they can make any recommendations they consider necessary to fix

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<sup>5</sup> In the associated regulatory impact statement, officials note that approximately 100 to 120 appellants to the IPT each year would no longer be able to pursue this avenue and may make a complaint to the Ombudsman regarding INZ's actions and decisions in relating to issuing a deportation liability notice.

<sup>6</sup> This is because the Ombudsman generally cannot investigate if the subject matter of a complaint can be appealed, on the merits of the case, to a court or tribunal, such as the IPT (see [section 13\(7\)\(a\) of the Ombudsmen Act 1975](#)). Removal of this appeal pathway opens the door for complainants to more readily approach the Ombudsman instead.

<sup>7</sup> The Ombudsman does not have the authority to investigate complaints about the actions or decisions of Ministers, including decisions made by the Minister of Immigration or the Associate Minister of Immigration. However, we may consider complaints about the adequacy of the advice that INZ tenders to Ministers in relation to requests for ministerial intervention.

problems that have been identified. In past cases, for example, the Ombudsman has recommended that INZ reconsider deportation decisions where good administrative practice was not observed.<sup>8</sup>

22. It is important, in my view, that the Committee take note of the differences in review processes and outcomes between the IPT and an Ombudsman investigation.

### **Legislative safeguards**

23. The Committee may wish to consider what additional legislative safeguards might be introduced, should this proposal proceed. Some suggested examples are below.

### **Timeframes for gathering evidence of humanitarian circumstances**

24. Officials have noted that, as a consequence for removing the IPT appeal pathway for affected temporary entrants, the Immigration Act would now *'only afford protection for 14 days for the affected person to provide good reason why deportation should not proceed'*.<sup>9</sup>
25. Once a decision is made, officials highlight that INZ may then serve the affected person a deportation order *'immediately'* with a minimum of 15 days from the issuance of a deportation liability notice to deportation order.<sup>10</sup>
26. I note that Immigration Act 2009 currently allows for between 28 and 42 days for temporary entrants to appeal their deportation liability to the IPT on humanitarian grounds.<sup>11</sup>
27. These timeframes appear to reflect, in part, Parliament's intent to allow sufficient time for individuals to gather evidence of their humanitarian circumstances, including material relevant to New Zealand's international obligations.
28. Consequently, the Committee may wish to consider whether there should be a longer default timeframe or whether INZ officials might be granted explicit discretion to extend the 14-day window for the affected person to provide good reason why deportation should not proceed – particularly where there are circumstances justifying a timeframe extension.

### **Clearer discretion for INZ to grant short term visas**

29. The IPT has noted that, in many of temporary entrant deportation appeals on humanitarian grounds, it has granted a short-term visa to defer deportation and allow the person to settle

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<sup>8</sup> For example, see published cases: [Immigration New Zealand unreasonable to proceed with deportation when inadequate reasons were given for decision](#) and [Immigration New Zealand's decision to issue Deportation Liability Notice unreasonable in circumstances](#).

<sup>9</sup> Page 10 of the associated RIS refers, in reference to in cases where deportation liability arises, for example, under [section 157](#) of the Immigration Act due to criminal offending.

<sup>10</sup> Page 10 of the associated RIS refers.

<sup>11</sup> After first being served a deportation liability notice or becoming unlawfully in New Zealand (see sections 154 to 157 of the Immigration Act 2009).

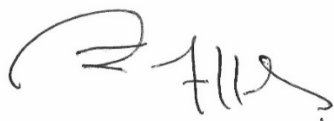
their affairs prior to leaving New Zealand.<sup>12</sup> For example, by granting a short-term visa to allow the temporary entrant's children to finish the school year.<sup>13</sup>

30. While compliance officers can currently refer a case to the Minister or a Delegated Decision Maker to consider granting a short-term visa, the Committee may wish to explore whether further legislative clarity or discretion is needed as to when a short-term visa may be granted to enable a temporary entrant to settle their affairs prior to leaving New Zealand.

### **Proposal to remove the ability for asylum claimants to bring late appeals to the IPT**

31. Currently, if an asylum claim is declined, the claimant has 10 working days to appeal this decision and to appeal their liability for deportation on humanitarian grounds<sup>14</sup> to the IPT. This timeframe is reduced to **5 working days if the claimant is in detention**.<sup>15</sup>
32. The IPT may extend this timeframe where it is satisfied that special circumstances warrant an extension.
33. I note the further proposal to remove the discretion of the IPT to accept a late appeal from asylum claimants.<sup>16</sup>
34. The IPT's ability to allow an extension as outlined in at section 194(3) of the Act is a safeguard against barriers to timely access to lawyers and interpreters for those detained under the Immigration Act 2009. Removing this ability and consequently imposing an inflexible timeframe for appeals may impact on New Zealand's international obligations to protect against refoulement.<sup>17</sup>
35. I suggest that the Committee considers this context when assessing the impact of this proposal on claimants in detention. I am also mindful that officials have stated that only a *'very small number of appeals are made out of time'*.<sup>18</sup>

Yours sincerely



John Allen  
Chief Ombudsman

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<sup>12</sup> Under [section 216](#) of the Immigration Act 2009.

<sup>13</sup> See page 15 of the RIS.

<sup>14</sup> See section 194(5) and (6)

<sup>15</sup> [Sections 194](#) and [195](#) of the Immigration Act 2009 refers.

<sup>16</sup> *Proposal 4: Remove the ability to bring late appeals to the IPT of the Parliamentary paper: proposed policy additions to the Immigration (Enhanced Risk Management) Amendment Bill*

<sup>17</sup> See article 33 of the United Nations Convention on the Status of Refugees and article 3 of the Convention Against Torture

<sup>18</sup> *Proposal 4: Remove the ability to bring late appeals to the IPT of the Parliamentary paper: proposed policy additions to the Immigration (Enhanced Risk Management) Amendment Bill*