

# **Immigration Amendment Bill**

Government Bill

As reported from the committee of the whole  
House



**Immigration Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole  
House**

text inserted

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*Hon Michael Woodhouse*

## **Immigration Amendment Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Immigration Amendment Act **2012**.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**  
This Act amends the Immigration Act 2009 (the **principal Act**).

## Part 1 Substantive amendments

- 4 Section 4 amended (Interpretation)**
- (1) In section 4, insert in its appropriate alphabetical order:  
 “**mass arrival group** has the meaning given to it by **section 9A**”.
- (2) In section 4, replace the definition of **warrant of commitment** with:  
 “**warrant of commitment**—  
 “(a) means a warrant of commitment issued under section 317, 318, or 323; and  
 “(b) includes—  
     “(i) a mass arrival warrant issued under **section 317B** (in respect of all or specified members of a mass arrival group); and  
     “(ii) a further warrant of commitment issued under **section 317E(1)(a)** (in respect of all or specified members of a mass arrival group)”.
- 5 New section 9A inserted (Meaning of mass arrival group)**  
 After section 9, insert:
- “9A Meaning of mass arrival group**
- “(1) In this Act, **mass arrival group** means a group of more than ~~10~~ 30 people, each of whom falls within 1 or more of the classes of person described in paragraphs (a) to (f) of section 115(1), who arrive in New Zealand—
- “(a) on board the same craft; or  
     “(b) on board the same group of craft at the same time; or  
     “(c) on board the same group of craft and within such a time period or in such circumstances that each person arrived, or intended to arrive, in New Zealand as part of the group.
- “(2) In **subsection (1)**, **craft** does not include a craft travelling to New Zealand in the course of a scheduled international service (within the meaning of section 96(4)).”

- 6 Section 26 amended (How claims and applications for visas and entry permission processed)**
- (1) After section 26(3), insert:  
“(3A) Subsection (3) applies unless regulations made under section 400 require otherwise.” 5
- (2) In section 26(10)(b), after “transit visas”, insert “; or”.
- (3) After section 26(10)(b), insert:  
“(c) regulations made under section 400.”
- 7 New section 135A inserted (Suspension of determination of claim)** 10
- After section 135, insert:  
**“135A Suspension of determination of claim**  
“(1) This section applies to a claim if the processing of the claim is suspended in accordance with regulations made under section 400. 15  
“(2) For the duration of the suspension, a refugee and protection officer must not—  
“(a) determine the claim in accordance with sections 136 and 137; or  
“(b) make a decision on the claim in accordance with section 138.” 20
- 8 Section 140 amended (Limitation on subsequent claims)**
- (1) In section 140(1), after “as a refugee”, insert “or a protected person”.
- (2) In section 140(1)(b)(ii), replace “section 129” with “any of 25 sections 129 to 131”.
- (3) Replace section 140(3)(b) with:  
“(b) repeats any claim previously made (including a subsequent claim).”
- 9 Section 233 replaced (When Tribunal must or may provide oral hearing)** 30
- Replace section 233 with:



**“233 When Tribunal must or may provide oral hearing**

“(1) The Tribunal must provide an oral hearing in the case of an appeal against liability for deportation by a resident or permanent resident.

“(2) The Tribunal may, in its absolute discretion, provide an oral hearing in any other appeal against liability for deportation. 5

“(3) The Tribunal must provide an oral hearing in the case of an appellant or affected person currently or previously recognised as a refugee or a protected person, or a claimant for such recognition, unless— 10

“(a) the person was interviewed by a refugee and protection officer (or a refugee status officer under the former Act) in the course of determining the relevant issue at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and 15

“(b) the Tribunal considers that the appeal or other contention of the person—

“(i) is prima facie manifestly unfounded or clearly abusive; or

“(ii) relates to a subsequent claim for refugee or protection status. 20

“(4) The Tribunal may, in its absolute discretion, provide an oral hearing in the case of an appeal that relates to a subsequent claim for refugee or protection status.”

**10 Section 249 amended (Restriction on review) 25**

Replace section 249(1) with:

“(1) No review proceedings may be brought in any court in respect of a decision where the decision (or the effect of the decision) may be subject to an appeal to the Tribunal under this Act unless an appeal is made and the Tribunal issues final determinations on all aspects of the appeal. 30

“(1A) No review proceedings may be brought in any court in respect of any matter before the Tribunal unless the Tribunal has issued final determinations in respect of the matter.

“(1B) Review proceedings may then only be brought in respect of a decision or matter described in **subsection (1) or (1A)** if the High Court has granted leave to bring the proceedings or, if 35

the High Court has refused to do so, the Court of Appeal has granted leave.

- “(1C) In determining whether to grant leave for the purposes of this section, the court to which the application for leave is made must have regard to— 5
- “(a) whether review proceedings would involve issues that could not be adequately dealt with in an appeal against the final determination of the Tribunal; and
  - “(b) if **paragraph (a)** applies, whether those issues are, by reason of their general or public importance or for any other reason, issues that ought to be submitted to the High Court for review.” 10

#### 11 Section 307 amended (Purpose of Part)

In section 307, insert as subsection (2):

- “(2) The purposes of the warrant of commitment regime for members of a mass arrival group under this Part are— 15
- “(a) to provide a practicable and administratively workable time period within which arrival processing of the mass arrival group can be completed; and
  - “(b) to provide a practicable and administratively workable time period within which any threat or risk to security or to the public arising from, or that may arise from, the members of the mass arrival group, whether collectively or individually, may be properly assessed; and 20
  - “(c) to avoid disrupting the efficient functioning of the Department, the courts, or any prison or premises identified in a relevant warrant of commitment.” 25

#### 12 New sections 317A to 317E inserted

After section 317, insert:

- “**317A Application for mass arrival warrant** 30
- “(1) An immigration officer may apply to a District Court Judge for a warrant of commitment authorising the detention, for a period of not more than 6 months, of the members of a mass arrival group (a **mass arrival warrant**) if—
- “(a) the warrant is necessary— 35
    - “(i) to effectively manage the mass arrival group; or

- 
- “(ii) to manage any threat or risk to security or to the public arising from, or that may arise from, 1 or more members of the mass arrival group; or
- “(iii) to uphold the integrity or efficiency of the immigration system; or 5
- “(iv) to avoid disrupting the efficient functioning of the District Court, including the warrant of commitment application procedure; and
- “(b) the members of the mass arrival group are detained in custody under this Part; and 10
- “(c) it becomes apparent that, before the expiry of the period for which detention is authorised, 1 or more of the circumstances described in paragraphs (a) to (d) of section 316(1) will apply to each member of the mass arrival group. 15
- “(2) Every application under this section must—
- “(a) be made on oath; and
- “(b) include—
- “(i) the number of persons to whom the warrant is to apply; and 20
- “(ia) identity information in respect of each of the persons; and
- “(ii) particulars of the craft, or of each of the group of craft, on which the persons arrived (if known); and 25
- “(iii) a description of the circumstances in which the craft, or the group of craft, arrived; and
- “(c) include a statement of—
- “(i) why the warrant is necessary in terms of **subsection (1)(a)**; and 30
- “(ii) how **subsection (1)(c)** relates to each person to whom the warrant is to apply.
- “(3) An application under this section may, but is not required to, include any other supporting evidence or information relating to the members of the mass arrival group. 35
- “(4) The Judge must determine an application under **section 317B**.
- “(5) Nothing in this section permits an immigration officer to include a person under 18 years of age in an application for a

mass arrival warrant unless the person has a parent, guardian, or relative who is a member of the mass arrival group.

“(6) In **subsection (2)(b)(ia)**, **identity information** means 1 or more of the following:

- “(a) a name of the person (which may be the name that the person is known by or a name assigned to the person): 5
- “(b) biometric information in relation to the person:
- “(c) a physical description of the person.

“**317B Decision on application for mass arrival warrant**

“(1) On an application for a mass arrival warrant under **section 317A**, a District Court Judge must,— 10

- “(a) if satisfied of the matters in **subsection (2)**, grant the application and act under **subsection (3)**; or
- “(b) if not satisfied of the matters in **subsection (2)**, refuse the application and act under **subsection (4)**. 15

“(2) The matters are that—

- “(a) the application relates to a mass arrival group; and
- “(b) the warrant is necessary for 1 or more of the reasons stated in **section 317A(1)(a)**; and
- “(c) 1 or more of the circumstances described in paragraphs (a) to (d) of section 316(1) will apply in respect of each member of the mass arrival group; and 20
- “(d) the requirements of **section 317A(2)(a) to (c)** have been met.

“(3) The Judge must issue the warrant in the prescribed form authorising the detention of each member of the mass arrival group in a place or the places named in the warrant— 25

- “(a) for the period sought in the application; or
- “(b) for a specified shorter period, if he or she is satisfied that, after the expiry of the shorter period,— 30
  - “(i) the reasons for the necessity of the warrant in terms of **section 317A(1)(a)** will no longer apply; or
  - “(ii) the circumstances described in paragraphs (a) to (d) of section 316(1) will no longer apply in respect of each member of the mass arrival group. 35

“(4) The Judge must—

- “(a) treat the application as if it were applications made under section 316 in respect of each member of the mass arrival group; and
- “(b) determine the applications in accordance with subsection (3) of that section.

5

**“317C Variation of mass arrival warrant**

- “(1) If a mass arrival warrant is issued under **section 317B**, an immigration officer may subsequently apply for a variation of the warrant to include 1 or more persons who are members of the mass arrival group but who were not known to the immigration officer who made the application under **section 317A** at the time the application was made. 10
- “(2) Every application under this section must—
  - “(a) be made on oath; and
  - “(b) include— 15
    - “(i) a copy of the original application and warrant; and
    - “(ii) identity information (within the meaning of **section 317A(6)**) in respect of each person to be included in the warrant; and 20
    - “(iii) a statement of how **section 317A(1)(c)** relates to each person to be included in the warrant.
- “(2A) On an application under this section, a District Court Judge must,—
  - “(a) if satisfied of the matters in **subsection (2B)**, grant the application and act under **subsection (3)**; or 25
  - “(b) if not satisfied of the matters in **subsection (2B)**, refuse the application and act under **subsection (4)**.
- “(2B) The matters are that—
  - “(a) the persons are members of the mass arrival group; and 30
  - “(b) 1 or more of the circumstances described in paragraphs (a) to (d) of section 316(1) will apply in respect of each of those persons; and
  - “(d) the requirements of **subsection (2)** have been met.
- “(3) The Judge must vary the existing warrant to include the persons specified in the application, but must not extend the period of the warrant. 35

- “(4) The Judge must—
- “(a) treat the application as if it were applications made under section 316 in respect of each person the immigration officer has sought to be included in the mass arrival warrant; and 5
  - “(b) determine the applications in accordance with subsection (3) of that section.
- “(5) Nothing in this section permits an immigration officer to include a person under 18 years of age in an application for a variation of a mass arrival warrant unless the person has a parent, guardian, or relative who is a member of the mass arrival group. 10

**“317D District Court may impose reporting requirements**

- “(1) When issuing a mass arrival warrant under **section 317B** or varying a mass arrival warrant under **section 317C**, a District Court Judge may order an immigration officer to report to the court, on a day or days determined by the Judge, but no more than once every 28 days for the duration of the warrant, on the continuing applicability of the reasons for the necessity of the warrant in terms of **section 317A(1)(a)**. 15 20
- “(2) A District Court Judge may shorten the period of a mass arrival warrant or a varied mass arrival warrant, and vary the warrant accordingly, if, after receiving a report, he or she is satisfied that those reasons will no longer apply after the expiry of the shortened period. 25

**“317E Application for further warrant of commitment in respect of mass arrival group**

- “(1) An immigration officer may apply to a District Court Judge for a further warrant of commitment authorising the continued detention of— 30
- “(a) all or specified members of a mass arrival group, as members of a mass arrival group; or
  - “(b) 1 or more members of a mass arrival group as individuals.
- “(2) An application for a further warrant of commitment under **sub-section (1)(a)** may be for a period of not more than 28 days and must— 35

- “(a) comply with **section 317A(2)**, and that section applies with any necessary modifications; and
- “(b) be determined by a District Court Judge in accordance with **section 317B**, and that section applies with any necessary modifications. 5
- “(3) An application for a further warrant of commitment under **subsection (1)(b)** must be made under section 316 and determined by a District Court Judge in accordance with subsection (3) of that section.
- “(4) If a member of a mass arrival group is dealt with under **subsection (3)**,— 10
- “(a) he or she—
- “(i) is no longer to be treated as a member of a mass arrival group for the purposes of this Act; and
- “(ii) must, from the time of the Judge’s determination, be dealt with under this Act as any other individual would be; and 15
- “(b) the Judge must consequentially amend the warrant of commitment relating to the mass arrival group to exclude the member from the warrant. 20
- “(5) **Subsection (4)(a)** is for the avoidance of doubt.”
- 13 Section 324 amended (Review of warrant of commitment or release on conditions)**
- (1) In section 324, before subsection (1), insert:
- “(1AA) In this section, **warrant of commitment** does not include— 25
- “(a) a mass arrival warrant issued under **section 317B** (in respect of all or specified members of a mass arrival group); or
- “(b) a further warrant of commitment issued under **section 317E(1)(a)** (in respect of all or specified members of a mass arrival group).” 30
- (2) In section 324(6), replace “in accordance with” with “having regard to”.
- 14 New section 324A inserted (Review of mass arrival warrant)** 35
- After section 324, insert:

**“324A Review of mass arrival warrant**

- “(1) In this section, **warrant of commitment** means—
- “(a) a mass arrival warrant issued under **section 317B** (in respect of all or specified members of a mass arrival group); and 5
  - “(b) a further warrant of commitment issued under **section 317E(1)(a)** (in respect of all or specified members of a mass arrival group).
- “(2) At any stage during the currency of a warrant of commitment, an immigration officer may apply to a District Court Judge for a variation of the warrant for either or both of the following reasons: 10
- “(a) to shorten the period that the warrant applies;
  - “(b) to provide for 1 or more persons detained under the warrant to be detained in a place or places other than the place or places currently specified in the warrant for those persons. 15
- “(2A) An application made under **subsection (2)** must—
- “(a) be made on oath; and
  - “(b) include— 20
    - “(i) a copy of the warrant to be varied; and
    - “(ii) a statement of the reasons for the application.
- “(2B) On an application under **subsection (2)(a)**, a District Court Judge must vary the period of the warrant of commitment— 25
- “(a) to the period sought in the application; or
  - “(b) to a specified shorter period, if he or she is satisfied that, after the expiry of the shorter period,—
    - “(i) the reasons for the necessity of the warrant in terms of **section 317A(1)(a)** will no longer apply; or 30
    - “(ii) the circumstances described in paragraphs (a) to (d) of section 316(1) will no longer apply in respect of each person subject to the varied warrant.
- “(2C) On an application under **subsection (2)(b)**, a District Court Judge may vary the warrant of commitment, but only to authorise the detention of the persons in a place or places other than the place or places currently specified in the warrant for those persons. 35



- “(4) At any stage during the currency of a warrant of commitment, an immigration officer may, in respect of a particular individual detained under the warrant, apply to a District Court Judge for—
- “(a) a warrant of commitment for the individual as an individual; or
  - “(b) an order that the individual be released on conditions under section 320; or
  - “(c) an order that the individual be released.
- “(5) An application for a warrant of commitment under **subsection (4)(a)** must be made under section 316 and determined by a District Court Judge in accordance with subsection (3) of that section.
- “(6) An application for release on conditions under **subsection (4)(b)** must be considered having regard to section 317, 318, or 323, as appropriate.
- “(7) If a member of a mass arrival group is dealt with under **subsection (4)**,—
- “(a) he or she—
    - “(i) is no longer to be treated as a member of a mass arrival group for the purposes of this Act; and
    - “(ii) must, from the time of the Judge’s determination, be dealt with under this Act as any other individual would be; and
  - “(b) the Judge must consequentially amend the warrant of commitment relating to the mass arrival group to exclude the member from the warrant.
- “(8) **Subsection (7)(a)** is for the avoidance of doubt.”

**14A Section 343 amended (Aiding and abetting)**

- (1) In section 343(1)(b), delete “(by arriving in New Zealand in a manner that does not comply with section 103 or by arriving in New Zealand without holding a visa where the other person requires a visa to travel to New Zealand)”.
- (2) After section 343(2), insert:
- “(3) For the purposes of subsection (1)(b), a person unlawfully enters New Zealand if the person—

- “(a) arrives in New Zealand in a manner that does not comply with section 103; or
- “(b) arrives in New Zealand without holding a visa, if the person requires a visa to travel to New Zealand; or
- “(c) arrives in New Zealand as the holder of a visa but the visa was— 5
- “(i) granted in a false identity; or
- “(ii) procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or 10
- “(d) is granted a visa on arrival in New Zealand but the visa is—
- “(i) granted in a false identity; or
- “(ii) procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or 15
- “(e) is granted entry permission but the entry permission is—
- “(i) granted on the basis of a visa granted in a false identity; or 20
- “(ii) procured through fraud, forgery, false or misleading representation, or concealment of relevant information; or
- “(f) enters New Zealand in any other manner and, in doing so, does not comply with the requirements of this Act. 25
- “(4) To avoid doubt, a person unlawfully enters New Zealand within the meaning of **subsection (3)** whether or not any action has been taken under this Act in relation to the visa or entry permission used by the person for the purpose of entering (for example, conviction of the person for procuring a visa by fraud or revocation of the person’s entry permission).” 30

**15 Section 403 amended (Regulations in respect of refugee and protection matters)**

(1) After section 403(k), insert:

- “(ka) specify, by reference to 1 or both of the following matters, the claims that a refugee and protection officer must not process or determine or make a decision on under sections 136 to 138: 35

- “(i) common circumstances or common characteristics of the claims:
- “(ii) common circumstances or common characteristics of the claimants making the claims.”.
- (2) In section 403, insert as subsections (2) and (3): 5
- “(2) No regulations may be made under section 400 in respect of the matters specified in **subsection (1)(ka)** of this section unless the Minister—
- “(a) has recommended the making of the regulations to the Governor-General; and 10
- “(b) before doing so, is satisfied that the regulations are necessary for 1 or both of the following reasons:
- “(i) there are problems in accessing information or assessing information that is relevant to determining or making a decision on the claims to be specified in the regulations: 15
- “(ii) the circumstances to which the claims to be specified in the regulations relate, or the circumstances of the claimants making those claims, are otherwise of a nature, or subject to such a degree 20 of change or uncertainty, that determination or decision of the claims under sections 136 to 138 is unlikely to produce a robust outcome.
- “(3) Regulations made under section 400 in respect of the matters specified in **subsection (1)(ka)** of this section— 25
- “(a) are deemed to be revoked on the date that is 6 months after their commencement or on any earlier date specified in the regulations; and
- “(b) have no continuing effect after the date on which they expire.” 30

## Part 2

### Consequential amendments

- 16 **Consequential amendments to principal Act**  
Amend the principal Act as set out in **Schedule 1**.

**17 Consequential amendments to Immigration (Certificate and Warrant Forms) Regulations 2010**

(1) This section amends the Immigration (Certificate and Warrant Forms) Regulations 2010.

(2) After regulation 6(2), insert:

5

“(3) A warrant of commitment issued by a District Court Judge under **section 317B(3) or 317E(1)(a)** of the Act must be in **form 5** of the Schedule.”

(3) In the Schedule, after form 4, insert the **form 5** set out in **Schedule 2**.

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**Schedule 1**  
**Consequential amendments to principal Act**

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**Section 116**

After section 116(1)(d), insert:

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- “(e) in the case of a person detained under a mass arrival warrant issued under **section 317B**, the expiry of the mass arrival warrant, unless a further warrant of commitment is issued under section 317, **317E**, 318, or 323 or the person is released on conditions under Part 9, or agrees to residence and reporting requirements under section 315.”

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**Section 117**

In section 117(4), replace “earlier” with “earliest”.

After section 117(4)(b), insert:

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- “(c) in the case of a person detained under a mass arrival warrant issued under **section 317B**, the expiry of the mass arrival warrant, unless a further warrant of commitment is issued under section 317, **317E**, 318, or 323 or the person is released on conditions under Part 9, or agrees to residence and reporting requirements under section 315.”

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**Section 195**

In section 195(1)(a), after “as a refugee”, insert “or a protected person”.

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**Section 200**

In section 200(1)(b)(ii), replace “section 129” with “any of sections 129 to 131”.

In section 200(2)(b)(ii), replace “section 129” with “any of sections 129 to 131”.

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In section 200(3)(b)(ii), replace “section 129” with “any of sections 129 to 131”.

**Section 311**

In section 311(d), delete “issued under section 317 or 318”.

**Section 320**

In section 320(1), replace “or 323(3)” with “323(3), or **324A(4)(b)**”.

**Section 322**

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In section 322(1)(a), delete “issued under section 317 or 318”.

**Section 339**

After section 339(2), insert:

“(3) In subsection (1), **warrant of commitment** does not include a mass arrival warrant issued under **section 317B** (in respect of all or specified members of a mass arrival group) for a period of more than 28 days.” 10

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<b>Schedule 2</b>		<b>s 17(3)</b>
<b>Immigration (Certificate and Warrant Forms) Regulations 2010—new form 5</b>		
Form 5		r 6(3)
Warrant of commitment (mass arrival warrant)		5
<i>Sections 317B(3), 317E(2)(b), Immigration Act 2009</i>		
To every constable/[ <i>name</i> ], constable*		
*Select one.		
and		
*To Manager(s) of [ <i>specified prison(s)</i> ]		
*Omit if inapplicable.		
and		10
*To Person(s) in charge of [ <i>specified premises</i> ]		
*Omit if inapplicable.		
1	[ <i>Names or other identity information of persons to be detained under the warrant</i> ] were detained in custody under Part 9 of the Immigration Act 2009.	
	An application for a mass arrival warrant under <b>section 317A</b> of that Act/A further application for a mass arrival warrant under <b>section 317E(1)(a)</b> of that Act* has been made in relation to the persons.	15
	*Select one.	
2	Subject to paragraph 3, <b>I order</b> that the persons referred to in paragraph 1 be detained until [ <i>date (no more than 6 months from date warrant signed for warrant issued under section 317B of the Immigration Act 2009 and no more than 28 days from date warrant signed for warrant issued under section 317E of that Act)</i> ].	20
3	In respect of any individual referred to in paragraph 1, if one of the following events occurs before [ <i>restate the date stated in paragraph 2</i> ] in relation to that individual, he or she must be detained only until the date that the event occurs:	25
	(a) he or she is ordered to be released by any court; or	
	(b) he or she is required to be delivered up to an immigration officer or constable under section 335(1) of the Immigration Act 2009 for the purpose of executing his or	30

Form 5—*continued*

her deportation or effecting his or her departure from New Zealand; or

- (c) written notice is received from an immigration officer that he or she has ceased to be liable to arrest and detention under Part 9 of the Immigration Act 2009. 5

- 4 **I direct you**, the constable(s), to deliver each person named or identified in the following table to the place specified in the table:

<b>Name or other identity information of person to be detained under the warrant</b>	<b>Place to which person is to be delivered</b>
<i>[specify]</i>	<i>[specify]</i>

- 5 **I direct you**, the Manager(s)/Person(s) in charge/Manager(s) and Person(s) in charge\* of the place(s) specified in paragraph 4, to receive the person(s) to be detained at that place/those places\* specified in that paragraph into your custody and detain them— 10
- (a) for the period specified in paragraph 2; or
- (b) in relation to an individual to whom paragraph 3 applies, until the date of the relevant event referred to in that paragraph. 15

\*Select one.

Dated at: *[place, day, month, year]*

Signature:

(District Court Judge)

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## Immigration Amendment Bill

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### Legislative history

30 April 2012	Introduction (Bill 16–1)
3 May 2012	First reading and referral to Transport and Industrial Relations Committee
28 August 2012	Reported from Transport and Industrial Relations Committee (Bill 16–2)
16 April 2013	Second reading
11 June 2013	Committee of the whole House

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