

FOREIGN AFFAIRS, DEFENCE AND TRADE BRIEFING PAPER

Asylum Seekers

An asylum seeker, distinct from a quota refugee, is a person who has arrived in New Zealand by illegitimate means, seeking recognition as a refugee or protected person. Once granted refugee status, they are classified as a spontaneous refugee.

Adopted by the UN General Assembly in 1948, the Universal Declaration of Human Rights (UDHR) sets out an individual's right "to seek and to enjoy in other countries asylum from persecution."¹ As a signatory to a number of international conventions that encapsulate the spirit of the UDHR (including the 1951 Convention Relating to the Status of Refugees and the 1966 International Covenant on Civil and Political Rights)², New Zealand has an international obligation to accept and protect such persons. Each year, the government grants an average of 150 asylum seekers refugee status³, allowing them to remain here indefinitely (note that there is not, currently, a minimum quota for refugees accepted by these means). However, events in recent years have underlined the need for a review of this process.

Firstly, this Bill proposes to introduce a formal annual quota of 200 for spontaneous refugees (asylum seekers granted refugee status). Whilst supported by humanitarians, this establishment of a formal quota garners the usual opposition from those who believe the financial burden of an additional 50 asylum seekers, annually, outweighs the more philanthropic concerns of protecting individuals' right to safety and asylum, as guaranteed by the UDHR.⁴

Australia and Asylum Seekers

Ever since the 2001 Tampa affair, during which 433 asylum seekers were refused entry into Australian waters, Australian asylum policies have garnered much international scrutiny. Australia's response was to adopt a hard-line policy, known as the Pacific solution, which called for asylum boat interdiction, mandatory detention and offshore processing.⁵ However, reports published in subsequent years have revealed these offshore detention centres – specifically on Nauru and Manus Island – to be sites of violence, murder, sexual predation, medical neglect and other human rights abuses.⁶

In response, there have been calls for the New Zealand Government to resettle these detained and gravely mistreated asylum seekers. Prime Minister Jacinda Ardern has reaffirmed her commitment to welcoming 150 of those detained on the two islands, and has offered \$3 million to provide essential services to those left behind. Nevertheless, these events across the Tasman have made it more important than ever for New Zealand to decide where it stands on the issue.

¹ Resolution 217 A, "Universal Declaration of Human Rights" (1948), United Nations General Assembly.

² "Information for Asylum Seekers", *New Zealand Immigration*.

³ "Refugees coming to New Zealand", *New Zealand Government*.

⁴ "How are Anti-Asylum Arguments Justified?", Simon Goodman, *The Huffington Post*.

⁵ "A race to the bottom": how Australia imported its asylum seeker policies from the US, Ben Doherty, *The Guardian*.

⁶ "Australia's offshore detention centres 'terrible', says architect of system", Ben Doherty, *The Guardian*.

⁷ "Australia's offshore detention centres 'terrible', says architect of system", Ben Doherty, *The Guardian*.

New Zealand and Asylum Seekers

The 1951 Convention Relating to the Status of Refugees protects asylum seekers from 'arbitrary detention' (interpreted to mean any practices of detention that are capricious, disproportionate or indefinite).⁷ As such, New Zealand has supposedly committed to avoid long detention periods such as those enforced in Australia. However, a 2013 amendment to the Immigration Act 2009 empowers the government to detain 'mass arrivals' (asylum seekers who arrive in groups larger than 30) for up to 6 months whilst their status is investigated, though this can be extended if approved by a District Court judge.⁸ Though introduced primarily as a measure to strengthen national security, this amendment has been strongly criticized as a 'major setback for human rights'⁹ and a contravention of New Zealand's international obligations.

So, what is to be done? The Tampa affair and Australia's abhorrent detention centre conditions certainly reinforce the need for acceptable standards of asylum seeker treatment and an expedited approval process. This Bill's proposal to limit detention periods would certainly facilitate this. However, national security concerns still remain. Though traditional fears that terrorists or criminals could try to enter New Zealand as asylum seekers may seem sensationalist and insular, reports of people smugglers among the Tampa asylum seekers have emerged, proving that such concerns are not baseless.¹⁰ Detention - though denounced by human rights proponents - is arguably the most effective way to prevent unwanted entry and to preserve border security. A balance must therefore be established between protecting both refugee rights and our borders.

Deportation Liability

Under the Immigration Act 2009, an immigrant is liable for deportation if they have either breached the conditions of their visa (for example, by overstaying) or are convicted of a criminal offence for which a court has the power to impose imprisonment for at least 3 months (though this varies depending on how long a visa has been held).¹¹ In certain cases, however, a deportation order can be appealed. This can either be on factual (i.e. they are wrongly being deported) or humanitarian grounds, meaning there are "exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported".¹²

¹² Under the latter, an appeal is made to the Immigration and Protection Tribunal.

However, with such an ambiguously defined term as this - with no further definition of "unduly harsh" or "unjust" circumstances - this Bill proposes to strengthen and establish a more comprehensive set of criteria for humanitarian appeals in order to protect those for whom it is best to stay in New Zealand, whether due to adverse circumstances in their country of origin, health issues or their level of establishment in New Zealand. Though some may herald this as a more ethical approach, there are concerns that, given the existing overcrowding issues in our prisons, to be responsible for the punishment and rehabilitation of arguably undesirable citizens would only add further, unwanted pressure.

Border Security and INZ

Immigration New Zealand (INZ) is the governmental agency tasked with managing immigration, visas and border security in New Zealand. Underfunded and understaffed,¹³ this Bill would have

⁷ *Compilation of Deliberations*. Working Group on Arbitrary Detention, OHCHR, 2013, p. 8.

⁸ "Mass arrivals bill passes into law", *Beehive*.

<https://www.beehive.govt.nz/release/mass-arrivals-bill-passes-law>

⁹ "Open letter to Immigration Minister re: Immigration Amendment Bill", *Amnesty International et al.*

https://www.amnesty.org.nz/sites/default/files/Open_Letter_to_Immigration_Minister_Re_Immigration_Amendment_Bill.pdf

¹⁰ "Decision on whether to extradite alleged people-smuggler at crux of refugee debate", Jonathan Milne, *Stuff*.

<https://www.stuff.co.nz/national/99241149/decision-on-whether-to-extradite-alleged-peoplesmuggler-at-crux-of-refugee-debate>

¹¹ Immigration Act (2009), NZ

¹² Immigration Act (2009), NZ

¹³ "Immigration NZ broke, new Minister says", Shane Cowlshaw, *newsroom*.

<https://www.newsroom.co.nz/2017/11/30/64436/immigration-nz-broke-new-minister-says>

the immigration levy (the fee imposed on migrants upon lodging a residence application) raised in order to support an increased INZ budget.

Amid globally heightened fears surrounding national security, there have been calls for border security and the screening of foreign incomers to be strengthened. However, with its current budget, INZ lacks the staff and funding necessary to achieve this. The government aims to generate sufficient revenue for the employment of 50 additional INZ staff to increase traveller profiling from 30% to 60% on high risk routes.¹⁴

Key questions to consider:

1. How can the government balance national security concerns with fulfilling its international obligations with regard to asylum seekers?
2. Do we have the resources to manage the punishment and rehabilitation of criminal migrants?
3. What is the cost of a significantly increased immigration levy for immigrants themselves? Do we want to deter immigrants further?
4. Should the government take a harder line on border security?

Further reading:

- <https://www.beehive.govt.nz/release/mass-arrivals-bill-passes-law>
- <https://www.theguardian.com/australia-news/2017/aug/16/australias-offshore-detention-centres-terrible-says-architect-of-system>

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¹⁴ *Immigration Fees and Levy Review*, Chair, Cabinet Economic Development Committee. Office of the Minister of Immigration, 2018, p. 2.