

IMMIGRATION
NEW ZEALAND



Immigration New Zealand Operational Manual

Investigations

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Note: Investigations policy contained in this section of the Operational Manual is INZ operational policy and does not constitute Government immigration policy as described in section 13A(1) of the Immigration Act 1987.

D1 OBJECTIVE

The objective of Investigations Policy is to maintain the integrity of New Zealand's immigration law and policy. This is achieved by ensuring that breaches of New Zealand's immigration laws and policies are detected and dealt with in accordance with those laws and policies.

Effective 01/10/1999

D2 PEOPLE SUSPECTED OF BEING IN NEW ZEALAND UNLAWFULLY

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D2.1 Requirement to hold permit to be in New Zealand, or to be exempt

Immigration Act 1987 ss 4, 11

See previous policy D2.1 Effective 01/10/1999

- a. No one other than a New Zealand citizen may be in New Zealand unless that person is:
 - i the holder of a current permit granted under the Immigration Act 1987; or
 - ii exempt under a provision of the Immigration Act 1987 from having to hold a permit.
- b. Any person who is in New Zealand contrary to (a) above is considered to be in New Zealand unlawfully.

D2.1.1 Who is exempt from the requirement to hold a permit

Immigration Act 1987 ss 4A, 11, 12(1) and (2), 14E(4), 150

Immigration Regulations 1999 Schedule 1, Part 2

People exempt from having to hold a permit include but are not limited to:

- a. citizens of the Commonwealth of Australia; and
- b. those exempted by special direction under section 12(2); and
- c. those entitled to immunity from jurisdiction under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971; and
- d. members of the armed forces of any country, or crew members of any craft transporting such people to New Zealand, while in New Zealand:
 - i at the request or with consent of the Government of New Zealand, and
 - ii in the ordinary course of the member's duty or employment; and
- e. crew or passengers on any seagoing ship, from the time the ship arrives at a port of entry in New Zealand until whichever of the following occurs first:
 - i the ship is given clearance to leave its last port of entry in New Zealand on the same voyage, or
 - ii 28 days have expired, beginning with the day the ship arrived at its first port of entry in New Zealand on that voyage; and
- f. crew or passengers on any foreign fishing craft licensed or seeking to be licensed under section 15 of the Territorial Sea and Exclusive Economic Zone Act 1977 for a period of 7 days after the date:
 - i on which the licence expires if a licence has been granted, or

- ii of first arrival in New Zealand if a licence is refused; and
- g. aircraft crew on any commercial aircraft flying between any other country and New Zealand, for 7 days beginning with the day on which the aircraft arrived in New Zealand; and
- h. a member of any scientific programme or expedition under the auspices of Operation Deep Freeze while in the Ross Dependency; and
- i. crew or passengers on any ship authorised by the Minister of Transport under section 198(2) of the Maritime Transport Act 1994 to carry passengers or cargo for a period of 28 days from the date the ship first arrives in New Zealand; and
- j. holders of transit visas who are in New Zealand for less than 24 hours and who during that time remain:
 - on the craft; or
 - in a Customs controlled area; or
 - in the custody of the Police; and
- k. children born in New Zealand on or after 1 January 2006 to a parent who is exempt from having to hold a permit (see A17.5).

D2.1.5 Status of people lodging an application for a permit

Immigration Act 1987 s 4(3)

Lodging an application for a permit does not:

- a. make the applicant's presence in New Zealand lawful; or
- b. give the applicant the right to remain in New Zealand while the application is being considered; or
- c. give the applicant the right to apply for or be granted any other permit while the application is considered; or
- d. protect the applicant from removal action.

Effective 01/01/2006

D2.5 Categories of people who may be in New Zealand unlawfully

See previous policy D2.5 Effective 01/10/1999

Persons who may be in New Zealand unlawfully include any of the following:

- a. the holder of a temporary permit who remains in New Zealand after that temporary permit expires;
- b. a person whose temporary permit has been revoked (see *D8.10* (on page 8-2)) and who fails to leave New Zealand before the date the revocation became effective;
- c. the holder of a Limited purpose permit who remains in New Zealand after the expiry of that permit;
- d. the holder of a Limited purpose permit which is given a shortened duration who remains in New Zealand after the expiry of that permit;

- e. the holder of a Limited purpose permit which has been revoked;
- f. a stowaway who has remained in New Zealand more than 72 hours after the craft carrying them berthed, landed or otherwise arrived in New Zealand and has not had any action taken against them under section 128 of the Immigration Act 1987 during that 72 hour period (see Y3.55);
- g. a crew member who remains in New Zealand beyond the period of their exemption from the requirement to hold a permit (see Y2.15);
- h. a person whose residence permit has been revoked and who fails to:
 - i. appeal against the revocation; or
 - ii. apply for and be granted a temporary permit under section 25(1)(d) of the Immigration Act 1987 before the revocation of residence permit becomes effective;
- i. a person claiming to be exempt from having to hold a permit, but who is found to be a person to whom section 7(1) of the Immigration Act 1987 applies (see Y3.1(a));
- j. a person released from custody under the provisions of section 128(13) or (14) of the Immigration Act 1987, unless a permit is granted;
- k. a child born in New Zealand on or after 1 January 2006 and deemed to be unlawfully in New Zealand under section 4A of the Immigration Act 1987 (see A17.5).

Effective 01/01/2006

D2.10 People unlawfully in New Zealand must leave

Immigration Act 1987 ss 45, 46

- a. From the moment a person is in New Zealand unlawfully until they leave New Zealand, they are obligated to leave New Zealand unless they are subsequently granted a permit.
- b. The obligation to leave arises if the person is unlawfully in New Zealand because:
 - i. their permit has expired or been revoked; or
 - ii. they entered New Zealand without a permit or exemption; or
 - iii. they are no longer exempt from the requirement to hold a permit; or
 - iv. they have lost New Zealand citizenship; or
 - v. they are unlawfully in New Zealand for any other reason.
- c. All people seeking visas to enter New Zealand will be advised of their obligation to leave New Zealand if they are in New Zealand unlawfully.
- d. The obligation for a person unlawfully in New Zealand to leave New Zealand arises whether or not they are aware of their obligation to leave or of their liability to be removed from New Zealand.

Effective 01/10/1999

D3 IDENTIFYING AND LOCATING PEOPLE SUSPECTED OF BEING IN NEW ZEALAND UNLAWFULLY

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D3.1 Dealing with information on people suspected of being in New Zealand unlawfully

Information alleging a person may be in New Zealand unlawfully can come from a variety of sources. An immigration officer must verify such information to the extent that they are satisfied there is good cause to suspect that a particular person is in New Zealand unlawfully. This may be achieved by establishing a person's identity and immigration status from NZIS files or database or other documentation.

Effective 01/10/1999

D3.5 Determining whether a person is in New Zealand unlawfully

- a. Once a person suspected of being in New Zealand unlawfully is located it is necessary to confirm both their identity and immigration status.
- b. The powers set out at *D3.10.10* (on page 3-1) and *D3.10.15* (on page 3-1) can be used to obtain both evidence of identity and immigration status as well as an address in New Zealand.

Effective 01/10/1999

D3.10 Powers of immigration officers and Police in relation to persons suspected of being in New Zealand unlawfully

Immigration Act 1987 ss 64, 66, 67, 136, 137, 138, 139, 141

There are a range of provisions in the Immigration Act 1987 which assist immigration officers and Police officers to locate and take action against persons suspected of being in New Zealand unlawfully. These powers and their limitations are described in detail in D3.10.1 to D3.10.35.

D3.10.1 Powers of immigration officers to require production of information from some agencies

Immigration Act 1987 s64

- a. If an immigration officer has good cause to suspect that:
 - i a particular person is in New Zealand unlawfully; or
 - ii particular premises are, or have been, occupied by a person who is in New Zealand unlawfully;

the immigration officer may prepare a certificate requiring certain government departments or other bodies to produce; and allow the officer to copy, any record or other information held that is reasonably available.

- b. The power to require production of such information and records is limited to the government departments or other bodies as set out below:

Department or Body	Class of Records or Information
Housing New Zealand	
New Zealand Post Limited	Postal delivery records
Telecom Corporation of New Zealand Limited	Telephone subscriber records other than confidential listings
Department of Work and Income	
Department of Social Welfare	
Land Transport Safety Authority	
Power supply authorities	Customer names and addresses
Local authorities	Customer names and addresses
Energy companies under the Energy Companies Act 1992	Customer names and addresses
Clear Communications	Telephone subscriber records other than confidential listings

- c. Information obtainable from the sources detailed above is limited to information about an individual which establishes:
- i in the case of a certificate under(a)(i) above, the present location of the person named in the certificate, or that person's location at any time in the past; or
 - ii in the case of a certificate under(a)(ii) above, the name(s) of the present occupier(s), or name(s) of any occupier(s) of the premises at any time in the past.
- d. If an immigration officer believes the suspected person is using one or more aliases, the immigration officer may include any such alias in any certificate.

D3.10.5 Powers of immigration officers to enter premises to obtain information

Immigration Act 1987 ss 138

- a. Immigration officers have restricted powers of entry, limited to those circumstances provided for by section 138 of the Immigration Act 1987. This section allows immigration officers to enter certain premises if they believe on reasonable grounds that a person, who is either unlawfully in New Zealand or working without authority, is named in records held on the premises; and to require production of such records.
- b. Premises include:
- i accommodation premises such as any:
 - hotel
 - motel
 - guesthouse
 - motorcamp
 - other premises where accommodation is offered for payment, except a private home; or
 - ii business premises or places of employment.

Note: This does not include educational institutions in respect of educational records

- c. Records include:

- i in the case of accommodation premises, any register or list; and
 - ii in the case of business premises or places of employment, any wages or time record kept by an employer.
- d. An immigration officer may enter any of the premises included in (b) above and any part of those premises where the officer reasonably believes any record included in (c) above is kept. No warrant or authority other than section 138 of the Immigration Act 1987 is required.
- e. Entry may be made at any reasonable time, both day and night, during which the premises are open for business.

D3.10.10 Power of immigration officers to require a suspected person to surrender documents

Immigration Act 1987 s 138A

- a. The powers conferred by section 138A of the Immigration Act 1987 should only be used if good cause to suspect a person is unlawfully in New Zealand has been established (see *D3.1* (on page 3-1)) and the person is unwilling to cooperate in confirming their actual status in New Zealand. Prior to taking a person into custody under this section, immigration officers should discuss the case with their team leader or Branch Manager.
- b. Provided they inform the person that they have good cause to suspect they are in New Zealand unlawfully, an immigration officer, for the purpose of establishing that, may require that person to:
 - i give their full name or names (if known by more than one name); and
 - ii either surrender to the officer or give the officer authority to uplift from any other person:
 - any passport or certificate of identity relating to the suspected person, whether or not it also relates to any other person; and
 - any passport or certificate of identity relating to any dependent child of the suspected person; and
 - any travel tickets or cash or security in lieu of travel tickets held by or on behalf of the suspected person; and
 - documentary or other evidence of their identity.
- c. If the suspected person refuses or fails without reasonable excuse to comply, or make reasonable arrangements to comply, with any requirement in (b) above (except the request to surrender travel tickets, or cash or security in lieu of travel tickets), the immigration officer must warn them that if they continue to refuse or fail to comply, they are liable to be detained.
- d. If, despite being warned as in (c) above, the suspected person continues to refuse or fail to comply, or to make reasonable arrangements to comply, with any requirement in (b) above, the Police may arrest the person without warrant and place them in custody.
- e. If a person is placed in custody as provided in (d) above, an immigration officer must ensure that unless:
 - i the person's identity has been confirmed; or
 - ii the person has been removed from New Zealand under section 59 of the Immigration Act 1987; or
 - iii the person has been released,

they are brought before a District Court Judge as soon as possible so that they can establish their identity to the satisfaction of the Judge. The Judge may then determine who the person is and may make any orders or directions as they think appropriate.

D3.10.15 Powers of immigration officers to require a third party to surrender documents

Immigration Act 1987 s 66

Immigration Regulations 1999 Reg 37 Form 3 Schedule 2

- a. If a person has refused or failed to surrender a passport or certificate of identity, or has given an immigration officer information on where the document can be found, an officer may, if they have good reason to suspect that a third party holds the document, request, in the prescribed manner, that third party holding the document to surrender it to them. This includes lawyers, immigration consultants etc.
- b. A person who, without reasonable excuse, fails to surrender the requested document, commits an offence under Immigration Act 1987.

D3.10.20 Use and return of surrendered documents

Immigration Act 1987 s 67

- a. Any passport, certificate, documentary or other evidence surrendered to an immigration officer under section 65 or 138A of the Immigration Act 1987 will only be used:
 - i to confirm the identity of the suspected person; and/or
 - ii to confirm the immigration status of the suspected person; and/or
 - iii to bring about the removal of the suspected person from New Zealand; and/or
 - iv in any proceedings before an Authority, Tribunal or a court.
- b. Documents or other material must be returned to the person who surrendered them :
 - i if the immigration officer is satisfied that the suspected person is not unlawfully in New Zealand; or
 - ii the purpose for which it was surrendered has been served; or
 - iii if it is still available to be returned, once the person has been removed from New Zealand.
- c. If the document or other material is known to be the property of a third party it must be returned to the third party.

D3.10.25 Powers of entry and search - Police officers

Immigration Act 1987 s 137

- a. Police officers have the same powers of entry and search as set out in D3.10.5 for immigration officers.
- b. In addition to the powers in (a) above, if any member of the Police believes on reasonable grounds that a person named in an order or notice is present they may enter any building or premises at any reasonable time by day or night, by force if necessary, for the purpose of:
 - i serving or executing any removal order; or
 - ii serving or executing any deportation order; or
 - iii serving notice of revocation of a residence permit.

D3.10.30 Power of arrest - Police officers

Immigration Act 1987 ss 134, 135

- a. The Immigration Act 1987 has a number of provisions which give Police officers powers of arrest.
- b. When arresting any person without warrant under any provision in Part II of the Immigration Act 1987 the Police officer has a duty to:
 - i inform the person at the time of arrest, unless it is impracticable to do so, of the reason for the arrest and the fact that the arrest does not relate to a criminal matter; and
 - ii if not in uniform, produce evidence that they are a Police officer.
- c. A Police officer arresting any person under the Immigration Act 1987 may call on any person nearby for assistance. That may include an immigration officer, who is then justified in assisting.

D3.10.35 Requirement on officers to identify themselves

Immigration Act 1987 s 133

- a. Immigration, Customs and Police officers are all required to identify themselves when exercising the powers of an immigration officer under the Immigration Act 1987.
- b. Suitable evidence of identity is as follows:
 - i for immigration officers, the officer's warrant of designation.
 - ii for Customs officers, evidence of the officer's appointment as a Customs officer.
 - iii for Police officers, being in uniform is sufficient, otherwise the officer's badge or other evidence of being a member of the Police.
- c. If an officer is seeking entry to any premises, building or craft in the course of their duties under the Immigration Act 1987, the officer must, if called upon to do so, state the provision or provisions of the Immigration Act 1987 which entitle them to entry.

Effective 01/10/1999

D4 REMOVAL FROM NEW ZEALAND

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D4.1 Removal action

- a. Persons who are liable to removal may be removed from New Zealand following the service of a removal order.
- b. Immigration officers have the discretion to effect removal by having a person liable for removal:
 - i taken into custody by a Police officer; or
 - ii monitoring the person's departure without having them taken into custody.
- c. Officers need to assess the most appropriate means of removal after having taken into account all the circumstances of the case.

Effective 01/10/1999

D4.5 Who is liable for removal from New Zealand

Immigration Act 1987 ss4A, 27A(2), 47, 53, 63, 114K(4)(b), 115A, 116

See previous policy D4.5 Effective 01/10/1999

A person who is in New Zealand unlawfully may be the subject of a removal order and is liable to be removed from New Zealand if:

- a. they are not awaiting an appeal under sections 47 or 115A of the Immigration Act 1987 and have been in New Zealand unlawfully:
 - i for a period of 42 consecutive days; or
 - ii (if, while still lawfully in New Zealand, they have lodged an application for reconsideration of a decision to decline a temporary permit), for a period of 42

consecutive days following the day on which they were advised under section 31 of the Immigration Act 1987 that the decision to decline their application is confirmed, if that day was later than the day on which the person became unlawfully in New Zealand; or

- b. an appeal under sections 47, or 115A or 116 against having to leave New Zealand has been declined and they are still unlawfully in New Zealand 7 days after they have been advised of the decision to decline the appeal, or 7 days after becoming unlawfully in New Zealand following the expiry or cancellation of any permit which has been granted under section 22(7) of the Immigration Act 1987; or
- c. they are unlawfully in New Zealand because a Limited purpose permit has expired; or
- d. they are in New Zealand while a previously executed removal order is still in force; or
- e. they are unlawfully in New Zealand because their temporary permit has expired, and that temporary permit was granted subject to the condition under section 27A(2) of the Immigration Act 1987 that they have no right to apply for another permit; or
- f. they are unlawfully in New Zealand due to the cancellation or revocation of their permit resulting from the confirmation of a security risk certificate under 114K of the Immigration Act 1987; or
- g. they are deemed by virtue of section 4A of the Immigration Act 1987 to be unlawfully in New Zealand (see A17.5).

D4.5.1 Removal resulting from confirmation of a security certificate

Immigration Act 1987 s 114K(4)

If directed by the Chief Executive of the Department of Labour under section 114K(4) of the Immigration Act 1987, an immigration officer must immediately make, serve and execute a removal order in relation to the person named in a security risk certificate.

Effective 01/01/2006

D4.10 Making and serving a removal order

See previous policies:
D4.10 Effective 01/04/2001
D4.10 Effective 01/10/1999

Immigration Act 1987 ss54, 56

- a. A removal order can only be made by certain designated immigration officers who have not been previously involved at any time in determining an application for a permit made by the subject of the order.
- b. If the subject of the removal order has any dependent children who are unlawfully in New Zealand, the names of any such children may be included in the removal order.
- c. A removal order must only be served where the identity and immigration status of the person named in the removal order has been established.
- d. A removal order must only be served on the person named in it by personal service.
- e. Removal orders may be served:
 - i (at residences) only between the hours of 7.00 am and 9.00 pm so long as the time of service is reasonable in the circumstances, and

- ii (at workplaces) at any time that the workplace is in operation so long as the time of service is reasonable in the circumstances. Weekend visits are permitted within the working hours of the business, and
 - iii (at workplaces which are also residential premises) between the hours of 7.00am and 9.00 pm. Visits outside of these hours to locations which are both residential and business premises may only be made where approval has been sought and obtained from the Office of the Minister of Immigration.
- f. While only certain designated immigration officers may make a removal order, any warranted immigration officer or member of the Police may serve a removal order.

If the subject of the removal order is a minor the order must be served on the nominated responsible adult (see *D5.15* (on page 5-2)).

Effective 01/07/2001

D4.15 Content and effect of removal orders

Immigration Act 1987 s 55

- a. Removal orders authorise the Police to take the person named in the order into custody and to execute the order.
- b. Removal orders inform the person named in them that:
 - i they are in New Zealand unlawfully; and
 - ii are subject to removal; and
 - iii as they have not responded voluntarily to the obligation to leave New Zealand, they will be removed from New Zealand; and
 - iv they may contact a solicitor, or counsel or designated or nominated responsible adult.

D4.15.1 Right of access to counsel etc.

Immigration Act 1987 s 140(4)

- a. Any person detained in custody under the Immigration Act 1987 has the right to contact a solicitor or counsel or any responsible adult, parent or guardian, and must be informed of that right. Immigration officers must ensure that members of the Police who are detaining a person are aware of their responsibility to advise the person of this right.
- b. If the detainee chooses to exercise that right, the person nominated must be allowed access to the detainee and assisted to communicate with the detainee in private.

Effective 01/10/1999

D4.20 Currency of removal orders

Immigration Act 1987 s57

- a. A removal order remains in force from the time at which it is served until 5 years have expired after the date the subject of the order is removed from New Zealand, unless it is cancelled before then (see *D4.25* (on page 4-4)), or (b) below applies.

- b. If the subject of a removal order is under 17 years of age on the date that the order is made, the order only remains in force until they are removed from New Zealand.

Effective 01/10/1999

D4.25 Cancellation of a removal order

Immigration Act 1987 ss 35A, 58

Immigration Regulations 1999 Form 5, Schedule 2

- a. A removal order may be cancelled if:
 - i. it was granted in error; or
 - ii. an immigration officer considers that, in all the circumstances, it is appropriate to grant a permit under section 35A of the Immigration Act 1987.
- b. Immigration officers who are designated to make removal orders may, while the subject of a removal order is still in New Zealand, cancel the removal order by endorsing a copy of the removal order accordingly and personally serving that copy of the order on the person named in it.
- c. The cancellation endorsement has the effect of directing anyone who is detaining the person named in the order as a result of the removal order, to immediately release the person from custody. The immigration officer who cancels the order must ensure that the person is released immediately.
- d. If a person has already left New Zealand or been removed from New Zealand an immigration officer who is designated to make removal orders may cancel the removal order by advising (on Form 5, Schedule 2, Immigration Regulations 1999) the person named in a removal order, that the order is cancelled.
- e. Under section 58 of the Immigration Act 1987 no person has the right to apply to an immigration officer to have a removal order cancelled. If a person purports to apply for the cancellation of a removal order, an immigration officer is not obliged to consider the application or to give any reasons for any decision relating to the application, other than that section 58(5) of the Immigration Act 1987 applies.

Note: Section 23 of the Official Information Act 1982 does not apply to any application to have a removal order cancelled.

Effective 01/10/1999

D4.30 Executing a removal order

Immigration Act 1987 s 59

- a. A removal order is executed by placing a person named in the order on a craft leaving New Zealand.
- b. For the purpose of executing the order, any member of the Police may arrest (without warrant) and detain, a person on whom a removal order has been served.
- c. The person may be detained for up to 72 hours to await being placed on the craft.
- d. Once the person has been placed on the craft, the Police may continue to detain them there to ensure that they do not leave the craft before its departure.

D4.30.1 Executing a removal order on an unmarried person under the age of 17

Immigration Act 1987 ss 59, 141B, 141D

- a. If an unmarried person under the age of 17 is to be removed from New Zealand and a parent or guardian is not accompanying them, immigration officers must:
 - i make all reasonable efforts to contact their parent or guardian to agree on suitable travelling arrangements for them; and
 - ii have nominated a responsible adult; and
 - iii give the minor opportunity to express their views (whether personally, or through a responsible adult) and give due weight to those views.
- b. Immigration officers must make travel arrangements for the person in consultation with:
 - i the nominated responsible adult for the person (see *D5.1* (on page 5-1)); or
 - ii if consultation with the nominated responsible adult is not possible or practicable, with the Director-General of Social Welfare.

Effective 01/10/1999

D4.35 Release or extended detention within the 72 hour period

Immigration Act 1987 s 60

- a. If a person is arrested or detained for the purposes of removal and it becomes apparent that:
 - i no craft will be available within 72 hours; or
 - ii the craft that the person was to have departed on is no longer available; or
 - iii the circumstances of that person make it impracticable for them to leave within 72 hours; or
 - iv the person is unable to depart within 72 hours for some other reason (such as the lodging of a claim for refugee status),then unless the person is released, an immigration officer must arrange for the person to be brought before a District Court Judge so that a warrant of commitment can be obtained.
- b. Unless a Judge considers that there are exceptional circumstances that justify the release of a person who is detained under a warrant of commitment, they may not order the release of a person if the person is currently a refugee status claimant and the claim was only made after the removal order was served.
- c. A person cannot be detained for the purposes of removal under one or more warrants of commitment for a consecutive period of more than 3 months.
- d. If a person is released from detention, this does not affect their liability for later detention and removal.

Effective 01/10/1999

D4.40 Custody

Immigration Act 1987 ss 59, 62

- a. People who are placed in custody and are to be detained overnight will be detained in approved premises or a Police station.
- b. Unmarried people under the age of 17 who are to be detained overnight will be detained in:

- i a residence or other premises under the control of, or approved by, the Director-General of Social Welfare; or
 - ii other premises agreed to by an immigration officer and the person's parent or guardian, or the adult nominated to represent the interests of the person (see *D5.1* (on page 5-1)).
- c. People who are to be detained in custody under a warrant of commitment will be detained:
- i in a penal institution (as if they are an inmate awaiting trial); or
 - ii in other premises approved for detention by the Judge before whom they were brought.

Effective 01/10/1999

D4.45 Effect of International Conventions on removal action

- a. As the New Zealand Government recognises New Zealand's obligations under international law it is essential that such obligations be taken into account when executing removal orders. International obligations which may apply in such circumstances are:
- i the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (the "Refugee Convention");
 - ii the 1966 International Covenant on Civil and Political Rights and the optional Protocol relating to that Covenant;
 - iii the 1989 Convention on the Rights of the Child and New Zealand's reservations to that Convention;
 - iv the 1984 Convention Against Torture.

D4.45.1 Refugee status claimants

Immigration Act 1987 s 129D(2)

- a. While a removal order may be served on a person who claims refugee status and who is unlawfully in New Zealand, unless Article 32 or Article 33 of the Refugee Convention allows for their removal, under no circumstances must a claimant be removed from New Zealand until:
- i they have had their claim determined by a refugee status officer; and
 - ii if applicable, had any appeal finalised by the Refugee Status Appeals Authority (RSAA); and
 - iii they are not recognised as a refugee.

Note: Refugee claims made after or at the time the removal order is served may not prevent detention of the claimant but the claim for refugee status will be given priority.

D4.45.5 Necessity to consider other rights

- a. When determining whether or not to execute a removal order it is necessary for the immigration officer to take into account the particulars of the case and the impact removal might have on the rights of:
- i the person being removed; and
 - ii any immediate family associated with that person, (particularly those who are New Zealand citizens or residents).
- b. The immigration officer must then balance the factors set out in (a) above against:

- i the rights and interests of the State in determining who should reside within its borders;
- ii the principal goals of Government residence policy;
- iii the intention of the Immigration Act 1987 to ensure a high level of compliance with immigration laws;
- iv the need to be fair to other potential immigrants who have not met policy requirements and who have not been able to remain in New Zealand.

Effective 01/10/1999

D4.50 Issue of warrant of commitment

- a. A warrant of commitment authorises the person named in it to be detained for a period of 7 days or for any shorter period that the Judge considers is necessary to enable the removal order to be executed.
- b. A warrant of commitment will be issued if the Judge is satisfied that the person in custody is the person named in the removal order and that:
 - i a craft is likely to be available within the proposed period of the warrant of commitment to take the person from New Zealand; or
 - ii the practical difficulties preventing the person being placed on an available craft within 72 hours are likely to continue, but not for an unreasonable period; or
 - iii other reasons preventing the person from leaving New Zealand within 72 hours are likely to remain in existence, but not for an unreasonable period; or
 - iv in all the circumstances, it is in the public interest to make a warrant of commitment.
- c. A craft is considered to be available if:
 - i it is travelling to a country to which the detained person has right of entry; and
 - ii the detained person has appropriate documentation to ensure entry to the country of destination will be allowed; or
 - iii the country of destination has authorised entry despite the lack of documentation; and
 - iv the person in charge of the craft is prepared to carry the detained person; and
 - v there is nothing else preventing the departure of the detained person (such as a claim for refugee status or an inability to obtain travel documents).

D4.50.1 Subsequent warrant(s) of commitment

- a. If the warrant of commitment expires and the person has still not left New Zealand, then unless they are released, they must be brought before a Judge again to have the warrant of commitment extended.
- b. Instead of extending the warrant of commitment, the Judge may order the release of the person on condition they comply with residence, reporting and other requirements, if application is made for a second or subsequent warrants of commitment and:
 - i it seems likely that detention may need to be extended a number of times; and

- ii the Judge is satisfied that the person is unlikely to abscond.

Effective 01/10/1999

D4.55 Release from prison into immigration detention

Immigration Act 1987 s 61

A person who has been served with a removal order must be released into the custody of the Police for execution of the removal order, if the person:

- a. is imprisoned in a penal institution; and
- b. is due to be released from imprisonment; and
- c. the Police have indicated their intention to execute the removal order.

Effective 01/10/1999

D4.60 People unlawfully in New Zealand arrested for other offences

Sometimes, people unlawfully in New Zealand are arrested by the Police and placed in custody because they have committed other offences. Because action in relation to other offences takes precedence over removal action, it may not be possible to proceed with removal immediately. If it is still appropriate to remove them, then a removal order should be served and the officer should liaise with the Police to determine how the removal can best be effected.

Effective 01/10/1999

D4.65 Reclaiming costs of removal

Immigration Act 1987 s 28

- a. If INZ incurs expenses in executing a removal order and the person named in the order later applies for a visa or permit, no visa or permit will normally be issued or granted to anyone included in that application, until all expenses incurred by INZ in removing the person from New Zealand are repaid (see E7.20 and R5.25).
- b. INZ may also seek to recover the cost incurred in removing a person from New Zealand from any other person or organisation involved in sponsoring, or undertaking to repatriate the person, which enabled the grant of a permit or entry to New Zealand to that person.

Effective 01/10/1999

D4.70 Forfeiture of bond

Immigration Act 1987 s 148B(7)

If a person who was issued with a visitor's visa subject to payment of a bond (see E4.58.15) is removed from New Zealand, an immigration officer must decide on forfeiture action in accordance with section 148B(7) of the Immigration Act 1987.

Effective 01/10/1999

D4.75 Appeals against having to leave New Zealand

Immigration Act 1987 s 47

- a. A person who is unlawfully in New Zealand may appeal to the Removal Review Authority against having to leave New Zealand, unless they have held a Limited purpose permit at any time.
- b. The appeal must be lodged within 42 days after the later of either:

- i the day on which they became unlawfully in New Zealand; or
- ii the day on which they received notification that their application under section 31 of the Immigration Act 1987 for reconsideration of a decision to decline another temporary permit, has been declined.

D4.75.1 Grounds on which an appeal may be lodged

- a. An appeal may only be lodged on the grounds that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be removed from New Zealand, and that it would not in all circumstances be contrary to the public interest to allow the person to stay in New Zealand.
- b. The mere fact that a person's circumstances prevent them from meeting any Government residence policy requirements for the grant of a residence permit, does not constitute exceptional circumstances of a humanitarian nature.

D4.75.5 Who may not lodge an appeal

- a. The following people may not lodge an appeal under section 47 of the Immigration Act 1987:
 - i a person who is unlawfully in New Zealand because they returned to New Zealand while a removal order relating to them is still in force; or
 - ii a person who is unlawfully in New Zealand because a limited purpose permit has expired; or
 - iii a person who is unlawfully in New Zealand after the Deportation Review Tribunal has confirmed the revocation of their residence permit; or
 - iv a person unlawfully in New Zealand because a temporary permit that was granted for the purposes of the Mutual Assistance in Criminal Matters Act 1992 has expired; or
 - v a person who is unlawfully in New Zealand because of the cancellation or revocation of their permit resulting from the confirmation of a security risk certificate under 114K of the Immigration Act 1987.

Effective 01/10/1999

D4.80 Transitional provisions - existing removal orders

Immigration Act 1987 ss 68, 69, 70

- a. If a removal order has been served on a person before 1 October 1999 that person may exercise the rights of appeal provided by previous sections 63A and 63B of the Immigration Act 1987 within 42 days of the service of the removal order.
- b. Sections 63A and 63B, and any other relevant sections as in force before 1 October 1999 will continue to apply to any such appeal as if they were still in force.
- c. If a removal order has been served on a person before 1 October 1999 and:
 - i the rights of appeal provided by sections 63A and 63B of the Immigration Act 1987 have not been exercised within the 42 day time limits in those sections; or
 - ii that person has unsuccessfully exhausted any appeal rights under those sections,

they will be liable for removal from New Zealand under Part II of the Immigration Act 1987 as if the removal order had been made under Part II, but as if section 47 did not apply. (Section 47 provides for a person who is in New Zealand unlawfully to appeal to the Removal Review Authority against the requirement for them to leave New Zealand.)

Effective 01/10/1999

D4.85 Transitional provisions - people unlawfully in New Zealand as at 1 October 1999

Immigration Act 1987 s 70

- a. Section 70 of the Immigration Act 1987 applies to people who:
 - i are in New Zealand unlawfully immediately before 1 October 1999 (i.e., at midnight on 30 September 1999); and
 - ii for whom a removal order is not in force at that time.
- b. Section 70 no longer applies to such people once they leave New Zealand.

D4.85.1 Appeal provisions

Immigration Act 1987 s 70

Immigration Regulations 1999 Form 12, Schedule 2

- a. People described in D4.85(a) above may appeal to the Removal Review Authority under section 47 of the Immigration Act 1987 before 1 October 2000 despite having been in New Zealand unlawfully for more than 42 days, unless:
 - i they are notified before that date (see (b) below) that they must leave New Zealand; or
 - ii they appeal to the Removal Review Authority under section 47 within 42 days.
- b. If, before 19 August 2000, an immigration officer serves a Notice on a person to whom section 70 of the Immigration Act 1987 applies that they must leave New Zealand or appeal to the Removal Review Authority under section 47 within 42 days, then:
 - i they may appeal under section 47 within 42 days of having been served with the Notice, despite having been in New Zealand unlawfully for more than 42 days; and
 - ii if they do not appeal within the 42 day period, or if their appeal is unsuccessful, they may be liable to be removed from New Zealand at the end of that period.
- c. At any time on or after 1 October 2000 a person described in D4.85 (a) above may be liable for removal from New Zealand unless:
 - i they are awaiting an appeal under section 47 at that time; or
 - ii they are no longer unlawfully in New Zealand.

D4.85.5 Obligation to leave New Zealand

Immigration Act 1987 s 70

- a. Department of Labour will take appropriate action to provide information to people to whom section 70 of the Immigration Act 1987 applies about their obligation to leave New Zealand, and the implications if they do not leave New Zealand.

Effective 01/10/1999

D5 MINORS

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D5.1 Nomination of responsible adult

Immigration Act 1987 s 141B

- a. If a minor and one or more of their parents are:
 - i the subject of the making, serving and execution of a removal order or deportation order; or
 - ii the subject of the revocation of a permit; or
 - iii the subject of an appeal; or
 - iv are in detention,

the parent must represent the minor's interests and the parent is the person who is the responsible adult for the minor.
- b. If a minor does not have a parent to act as a responsible adult to represent their interests, a responsible adult must be nominated to represent their interests in relation to any removal, deportation or revocation.
- c. An immigration officer or Judge must nominate the responsible adult. The person nominated should be a family member who is prepared to take on the role of responsible adult, or, if a family member is not available or prepared to take on this role, the responsible adult should be nominated in consultation with the Children, Young Persons and their Families Service (CYPFS).
- d. A person may be nominated as a responsible adult only if:
 - i the person is 20 or older; and
 - ii except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or the holder of a residence permit; and
 - iii the person is any of the following:
 - a parent, guardian or relative of the minor; or
 - a person suggested by the minor; or
 - any other person having responsibility for the minor or who is otherwise suitable to represent the minor's interests; or
 - if no other suitable person is available, a person designated by the Director-General of Social Welfare; and
 - iv (except in the case of a parent or guardian of the minor) the person agrees in writing to be nominated as a responsible adult.
- e. Should the need arise, and after reasonable consultation, a substitute responsible adult may be nominated.

- f. A responsible adult who is representing the interests of the minor must supply an immigration officer with an address in New Zealand at which they may be notified of any matter concerning the minor.

D5.1.1 Definition of 'minor'

New Zealand Immigration Act 1987 s 141B

'Minor' means a dependent child under the age of 17 years who is unmarried.

Effective 01/10/1999

D5.5 Roles and rights of responsible adult

Immigration Act 1987 ss 141B, 141C

- a. The role of a responsible adult relates to those matters or proceedings for which the nomination was made.
- b. The role of responsible adult finishes when the minor leaves New Zealand.
- c. The responsible adult may appear and be heard in any Court proceedings under the Immigration Act 1987 relating to detention of the minor.
- d. To the extent practicable given the level of maturity and understanding of the minor, the responsible adult must try to find out the views of the minor and make them known on behalf of the minor, if appropriate.
- e. Any document that must be served on or notified to the minor must instead be served on or notified to the responsible adult, and such service or notification is presumed to be service on or notification to the minor.

Effective 01/10/1999

D5.10 Views of minor to be considered

Immigration Act 1987 s 141D

- a. In any matter relating to the detention of a minor, as far as practicable, the minor must be given an opportunity to express their views on the matter, whether personally or through a responsible adult.
- b. The immigration officer must give due weight to those views taking into account the minor's age and level of maturity and understanding.

Effective 01/10/1999

D5.15 Serving a removal order or deportation order on a minor

If the subject of the removal order or deportation order is a minor the order must be served on the nominated responsible adult.

Effective 01/10/1999

D5.20 Executing a removal order or deportation order on a minor

Immigration Act 1987 s 59

See previous policy D5.20 Effective 01/10/1999

- a. If a person under the age of 17 years of age who is not married or in a civil union is to be removed or deported from New Zealand and a parent or guardian is not accompanying them, immigration officers must make all reasonable efforts to contact their parent or guardian to agree on suitable travelling arrangements for them.

- b. If agreement on the travel arrangements cannot be reached, immigration officers must make travel arrangements for the person in consultation with:
 - i the nominated responsible adult for the person; or
 - ii if consultation with the nominated responsible adult is not possible or practicable, with the Director-General of Social Welfare.

Effective 28/11/2005

D5.25 Detention of minors

Immigration Act s 141B

- a. A minor who is to be detained under the Immigration Act 1987 must have a responsible adult to represent their interests.
- b. A minor may be detained only in exceptional circumstances, and the approval of the Market Manager, Border and Investigations, is required for any such detention.

Effective 01/10/1999

D6 WARRANTS OF COMMITMENT

Immigration Act 1987 ss 59, 60(2), 75(1), 78(3), 79(1) and (7), 87(3), 86(2)(b), 97(1), 98(4), 101(4), 109(2)(b) and 110(3)

- a. Section 60(2) of the Immigration Act 1987 provides that a District Court Judge may issue a warrant of commitment to enable a person to be held in custody for longer than 72 hours if that person was taken into custody under the provisions of section 59 of the Immigration Act 1987 concerning people in New Zealand unlawfully. (See also *D4.50* (on page 4-7) and *D4.50.1* (on page 4-7))
- b. Section 79(1) of the Act provides that a District Court Judge may issue a warrant of commitment to enable a person to be held in custody for a period of longer than 48 hours if that person was taken into custody under sections 75(1) or 78(3), of the Immigration Act 1987 concerning people threatening national security and terrorists.
- c. Section 99 of the Act provides that a District Court Judge may issue a warrant of commitment to enable a person to be held in custody for a period of longer than 48 hours if that person was arrested by the Police under sections 97(1), 98(4), or 101(4) of the Immigration Act 1987 concerning the deportation of criminal offenders.
- d. Warrants of commitment must be obtained within the relevant time limits prescribed by the Immigration Act 1987, after a person is taken into custody, as follows:
 - i Sections 60(2), 87(3) and 110(3) of the Act have a time limit of 72 hours;
 - ii Sections 75(1), 78(1), 79(7), 97(1), 98(4) and 101(4) of the Act have a time limit of 48 hours;
 - iii Sections 86(2)(b), 87(3) and 109(2)(b) of the Act have a time limit of 24 hours.
- e. If a person is in custody under a warrant of commitment issued under section 99 of the Immigration Act 1987 and is not deported within 28 days after its issue, they may be brought before a District Court Judge again to consider whether they should continue to be detained, or be released. If the person remains in detention they must be brought before the District Court Judge again at intervals of not more than 7 days for consideration of further detention or release.

Effective 01/10/1999

D7 DEPORTATIONS

IN THIS SECTION

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D7.1 Who can be made the subject of a deportation order?

- a. The only people who can be made the subject of a deportation order are:
- i people who are holding residence status (under section 91 of the Immigration Act 1987), or
 - ii people who are exempt from the requirement to hold a permit (under section 92 of the Immigration Act 1987); or
 - iii people threatening national security and suspected terrorists. (under sections 72 and 73 of the Immigration Act 1987).

Effective 01/10/1999

D7.5 Deportation of a residence permit holder following conviction

Immigration Act 1987 ss 91, 93, 112.

The Minister of Immigration may order the deportation from New Zealand of any residence permit holder who is convicted (whether in New Zealand or not) of:

- a. an offence committed at any time when they:
 - i were in New Zealand unlawfully; or
 - ii were the holder of a temporary permit; or
 - iii were exempt under the Immigration Act 1987 from the requirement to hold a permit; or
- b. an offence committed within 2 years after they were first granted a residence permit, and it is an offence for which the court has power to impose imprisonment for a term of 3 months or more; or

- c. two offences committed within 5 years after they were first granted a residence permit, and each of those offences is an offence for which the Court has the power to impose imprisonment for a term of 12 months or more; or
- d. an offence committed within 5 years after they were first granted a residence permit and they are sentenced to imprisonment for:
 - i a term of 12 months or more; or
 - ii for an indeterminate period capable of running for 12 months or more; or
- e. an offence committed within 10 years after they were first granted a residence permit and they are sentenced to imprisonment for:
 - i a term of 5 years or more; or
 - ii an indeterminate period capable of running for 5 years or more.

D7.5.1 First grant of residence permit

- a. The holder of a residence permit is considered to have been first granted a residence permit either:
 - i on the first occasion on which they were granted a residence permit (or entered New Zealand lawfully for permanent residence); or
 - ii if they were granted a residence permit (or entered New Zealand on a residence visa and were granted a residence permit for the first time) on any subsequent occasion, following a continuous period of absence from New Zealand of at least 5 years, on the last such subsequent occasion.
- b. The period begins from the time the person was granted residence or its equivalent. Any previous period spent lawfully in New Zealand (e.g. on a visitor's permit) or any 'unlawful' period does not count.
- c. Any period spent in prison following conviction for an offence is not included when calculating the period spent in New Zealand.

Effective 01/10/1999

D7.10 Deportation of an exempt person following conviction

*Immigration Act 1987 ss11(1)(b) to (e), 12, 92, 93, 112.
Immigration Regulations 1999 Part 2 of Schedule 1*

The Minister of Immigration may order the deportation from New Zealand of any exempt person (i.e. any person who is exempt under section 11(1)(b) to (e) or section 12 (and Part 2 of Schedule 1 to the Regulations) of the Immigration Act 1987 from having to hold a permit), who is convicted (whether in New Zealand or not) of:

- a. an offence committed within 2 years after they first arrived in New Zealand and it is an offence for which the Court has the power to impose imprisonment for a term of 3 years or more; or
- b. two offences within five years after they first arrived in New Zealand, and each of those offences is one for which the Court has the power to impose imprisonment for a term of 12 months or more; or
- c. an offence committed within 5 years after they first arrived in New Zealand and they are sentenced to imprisonment for:
 - i a term of 12 months or more; or

- ii for an indeterminate period capable of running for 12 months or more; or
- d. an offence committed within 10 years after they first arrived in New Zealand and they are sentenced to imprisonment for:
 - i a term of 5 years or more; or
 - ii for an indeterminate period capable of running for 5 years or more.

D7.10.1 First arrival in New Zealand

- a. A person is considered to first arrive in New Zealand either:
 - i on the first occasion on which they arrive in New Zealand; or
 - ii if they arrived in New Zealand on any subsequent occasion, following a continuous period of absence from New Zealand of at least 5 years, on the last such subsequent occasion.
- b. Any period spent in prison following conviction for an offence is not included when calculating the period spent in New Zealand

Effective 01/10/1999

D7.15 Time limit(s) within which a deportation order must be made

Immigration Act 1987 s 93

- a. An order to deport a residence permit holder or an exempt person following their conviction cannot be made more than 6 months after the following dates:
 - i if a person is sentenced to imprisonment for a single offence that makes the person liable to deportation, the date on which the person is released from imprisonment; or
 - ii if the person is not sentenced to imprisonment, the date on which the person is convicted of the offence that makes the person liable to deportation; or
 - iii if the person is convicted of 2 offences that together make that person liable to deportation, the latest of the following dates:
 - the date on which the person is convicted of the earlier offence; or
 - the date on which the person is convicted of the later offence; or
 - the date on which the person is released from imprisonment for the earlier offence; or
 - or
 - the date on which the person is released from imprisonment for the later offence.

- b. In cases where a person is sentenced to imprisonment for any further offence(s) before the 6 month period referred to in (a) above expires, the provisions of that paragraph apply as if the further offence(s) were the offence(s) that made the person liable to deportation.

Effective 01/10/1999

D7.20 Preparing a deportation order

Immigration Act 1987 ss91, 92, 94, 104

See previous policy D7.20 Effective 01/10/1999

- a. All cases for deportation are referred to the Border Security Group, Workforce at the National Office of the Department of Labour so that the deportation order can be prepared and referred to the Minister of Immigration for signature.

Effective 04/07/2005

D7.25 Service of a deportation order

Immigration Act 1987 ss 2 (1), 104

Once the Minister has returned the signed deportation order, it must be served on the person named in it by personal service along with the Deportation Review Tribunal Appeal Form.

Effective 01/10/1999

D7.30 Consequences of a deportation order

Immigration Act 1987 ss 2(4), 3, 91(7), 92(7), 105, 117

- a. A deportation order comes into force from the date on which it is served on the deportee and remains in force until:
- i the Deportation Review Tribunal or the High Court quashes it; or
 - ii the Minister revokes it; or
 - iii the deportee named in the order leaves New Zealand.
- b. If a deportee leaves New Zealand after they have been served with a deportation order but before the order is executed, they will be presumed under section 2(4) of the Immigration Act 1987 to have been deported from New Zealand.
- c. If the holder of a residence permit is deported from New Zealand the permit and any returning resident's visa held by the deportee are presumed to be cancelled.
- d. At this stage, or at any future stage in the process, it is possible that the deportee (or a solicitor acting on behalf of the person), may object to being deported to a particular country and may indicate an intention to apply for refugee status. While a deportation order may be served on a person who claims refugee status under no circumstances must a claimant be deported from New Zealand until:
- i they have had their claim determined by the Refugee Status Branch (RSB); and
 - ii if applicable, had any appeal finalised by the Refugee Status Appeals Authority (RSAA); and
 - iii they are not recognised as a refugee.

- e. If the person named in a Deportation Order wishes to be deported to a country other than the country where they are normally resident or have citizenship, they must produce evidence of their right of entry to that country before their request can be considered.

Effective 01/10/1999

D7.35 Arrest of a person subject to a deportation order

Immigration Act 1987 ss 97, 99

- a. Section 97 of the Immigration Act 1987 provides that any person in relation to whom a deportation order has been made under section 91 or section 92 of the Immigration Act 1987 may be arrested at any time by any member of the Police without warrant and placed in custody.
- b. A deportee will usually only be arrested if they refuse to comply with any proper requests that are made of them or if the Police are convinced that an arrest is justified on the grounds of public safety.
- c. If a deportation order has not been served on the person before they are arrested under the circumstances given in (b) above, an immigration officer must serve the order on the person as soon as possible.

D7.35.1 Consequences of arrest

- a. If a person is arrested they must be brought before a District Court Judge no later than 48 hours after the arrest in order to determine whether or not they should be detained in custody under a warrant of commitment (see *D6* (on page 6-1)) or released from custody until their deportation.
- b. If a Judge declines to issue a warrant of commitment for the person's detention in custody and instead orders the person's release on conditions under section 101 of the Immigration Act 1987, the person is to be released under the following conditions:
 - i that they reside at a specified address; and
 - ii that they report to a Police station at intervals of not more than 7 days and at such times and in such a manner as the Judge may specify; and
 - iii any other conditions the Judge may impose to ensure the person complies with residence and reporting conditions.
- c. A member of the Police or the person concerned can apply at any time to the District Court to have the conditions varied. If the person breaches the conditions the Judge's order for their release is nullified, enabling the Police to arrest the person without warrant and bring them before a District Court Judge again.

Effective 01/10/1999

D7.40 Conditions imposed on deportee who is not in custody

- a. If a person who has been served with a deportation order under section 91 or 92 of the Immigration Act 1987 is not in custody under a warrant of commitment or subject to conditions imposed under section 101 of the Immigration Act 1987, a member of the Police can impose residence and reporting conditions on them.
- b. The conditions will require the deportee to reside at a specified address and to report to the Police station at times specified by the Police. These conditions can be varied at any time by consent between the Police and the deportee. If the deportee fails to comply with the conditions, they can be arrested without warrant by the Police and placed in custody.

Where this occurs the deportee must be brought before a District Court Judge as soon as possible.

Effective 01/10/1999

D7.45 Actions following service of a deportation order

- a. After service of the Deportation Order, the deportee must:
 - i surrender their passport or certificate of identity together with any travel tickets, cash or security in lieu of travel tickets so that they may be used to bring about the deportee's departure from New Zealand; or
 - ii give written authority to an immigration officer to uplift any tickets, cash or security from any other person who may be holding them on the deportee's behalf.
- b. INZ will make travel arrangements for the deportee (and an escort if applicable). If the deportee does not have a valid travel document or a visa required for entry to the country of destination INZ will make arrangements to obtain these. In cases where a travel document cannot be obtained (e.g., if there is no diplomatic representation in New Zealand or Australia or the representative is unable to assist), an application for a Certificate of Identity should be made to the Department of Internal Affairs.

Effective 01/10/1999

D7.50 Execution of a deportation order

- a. INZ can only ask the Police to execute a deportation order when:
 - i 21 days have elapsed from the date the order was served on the person named in it; or
 - ii a decision not to quash a deportation has been notified to the deportee following their unsuccessful appeal to the Deportation Review Tribunal or the High Court; or
 - iii 28 days have elapsed since the dismissal of an appeal to the Deportation Review Tribunal.
- b. If a deportee is imprisoned in a penal institution, the deportation order can only be executed when the deportee is released from the institution.

D7.50.1 Execution of a deportation order where the deportee is in custody under a warrant of commitment

- a. If a deportee is in custody under a warrant of commitment the Police must make a written request for the deportee's release into their custody so that they can be deported.
- b. The Police are responsible for the deportee's escort arrangements to the place of departure and must ensure that the deportee is placed on the craft and detained on board until it leaves New Zealand. If the deportee's departure is delayed for more than 24 hours, or the deportee is unable to leave within this time period, the Police must arrange for the deportee to be escorted back to the place in which they were previously held. The deportee will continue to be held in custody under the initial warrant of commitment until departure can be arranged.

D7.50.5 Execution of a deportation order where the deportee is imprisoned

If a deportee is imprisoned their date of departure must be arranged to take place on the proposed date of release from imprisonment. The Police must ask the person in charge of the place of imprisonment in writing not to release the deportee at large but to deliver them into

Police custody so that arrangements can be made to escort them to the place of departure. If the deportee cannot depart within 24 hours after their release from imprisonment, they must be brought before a District Court Judge who will determine whether or not to issue a warrant of commitment or impose conditions on the deportee.

D7.50.10 Execution of a deportation order where the deportee is not in custody

- a. Wherever possible, and in order to achieve full cooperation with the deportee, travel arrangements should be made in consultation with them.
- b. If there is an indication that the deportee will not cooperate with any arrangements being made and that they may abscond, INZ will contact the Police requesting that they arrest the deportee without warrant and detain them in custody until their departure. In such cases the deportee cannot be arrested earlier than 72 hours before they are due to depart.
- c. If the deportee cannot depart within that 72 hour period, they must either be released from custody or be brought before a District Court Judge who will determine whether or not to issue a warrant of commitment or impose conditions on the deportee.

Effective 01/10/1999

D7.55 Right of appeal to the Deportation Review Tribunal

Immigration Act 1987 ss104, 106

- a. When the Minister makes a deportation order under sections 91 or 92 of the Immigration Act 1987, the deportee may appeal to the Deportation Review Tribunal for an order quashing the deportation order.
- b. The appeal must be made within 21 days after the day on which the order is served.
- c. On appeal the Deportation Review Tribunal may quash the deportation order if it is satisfied that it would be unjust or unduly harsh to deport the person from New Zealand and that it would not be contrary to the public interest to allow the person to remain in New Zealand.
- d. No deportation order made under sections 91 or 92 of the Immigration Act 1987 may be executed:
 - i except at the request of the person named in the order:
 - within 21 days after it is served on the person named in it; or
 - until any appeal under section 104 of the Immigration Act 1987 has been decided; or
 - until any appeal under section 117 of the Immigration Act 1987 has been decided; or

- ii subject to section 96 of the Criminal Justice Act 1985, while the person is imprisoned in a penal institution.

Effective 01/10/1999

D7.60 Appeal to the High Court

Immigration Act 1987 s117

- a. If an appellant or the Minister of Immigration considers that any determination of the Deportation Review Tribunal in the proceedings as wrong in point of law, the appellant or the Minister may appeal to the High Court on that point of law.

Effective 01/10/1999

D7.65 Deportation of people threatening national security and suspected terrorists

Immigration Act 1987 ss 72, 73

- a. If the Minister of Immigration certifies that the continued presence in New Zealand of a person named in the certificate constitutes a threat to national security, the Governor General may order the person's deportation.
- b. The Minister of Immigration may order the deportation of any person if the Minister has reason to believe that:
 - i the person is a member of or adheres to any organisation or group that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand or outside of New Zealand, and constitutes a threat to public safety; or
 - ii the person has engaged in, or claimed responsibility for, an act of terrorism in New Zealand or outside of New Zealand, and constitutes a threat to public safety; or
 - iii the person will, if permitted to remain in New Zealand, engage in, or facilitate the commission of, an act of terrorism.
- c. The Minister of Immigration may revoke a deportation order made under section 73 of the Immigration Act 1987 at any time.
- d. People subject to deportation under section 72 of the Immigration Act 1987 have no right of appeal.
- e. Sections 74 to 88 of the Immigration Act 1987 set out matters in relation to deportations under sections 72 and 73 of the Act.

Effective 01/10/1999

D8 REVOCATION OF PERMITS

IN THIS SECTION

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D8.1 Powers to revoke temporary permits

Immigration Act 1987 ss 32, 33,

- a. The Immigration Act 1987 provides for a temporary permit to be revoked if any such permit is granted as the result of an administrative error (see E3.5.45, Y5).
- b. A temporary permit may also be revoked for any other good reason as the Immigration Act 1987 does not specify any particular grounds for revocation of a temporary permit. Revocation of a temporary permit is most likely to take place if the holder breaches any conditions of their permit (see E3.5.50, U7.15).

Effective 01/10/1999

D8.5 Revocation of temporary permit on grounds of administrative error

Immigration Act 1987 s 32

- a. An administrative error in granting a temporary permit occurs if:
 - i it is granted to a New Zealand citizen or a person who is exempt under the Act from the requirement to hold a permit; or
 - ii it is granted to a person to whom section 7(1) of the Act applies; or
 - iii the person granting it intended to grant a permit of some type other than the one that was actually granted; or
 - iv it is granted in contravention of any special direction, or any instruction of a kind referred to in section 130(5) of the Act; or
 - v it is granted contrary to Government policy applying at the time; or
 - vi it is granted for a period longer than that prescribed for permits of that type by regulations made under the Act; or
 - vii it is granted on the basis of an administrative error in determining an earlier application for a visa or permit.
- b. An immigration officer may revoke a temporary permit if an error as described in (a) above in granting the permit is detected within the issuing office or in the arrival hall at the Customs place, unless the holder has taken the permit out of the issuing office or Customs place.

- c. If an error as described in (a) above is detected after the holder has left the issuing office or Customs place then action to revoke the permit must follow the steps set out at *D8.10* (on page 8-2).

Effective 01/10/1999

D8.10 Revocation of temporary permit in other circumstances

Immigration Act 1987 s 33

- a. Section 33 of the Act does not define the grounds on which a temporary permit may be revoked. Instances when an immigration officer may take revocation action include, but are not limited to:
- i where the temporary permit was procured by fraud, forgery, false or misleading representation or by concealing relevant information; or
 - ii where there has been a breach of the conditions of the temporary permit; or
 - iii where a person has been convicted of a crime after being granted a temporary permit (including those discharged without conviction or given diversion).
- b. Regardless of the reason why a temporary permit is revoked, the immigration officer must be satisfied there is good reason in all the circumstances (i.e. taking both positive and negative factors into account), for revoking it and supply written reasons for doing so in a Notice of Revocation of a Temporary Permit.
- c. Action to revoke a temporary permit should not be undertaken if the holder's existing temporary permit is current for less than another four weeks, unless the person is subject to section 7(1) of the Act. If a person in that situation is not subject to section 7 of the Act then they should be informed in writing that no further temporary permits will be granted and the reason why.
- d. Only officers holding Schedule 2 delegations or above have authority to revoke temporary permits under section 33 of the Act.

D8.10.1 Bringing about revocation of a temporary permit

- a. To bring about revocation of a temporary permit it is necessary to prepare and serve a formal *Notice of Revocation of a Temporary Permit*.
- b. The *Notice of Revocation of a Temporary Permit*, may be served in person (if the revocation is under section 32 or 33) or by registered mail (if the revocation is under section 33) to the permit holder's last known New Zealand address. It is not necessary to physically endorse the relevant temporary permit in the holder's passport or travel document to bring about revocation, but this should be done if possible.

D8.10.5 Effect of revocation on temporary permit holder

- a. If the person named in the *Notice of Revocation of a Temporary Permit* is subject to section 7(1) of the Act revocation is effective immediately. Otherwise, revocation of the temporary permit takes effect on the date specified in the notice. The specified date cannot be earlier than:
- i 14 days from the date of personal service; or
 - ii 21 days after the date it was posted.
- b. The *Notice of Revocation of a Temporary Permit* informs the person named in it that they may show good cause why their permit should not be revoked. People who choose to do this must do so in writing to INZ before the date on which revocation takes effect.

- c. If the person named in the *Notice of Revocation of a Temporary Permit* fails to:
 - i show good cause why their permit should not be revoked; or
 - ii leave New Zealand;before the revocation takes effect then they are considered to be in New Zealand unlawfully and are liable to removal action.

D8.10.10 Action where permit holder claims good cause

- a. An immigration officer different to and of equal grade or senior to the one who made the decision to revoke the temporary permit should consider the reasons why the permit holder believes their permit should not be revoked and:
 - i either inform the person in writing to disregard the Notice of Revocation; or
 - ii confirm the decision to revoke the temporary permit.
- b. If the revocation is set aside then the original permit will remain in force until it expires.
- c. If the revocation is confirmed then the person must be informed in writing by personal service or by registered mail that action will be taken to remove them if they fail to leave New Zealand:
 - i by the date revocation becomes effective; or
 - ii if this has passed, the date specified in the letter confirming revocation.

Effective 01/10/1999

D8.15 Powers to revoke residence permits and returning resident's visas

Immigration Act 1987 ss 19, 20

See previous policy D8.15 Effective 01/10/1999

- a. The Immigration Act 1987 provides for a residence permit or returning resident's visa to be revoked by an immigration officer if any such permit is granted as the result of an administrative error and the error is discovered while the person is still in the arrival hall or INZ office.
- b. An administrative error in granting a residence permit or returning resident's visa occurs if:
 - i it is granted to a New Zealand citizen or a person who is exempt under the Immigration Act 1987 from having to hold a permit; or
 - ii it is granted to a person to whom section 7 of the Act applies; or
 - iii the person granting it intended to grant a temporary permit of some type other than the residence permit that was actually granted; or
 - iv it is granted in contravention of any special direction, or any instruction of a kind referred to in section 130(5) of the Act, or the Government residence policy applying at the relevant time; or
 - v it is granted on the basis of an administrative error in determining an earlier application for a visa or a permit.
- c. The Minister of Immigration may revoke a residence permit or returning resident's visa on the following grounds at any time after the holder leaves the arrival hall:
 - i administrative error; or

- ii the permit was procured by fraud, forgery, false or misleading representation or by concealing relevant information; or
- iii the permit was granted to a person who had been the holder of a visa or another permit procured by fraud, forgery, false or misleading representation or by concealing relevant information; and that fraud, forgery, false or misleading representation or concealment of information would have affected the grant of residence or the issue of the returning resident's visa; or
- iv the permit was granted to a person who was, but is no longer, recognised, as a refugee in New Zealand, that earlier recognition having been gained through fraud, forgery, false or misleading representation or concealment of relevant information; or
- v the holder of the permit or returning resident's visa has not met a requirement imposed under section 18A of the Immigration Act 1987 (see RA40, BI12, BE6.1).

Effective 04/07/2005

D8.20 Revocation of residence permits

Immigration Act 1987 s 20, 20A

See previous policy D8.20 Effective 01/10/1999

- a. All cases for revocation of residence permits and returning resident's visas are referred to the Border Security Group, Workforce at the National Office of the Department of Labour so that the notice of revocation can be prepared and referred to the Minister of Immigration for signature.
- b. Before referring any case for revocation to the Border Security Group, Workforce at the National Office of the Department of Labour, immigration officers must interview the person whose residence permit or returning resident's visa is to be revoked (and any other family member affected by the revocation) in order to determine the facts of the case and the circumstances of the person, including:
 - i their age; and
 - ii how long they have been in New Zealand lawfully; and
 - iii their personal and domestic circumstances; and
 - iv their work record; and
 - v the grounds on which the permit is to be revoked; and
 - vi the interests of their family.
- c. If a person's residence permit is revoked any returning resident's visa held by that person is deemed to be cancelled and there is no separate right of appeal in relation to the returning resident's visa.

D8.20.1 Notice of revocation

A notice of revocation must specify the grounds on which the revocation is made and, unless the permit or returning resident's visa is revoked on the ground that the person is a New Zealand citizen or is a person exempt from the requirement to hold a permit or returning resident's visa, the notice must also inform the person of:

- i their rights of appeal to the High Court and/or the Deportation Review Tribunal; and
- ii the period within which any appeal must be made; and
- iii the right to apply for a temporary permit under section 25(4) of the Immigration Act 1987 if they do not appeal against the revocation. They must apply in the manner

prescribed by regulation 12 of the Immigration Regulations 1999 and within 21 days of the date of service of the notice of revocation.

D8.20.5 Service of notice of revocation

- a. A notice of revocation must be served on the person named in it by personal service along with the appeal form.
- b. Once the notice has been served on the person concerned, the immigration officer should ask the person to acknowledge service by signing and dating all three copies of the notice. If the person refuses to acknowledge service of the notice, the notice must nevertheless be left with the deportee and the officer must record the refusal on the other 2 copies of the notice and complete the 'details of service' section on both copies.'
- c. Having served the notice on the person, the immigration officer must then inform them of:
 - i their appeal rights to the Deportation Review Tribunal; and
 - ii the time limit for lodging an appeal (i.e. 21 days after the date of service of the order).

Effective 04/07/2005

D8.25 Consequences of service of the notice of revocation

- a. After service of the revocation notice, if in New Zealand the person named in it may:
 - i leave New Zealand; **or**
 - ii apply for a temporary permit (unless they are a person to whom section 7 of the Immigration Act 1987 applies); or
 - iii appeal to the High Court against the revocation on the grounds that the Minister's decision is erroneous; and/**or**
 - iv appeal to the Deportation Review Tribunal against the revocation on humanitarian grounds. (If an appeal is lodged with the Deportation Review Tribunal, the appellant cannot subsequently appeal to the Removal Review Authority).

Note: A person may file an appeal with the High Court and with the Deportation Review Tribunal at the same time.

- b. If the person is outside New Zealand only (iii) and (iv) above apply.

D8.25.1 Application for temporary permit

A person may apply for a temporary permit under section 25(1)(d) of the Immigration Act 1987 (unless they are a person to whom section 7 of the Immigration Act 1987 applies) if:

- a. A residence permit has been granted as a result of administrative error to a person who should have been granted a temporary permit, and that error was not detected until after the person left the Customs place or issuing office and the person does not intend to appeal against the revocation;
- b. A residence permit is to be revoked on the grounds that :
 - i it was procured by fraud, forgery, false or misleading representation or by concealing relevant information; or
 - ii it was granted to a person who had been the holder of a visa or another permit procured by fraud, forgery, false or misleading representation or concealing relevant information; or

- iii the permit holder has not met a requirement imposed under section 18A of the Immigration Act 1987; and
 - iv the person's intention is to leave New Zealand and not appeal against the revocation.
- c. The application for a temporary permit must be made within 21 days of the service of the revocation notice. Any temporary permit applied for in these circumstances will come into force after the revocation of the residence permit becomes effective. (See also E4.70 Requirements for a person whose residence permit has been revoked.)

D8.25.5 Failure to apply for a temporary permit

Removal proceedings will be instituted against any person who fails to apply for a temporary permit under section 25(1)(d) of the Immigration Act 1987 within the 21 days after the service of the notice of revocation and:

- a. it is confirmed that they have not opted to appeal against the revocation; and
- b. they have not left New Zealand (other than for reasons of any emergency or circumstances beyond their control) (see *D4* (on page 4-1)).

Effective 01/10/1999

D8.30 Appeals against revocation

Immigration Act 1987 ss21, 22

- a. Any person who has been served with a notice of revocation of their residence permit or returning resident's visa may appeal to the Deportation Review Tribunal and/or to the High Court against the revocation.
- b. In the case of the revocation of a returning resident's visa, if the Minister of Immigration:
 - i has revoked the visa holder's residence permit within the previous 21 days; or
 - ii revokes the visa holder's residence permit within 21 days after the revocation of the returning resident's visa;no appeal in relation to the returning resident's visa can be made under section 21 or 22 of the Immigration Act 1987.

D8.30.1 Appeal to the High Court

- a. Any person whose residence permit or returning resident's visa is revoked by the Minister of Immigration may appeal to the High Court (subject to D8.30(b)), however they may not lodge an appeal in a case where:
 - i their residence permit or returning resident's visa has been revoked on the ground that it was procured by fraud, false or misleading representation or by concealing relevant information; and
 - ii the Minister has revoked their permit in reliance on their conviction of an offence against section 142(a), (c), or (d) of the Immigration Act 1987 or a crime against section III of the Crimes Act 1961.
- b. An appeal to the Administrative Division of the High Court against the revocation of a residence permit or a returning resident's visa on the grounds that the Minister's decision is erroneous must be lodged within 21 days after the notice of revocation has been served.

D8.30.5 Appeal to the Deportation Review Tribunal

- a. Any person whose residence permit is revoked, may appeal (subject to D8.30(b)), on humanitarian grounds, to the Deportation Review Tribunal to have the revocation quashed.
- b. An appeal to the Deportation Review Tribunal against the revocation of a residence permit must be lodged within 21 days after the notice of revocation has been served.

Effective 01/10/1999

D8.35 Institution of removal proceedings

- a. If a notice of revocation has been served and the person does not obtain a temporary permit, or the High Court or Deportation Review Tribunal has not quashed the revocation, the person will be in New Zealand unlawfully if they remain in New Zealand longer than:
 - i 21 days after the date of service of the notice; or
 - ii 21 days after the date the High Court and/or Deportation Review Tribunal notifies them of their unsuccessful appeal; or
 - iii 21 days after the date any appeal(s) is withdrawn.
- b. Where the person fails to leave New Zealand on or before the applicable 21 day period removal action can be taken(see *D4* (on page 4-1)).

Effective 01/10/1999

D9 REPATRIATIONS

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D9.1 Repatriation of people from New Zealand

Immigration Act 1987 s 148

- a. Repatriation involves the State paying some or all travel costs to enable permit holders who are not New Zealand citizens to return to a country to which they have right of entry. This will usually be their country of citizenship.
- b. In some cases where the family unit wishes to remain intact, this may include repatriating a New Zealand citizen or resident spouse, partner and dependent children.
- c. Repatriation will normally only occur in circumstances where the person is the holder of a current permit or has been in New Zealand unlawfully for less than 42 days, and then, only if *D9.5* (on page 9-1) applies.

Effective 01/10/1999

D9.5 Categories of people who may be considered for repatriation

People are not normally considered for repatriation unless:

- a. they wish to leave New Zealand, or if they are incapable of making such a decision themselves by reason of their mental condition, the relevant agencies involved consider that it is in the best interests of the person to return to their own country because of lack of family support and links in New Zealand; and/or
- b. they do not have the financial means to leave New Zealand themselves and are unable to obtain assistance from any other source; and/or
- c. they are a burden on the State and likely to remain so, because they:
 - i are destitute and require social welfare assistance; or
 - ii require long term medical or psychiatric treatment; and/or hospitalisation; and/or
- d. the State is removing one or more members of a family from New Zealand, and the family wishes to remain together but does not have the financial means to leave New Zealand themselves and are unable to obtain assistance from any other source.

Effective 01/10/1999

D9.10 Action before approval of repatriation

- a. Before approving repatriation it is necessary to confirm:
 - i the person being considered for repatriation wishes to be repatriated; or, if they are incapable of making that decision, that repatriation is the best option for the individual and New Zealand; and
 - ii the full costs of repatriation have been established, including the cost of an escort(s) if required; and

- iii financial assistance to meet the costs of repatriation is not available from any other source either in full or part; and
 - iv the person(s) being repatriated have right of entry to the country they are being repatriated to; and
 - v the person is not more appropriately subject to removal action.
- b. Approval for repatriation can only be given by officers with Schedule 1 delegations.

Effective 01/10/1999

D10 PROSECUTIONS

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D10.1 Offence provisions

The Immigration Act 1987 contains several offence provisions. Those most likely to give rise to prosecution are:

- a. Section 39(1) - an employer who allows a person to undertake employment knowing that that person is not entitled to under the Act.
- b. Section 40(1) - an 'educator' (person conducting a course of study or training) who allows a person to undertake a course of study or training knowing that that person is not entitled to under the Act.
- c. Section 125(6) - a carrier, or person in charge of a craft failing, without reasonable excuse to carry out their responsibilities under the Act.
- d. Section 126(4) - any person who:
 - i completes an arrival or departure card in a manner knowing it to be false or misleading in any particular; or
 - ii fails to comply with the requirements for persons arriving in or leaving New Zealand.
- e. Section 142 - a range of general offences against the Act.
- f. Section 136(2) - any person failing to comply with a request from an immigration officer who has good cause to suspect the person has committed an offence under section 142 of the Act.

Effective 01/10/1999

D10.5 Offences under other legislation

While the Immigration Act 1987 has a number of provisions which carry their own penalties on conviction, prosecution may be warranted under some other legislation, depending on the nature of the offence. For example, instances of document fraud may be covered by the Crimes Act 1961, and passport forgery by the Passports Act 1992. The Police conduct such prosecutions.

Effective 01/10/1999

D10.10 Section 39(1) and 40(1) offences

- a. For a prosecution to succeed under sections 39(1) or 40(1) of the Act it is necessary to prove that:

- i in the case of section 39(1), the employer, despite knowing a person is not entitled to undertake employment in New Zealand, allows or continues to allow that person to undertake employment; or
 - ii in the case of section 40(1), the 'educator', despite knowing a person is not entitled to undertake a course of study or training, allows or continues to allow that person to undertake the course of study or training.
- b. In either case the employer or 'educator' is considered to know a person does not have authority respectively to undertake employment or a course of study or training, if the employer or the 'educator' has been informed of that fact in writing by an immigration officer within the preceding 12 months, or if other evidence of knowledge is available.
- c. If a person is found to be undertaking employment or a course of study or training without authority then an immigration officer may require the employer or 'educator' to stop employing, teaching, or training that person. The immigration officer should confirm that requirement in writing and include a warning that failure to comply may result in prosecution. Revocation of the person's permit should also be considered.
- d. No employer is liable for an offence under section 39(1) if they continue to employ a person while complying with the minimum requirements of an employment contract relating to termination of employment.

Effective 01/10/1999

D10.15 Exploitation of people not legally entitled to work

Immigration Act 1987 Section 39A

- a. Every employer commits an offence if (while knowingly employing a person not legally entitled to undertake that employment in the employer's service), they act with the intention of preventing or hindering the employee from:
 - i leaving that employment, or
 - ii leaving New Zealand, or
 - iii ascertaining or seeking their entitlements under New Zealand law; or
 - iv disclosing to any person, the circumstances of their employment by the employer.
- b. Examples of hindrance or prevention of a person leaving the employment or ascertaining their employment rights are:
 - i retaining possession of a person's passport, travel or identity document or travel tickets;
 - ii preventing or hindering access to or use of a telephone by the person;
 - iii preventing or hindering the person from leaving the premises;
 - iv preventing or hindering a labour inspector from having access to the premises.

- c. The offences above may be punishable by a fine of up to \$100,000 and a prison term of up to 7 years.

Effective 07/10/2002

D10.20 Section 125(6), 126(4) and 126A(4) offences

The provisions set out at Y2 detail the responsibilities of carriers and persons arriving in and departing New Zealand and instances where failure to comply with those responsibilities could result in prosecution.

Effective 01/10/1999

D10.25 Section 142 - General offences

- a. All visa and immigration officers need to familiarise themselves with the provisions of section 142 of the Act as they may encounter possible offences when processing applications for visas or permits or receive information alleging improper actions by people which may constitute offences under these provisions.
- b. Prosecutions for offences under section 142 can be taken against New Zealand citizens and residence permit holders and can include offences committed by a person acting on behalf of another person.
- c. If the person concerned is being dealt with by way of removal action or revocation of permit, then prosecutions under section 142 are not normally instituted.

Effective 01/10/1999