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**WORKFORCE (IMMIGRATION NEW ZEALAND)
INTERNAL ADMINISTRATION CIRCULAR NO: 10/13**

To:	All Workforce (Immigration) Managers	Date: 04 November 2010
	All Workforce (Immigration) Staff	
	MFAT Posts (information only)	

Transitioning to the Immigration Act 2009

This IAC provides important information for all staff on transitioning from the Immigration Act 1987 (1987 Act) to the Immigration Act 2009 (2009 Act). Please **read** this information and ensure that all staff members who may be affected are aware of what is required of them.

This document covers the following:

- [AMS - Lodgement of applications before and after 29 November 2010](#)
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AMS – Lodgement of applications before and after 29 November 2010

Applications tendered on and from 29 November 2010

1. Applications that are tendered on and from 29 November 2010 are to be lodged under the new application type/category in AMS that is relevant to the 2009 Act.

Applications tendered prior to 29 November 2010

2. When lodging an application from 29 November that was *tendered prior to 29 November* branches will need to create the application under the appropriate 2009 Act application type/category. This is because the previous application types/categories will not exist in AMS from 29 November. This is described in further detail under “*Lodgement scenarios*”, below.
3. In most cases AMS will recognise the tender date as being before 29 November and the fee will be adjusted to the fee that applied prior to 29 November; if this does not occur, the fee applicable at tender date is to be receipted and a fee waiver ‘administrative’ may be applied for any outstanding fee amount, with the reason ‘*minor fee regulations differential*’ (IAC 10/06 ‘Fee Waiver Guidelines’ applies).

Lodgement scenarios

4. These lodgement scenarios provide further guidance on the lodgement of applications from commencement of the new Act. They refer to applications that were tendered *prior to 29 November 2010*, but are not lodged *until 29 November 2010* or after:

Scenario One

*This applies to **onshore** applications. An application for a visa & permit is tendered on 26 November with the visa and permit application fees. The applications are not ready for lodgement in AMS until 29 November:*

- The application is to be lodged as a visa application only, as permits no longer exist as an application type.
- Both the permit and visa application fees are to be receipted, as these are the fees that apply as at the tender date of the application. This will result in an overpayment showing in AMS; however, receipting will equal the banking so there will be no impact in reconciliation at the end of the day.
- No refunds are applicable (*note this is consistent with IAC 10/08 ‘Updated Fee Payments and Refunds’*).

Scenario Two

*This scenario applies to **onshore and offshore** applications. An application is tendered on 26 November for an application type that exists under the 1987 Act, but there is a new application type under the 2009 Act when lodging on 29 November:*

- The application will need to be lodged under the new corresponding 2009 Act application type, but the original tender date can still be entered. For example, a section 35A application becomes a section

- Because this is a new application type, AMS will show the fee required as the new fee applicable as at 29 November. However, the fee is still to be receipted as per the fee that applied to the 'old' application type on the tender date.
- If the old fee at tender date is less than the new fee at lodgement date, then the outstanding amount is to be waived using a fee waiver 'administrative'.

Lodgement criteria: police certificates

5. Immigration Instructions effective 29 November 2010 contain a change to the validity of police certificates that were submitted with a previous application. Immigration Instructions at A5.10(d) state that:

d. If police certificates were submitted with a previous application, they can be accepted for any further application for a temporary entry class visa made within 24 months of the date of issue of the police certificates.

6. When accepting new applications from the Act commencement, Immigration Officers are to check if a police certificate was submitted by the applicant within the previous 24 months. If so, a new police certificate is not required with the new application.

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AMS - Determining existing visa and permit applications from 29 November

7. Applications created in AMS under the 1987 Act will remain in AMS from commencement of the 2009 Act. All visa and permit applications lodged prior to 29 November 2010, but decided after this date, will retain the determination questions that applied pre-29 November 2010.

8. For applications that are approved, Immigration Officers will be able to format the visa label according to the new language and terminology of the 2009 Act (e.g. a visa may be granted with stay and travel conditions).

Returning Resident Visa (RRV) applications

9. From commencement of the 2009 Act, RRVs will not exist as an application type/category in AMS. This means that any RRVs in process as at 29 November will be unable to be determined. Immigration Officers will therefore need to lapse the application in AMS and create a new application under the corresponding application type/category of the 2009 Act. The lapsing reason is "Immigration Act 1987" (refer to *Lapsing applications in AMS* on page 6).

10. When creating the new application, you will be able to enter the tender date as the date the application was originally tendered (i.e. even though the tender date was prior to commencement of the Act). The following table

illustrates what undetermined RRV applications should be re-lodged as from 29 November. Further information can also be found on the [Residence Fact Sheet](#).

Application type lodged under 1987 Act	Assessed as being entitled to	Replacement application type under 2009 Act	Label Details
General RRV	Indefinite RRV based on holding NZ citizenship	Endorsement – New Zealand citizen - general	
	Indefinite RRV based on commitment to NZ	Permanent Resident Visa - general	Travel expiry: indefinite Visa expiry: indefinite
	Non - indefinite RRV	Resident Visa - Variation of travel conditions (if person holds residence permit and/or current RRV)	Travel expiry: same date as you would have granted the RRV until Visa expiry: indefinite
	Non – indefinite RRV	Resident Visa – Grant of second or subsequent resident visa (if person does not hold residence permit or current RRV)	Travel expiry: same date as you would have granted the RRV until Visa expiry: indefinite
RRV Replace	Indefinite RRV based on holding NZ citizenship	Endorsement – New Zealand citizen - general	
	Indefinite RRV based on commitment to NZ	Permanent Resident Visa - Replace	Travel expiry: indefinite Visa expiry: indefinite
	Non – indefinite RRV	Resident visa – Replacement visa	Travel expiry: same date as you would have granted the RRV until Visa expiry: indefinite

Variation of Conditions (VoC)

11. Immigration Officers are to be aware of the following difference in VoC applications:

- A VoC application lodged and determined from 29 November 2010 will generate a label; however,
 - A VoC application that has been lodged *prior to* 29 November 2010 (i.e. under the 1987 Act), but is determined from 29 November 2010 will generate a *letter only*.
12. There is no requirement for Immigration Officers to alter anything in respect of any VoC applications that are undecided prior to commencement of the 2009 Act.
13. *Onshore* branches should note the following: if a person only holds a permit to be in New Zealand, at commencement of the 2009 Act they will be deemed to hold the corresponding visa, but this will not have travel conditions. Therefore, if they intend to travel out of New Zealand and wish to return they will need to apply for a Variation of Travel Conditions and pay the fee (just as they would have had to apply and pay for a visa under the 1987 Act). For example, a person holding a work permit only valid to 30 June 2011 will be deemed to hold a work visa valid to 30 June 2011. If they wish to travel they will need to apply for Variation of Travel Conditions which if granted could be granted for multiple journeys to 30 June 2011.

Applications that have been 'Approved in Principle' (AIP)

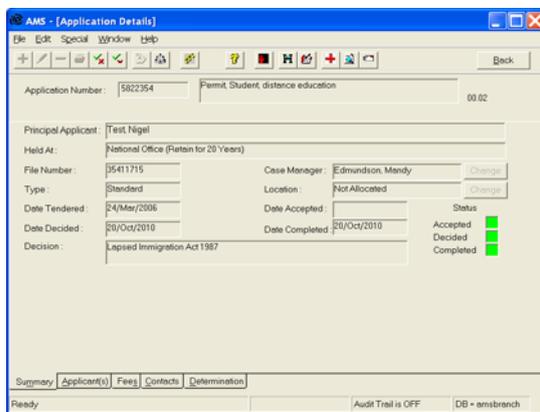
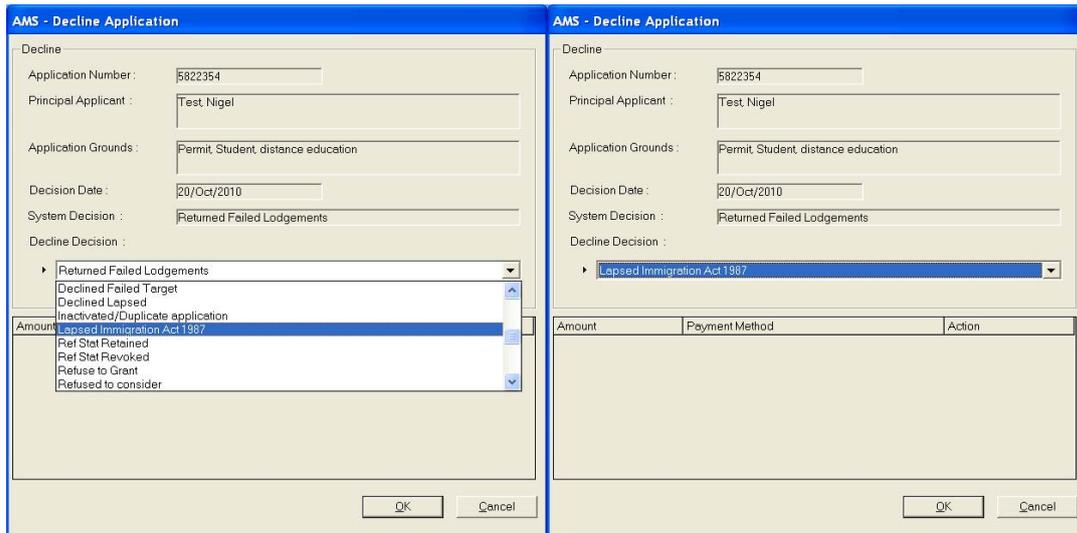
14. Immigration Officers are to be aware that applications that have been AIP'd prior to commencement, but are finally determined post-commencement, will need to have the label re-formatted prior to granting. This is because any labels that have been formatted prior to commencement of the 2009 Act will have conditions under the 1987 Act and will therefore be incorrect.
15. Immigration Officers will need to check label conditions of AIP'd applications before printing, to ensure the conditions are those that apply to the 2009 Act. Any pre-formatted labels granted in error will need to be cancelled and re-issued.

Onshore branches

16. Where there is an existing application for a permit only, this can continue to be determined as usual, as label formatting will allow for a visa to be granted.
17. Where there is an existing application for a visa and permit that has been made prior to commencement of the 2009 Act, the Immigration Officer will need to lapse the visa application in AMS (reason: "Immigration Act 1987" as illustrated below) and continue to determine the permit application. The permit application will be retained as the majority of processing notes will be held against this application. Again, if the permit application is approved, label formatting will allow for a visa with travel conditions to be granted.

Lapsing applications in AMS

18. The following screens illustrate lapsing an application where it no longer exists under the 2009 Act, e.g. lapsing a RRV as discussed earlier:



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Labels

New visa labels

19. Visa labels have been updated to reflect the 2009 Act. Business Services Group will be in contact with branches and Ministry of Foreign Affairs and Trade (MFAT) posts about ordering new stock when this is closer to being available, and also about the destruction of old (1987) labels.

20. The new visa labels are to be used from 29 November 2010, *except in the following situations:*

Transitional cases and the use of Immigration Act 1987 Manual Labels

21. Although new manual labels will be distributed to all branches, all current stocks of Immigration Act 1987 manual labels **must be retained in branches** until further notice. These are predominately for use when there is an unplanned AMS outage.

Why?

22. Despite general commencement of the Immigration Act 2009 on 29 November 2010, from that date there will still be a small group of clients for whom the

Immigration Act 1987 Act applies. Amongst others, this group includes residence permit holders who, as at 29 November 2010, are in the process of appealing the Minister of Immigration's decision to revoke their residence permit and/or returning resident's visa. Such a person is eligible, on application, for a returning resident's visa under the Immigration Act 1987. Additionally, if such a person presented themselves at a border on arrival in New Zealand (with a valid returning resident's visa) they must be granted entry under the Immigration Act 1987 - including a residence permit border stamp in their passport.

How will this work?

23. All affected clients will be identified and will have information warnings placed on their AMS record. If you are presented with an application for a returning resident's visa, a residence permit (border only), a temporary permit under section 25(1)(d) of the Immigration Act 1987, or an application to transfer a residence permit and/or returning resident's visa into a new passport, a standard check of the applicant's AMS warnings will alert you to the fact that they are a special transitional case. The AMS warning will direct you to instructions on how to process their application, including the use of an Immigration Act 1987 manual label or an Immigration Act 1987 residence permit stamp (border only).
24. It is very important that the steps to process such applications are followed. If the steps are not followed, the process to revoke the client's residence permit and/or returning resident's visa may be jeopardised. It is important to note that the group of affected clients is relatively small and the likelihood of receiving an application from an affected client is small.

Label cancellation

22. There may be instances where a label has been formatted prior to commencement of the 2009 Act. If the label is then granted following commencement, it will be incorrect. Immigration Officers will then need to cancel the label and re-issue it.
23. From 29 November, when approving applications that were created *before* commencement of the 2009 Act, please check the format of all labels prior to granting to ensure the conditions are in accordance with the 2009 Act. Adhere to label cancellation procedures (IAC 06/16 *Label Management Procedures*) if a label is granted with the incorrect format and conditions.

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Forms

24. Old forms that are valid on 28 November 2010, may continue to be accepted indefinitely on and after 29 November 2010, with the following exceptions:
- Form 1004 *Application for Returning Resident's Visa*,
 - Form 1024 *Sponsorship form for Residence*, and
 - Form 1025 *Sponsorship form for Temporary Entry*.

25. The three forms specified above are not to be accepted for any application made/tendered from 29 November 2010. As there is no longer a Returning Resident's Visa application type, applicants will be required to complete the appropriate form for a residence visa or an endorsement. Enhanced sponsorship obligations under the 2009 Act require that only forms valid under the 2009 Act be accepted for applications made from 29 November 2010.

26. If one of the three forms specified above is provided with an application made on or after 29 November 2010, the following options are available to branches:

- Return the application as failed lodgements, **or**
- Continue to process the application, but not decide the application until the new form is provided, **or**
- Accept the application as tendered and place on hold pending receipt of the new form.

Immigration Officers should discuss the best course of action with their Branch Manager.

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Delegations

Letters of delegation

27. All delegated officers (Immigration Officers, Refugee and Protection Officers and Compliance Officers) must have an updated letter confirming their delegations. Managers will need to ensure that all officers have an updated letter from 29 November 2010.

Warrant cards

28. Staff in Compliance and at the Border exercising certain powers must have new warrant cards from 29 November 2010. While it is not mandatory for other officers to hold a warrant card, the department will be issuing all officers with warrant cards. Cards are being sent to branches as they are produced and most branches should receive their cards in time for 29 November.

Spreadsheet

29. An updated version of the Delegations spreadsheet will be available before 29 November so that managers can review an officer's delegations and prepare their letter confirming their delegations. The current version of the spreadsheet will continue to be available until 29 November 2010.

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Former Exemptions

Confirmation of status

30. Persons formerly exempt from the requirement to hold a permit under the 1987 Act (e.g. diplomatic and consular staff) may request confirmation of their immigration status under the 2009 Act. Such persons can be reassured of their status as per the provisions of section 417 of the 2009 Act, otherwise a new template letter has been created (V336), which may be provided to

them if written confirmation of their status is requested. There is no fee required for this letter.

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Agreements with third parties

31. Service Design has identified those agreements with third parties that may be affected. An agreement could also be called a Memorandum of Understanding (MoU), accord, contract, data share, exchange of information, partnership agreement, performance agreement or service level agreement. While some agreements have been updated, other third parties will be sent a letter advising them of the new Act. If your branch has a local agreement which you think may be affected, please ensure the agreement is updated in a timely manner or contact Service Design for assistance.

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Appeals

32. The Immigration and Protection Tribunal (IPT) will replace the Residence Review Board (RRB), Removal Review Authority (RRA), Refugee Status Appeals Authority (RSAA), and the Deportation Review Tribunal (DRT). The IPT will commence on 29 November 2010 and will be located with the Ministry of Justice.

33. The IPT website address is: www.justice.govt.nz/tribunals.

Appeal forms and guides

The Ministry of Justice has advised that new appeal forms and guides will be available on the IPT website, together with a link from the INZ website. www.justice.govt.nz/tribunals/immigration-protection-tribunal from mid-November.

Transitional RRB/RRA appeals

35. A transitional RRB/RRA appeal is an appeal that is available at 29 November but not lodged until after that date. Transitional appeals will be considered by the IPT under the provisions of the 1987 Act (that is, under the Act in force when the decision being appealed was made or the event being appealed occurred).

36. Transitional appeals filed on or after 29 November will be made on existing appeal forms. RRB and RRA appeal forms will therefore remain on both the INZ and IPT websites until late January 2011.

Appeal fees: Transitional appeals

37. The fee for RRB or RRA transitional appeals will continue at the current level of \$715.56 including the increase in GST. The fee may be payable either to the Ministry of Justice, or to the RRB or RRA (as requested on the current appeal forms).

Appeal fees: New appeals to the IPT

38. The fee for an appeal to the IPT will be \$550.00 inclusive of GST. This will be payable to the Ministry of Justice.

Appeal fees: Refugee appeals

39. There is no fee for an appeal on refugee/protection grounds.

Where to lodge an appeal: Transitional appeals

40. Ideally transitional appeals filed on or after 29 November should be filed at the IPT address (stated below). A DOL IPT Liaison Team will forward to the IPT any transitional RRB/RRA appeals that are lodged at the current RRB/RRA addresses, which are to be retained until February 2011. Following this, re-direction orders will be established for referral to the IPT.

Where to lodge an appeal: New appeals

41. New appeals are to be filed with the IPT. The IPT will be located in the RSAA premises on Level 22, BDO Tower, 120 Albert Street Auckland. It will continue to use the RSAA postal address (PO Box 90-251 Victoria Street West, Auckland).

Contacting the IPT

42. From 29 November, appellants will need to contact the IPT in relation to any appeal enquiries.

Telephone contacts

43. The IPT will retain the RSAA telephone number (09-914-4299) and fax number (09-914-5263). A referral message to the IPT will be left on the public telephone numbers for the RRA and RRB from 29 November.

Email contacts

44. The IPT email address will be IPTinquiries@justice.govt.nz. From 29 November a referral message will be posted on current email addresses for the RRB, RRA and RSAA, directing enquirers to the IPT. The current appeal authorities' websites will also be updated for the new email address.

Refugee appeal procedures

45. Refugee appeals that are not decided at 29 November will transition to the 2009 Act immediately so that protection grounds may be considered by the IPT. This is more advantageous to the appellant than the current provisions. The exception to this is an appeal against a refusal to consider a subsequent claim (sections 448(7) and 449(4) of the 2009 Act).