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Te Kaunihera Wahine O Aotearoa

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**Submission to the Transport and Industrial Relations Select Committee on the Immigration Bill**

NCWNZ is an umbrella organisation representing 46 Nationally Organised Societies and National Members. It has 28 Branches throughout the country attended by representatives of those societies and some 150 other societies. It also has three satellite groups and three regional consultation groups. NCWNZ is representative of approximately 350,000 women, via its affiliated bodies. The Council's functions are to serve women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ welcomes the opportunity to consider this Bill. The response has been prepared by the Public Issues Standing Committee.

**General Comments:**
Members found this to be a wide-ranging and comprehensive re-write of the Act, so will comment on only some aspects. The total re-write was appreciated rather than having to consider the usual amendment process which inevitably results in a jigsaw of references. However it is felt that the wording of some clauses is less than clear in both the wording and the intent e.g. clause 4(4) and clause 12(3)

NCWNZ agrees that States must balance the need to ensure security with respect for the rights of individuals. This Bill although including positive aspects, also contains many measures which are out of step with international best practice, even in countries which are facing more serious security threats than New Zealand.

The stated purpose of the Bill, "to manage immigration, through balancing the rights of the individual and the national interest as determined by the Crown", overlooks the first immigration document of this nation, the Treaty of Waitangi, which gives us all the right to be here. In the national interest there seems to have been very little consultation or dialogue by the Crown with the Treaty partner, except that Te Puni Kokiri was informed of the proposals, and no specific Maori input into the Bill.

The Bill seems to be drafted from the perspective of security services and border control, undermining the fulfilment of New Zealand's domestic and international human rights obligations, as well as the findings of the New Zealand Courts. It is also of concern that the cumulative approaches proposed by the Bill undermine the institution of asylum.

A significant context of the Bill is the assumed security threat raised in other recent legislation such as the Terrorism Suppression Amendment Bill.

NCWNZ endorses the Human Rights Commission's expectation of immigration legislation that it should reflect:

- compliance with relevant international standards;

- non-discrimination;
- the right to be treated with dignity and respect at each stage of the process;
- observation of the principles of natural justice which are evident in transparent and fair procedures, procedural safeguards, and clear rules relating to the protection of personal information and;
- adequate protection of all immigrants and in particular vulnerable groups such as children and young people.

**Specific Comments:**

**Part 1 Preliminary provisions**
**Clause 4 Interpretation**
**(1)** Definition of **Security**
This definition is extremely broad - for example 'the protection of New Zealand from activities within or related to New Zealand that impact adversely on New Zealand's international well-being, reputation or economic well-being'. This definition overrides the standards established by the Supreme Court in the Zaoui case. The Government could define someone a 'security risk' for all sorts of reasons under this definition.

Once defined as a security risk people are subject to all sorts of strict measures, including deportation, with no right of appeal. This could apply to a person with permanent residency whose residency has been questioned (Part 6, Clause 152**)**

**Clause 5 Definition of Classified Information**
It is very concerning that the definition of classified information has been widened from being limited to information from security services to allow the Chief Executive of any government agency to designate information as classified. It expands the use of secret information exponentially.

The definition is so broad that it could include information from WINZ, the Police or the Immigration Service or could include letters from spiteful relatives or communities.

Members are amazed that the Chief Executives can determine what they present to the Tribunal but the Tribunal cannot seek information from Chief Executives, which limits the Tribunal's effectiveness in cases involving classifies information (Part 7, Clause 215).

Also of concern is that the legislation will be retrospective, so that secret information will be able to be used for cases being considered now, including in refugee and protection status decisions (Part 12, Clause 435).

**Part 2 Core provisions and decision making**
**Clause 9 Certain convicted or deported persons not eligible for visa or entry permission**
NCWNZ has some concerns about (1)(b) that defines a conviction within the preceding 10 years as a reason for not granting a visa or entry permission, and queries why the Criminal Records (Clean Slate) Act 2004 provision of seven years does not apply.

Concerns were also raised about 1(f) where permission to enter will not be granted to a person who has been removed from another country. Such removal may have been for political or other unsubstantiated reasons.

**Clause 10 Certain other persons not eligible for visa or entry permission**
10(a) is seen to broaden the criteria for exclusion to include the situation where the Minister 'has reason to believe the person is likely to commit an offence in New Zealand that is punishable by

imprisonment or is a risk to public order or the public interest'. The speculative nature of this provision suggests that it could be abused and may infringe the presumption of innocence.

**Clause 26 No right to apply for or have certain matter considered**
Members are concerned that the decision maker for granting a visa does not have to give reasons for refusing. This could be a potential breach of s27(1) of the New Zealand Bill of Rights Act 1990 – the right to observance of natural justice and ability to answer adverse allegations. It prevents an independent review of decisions.

**Clause 29 Use of biometric information in decision making and Part 4 Clause 88 Collection of biometric information from proposed arrivals**
The Privacy Commissioner has consistently raised concerns regarding the collection of biometric information not only from immigrants or potential immigrants, but also from New Zealand citizens.

There are also concerns about the use of biometric methods for determining the age of child applicants. Age tests require triangulation of methods, which would involve an extensive process of information collection on vulnerable children, and there are no safeguards in the Bill for this.

**Part 3 Visas**
**Clause 49 Applications by minors**
This provision is seen to disadvantage people aged 16 and 17 who are not married or in a civil union and is inconsistent with s19 of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 which limits discrimination on the grounds of age to people over the age of 16 and by reason of marital status.

**Part 4 Arrivals and departures**
**Clauses 86-88 Advance passenger processing**
It appears that the advance passenger processing system would screen people before they travel to New Zealand, operating as a barrier to entry without effective guarantees that this process would not act as a barrier to genuine refugees accessing asylum procedures.

**Part 5 Refugee and protection status determinations**
**Clause 116 Recognition of refugees selected offshore**
Members see this as a positive step where the status of refugees that come to New Zealand under the refugee quota is regularized.

**Clause 122 Additional requirements for recognition as protected person**
In this Bill the 'protected persons' category is negated by **Clause 122(b).** This denies protection if 'torture, arbitrary deprivation of life, or cruel treatment' are generally faced by other persons in their country. In other words it would not apply to people who are threatened by indiscriminate or generalised violence in their country.

This is inconsistent with New Zealand's core obligations under the Convention Against Torture[1] and other international human rights conventions. It does not appear to provide complementary protection.

**Part 7 Review and appeals**
**Clause 193 Immigration and Protection Tribunal**
The creation of this new Tribunal which replaces the current Residence Review Board, the Refugee Status Authority, with the removal of the Review Authority and the Deportation Review

[1] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available: http://www.ohchr.org/english/law/cat.htm

Tribunal, could be a cause of lack of expertise in certain areas of law, particularly refugee law, on a Tribunal with such a wide-ranging mandate.

**Clause 235-239 Special Advocates**
NCWNZ believes that these clauses will severely limit the role of the Special Advocate who should be able to represent the person concerned in the disclosure process in the way the information or parts of it are communicated to the person concerned. According to this Bill, this information must be approved solely by the people making the decisions (for example the Tribunal Part 7 Clause 216)**.** The Special Advocate cannot represent the person concerned in this process.

It appears that Special Advocates would also be unable to bring their own proceedings, for example by way of judicial review (clause 235(2)). This limits natural justice, as the decisions made by the Tribunal where classified information is involved, cannot be supervised by the judiciary. Judicial supervision is seen as crucial for ensuring that justice is served in our common law system.

**Part 9 Detention and monitoring**
**Clause 275 Initial period of detention for up to 96 hours without warrant**
Under this Bill new arrivals can now be detained by the Police for an extended period of 96 hours without a Warrant of Commitment - an increase from 72 hours. This initial period of detention is usually in police cells. NCWNZ noted that penal facilities have been routinely identified as inappropriate for immigration detainees.

The Bill also extends powers of detention to Immigration Officers, who can detain individuals at the airport for up to four hours. This raises concern as to the qualifications of an Immigration officer to exercise such a significant power.

These extensions to current periods and powers of detention are contrary to the norms and principles of international law which states that there should be a presumption against detention, particularly for asylum seekers, and that forced and voluntary migrants should only be detained for the minimum justifiable period.

**Clause 289 Process for High Court to consider application**
At present a person can be detained on the basis of classified security information and if so they can go to court to seek release or challenge their detention. However in the Bill, the Court must treat the secret information as accurate.

The Court's ability to supervise detention is completely undermined by this process and will be powerless to assess the information. Members are very concerned that this would give unsupervised power of detention to those officials classifying the information.

**Part 10 Offences, penalties, and proceedings**
**Clause 315 Offences by education providers**
Children who are in New Zealand irregularly can continue to attend compulsory education. Education providers will not be committing an offence by continuing to teach these children. NCWNZ believes that this is a positive step.

**Part 11 Miscellaneous provisions**
**Cause 336 Immigration status of persons born in New Zealand … and Clause 337 Immigration status of persons whose status depends on immigration status of parent**
Under the Bill the immigration status of children born in New Zealand is dependent on that of their parents. If the child's parents are in New Zealand irregularly and the child cannot claim citizenship

in the country of their parent's birth, then a child could be born stateless in New Zealand, effectively with no right of appeal.

There are concerns that the Bill at times fails to make special provisions for children, which means that children could be subject to inappropriate treatment of processes.

**Clause 340 Views of minors to be considered**
A positive step is that in proceedings involving minors, the child has the right to present his or her views and for those views to be considered.

**Concluding Comments**
NCWNZ has some major concerns about this Bill as stated in our opening comments and in the clause analysis, in particular the consideration of human rights versus security. Members have also noted some positive aspects such as that the purpose statement now refers to individual rights and recognises the contribution that immigrants can make to the local workforce.

The Bill recognises some of the international human rights conventions including the Convention Against Torture and the International Covenant on Civil and Political Rights[2]. There are other relevant Conventions which have a bearing on the Bill which are not recognised, such as the Convention on the Rights of the Child[3].

When Bills are put out for public discussion, members see it as important that the writing style be such that it is easily read and understood, therefore use of such terms as 'amicus curiae' and de novo' should be avoided.

Members would also like to express their disappointment about the lack of consultation with Maori in the drafting of this Bill. Maori are an important part of the 'national identity' (general policy statement) and should have been involved. The national interest should not only be determined by the Crown.

Finally a major concern is the proposed devolution of decision-making to front line staff, on the right or not, of entry into New Zealand, and further the prospect of automated electronic decision-making, based on criteria, but with no right of appeal, and no review proceedings being allowed to be brought to court. This seems to be a major change from public expectation of a humanitarian Bill.

Thank you for the opportunity to comment.

Christine Low
**President**

Joan Macdonald
**Convener Public Issues Standing Committee**

[2] Available: http://www.ohchr.org/english/law/ccpr.htm
[3] Available: http://www.ohchr.org/english/law/crc.htm

***Oral submission to the Transport and Industrial Relations Select Committee on the Immigration Bill***
**When:** Thursday 8 November 2007
**Present:** Beryl Anderson, Lynda Sutherland, Christine Low

**Select Committee:** Chairperson: Mark Gosche (L)

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| David Bennett (N), | Sue Moroney (L), | Kate Wilkinson (N), |
| Peter Brown (NZF), | Lesley Soper (L), | Maurice Williamson (N), |
| Darien Fenton (L), | Judith Tizard (L), | Pansy Wong (N). |

Good morning. My name is Beryl Anderson. I am the convener of the Parliamentary Watch Committee of the National Council of Women of New Zealand. With me this morning is the National President Christine Low, and Lynda Sutherland, Executive Officer. This submission has been prepared by the convener of the Public Issues Standing Committee in consultation with members of NCWNZ, the Board and PWC. As well we have prepared a supplementary submission on an area of omission from the Bill.

NCWNZ agrees that States must balance the need to ensure security with respect for the rights of individuals. There needs to be a better balance in this Bill between domestic and international human rights obligations, and the needs of security services and border control.

While the Bill recognises some of the international human rights conventions, there are others that appear to have been overlooked such as the Convention on the Rights of the Child. We are also concerned at the lack of reference to the Treaty of Waitangi, which gives us all the right to be here.

We are concerned that the balance of decision making (on the right or not, of entry into New Zealand) is being devolved to front line staff, and the prospect of automated electronic decision-making, based on criteria, but with no right of appeal in some circumstances. The power of immigration officers should not be increased beyond those applying in the current Immigration Act

Members have expressed concern at the definition of Security in **Clause 4**. More consideration should be given to the definition of a security threat and its definition greatly narrowed.

The definition of classified information **Clause 5** needs to be narrowed to only cover the police and security services and here should be an effective right to challenge such information in court.

The membership believes that the detention of new arrivals **clause 275** should be kept to a minimum with an adherence to international best practice.

The omission of mention of environment internally displaced person – environmental refugees – we outlined in the supplementary submission.

“New Zealand has not made, and does not currently intend to make any specific commitment to resettle such migrants/environmental refugees from the Pacific, but we shall continue to monitor the situation and any potential future implications for immigration policy.” – (Environmental Migrants – briefing paper to Minister of Foreign Affairs 22 September 2006)

The supplementary submission has presented the moral obligation New Zealand has to our Pacific neighbours. Of equal import however is the sensibility of addressing this matter sooner rather than

later. While it is understandable that New Zealand work alongside the global community to address the threat of climate change and rising sea levels, as a small state we risk losing our self-determination, our ability to set our own quota levels and how we might integrate environmental refugees into the New Zealand way of life. NCWNZ believes that this matter should be addressed now, in this revision of the Immigration Act, rather than at a time of crisis.