

Submission from Asia:NZ on the Review of the Immigration Act 1987

The Asia New Zealand Foundation (Asia:NZ) was founded in 1994 as a non-profit, apolitical organisation dedicated to building New Zealand's links with Asia. Through its activities in education, business, media, culture, research and policy studies, Asia:NZ aims to promote initiatives which deepen understanding and relationships between New Zealanders and the peoples of Asia.

Asia:NZ offers its perspective on the review of the Immigration Act 1987 (the Act) as we recognise the importance of immigration to New Zealand's past, present and future. Asia:NZ retains a watching brief on immigration matters, in particular due to its contribution to the growth of New Zealand's Asian communities and the related importance of the Asian region to New Zealand's future.

Our submission is directed at the proposed legislative changes and we are preparing a separate document commenting on the wider policy framework.

Reason for the review and purpose of the legislation

Asia:NZ agrees that the Act needs to be updated given the increase of people flows around the world and the varied reasons for migration flows: people movements may include migrants seeking a temporary or permanent move for work or lifestyle reasons, refugees seeking a safe haven or relatives desiring to re-connect with family members. At the same time, this increase in movement also means that illegal movements have the potential to become faster and easier. It is acknowledged that New Zealand needs to make sure that its borders are adequately protected. However, alongside this safeguarding requirement we must also actively encourage immigration for our future benefit.

During the past decade, New Zealand's immigration policy has had the aim of increasing the level of human capital as well as increasing economic growth. The economic importance of migrants and their international linkages underlines the importance of the argument of the Chamber of Commerce that immigration policy should be a central component of wider economic and trade policy. Accordingly, immigration legislation should not just focus on how to keep people out but should also recognise the importance of migrants to the development of our economy and society.

Overly restrictive legislation may decrease New Zealand's attractiveness as a destination for migrants. We must remain appealing in this competitive setting, such as providing a welcoming environment so that migrants can contribute to the benefits associated with their remaining here, whether that is in a temporary or permanent capacity. New Zealand therefore has a responsibility to consider the access and equity issues for migrant settlement; settlement problems faced by migrants represent both personal losses and a loss for New Zealand in terms of social and economic productive potential. Asia:NZ feels that the importance of settlement is not made clear in the proposed changes to the Act.

Inclusion of settlement language

High quality legislation is meant to give effect to government policies. However, the changes to the Immigration Act appear to give little weight to settlement - despite this having been a major change in policy focus in recent years.

Research has revealed that there are many instances of poor settlement outcomes for migrants of non-English speaking backgrounds. Entry into the New Zealand workforce is one of the most difficult settlement aspects with barriers to migrant employment being well researched. It is also suggested that many private sector companies and government organisations are underutilising migrants' skills and abilities by not recognising their intellectual, cultural and linguistic capital.¹

Therefore, Asia:NZ welcomes the recent attention paid to settlement initiatives and in particular the National Settlement Strategy. However, this is only mentioned in the context of the wider immigration change programme within the Immigration Act review discussion paper. In order to place appropriate weight on achieving suitable settlement outcomes there is a need for this to be more specifically stated within the legislation, which would then help ensure that settlement outcomes continue to be central to policy. It is noted that the Code of Practice for the Pastoral Care of International Students is specifically mentioned in the proposed legislative changes; therefore it seems reasonable that the National Settlement Strategy should also be included.

¹ Burrell, B., Hawthorne, L. & Richardson, S. (2006), *Evaluation of the General Skilled Migration Categories*, Australia.

The need for a regular consultation mechanism

Asia:NZ supports a whole of government approach to immigration. It is agreed that legislation and policy should not be made in a vacuum and that consultation should be widely and comprehensively made. Asia:NZ has attended a number of the meetings held to discuss the review of the Act and in addition we have contacted a wide variety of business and community groups to discuss their submissions on the Act.

Overwhelmingly the discussions we have taken part in have tended to focus on policy issues. This strongly suggests the need for a formalised, regular consultation process on immigration policy. This is of especial importance given that policy has such a direct impact on the composition of migrants approved for residence in New Zealand, as the progression of policy initiatives from 1991 reveals.

In the early 1990s, the introduction of the points system saw a significant increase in migrants settling in New Zealand from countries in Northeast Asia.² More recently the introduction of the Skilled Migrant Category (SMC) has notably changed the composition again, with a shift back to more traditional source countries: the United Kingdom and South Africa now contribute over 60 percent of migrants under the SMC.³ Such changes have had direct implications for those countries such as China and India whose representation has dropped markedly.⁴

The establishment of a two way consultation process would allow the Department of Labour to explain current policy settings while at the same time hearing from those affected by policy decisions. Other countries already have such mechanisms. For instance in Australia, development of migration policy involves consultation with all parties concerned. A wide consultative process is carried out between federal and state governments, businesses, unions, environmental groups, churches, NGOs and community groups (including migrant groups).⁵

² Ibid

³ Ibid.

⁴ Ibid.

⁵ 86th Council Workshops (2003). Workshops for Policy Makers report: Labour Migrant, Australia.

⁶ *Legislation Advisory Committee Guidelines* (2001), Legislation Advisory Committee: Wellington, p. 28.

Likewise, such a consultative process in New Zealand should be based on the principles of openness, transparency, integrity and mutual respect.⁶ Consultation can improve the legitimacy and support for government action. It is also particularly relevant in relation to issues of trust for those who have the power to make decisions that have a significant impact on peoples' lives. Credibility of the officials involved in migration decision making needs to be built up in order that the Department of Labour can be perceived as a transparent and efficient agency that makes fair and transparent decisions.

Offshore perceptions

It would also be of value to note that although legislation is made within the domestic context, changes have international repercussions and a clear understanding of legislative and policy implications between key countries is important. There should be mechanisms to ensure that our legislative and policy framework is explained offshore, in particular to those countries important for New Zealand's future. In the Asian region this would particularly include China, South Korea, Japan, India and the ASEAN states.

Asia:NZ response to the Immigration Act Review

The next section addresses certain aspects of the legislative proposals contained in the review document.

Discussion document proposal	Asia:NZ comments
<i>S3 Purpose and Principles</i>	
3.1 Do you agree with the suggested purpose of New Zealand's immigration legislation	Asia:NZ agrees that a purpose statement should be included in the Act. However, we question how the new legislation fits with the broad policy objectives when the key issue of settlement is not mentioned in the Act itself.
3.2 Do you agree that the principles as outlined should underpin the development of our	As suggested by the Human Rights Commission, we agree that a reference to the economic, social and

immigration legislation?	cultural benefits of migrants should be included.
<i>S5 Decision making</i>	
5.1 Should the power to make positive exceptions to residence policy be delegable to selected senior immigration officials?	<p>Currently there is no flexibility for immigration officers to make exceptions to residence policy.</p> <p>Increasing delegation to immigration officials is problematic considering the perception from constituents that unfair decisions are often made. The credibility of the system would need to considerably improve before this could become a viable option.</p>
5.2.2 Do you agree that an applicant should be able to be declined on the basis of classified information without disclosing the classified information to the applicant?	<p>Potentially prejudicial information can lead to an application being declined. Concern has been raised in consultation regarding the use of potentially prejudicial information, which raises questions about the principles of natural justice as the source of such information may be inaccurate.</p> <p>Therefore Asia:NZ does not agree that applications should be able to be declined on the basis of classified information when this information is not disclosed to the applicant.</p>
<i>S6 Exclusion and Expulsion</i>	
6.1 Do you agree that health and character grounds for exclusion should be included in legislation?	Asia:NZ finds the exclusion based on health criteria concerning and supports the view of the Human Rights Commission. Excluding or expelling a person on the basis of poor health or disability may be contrary to the New Zealand Bill of Rights Act (NZBORA); this is a

	prohibited ground of discrimination under section 19 of the Human Rights Act 1993.
<i>S7 Access to review and appeal</i>	
7.1.1 Which residence applicants should have access to independent appeal?	<p>Review and appeal provide important mechanisms for ensuring that government is held accountable for decisions it makes and the quality of those decisions.</p> <p>It is preferred that all residence applicants should have access to independent appeal because this upholds the principle of the legislation to provide a fair immigration system.</p> <p>Asia:NZ believes there is a need for avenues of appeal to support the principles of justice and fairness.</p>
<i>S8 Independent Appeal Bodies</i>	
8.2.1. Which government department should service the immigration and refugee appeals bodies?	Asia:NZ supports the proposal that the Ministry of Justice should administer the appeals process. This ensures a clear separation of the decision makers and allows for transparency and robust decisions to be made in a timely manner.
<i>S9 The Use of classified information</i>	
9.3 Do you support the proposal to allow the use of classified information in refugee/protection determinations with appeals heard by a judge of the independent immigration and refugee tribunal?	<p>Asia:NZ supports the Human Rights Commission view that the use of classified information contravenes the right to a fair hearing and the principles of natural justice.</p> <p>Asia:NZ finds the use of classified information in general concerning when such information cannot be</p>

	openly challenged. The sources of classified information cannot always be assumed correct and robust; therefore proposals for its usage incur judicial risks for New Zealand's immigration system.
<i>S10 Compliance and Enforcement</i>	
<p><i>10.1</i> Should officers be able to require information to assist with investigations regarding those who: 1) have stayed in New Zealand beyond the expiry of their permit, or 2) are breaching permit conditions (such as working on a visitor permit), or 3) may have obtained their refugee status or permit through fraud or misrepresentation?</p> <p><i>10.1.2</i> Should delegated immigration and Customs officers be able to detain people liable for detention and/or arrest for immigration purposes until Police can become involved (for a maximum of four hours)?</p> <p><i>10.1.3</i> Should the existing powers of entry and search that Police and Customs have in the immigration context be conferred on immigration officers?</p>	<p>Asia:NZ responds to all three of these questions collectively:</p> <p>In line with the previous comment made regarding perceptions credibility and fairness (S5), it is proposed that no further extension of police and customs officers' powers be granted to immigration officials. There is already concern regarding the decision making processes and conferring more powers would serve to exacerbate this concern.</p>
<i>S13 The Role of Third parties</i>	
This section considers the relationship between those individuals who come to New Zealand and third parties who have a relationship with them.	Asia:NZ agrees that a stronger legislative basis for sponsorship benefits and responsibilities is required in order to off-set the risks of employing migrants for employers.

<p>13.2.1 Should the legislation provide a stronger basis for sponsorship benefits and responsibilities?</p>	<p>Enabling businesses and organisations to act as sponsors would broaden the potential pool of sponsors as well as reflect business realities where an application is not always supported by one individual. It is agreed that this would ensure that a high-risk potential worker's presence is able to benefit New Zealand through contributing to the economy.</p>
<p>13.3.2 Should employers be legally obliged to positively check that a prospective employee is entitled to work for that employer?</p>	<p>Asia:NZ does not support the option of introducing employer obligation to check the status of their employees. Although this may help maintain the integrity of the immigration system, this benefit is offset by the potential for selection discrimination. Barriers to migrant employment are already of concern, in particular the unemployment and underemployment of highly skilled and qualified migrants. This option would not be in the best interests for New Zealand or for migrant settlement.</p>
<p><i>Education providers</i> Current immigration policy requires that all education providers offering course places must be signatories to the Ministry of Education's Code of Practice for Pastoral Care of International Students.</p> <p>13.4.1 Should immigration legislation include a reference to education providers' obligation to comply with the Ministry of Education's Code of Practice for Pastoral Care of International Students?</p>	<p>Asia:NZ supports the proposal that legislation should include a reference to education providers' obligation to comply with the Ministry of Education's Code of Practice for Pastoral Care of International students.</p> <p>International education is one of New Zealand's key revenue sources and it is therefore in the best interests of New Zealand to safeguard the quality of education and the responsibilities towards its international students. This would also enhance the perception of New Zealand as an attractive education destination.</p>

<i>S14 New Zealand's roles as an international citizen</i>	
<i>14.4</i> The paper asks whether New Zealand should become party to the 1954 <i>Convention Relating to the Status of Stateless Persons</i>	Asia:NZ along with the Human Rights Commission and Refugee and Migrant Services agree that New Zealand should become a signatory to the Stateless Persons Convention.