

PRESENTERS

Peter Moses, Barrister, Auckland

Peter specialises in immigration and refugee law. He has worked in this field since 1999, when he joined the New Zealand Immigration Service as a Refugee Status Officer. Since leaving the NZIS in 2002 Peter has worked as a lawyer in private practice. He has been a barrister sole since 2007. Peter is the current convener of the ADLSi's Immigration and Refugee Law Committee and has been a member of the committee since 2005. He was a member of the NZLS working party preparing submissions on the Immigration Bill in 2006/2007, and presented the NZLS submissions to the Parliamentary Select Committee. He regularly presents CLE papers for the ADLSi.

Fraser Richards, Department of Labour, Wellington

Fraser has been employed by the Department of Labour since completing his legal studies at Victoria University in November 2002. Initially, he was employed within Immigration New Zealand, where he held an immigration officer warrant and also advised in the offices of the Minister and Associate Minister of Immigration. He joined the Department's legal team as a solicitor in July 2005. Since that time, amongst other things he has provided legal support during the drafting and implementation of the Immigration Advisers Licensing Act 2007 and the Immigration Act 2009, as well as the corresponding Regulations and Immigration Instructions under those Acts.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1.	DEVELOPMENTS IN IMMIGRATION LAW	1
2.	THE IMMIGRATION ACT – WORKING AT THE SHARP END: AN ADVOCATE’S PERSPECTIVE	3
	THE LEGAL LANDSCAPE – A NEW BALANCE?	3
3.	OVERVIEW OF MAIN CHANGES	7
	BACKGROUND TO IMMIGRATION ACT 2009	7
	IMMIGRATION ACT 2009 AMENDMENT ACT 2010	8
	KEY CHANGES	8
	<i>Visas and terminology changes</i>	8
	<i>Sponsorship</i>	9
	<i>Refugees and Protected persons</i>	10
	<i>Streamlined appeal process</i>	10
	<i>Classified information</i>	10
	<i>Streamlining the deportation process</i>	10
	<i>Detention and Monitoring</i>	11
	<i>Immigration Officers’ Compliance Powers</i>	12
	<i>Biometrics and Information Sharing</i>	12
	<i>Employer and education provider obligations</i>	13
	<i>Infringement offences for airlines</i>	14
4.	STATUTORY TERMINOLOGY	15
	PURPOSE STATEMENT	15
	ABSOLUTE DISCRETION	16
	EXCLUSION	19
	<i>Section 15</i>	21
	<i>Section 16</i>	24
	CLASSIFIED INFORMATION	25
	BIOMETRICS	28
	IMMIGRATION CONTROL AREAS	30
5.	GETTING TO NEW ZEALAND	31
	VISAS	31
	GENERAL APPLICATIONS	32
	RESIDENCE CLASS VISAS	36
	RESIDENT VISAS	36
	<i>Permanent resident visas</i>	37
	TEMPORARY ENTRY CLASS VISAS	37
	<i>Interim visas</i>	38
	TRANSIT VISAS	39
	SPONSOR’S OBLIGATIONS	39
6.	IMMIGRATION OFFICERS’ COMPLIANCE POWERS	43
	POWER TO ACCESS ADDRESS INFORMATION	44
	ENTRY AND INSPECTION POWERS	46
	<i>Accommodation providers</i>	46
	<i>Employers</i>	46
	<i>Education providers</i>	47
	POWERS TO REQUIRE PRODUCTION OF DOCUMENTS	47
	POWERS AT BORDER AND POWERS RELATING TO DEPORTATION AND TURNAROUND	48
7.	REFUGEE AND PROTECTION CLAIMS	51
	NON-REFOULEMENT OBLIGATIONS UNDER THE REFUGEE CONVENTION, CAT AND ICCPR	54
	BURDEN AND STANDARD OF PROOF IN PROTECTION CLAIMS	56
	NEW ZEALAND JURISPRUDENCE	57

	AMBIT OF NEW PROTECTION REGIME.....	57
	EXCLUSION OF LACK OF MEDICAL TREATMENT CASES	58
	OTHER STATUTORY CHANGES TO FIRST INSTANCE DETERMINATION	58
	CONSIDERATION OF CLAIMS WHERE INTERNATIONAL AGREEMENT OR LACK OF GOOD FAITH.....	59
	SECOND AND SUBSEQUENT CLAIMS.....	60
	APPARENT SUBSERVIENCE OF CONVENTION TO IMMIGRATION ACT.....	62
	COLLECTION OF BIOMETRIC INFORMATION	63
8.	DEPORTATION	65
	NEW CANCELLATION OF VISA POWERS	66
	DEPORTATION LIABILITY IF PERSON’S VISA GRANTED IN ERROR	68
	DEPORTATION LIABILITY IF PERSON UNLAWFULLY IN NEW ZEALAND	69
	DEPORTATION LIABILITY IF VISA HELD IN FALSE IDENTITY	71
	DEPORTATION LIABILITY OF TEMPORARY ENTRY CLASS VISA HOLDER FOR CAUSE	73
	DEPORTATION LIABILITY OF RESIDENCE CLASS VISA HOLDER IF VISA OR CITIZENSHIP OBTAINED OR HELD BY FRAUD, FORGERY, ETC	74
	DEPORTATION LIABILITY OF RESIDENT IF VISA CONDITIONS BREACHED.....	76
	DEPORTATION LIABILITY OF RESIDENCE CLASS VISA HOLDER IF NEW INFORMATION AS TO CHARACTER BECOMES AVAILABLE.....	77
	DEPORTATION LIABILITY OF RESIDENCE CLASS VISA HOLDER CONVICTED OF CRIMINAL OFFENCE.....	78
	DEPORTATION LIABILITY IF REFUGEE OR PROTECTION STATUS CANCELLED UNDER S 146.....	79
	DEPORTATION LIABILITY OF PERSON THREATENING SECURITY	80
	CONSEQUENCES OF DEPORTATION LIABILITY	81
	DEPORTATION WHEN OUTSIDE NEW ZEALAND	82
9.	DEPORTATION CASES INVOLVING CHILDREN – THE SEQUEL TO THE SUPREME COURT DECISION IN <i>YE AND QIU</i>.....	83
	BACKGROUND – THE AMENDMENT TO CITIZENSHIP LEGISLATION	83
	<i>YE AND QIU</i> IN THE SUPREME COURT – PROVIDING A TOOL TO RECONCILE COMPETING LEGAL INTERESTS?	84
	IMPORTANCE OF CONSIDERING NEW ZEALAND’S INTERNATIONAL OBLIGATIONS	86
	THE DECISION IN THE SUPREME COURT OF THE UNITED KINGDOM IN <i>ZH (TANZANIA)</i>	87
	WHERE TO FROM HERE?	88
10.	DETENTION AND MONITORING.....	91
	4-HOUR POWER OF DETENTION BY AN IMMIGRATION OFFICER.....	93
	96-HOUR POLICE DETENTION.....	94
	AGREEMENT TO RESIDENCE AND REPORTING CONDITIONS	95
	WARRANTS OF COMMITMENT	96
	<i>Release from custody</i>	98
	<i>Grant of warrant</i>	99
	<i>Release on conditions</i>	99
	<i>Lengths of warrants/maximum length of detention</i>	100
	<i>Exceptional circumstances</i>	101
	<i>Review of warrants/release on conditions</i>	102
11.	APPEALS TO THE IMMIGRATION AND PROTECTION TRIBUNAL.....	103
	FORMATION OF THE IPT	103
	JURISDICTIONAL OVERVIEW	103
	ORAL HEARINGS.....	105
	RESIDENCE APPEALS	105
	REFUGEE AND PROTECTION APPEALS	106
	CONCURRENT HUMANITARIAN APPEALS	107
	PROTECTION APPEALS	107
	REFUSAL TO CONSIDER	108
	SUBSEQUENT CLAIMS.....	109
	CESSATION.....	109
	CANCELLATION.....	110
	DEPORTATION APPEALS	111
	APPEAL ON THE FACTS	112
	APPEAL ON HUMANITARIAN GROUNDS.....	112

DEPORTATION FOR CAUSE – A HIGHER THRESHOLD IMPOSED BY IMMIGRATION ACT 2009	112
APPEAL FROM AND REVIEW OF IPT DECISIONS	114
12. LOOKING FORWARD/FUTURE ISSUES	123
TRANS-TASMAN DOMESTIC TRAVEL	123
MASS ARRIVAL OF BOAT PEOPLE.....	123
MORE INFORMATION SHARING.....	123
APPENDIX 1 – SECTION COMPARISON TABLE.....	125