

(DRAFT) A PIDC Framework for Developing Immigration Legislation

Part B: Key parts and provisions

March 2011

Version 5.1 (Draft)



Overarching purpose of the framework

This framework has been designed to assist members in assessing their existing legislation and where appropriate in developing effective, modern legislation for immigration purposes that is in line with national strategy. It is intended to assist members to bridge the gap between a concern that existing legislation is not fit for purpose and the drafting of an immigration bill.

Purpose of Part B

Part A set out issues and approaches to developing immigration policy and legislation. This part (Part B) provides a framework for the legislation itself. It sets out the key areas that immigration legislation should cover, the key provisions in those areas and what they do, and provides a commentary on additional considerations. This part is also designed to be a practical document or tool for the comparison of existing legislation and therefore leaves space for a user to add notes where appropriate.

What this document is not

This document is not a model immigration bill and it is not intended to be so. Although the key provisions are at times phrased in a legalistic

way, this is due to existing immigration legislation being used as the basis and the need to reflect precise requirements.

Source documents

This framework has been developed using the New Zealand Immigration Act 2009 as the primary source document. This was cross-referenced with the Fiji Immigration Act 2003 and the Tonga Immigration Act as revised. The 2002 PIDC draft regional framework for review of immigration legislation, issues and findings from the review of Vanuatu's immigration legislation by Australia's Department of Immigration and Citizenship, the policy proposal for revised legislation by Cook Islands Immigration supported by Immigration New Zealand, and an Asia-Pacific Economic Cooperation (APEC) 2004 report on standards for immigration laws were also used to develop this framework.

The New Zealand Act was selected on the basis of it being a comprehensive reworking of immigration legislation developed into a single bill and recently enacted. Pacific Island legislation was selected on the basis of its enactment date and as a counterpoint to the New Zealand Act.

Explaining the tables

The following diagram provides a guide to how the framework has been laid out.

The framework is divided into parts. Each part represents an area of immigration legislation. In a draft bill you may want to order the parts differently, or split some parts across different sections

A brief statement of the purpose for the part is given to explain what it seeks to achieve

Part 9		Appeal and review measures		
Purpose		To ensure that there is a process by which decisions can be reconsidered within a context of fairness and accountability		
Key provisions		Reason for provision	Comments	Additional notes
1.	No appeal can be made against a decision by the Minister or an immigration officer in any matter relating to a visa for travel to your country, or an entry permission	To minimise the administrative burden that could be posed by appeals against straightforward decisions	Checks and balances are in place in place in the form of listed criteria for visas and entry permission, and with the requirement to provide reasons for refusal in writing upon request.	
2.	An appeal can be made to the Minister against a decision by an immigration officer in a matter relating to a permission to be in your country	To provide the opportunity for an administrative review of a case	In drafting it will be important to specify the period in which an appeal can be lodged after a decision.	
3.	An appeal can be made to a tribunal or other appropriate independent authority against a decision not to recognise a claimant as a refugee or to cancel a refugee status	To protect refugees from return to persecution	The right to appeal in asylum cases is important given the potential consequences of returning a genuine refugee to a place where they fear persecution. If possible the appeal should be to an independent body.	
4.	An appeal can be made against a decision that a person is liable for deportation			

The key provisions are the points for which clauses may be required in a draft bill

An extra column is provided for the user to add in their own comments, note applicability to their jurisdiction, or additional points they would want included.

A reason is given for why a provision is included; in other words what that provision seeks to achieve

A commentary is provided to give additional explanation or to identify where a provision may link to provisions elsewhere

Part 1		Core provisions		
Purpose		To make clear the fundamentals that underpin the immigration system, including who is entitled to be in or enter the country and who is excluded		
Key provisions		Reason for provision	Comments	Additional notes
1.	Extension of the Act	To make clear the geographic area to which the Act would apply	Immigration or other delegated officers should be empowered to act in the waters around your country. Other factors to consider include offences committed on board a vessel or aircraft registered in your country and offences committed outside your territory, but with view to a serious crime in your country.	
2.	Citizens of your country may enter and be in your country at any time	To confirm a principle of international law often already enshrined in constitutions	This may be provided for elsewhere, but inclusion in an immigration bill sets it in context and confirms its importance	
3.	Non-citizens must have permission to travel to, enter and be in your country unless exempted	To provide the basis for the rest of the bill as it is the conditions that apply to this category of people that the bill will mostly focus on	The bill will set out elsewhere the nature of this permission whether it be a visa, a permit, or some other form of permission, and when the requirement can be waived	
4.	Certain persons are excluded from gaining permission to travel to, enter or be in your country	To provide the basis for powers to refuse visas or permissions to enter or reside	The bill will need to define who is excluded. Common categories include those with recent or long criminal convictions, those previously deported, those with specified health conditions or those who are thought to pose a threat or risk to security or public order	
5.	Persons unlawfully in your country have no right to apply for permissions to stay, have no right to work and are obliged to leave	To ensure people who are no longer legal or who never were legal cannot regularise their status	This is generally viewed as an important provision that maintains the principles of border control by preventing those who have acted illegally gaining the reward of becoming legal. It links to policy options relating to the regularisation of illegally residing migrants to bring them into the formal economy	
6.	The Minister may issue regulations or instructions to specify conditions, procedures, fees, forms and similar matters	To give a Minister the power to create immigration instructions or regulations to define the processes and procedures e.g. for applying for visas or permits	The particular elements on which the Minister can issue instructions should be listed. Although, this provision may vary depending on the way legislation is given effect in your jurisdiction.	

Part 2		Permissions required to travel to or be in your country		
Purpose		To define the various visa requirements, entry or residence permissions		
Key provisions		Reason for provision	Comments	Additional notes
1.	A non-citizen must apply for a visa for permission to travel to your country unless this requirement is waived or their status under another immigration category exempts them from the requirement	This relates to Part 1, provision 3 above and provides the basis for requiring people to apply for visas	There could be provisions for different classes of visa that match the permits below (see provision 5), so that e.g. a person wanting to work in your country applies for permission to travel to your country for the purpose of work. The term 'visa', can cause confusion as it is sometimes used not only for the basic permission to travel to your country, but also for the permission to enter granted on arrival, and sometimes also work and residence permits (work/residence visas). In this framework the term 'visa' is used only in reference to the permission to travel. For other types of permission, the term 'permit' is used.	
2.	A non-citizen who will transit through your country with another country as the final destination must apply for a transit visa unless this requirement is waived or their status under another immigration category exempts them from the requirement	To ensure that even those who are passing through your country, but for whom it is not the final destination are obliged to apply for visas before travelling		
3.	The Minister can waive the requirement to obtain a visa permitting travel to your country	To exempt particular nationalities or other categories of person from needing an advance visa	The list of countries whose nationals do not need visas in advance of travel can be provided through secondary legislation. A visa is then sometimes issued on arrival or waived entirely.	
4.	A permit may be issued on application entitling a person to enter and be in your country: <ul style="list-style-type: none"> a. To reside permanently b. To reside indefinitely on certain conditions 	To create classes of permit that entitle non-citizens to an immigration status similar to that of citizens	These classes of permit would ordinarily include the right to travel to your country and be granted entry at any time, to stay indefinitely, and to work or study. Creating the second class of resident permit (b) would allow for additional flexibility in attaching conditions which could include no automatic right to enter	

5.	A permit may be issued on application entitling a person to enter and be in your country on a temporary basis: <ul style="list-style-type: none"> a. as a visitor b. as a business visitor c. to reside d. to reside and work e. to reside and study f. to reside and conduct research 	To create the classes of permit for which non-citizens can apply either at the border or in-country in order to be in your country for a defined period	The types of permit and the way they are defined vary. The visitor class can be subdivided into non-business visitors, such as tourists, who are granted entry for several months, and business visitors who are granted entry for a much shorter period. Unlike the classes above these permits would be granted for a limited period and have more conditions attached, including duration, activities that may be undertaken, that no national was able to undertake the work, a requirement to comply with directions given by an immigration officer etc. There may also be additional types of permit particular to national circumstance such as retirement permits or investor permits.	
6.	A limited permit may be issued for a specific purpose	To create a class of permit that can be issued when there is a specific reason why a person should be in your country outside the other classes of permit	For example, this class of permit would apply where a person needs to stay in your country to give evidence in criminal proceedings, or for specific health reasons, or to provide legal status to cover an interim period while a separate application is made. It may also cover asylum applicants or international disaster response personnel.	
7.	Certain categories of person can enter, reside and work without obtaining a permit	To create an exemption for those who have diplomatic or consular immunities and privileges, and other categories your government believes are appropriate		

Part 3	Arrivals and departures – passenger responsibilities			
Purpose	To clearly set out the obligations and responsibilities of people arriving in your country			
Key provisions	Reason for provision	Comments	Additional notes	
1.	A person arriving in your country is obliged to present him/herself at a designated place of entry to a designated officer without delay and apply for a visa, if previously waived, and/or	To create the basis for operating border controls	The process for applying to enter is likely to involve the presentation of the person at an immigration desk at a designated port of entry with appropriate documentation as specified in	

	permission to enter in the prescribed manner		regulations e.g. a completed arrival card, a passport or other travel document, and for non-citizens a return ticket and evidence of a visa where required. Although all persons would apply for entry, citizens and often permanent residents would have the right to have their application automatically accepted	
2.	A person applying for entry permission must provide a physical address in your country to which any communication may be sent or at which any notice served			
3.	A person applying for entry permission must allow biometric information to be collected from him/her			
4.	A person ordinarily leaving your country is obliged to present him/herself to a designated officer and provide information as prescribed	To allow for exit controls		

Part 4		Arrivals and departures – carrier responsibilities		
Purpose		To clearly set out the obligations and responsibilities of the airplane, ferry and other transport operators or owners who bring people to your country		
Key provisions		Reason for provision	Comments	Additional notes
1.	<p>The carrier, and/or the person in charge, of a craft en route to or arriving in your country must:</p> <ul style="list-style-type: none"> a. ensure all persons boarding the craft have the prescribed documents b. ensure the craft is cleared at a designated place upon entry c. prevent disembarkation other than into a designated place of entry d. if a stowaway is found, report this to an immigration officer as soon as practicable 	To set out the obligations on carriers on arrival	<p>This provision will need to cover the differing circumstances for aircraft, commercial vessels and private yachts.</p> <p>For sub-provision (a) the prescribed documents are likely to include a passport valid for 6 months, a visa if applicable, and a return ticket.</p> <p>Sub-provision (e) is intended to allow for advance passenger information or processing where it is in operation and to help ‘future-proof’ the legislation where this processing is planned. It could also apply to simply requiring the manifest to be faxed through before the craft</p>	

	e. where an approved system is in place, provide prescribed information in a specified form through that system for every person intending to board the craft before it departs, or every person on board a craft prior to or upon arrival		departs for your country if that is the system you have in place.	
2.	The carrier, and person in charge, of a craft departing your country must: <ul style="list-style-type: none"> a. allow any person being deported or being turned around to board the craft b. take reasonable steps to detain a person delivered by a designated officer on board the craft c. before departure report the details of any crew member or person who should be, but is not, on board the craft d. before departure obtain immigration clearance in accordance with any direction given by an immigration officer 	To set out the obligations on carriers on departure	Sub-provision (d) is largely intended for yachts or other vessels where you may want to know that they are departing your country	
3.	The carrier, and person in charge, of a craft must provide passage and the costs in all respects, including cost of passage, detention and maintenance, of any person who arrived on the craft, was not appropriately documented and was refused entry; or any crew member who remained unlawfully after the departure of their craft	To make clear that the carrier will be responsible for certain costs	This provision can be in addition to any penalty that may apply to a carrier not fulfilling their responsibilities	

Part 5	Decisions and refusal of permissions			
Purpose	To establish the process of refusal and the rights of people who are refused any immigration permission set out above			
Key provisions	Reason for provision	Comments	Additional notes	
1.	An immigration officer may grant a visa, or refuse a visa on specified grounds, and may vary or impose conditions on the visa granted,	To create the power to refuse a visa application	The conditions that apply to the visa, or can be applied to a visa should also be stipulated, but may include the period in which it is valid, and	

	or may cancel a visa		whether it is for single entry or multiple entry	
2.	An immigration officer may grant entry, impose conditions on entry or refuse entry on specified grounds with no right to appeal, except in the case of citizens and persons with certain immigration status, who must be granted permission to enter	To give immigration officers the power to refuse entry at the border regardless of a visa or certain other immigration status being held	The right of citizens to enter their country should not be undermined. This provision should also protect the rights granted to people holding a particular immigration status e.g. permanent residence	
3.	An immigration officer may grant any permit, or refuse any permit on specified grounds, and may grant a different class of permit to the class applied for, and may vary or impose conditions on the permit granted, or may cancel a permit	To create the power to refuse permits	The grounds for refusing a visa, entry or any permit (1,2 and 3) should be specified and may include: the application requirements were not met, the person was previously deported, declared a prohibited immigrant, had previous convictions, has insufficient funds, or was not of good character, or was assessed as not genuine, or did not meet health requirements, or where entry may be a risk to national interest or security. The grounds for cancelling a visa or permit may be similar to those for refusing a visa or permit.	
4.	A grant of a visa or permit may be conditional on the payment of a bond or on a sponsor undertaking to employ, accommodate, maintain, or cover any costs of repatriation or deportation	To create power to impose bonds or require a sponsor		
5.	Upon request, an immigration officer must give the reasons for any decision to refuse to grant a visa, permission to enter, or any other immigration permission in writing	To provide transparency to the decision process		
6.	The order and manner in which a visa, entry permission or permit is processed is at the discretion of the Minister or an immigration officer, subject to any immigration instructions or regulations	To enable the processes to be determined by operational needs and practicalities	General instructions or operating procedures would nevertheless be produced to give guidance	

Purpose		To set out the circumstances and processes by which a person can be removed from your country		
Key provisions		Reason for provision	Comments	Additional notes
1.	<p>A person can be arrested, detained and removed from your country within a specified period of time, as if a deportation order had been served, if that person:</p> <ol style="list-style-type: none"> a. fails to present him/herself to a designated officer b. fails to apply for entry in the prescribed manner c. is not the holder of a visa, where a visa waiver does not apply d. is refused a visa on arrival where a visa waiver does apply e. is refused permission to enter f. holds a visa that is subsequently cancelled g. is a stowaway h. holds a transit visa and the transit period has expired 	To create the power for persons in certain circumstances to be immediately turned around at the border and returned to their point of origin	The powers in this provision should be time-limited and their extent clear as there is generally no right of appeal. The New Zealand Act stipulates this provision ceases to apply after 72 hours.	
2.	<p>A person is liable for deportation if that person:</p> <ol style="list-style-type: none"> a. is in your country unlawfully b. was granted a permit in error c. holds a permit under a false identity d. breaches the conditions of his/her permit e. is convicted of a criminal offence f. concealed relevant information in relation to his/her application for a permit g. obtained his/her permit by fraud or forgery h. is on reasonable grounds believed to be a 	To set out the grounds for deportation	There is a cross-over between a person who is liable for deportation and a person who is declared a prohibited immigrant (see Part 11.1) which requires consideration	

	<p>threat to security as determined by the Minister, including in relation to transnational crimes</p> <p>i. is declared a prohibited immigrant</p>			
3.	A refugee or a person claiming to be a refugee may not be deported except where the Refugee Convention allows		This cross-references with Part 8 below	
4.	A person who holds a resident permit is not liable to deportation after a specified period of time	To provide protection to a person who has been legally resident for certain amount of time	If a person has been legally resident for a long time they may have a settled private and family life in your country. In such cases deportation may not be the most appropriate response	
5.	A notice signed by the Minister or designated officer must be served on a person liable for deportation stating the grounds for deportation, any right to and period of appeal, the period the person will be prohibited from entering your country and any other relevant detail, including any requirement to repay costs	To ensure due process before a person is deported		
6.	A person who is in your country unlawfully or is determined to be a threat to security need not be served with this notice of liability for deportation	To provide a means to more speedily deport someone in certain circumstances		
7.	A designated officer may serve a deportation order when a liability notice has been served and any period of appeal has expired or an appeal was unsuccessful, or when no liability notice needs to be served			
8.	A deportation order should state the grounds for deportation, any right to and period of appeal, the period the person is prohibited from entering your country and any other relevant detail, including any requirement to repay costs	To provide for due process	As with the deportation liability notice, it is important to ensure a person is aware of what is happening and what deportation will mean	

Part 7	People smuggling and human trafficking		
Purpose	To deter and address the serious and often organised crimes of people smuggling and human trafficking, and to ensure the appropriate treatment of victims of trafficking		
Key provisions	Reason for provision	Comments	Additional notes
<p>The Pacific Islands Forum Secretariat has developed model legislation to address transnational organised crime, including people smuggling and human trafficking. Although an immigration act is an appropriate place for both legislation on people smuggling and human trafficking, it is important to ensure that the definition of trafficking is not restricted to the movement of people across borders, as the act of trafficking can also occur domestically.</p> <p>The PIDC supports the implementation of the PIFS model. As the model has already been developed, key provisions are not outlined here. The PIDC secretariat can provide this model legislation and the appropriate contact at PIFS upon request. However, members should cross-reference the PIFS model with crime legislation to ensure that domestic trafficking is covered in legislation. Other models are available from the Bali Process and UNODC.</p>			

Part 8	Refugee and protection status determination		
Purpose	To set out the process by which a migrant can claim refugee or other protection status, how that claim will be considered, appropriate treatment and rights to appeal		
Key provisions	Reason for provision	Comments	Additional notes
<p>PIDC has developed draft model provisions for refugee status determination in the region. The following key provisions summarise those in the model and reflect input from UNHCR.</p>			
1.	Any person seeking asylum or recognition as a refugee must have their claim determined by a designated officer		UNHCR will provide advice and technical support as required to enable a determination to be made on a claim
2.	A person must be recognised as a refugee if he or she is a refugee within the meaning of the Refugee Convention		
3.	It is the responsibility of the claimant to provide all relevant information and evidence in support of their claim		
4.	The designated officer must inform the		

	claimant of the decision on the claim, the reasons for the decision, and the claimant's rights to appeal where a claim has been declined			
5.	An appeal can be made to a tribunal or other appropriate independent authority against a decision not to recognise a claimant as a refugee or to cancel a refugee status		This is reiterated in Part 9 below	
6.	A person whose claim has not been finally determined and any person who is recognised as a refugee cannot be removed or deported except where the Refugee Convention allows and must be provided with an appropriate immigration status			
7.	A claim is not finally determined until the expiry of any appeal period, or if an appeal is lodged, that appeal is determined			

Part 9		Appeal and review measures		
Purpose		To ensure that there is a process by which decisions can be reconsidered within a context of fairness and accountability		
Key provisions		Reason for provision	Comments	Additional notes
1.	No appeal can be made against a decision by the Minister or an immigration officer in any matter relating to a visa for travel to your country, or an entry permission	To minimise the administrative burden that could be posed by appeals against straightforward decisions	Checks and balances are in place in place in the form of listed criteria for visas and entry permission, and with the requirement to provide reasons for refusal in writing upon request.	
2.	An appeal can be made to the Minister against a decision by an immigration officer in a matter relating to a permission to be in your country	To provide the opportunity for an administrative review of a case	In drafting it will be important to specify the period in which an appeal can be lodged after a decision.	
3.	An appeal can be made to a tribunal or other appropriate independent authority against a decision not to recognise a claimant as a	To protect refugees from return to persecution	The right to appeal in asylum cases is important given the potential consequences of returning a genuine refugee to a place where they fear persecution. If possible the appeal should be to	

	refugee or to cancel a refugee status		an independent body.	
4.	An appeal can be made against a decision that a person is liable for deportation			
5.	With the leave of the High Court (or equivalent), an appeal can be made to the High Court when a determination by any authority is believed to be wrong in point of law. An appeal cannot be made to the High Court on the facts of a case.		By limiting the role of the higher court to determining points of law	

Part 10		Designation of powers		
Purpose		To establish who has the power to designate and appoint immigration officers and the role of ministers		
Key provisions		Reason for provision	Comments	Additional notes
1.	<p>The Permanent Secretary may designate as an immigration officer:</p> <p>a) a public officer or class of public officers suitably qualified and trained; or</p> <p>b) subject to conditions specified in the instrument of appointment and after consulting the Minister any other person in your country or in another country</p>	To enable a range of public officers to exercise immigration powers, including e.g. police and customs officers, or staff in overseas missions	Although the title Permanent Secretary is used here, some Acts use Chief Executive or Principal Immigration Officer. In some cases it may be the Minister or even the Prime Minister.	
2.	The Permanent Secretary must specify in writing which functions and powers an immigration officer is authorised to perform under the Act	To allow for designated officials to hold a limited range, but not all powers in the Act	E.g. this would enable customs officers at the primary line to hold entry permission decision-making powers, but not detention powers. In some jurisdictions the Minister may hold this power.	
3.	The Minister may give the Permanent Secretary or other immigration officer written policy directions consistent with the Act as to the exercise of any power or function and the Permanent Secretary or immigration officer	To clarify the relationship between the Minister and the Permanent Secretary and other public officials		

	must comply with the directions		
4.	Directions given by the Minister must not relate to an individual	To prevent the misuse of Ministerial power	

Part 11	Powers
Purpose	To provide powers to immigration officers to perform their functions and carry out their duties

Key provisions	Reason for provision	Comments	Additional notes
1. The Minister [or Permanent Secretary or Principle Immigration Officer] may declare any non-citizen a prohibited immigrant who is a person who is liable to deportation (as set out above) and that person will have any permits cancelled and is not eligible to re-enter your country after departure	To define create a category of persons that are prohibited from entry – the category equates to those persons liable for deportation	This is a common provision in immigration legislation in the region, but consideration could be given as to whether it is needed in view of provisions relating to persons liable for deportation	
2. For the purposes of exercising powers, functions and duties under the Immigration Act, an immigration officer may question: <ul style="list-style-type: none"> a) any person seeking permission to travel to, enter, be in or remain in your country; or b) any person who the officer on reasonable grounds believes to have committed an offence under the Immigration Act; or c) any person who the officer reasonably believes can give information on the above persons 	To enable immigration officers to question anyone arriving in your country or suspected of having committed an offence or who may have information about a person of interest	An immigration officer may not necessarily need the power to require someone to complete an entry or departure form or to undertake a medical examination, as failure to do these things will result in a refusal of visa, permission to enter, or other permit.	
3. For the purposes of exercising powers, functions and duties under the Immigration Act, an immigration officer may require a person to supply relevant details and produce relevant documents or provide the location of those documents	To create the power to require information and documents		

4.	<p>For the purposes of exercising powers, functions and duties under the Immigration Act, an immigration officer may, without a warrant, and with force if necessary,</p> <ul style="list-style-type: none"> a) enter and search any ship, aircraft or vehicle in territorial sea (or exclusive economic zone), or seeking to enter or having entered your country; or b) enter and search any border place where the officer has good cause to believe an offence is likely to be, or is being, committed; or a person liable for deportation or turnaround is in the place; or c) enter and search any building or premises in which the officer believes on reasonable grounds the person in a deportation notice or order to be; and serve the notice or execute the order 	To create powers of entry and search	<p>Border place can be defined in a broad sense to include areas in and around a port or airport and any foreshore or land border area.</p> <p>Consideration may need to be given to other entry and search powers that may be required, for example, to carry out in-country compliance.</p>	
5.	<p>Where an immigration officer believes on reasonable grounds that records relating to a person who is liable for deportation, or who is suspected of acting contrary to permit conditions, or who has committed an offence under the Immigration Act, or relating to an employer's or educational establishment's compliance with their obligations, the officer may:</p> <ul style="list-style-type: none"> a) enter premises other than a dwellinghouse/home b) require the holder of the records to produce them for inspection, and c) copy or require a person to provide a copy of the records 	To provide limited powers of entry and search to places that are not homes to access records and check for compliance	This provision would enable immigration officers to acquire records of suspected persons (from e.g. employers, educational establishments and accommodation providers), and check whether employers and educational establishments are meeting their obligations	
6.	On being provided with a letter signed by an immigration officer with good cause a person, officer or employee of a body must provide for inspection any record that may help to establish the whereabouts of a named person	To create the power to access address information from official or other sources that may have privacy rules	The departments, agencies and types of body (such as police, utility providers, phone providers etc) could be listed	

	or the names of persons occupying specified premises			
7.	Where a person is liable for deportation or turnaround an immigration officer may require the person to surrender any travel tickets, or cash, or security in place of travel tickets, and these may be used towards effecting the person's deportation or departure	To give powers to confiscate documents or items that may assist with removal from your country		
8.	An immigration officer may at any time without a warrant and solely on the basis of this provision enter any immigration control area or any building or craft in that area for the purposes of carrying out his or her functions	To ensure immigration officers have access to restricted immigration areas	This provision needs to have a matching provision that allows for the creation of immigration control areas	
9.	An immigration officer may require a person to allow biometric information to be collected from the person where there is good cause to suspect the person has acted in contravention of the Immigration Act or regulations or is liable for turnaround or deportation to enable current or future identification, and including as necessary to meet the transit requirements of any country the person will travel to or through	To help in combating identity fraud	Biometric information may include a photograph, fingerprints, DNA or other material. Depending on the jurisdiction or existing practice the legislation may need to state what happens if the person refuses. An immigration officer may need to apply to a court for a compulsion order	
10.	An immigration officer may seize and hold the passport of a non-citizen and prevent departure where a court orders so on the grounds that the person owes debts in your country, is involved in court proceedings, or where departure would not be in the interests of justice or national security	To prevent non-citizens leaving when there are good grounds for doing so		
11.	An immigration officer may seize and hold the passport of a non-citizen in order to: <ul style="list-style-type: none"> a) establish whether the document is genuine or obtained irregularly b) preserve it as evidence c) facilitate removal or to encourage other compliance requirements 	To make clear the circumstances in which a passport can be held by immigration		

12.	For the purposes of the immigration act, a police officer has the powers of an immigration officer	To enable the cross-vesting of powers		
13.	Where an immigration officer believes they may be at risk of harm in the course of their duties, upon request police assistance will be provided	To underpin police assistance in law	It is important that there is a clear responsibility on the part of the police to provide assistance when it is requested	

Part 12		Arrest, detention and monitoring		
Purpose		To give immigration officers the power to arrest certain persons for specified purposes as well as the periods of detention		
Key provisions		Reason for provision	Comments	Additional notes
1.	An immigration officer may arrest and detain a person, at such a place as they direct, who is: <ul style="list-style-type: none"> a) liable for turnaround or deportation; b) suspected to be liable for turnaround or deportation and has failed to provide satisfactory evidence to prove otherwise; c) on reasonable grounds suspected to be a threat or risk to security; d) in breach of any agreed residence and reporting requirements used in place of detention; e) declared a prohibited immigrant. 	To enable immigration officers to arrest and detain certain persons		
2.	The arrest and detention of a person must be for the purpose of removing the person from your country, or pending the provision of additional evidence, or so the purpose of the Immigration Act is not defeated	To limit the reasons for which an immigration officer can detain a person		
3.	A person liable for detention for a purpose set out above, may be detained by an immigration	To limit an immigration officer's powers of detention	This maximum is included in the NZ Act. Longer periods of detention require a police officer to exercise his or her powers. The Fiji Act gives	

	officer for a maximum of (4) hours		immigration officers the status of a police officer for the purposes of the Immigration Act. Longer maximum periods of detention may be appropriate depending on national circumstance. For significant periods an application to court may be required and should be in line with existing criminal procedure.	
4.	At the discretion of an immigration officer, a person liable to arrest and detention may agree to reside at a specified place; and/or report to a specified place at specified times; and/or provide a guarantor who is responsible for ensuring the person complies with any requirements; and/or attend any required interview; and/or undertake any other action to facilitate departure	To provide an alternative to detention where appropriate		
5.	When an immigration officer is exercising the power of detention the officer may use reasonable physical force to prevent harm, or damage to property or escape; and may search for and seize any item that may be a threat	To allow an immigration officer to use reasonable force to when circumstances demand it during arrest and detention		

Part 13		Responsibilities of employers and education providers		
Purpose		To ensure employers and education providers share some responsibility for the integrity of the immigration system		
Key provisions		Reason for provision	Comments	Additional notes
1.	Every employer must take reasonable steps to ensure that an employee is entitled to work in your country	To give employers a share of responsibility for preventing illegal migrant working	This could be accompanied by a penalty system for employers who do not take reasonable steps, and more severe penalties for those who knowingly employ illegal migrants	
2.	Every education provider must take reasonable steps to ensure that a person is entitled to study in your country	To give education providers a share of responsibility for preventing illegal migrant working and other forms of irregular migration	As above this should be accompanied by a penalty system and more severe penalties for providers that knowingly allow a person without entitlement to take a course of study	

Part 14		Information collection, sharing and data protection		
Purpose		To allow for the sharing of information for certain purposes with specified agencies		
Key provisions		Reason for provision	Comments	Additional notes
1.	A person authorised by the Permanent Secretary may share with and receive from any other government agency information and intelligence in order to detect, prevent, investigate, prosecute and respond to offences or suspected offences against the Immigration Act or other national legislation	To provide a legal basis for disclosing information between government agencies nationally	The detail needed for provisions relating to information-sharing will depend on national circumstance and existing legislation covering e.g. data protection	
2.	A person authorised by the Permanent Secretary may provide information to an employer or education provider for the purpose of verifying whether that person is entitled to undertake the work or study specified	To allow for the sharing of certain information with employers and education providers to help them avoid employing or enrolling people without entitlement		
3.	A person authorised by the Permanent Secretary may share with any overseas government agency, or other recognised agency, information and intelligence in order to detect, prevent, investigate, prosecute and respond to offences or suspected offences in your country or the country concerned, or for the purpose of processing international passengers			

Offences	Guide to max. Penalty/sentence level	Summary of offence
The following penalty amounts are those stated in the New Zealand Immigration Act 2009. In stating the maximum penalties it is presumed that they would be applied by a court. Penalty notices or administrative fines may also be appropriate for some offences, as proposed for breaches of with carrier responsibilities.		
1.	Every person commits an offence who makes any statement, or provides any information, evidence or submission, or produces any document knowing that it is false or misleading, or fails to comply in any way with the persons responsibilities	7 years, or NZD 100,000, or both for most serious forms of offence
		Provision of false information

	as set out in Part 3		
2.	Every person commits an offence who, whether in or outside your country, aids, abets, incites, counsels, or procures any other person to enter, be or to remain in your country or to breach any condition of a visa or other permission, or to complete a document in a manner that is known to be false or misleading	7 years, or NZD 100,000, or both (May include costs of deportation or removal)	Aiding and abetting
3.	Every person commits an offence who without reasonable excuse refuses or fails to comply with any requirement of an immigration officer in accordance with the Immigration Act, including to produce any document or information, to remain in a specified area, to provide biometric information, or the exercise of any other power	3 months, or NZD 10,000, or both	Obstructing exercise of powers
4.	Every person commits an offence who, whether in or outside your country: a) uses or seeks to use an immigration or identity document knowing it relates to another person, or knowing that it is forged or fraudulently obtained; or b) sells, lends, hires or gives an immigration or identity document relating to them to another person knowing the recipient will, or intending the recipient to, use it falsely or sell, lend, hire, or give it	7 years, or NZD 100,000, or both	Fraud and imposters
5.	Every carrier, or person in charge, of a craft commits an offence if they fail to comply with any of the above responsibilities without a reasonable excuse	For a carrier: 3 months, or NZD 50,000, or both For a person in charge: 3 months, or NZD 25,000, or both Summary/administrative fine: maximum NZD 5,000 for a carrier and NZD 2,500 for a person in charge	
6.	Every employer commits an offence who: a) allows or continues to allow any person to work for that employer, knowing that the person is not entitled to work under the Immigration Act; or b) allows a person who is not entitled to work to do so, unless reasonable steps have been taken to verify that entitlement	a) NZD 50,000 b) NZD 10,000	
7.	Every employer commits an offence who, while allowing an unlawful employee to work, exploits that person by contravening specified labour laws or by denying that person the right to make free choices	7 years, or NZD 100,000, or both	
8.	Every education provider commits an offence who: a) allows or continues to allow any person to undertake a course of study	a) NZD 50,000	This would exclude ordinary compulsory education

	<p>knowing that person is not entitled to do so; or</p> <p>b) allows any person to undertake a course of study who is not entitled to do so, unless reasonable steps have been taken to verify that entitlement</p>	b) NZD 30,000	
9.	<p>Every person commits an offence who breaches the confidentiality of a refugee claimant or a refugee where the breach identifies the person concerned and is likely to endanger their safety</p>	None stipulated in NZ Act	