

Appendix – relevant legal provisions

Deportation provisions

162 Deportation liability if refugee or protection status cancelled under section 146

- (1) A person who is not a New Zealand citizen and who was previously recognised as a refugee or a protected person is liable for deportation if his or her recognition is cancelled under [section 146](#).
- (2) The person may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal against his or her liability for deportation—
 - (a) on humanitarian grounds only, if the person has been convicted of an offence where it is established that he or she acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - (b) on the facts and on humanitarian grounds, in any other case.

161 Deportation liability of residence class visa holder convicted of criminal offence

- (1) A residence class visa holder is liable for deportation if he or she is convicted, in New Zealand or elsewhere,—
 - (a) of an offence for which the court has the power to impose imprisonment for a term of 3 months or more if the offence was committed at any time—
 - (i) when the person was unlawfully in New Zealand; or
 - (ii) when the person held a temporary entry class visa; or
 - (iii) not later than 2 years after the person first held a residence class visa; or
 - (b) of an offence for which the court has the power to impose imprisonment for a term of 2 years or more, if the offence was committed not later than 5 years after the person first held a residence class visa; or
 - (c) of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed not later than 10 years after the person first held a residence class visa; or
 - (d) of an offence against [section 350\(1\)\(a\)](#) or [351](#), if the offence was committed not later than 10 years after the person first held a residence class visa, and whether that visa was granted before or after this paragraph comes into force.
- (2) A person liable for deportation under this section may, not later than 28 days after being served with a deportation liability notice, appeal to the Tribunal—
 - (a) on humanitarian grounds against his or her liability for deportation; and
 - (b) if he or she is a refugee or a protected person, against any decision of a refugee and protection officer that he or she may be deported.

163 Deportation liability of persons threatening security

- (1) Where the Minister certifies that a person constitutes a threat or risk to security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.
- (2) The person named in the order is accordingly liable for deportation.
- (3) The Governor-General may, by Order in Council, revoke an order made under subsection (1).

Limitation on deportation of refugees

164 Limitation on deportation of persons recognised or claiming recognition as refugee or protected person

- (1) No person who is recognised as a refugee or a protected person in New Zealand, or who is a claimant, may be deported under this Act.
- (2) Subsection (1) applies despite anything in this Part, but subject to subsections (3) and (4).
- (3) A refugee or a claimant for recognition as a refugee may be deported but only if Article 32.1 or 33 of the Refugee Convention allows the deportation of the person.
- (4) A protected person may be deported to any place other than a place in respect of which there are substantial grounds for believing that the person would be in danger of being subjected to—
 - (a) torture (as defined in [section 130\(5\)](#)); or
 - (b) arbitrary deprivation of life or cruel treatment (as defined in [section 131\(6\)](#)).
- (5) A refugee and protection officer must determine the matter in subsection (3) or (4), and [section 148](#) applies when making the determination, as if the determination were a determination to which that section applies.

Articles 32 and 33 of the Refugee Convention

Article 32—Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33—Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

IPT appeal considerations

204 Special process where refugee or protection status acquired through fraud, etc

- (1) Subject to subsections (2) and (3), where a person who is liable for deportation under [section 162](#) appeals against liability for deportation, the Tribunal must, in addition to considering the appeal on the facts (if any) or on humanitarian grounds (if lodged), determine whether the person is currently a refugee or a protected person in terms of [sections 129 to 131](#).
- (2) If the Tribunal has allowed an appeal on the facts under [section 202\(f\)](#), the Tribunal need not consider—
 - (a) whether the person is currently a refugee or a protected person; or
 - (b) any humanitarian appeal brought by the person.
- (3) If the Tribunal does not allow an appeal on the facts under [section 202\(f\)](#), the Tribunal must—
 - (a) first determine whether to recognise the person as a refugee or a protected person in terms of [sections 129, 130, and 131](#); and
 - (b) if it does not recognise the person as a refugee or a protected person, then determine any humanitarian appeal by the person.
- (4) When determining whether to recognise a person as a refugee or a protected person for the purposes of this section, the Tribunal must determine the matter in accordance with [section 198\(1\)](#).

Relevant Arrest and detention provisions

310 Purpose for which arrest and detention powers may be exercised

The powers of arrest and detention under this Part may be exercised for the following purposes:

- (a) in the case of a person liable for turnaround, to detain the person in order to place him or her on the first available craft leaving New Zealand:
- (b) in the case of a person liable for deportation,—
 - (i) to detain the person pending the making of a deportation order, including during the completion of any appeal brought by the person against his or her liability for deportation; or
 - (ii) to deport the person following the making of a deportation order by placing him or her on the first available craft leaving New Zealand:
- (c) in the case of a person who is suspected by an immigration officer or a constable to be liable for deportation or turnaround and who fails to supply satisfactory evidence of his or her identity when requested under [section 280](#), to detain the person pending satisfactory establishment of the person's identity:
- (d) in the case of a person—
 - (i) who is suspected of constituting a threat or risk to security, to detain the person pending the making of a deportation order; or
 - (ii) who is subject to a deportation order under [section 163](#), to deport the person by placing him or her on the first available craft leaving New Zealand:
- (e) in the case of a person who has breached residence and reporting requirements agreed under [section 315](#) or conditions imposed under section 320, to detain the person pending a determination by a District Court Judge under [section 317](#), [318](#), or [320](#).