



Immigration Amendment Act 2004

Public Act 2004 No 56
Date of assent 1 July 2004
Commencement see section 2

Contents

1	Title	
2	Commencement	
3	Residence permit holders temporarily absent from New Zealand	
4	New sections 125AA to 125AE inserted	
	125AA Responsibilities of carrier, and person in charge, of commercial craft before it departs from another country to travel to New Zealand	125AD Person to whom section 125AA applies must provide further information if requested, and must provide access to further information
	125AB Chief executive may make decision about person boarding craft for purpose of travelling to New Zealand	125AE Offence relating to failure to provide information, or failure to provide access to information, under section 125AD
	125AC Offences relating to non-compliance with decision made by chief executive under section 125AB	5 Responsibilities of carrier and person in charge of any craft
		6 Police to have powers of immigration officers
		7 Evidence in proceedings

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Immigration Amendment Act 2004.
- (2) In this Act, the Immigration Act 1987 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Residence permit holders temporarily absent from New Zealand

Section 18 of the principal Act is amended by repealing paragraph (b).

4 New sections 125AA to 125AE inserted

The principal Act is amended by inserting, before section 125, the following sections:

“125AA Responsibilities of carrier, and person in charge, of commercial craft before it departs from another country to travel to New Zealand

“(1) This section applies to a carrier, and a person in charge, of a commercial craft if—

“(a) he or she is notified by the chief executive that—

“(i) he or she is a person of a kind who must comply with the responsibilities specified in subsection (2) before a craft in relation to which he or she is the carrier or the person in charge departs from another country to travel to New Zealand; or

“(ii) the craft in relation to which he or she is the carrier or the person in charge is a craft of a kind in relation to which he or she must comply with the responsibilities specified in subsection (2) before the craft departs from another country to travel to New Zealand; and

“(b) it is proposed that the craft travel to New Zealand from another country (including in the course of a scheduled international service).

“(2) A person to whom this section applies must do the following things before the craft in relation to which he or she is the carrier or the person in charge departs from another country to travel to New Zealand:

“(a) obtain the following information from every person who intends to board the craft for the purpose of travelling to New Zealand:

“(i) name:

“(ii) date of birth:

“(iii) nationality:

“(iv) sex:

“(v) passport, or certificate of identity, number (if any):

- “(vi) passport, or certificate of identity, expiry date (if any):
 - “(vii) the issuer of the certificate of identity, if it is not the person’s country of nationality (if any):
 - “(viii) the person’s status as a traveller (including, but not limited to, whether the person is a member of the crew of the craft, a passenger whose destination is New Zealand, or a passenger whose destination is other than New Zealand):
- “(b) provide the following information to the chief executive by means of an approved system:
- “(i) the information obtained under paragraph (a); and
 - “(ii) if the person to whom this section applies intends to board the craft himself or herself for the purpose of travelling to New Zealand, information about himself or herself of the kind specified in paragraph (a); and
 - “(iii) information identifying the craft and its intended movements; and
 - “(iv) in relation to a person referred to in paragraph (a), the location of information about that person of the kind specified in section 125AD(5) (including, if applicable, the electronic address for the information).
- “(3) The chief executive may, in writing, exempt a person to whom this section applies from complying with some or all of his or her responsibilities under this section in all or any specified circumstances.
- “(4) Every carrier, or person in charge, of a commercial craft who fails, without reasonable excuse, to comply with any of his or her responsibilities under this section commits an offence and is liable on conviction,—
- “(a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or
 - “(b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.

“(5) In this section and sections 125AB to 125AD,—

“**approved system** means a system, including an electronic system, approved by the chief executive for the purpose of—

“(a) providing information to the chief executive under this section; or

“(b) notifying a person to whom this section applies of a decision of the chief executive under section 125AB(1)

“**commercial craft** means a craft that travels for a commercial purpose or as part of a commercial operation

“**scheduled international service** means a series of flights or voyages performed by a craft for the transport of passengers, cargo, or mail between New Zealand and 1 or more points in any other country or territory, if the flights or voyages are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and that are operated in a manner where each flight or voyage is open to use by members of the public

“**travelling to New Zealand** includes, but is not limited to, travelling to New Zealand from another country in transit to another destination.

“125AB **Chief executive may make decision about person boarding craft for purpose of travelling to New Zealand**

“(1) The chief executive may decide that a person in relation to whom information has been received under section 125AA—

“(a) may board a craft for the purpose of travelling to New Zealand; or

“(b) may not board a craft for the purpose of travelling to New Zealand; or

“(c) may board a craft for the purpose of travelling to New Zealand only if he or she complies with conditions specified by the chief executive.

“(2) The chief executive—

“(a) must notify a person to whom section 125AA applies of a decision made under subsection (1); and

“(b) may do so in any form he or she thinks appropriate, including, but not limited to, by means of an approved system, which may contain code that represents the outcome of the decision; and

“(c) may do so in any manner he or she thinks appropriate, including, but not limited to, by means of an automated

electronic response to a decision made under subsection (1).

“(3) The chief executive—

“(a) may make any decision under subsection (1) whether or not the person to whom the decision relates—

“(i) holds a visa to travel to New Zealand; or

“(ii) is exempt from the requirement to apply for and hold a visa to travel in New Zealand; or

“(iii) is exempt from the requirement to hold a permit to be in New Zealand; but

“(b) may not make a decision under subsection (1)(b) or (c) if the person to whom the decision relates is—

“(i) a New Zealand citizen who holds a New Zealand passport; or

“(ii) a person who holds a returning resident’s visa in a passport or certificate of identity, or who has a returning resident’s visa electronically entered and retained in the records of the Department of Labour under section 35AB, and who intends to travel to New Zealand during the currency of that visa; or

“(iii) a person who—

“(A) has been granted a pre-cleared permit that is entered and retained (either electronically or otherwise) in the records of the Department of Labour under section 35E; and

“(B) intends to enter New Zealand during the currency of that pre-cleared permit on a flight designated by the Minister as a pre-clearance flight under section 35C.

“(4) To avoid doubt, section 141AA does not apply to the chief executive when he or she is notifying a person to whom section 125AA applies of a decision made under subsection (1).

“(5) To avoid doubt, the chief executive may make a decision under subsection (1) by means of an automated electronic system that analyses the information (if any) about a person that is held by the chief executive or to which the chief executive has access, using criteria predetermined by the chief executive.

- “(6) A person in relation to whom a decision is made under subsection (1) may not—
- “(a) appeal the decision to any court, the Tribunal, the Minister, or any other body or person; or
 - “(b) bring review proceedings in relation to the decision.
- “(7) Despite subsection (6)(b), a person in relation to whom a decision is made under subsection (1) may bring review proceedings, but may only do so on the grounds that he or she is a person in relation to whom that decision should not have been made because he or she is a person to whom subsection (3)(b) applies.
- “(8) The chief executive is not obliged to give reasons for a decision made under subsection (1) other than that subsection (1) applies.
- “(9) Section 23 of the Official Information Act 1982 does not apply in respect of a decision made under subsection (1).

“125AC Offences relating to non-compliance with decision made by chief executive under section 125AB

- “(1) Every carrier, or person in charge, of a commercial craft commits an offence who allows a person to travel to New Zealand before a decision has been made by the chief executive under section 125AB(1).
- “(2) Every carrier, or person in charge, of a commercial craft commits an offence who—
- “(a) is notified under section 125AB(2) of a decision made by the chief executive under section 125AB(1)(b) or (c); and
 - “(b) without reasonable excuse, fails to ensure that the decision is complied with by the person to whom the decision relates.
- “(3) Every carrier, or person in charge, of a commercial craft who commits an offence against subsection (1) or subsection (2) is liable on conviction,—
- “(a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or
 - “(b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.

“125AD Person to whom section 125AA applies must provide further information if requested, and must provide access to further information

- “(1) If the circumstances in subsection (2) exist, a person to whom section 125AA applies must provide the chief executive with information of the kind specified in subsection (5) about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft (including, but not limited to, if he or she did not board the craft as a result of a decision made by the chief executive under section 125AB(1)).
- “(2) The circumstances are that the chief executive has made the request for the information within 24 hours of the arrival in New Zealand of the craft on which the person to whom the information relates intended to, or did, travel to New Zealand.
- “(3) A person to whom section 125AA applies must ensure that the chief executive has access to information of the kind specified in subsection (5) about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft (including, but not limited to, if he or she did not board the craft as a result of a decision made by the chief executive under section 125AB(1)).
- “(4) A person to whom subsection (3) applies must ensure that the chief executive has access to the information—
- “(a) in an approved form and manner; and
 - “(b) for 24 hours after the arrival in New Zealand of the craft on which the person to whom the information relates intended to, or did, travel to New Zealand.
- “(5) The information referred to in subsections (1) and (3) is information held by a person to whom section 125AA applies, or to which a person to whom section 125AA applies has access, about the following matters:
- “(a) where the person booked the intended travel:
 - “(b) on what date the person booked the intended travel:
 - “(c) with whom, if anyone, the person intended to travel:
 - “(d) with whom a person has previously travelled:
 - “(e) whether or not the person paid for his or her own intended travel, and the manner of payment:
 - “(f) the person’s travel movements before the intended travel:

- “(g) whether the route of the person’s previous travel has changed from the way that he or she originally booked the travel and, if so, in what way:
 - “(h) whether the person failed to undertake intended travel on a previous occasion:
 - “(i) whether the person has checked baggage.
- “(6) Information collected or accessed by the chief executive under subsections (1) and (3) may only be retained by the chief executive if any of the following circumstances apply:
- “(a) the chief executive decided under section 125AB(1)(b) that the person may not board a craft for the purpose of travelling to New Zealand:
 - “(b) the person has been refused, on arrival, a permit or exemption to be in New Zealand:
 - “(c) the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (for example, a record that a person was interviewed on arrival):
 - “(d) the information gives the chief executive good cause to suspect that a risk to border security exists.
- “(7) In this section, **approved form and manner** means a form and manner (for example, an electronic form and manner) approved by the chief executive for the purpose of providing him or her with access to information under subsection (3).
- “125AE **Offence relating to failure to provide information, or failure to provide access to information, under section 125AD**
- “(1) Every carrier, or person in charge, of a commercial craft commits an offence who fails, without reasonable excuse, to provide the chief executive with information the chief executive requested under section 125AD(1).
 - “(2) Every carrier, or person in charge, of a commercial craft commits an offence who fails, without reasonable excuse, to provide the chief executive with access to information under section 125AD(3).
 - “(3) Every carrier, or person in charge, of a commercial craft who commits an offence under subsection (1) or subsection (2) is liable on conviction,—
 - “(a) in the case of a carrier, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$20,000, or to both; or

“(b) in the case of a person in charge, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both.”

5 Responsibilities of carrier and person in charge of any craft

Section 125 of the principal Act is amended by adding to the heading the words “**en route to New Zealand**”.

6 Police to have powers of immigration officers

Section 139 of the principal Act is amended by omitting the expression “and 138”, and substituting the expression “, 138, and 138A”.

7 Evidence in proceedings

Section 143(1) of the principal Act is amended by inserting, after paragraph (k), the following paragraphs:

- “(l) the person travelled to New Zealand on a certain commercial craft at a certain time; or
- “(m) the person travelled to New Zealand before a decision was made by the chief executive under section 125AB(1); or
- “(n) the person travelled to New Zealand contrary to a decision made by the chief executive under section 125AB(1)(b) or (c); or
- “(o) the person did not provide information requested by the chief executive under section 125AD(1); or
- “(p) the person did not provide the chief executive with access to information under section 125AD(3),—”.

Legislative history

17 June 2004	Divided from Border Security Bill (Bill 53–2) as Bill 53–3B
29 June 2004	Third reading
1 July 2004	Royal assent

This Act is administered in the Department of Labour.
