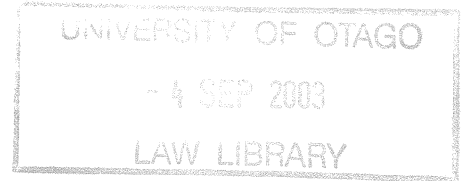


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No 131



## House of Representatives

# Supplementary Order Paper

Tuesday, 2 September 2003

### Immigration Amendment Bill

#### *Proposed amendments*

Hon Lianne Dalziel, in Committee, to move the following amendment:

*New clause 15A*

To insert, after clause 15 (after line 27 on page 13), the following clause:

**15A Release or extended detention if craft unavailable, etc,  
within 72-hour period**

- (1) Section 60(2) of the principal Act is amended by omitting the words “A warrant”, and substituting the words “Subject to any extension of it under subsection (4) or **subsection (6A)**, a warrant”.
- (2) Section 60(4) of the principal Act is amended by inserting, after the words “subsections (2) and (3)”, the words “(and, if appropriate, **subsection (6A)**)”.
- (3) Section 60 of the principal Act is amended by repealing subsections (6) and (7), and substituting the following subsections:
  - “(6) Unless the Judge considers that there are exceptional circumstances that justify the person’s release, a Judge may not order the release of a person under subsection (5) if—
    - “(a) the person is currently a refugee status claimant who claimed refugee status only after the removal order was served; or
    - “(b) a direct or indirect reason for the person being unable to leave New Zealand is or was some action or inaction by the person occurring after the removal order was served.

- “(6A) Where a Judge determines not to order the release of a person to whom **subsection (6)** applies, the Judge may—
- “(a) extend the warrant of commitment for a further period of up to 30 days, in which case—
- “(i) the warrant authorises the detention of the person named in it for the period specified in the extension of the warrant; and
- “(ii) **subsections (3) to (6) and this subsection** apply at the expiry of the extension of the warrant; and
- “(b) make any orders and give any directions that the Judge thinks fit.
- “(7) No person may be detained under 1 or more warrants of commitment under this Part for a consecutive period of more than 3 months, unless the person is a person to whom **subsection (6)** applies.”
- (4) To avoid doubt, a person upon whom a removal order has been served may be arrested and detained in accordance with sections 59 and 60 of the principal Act (as amended by this section) notwithstanding that the person may, before the commencement of this Act, have been released from detention under a warrant of commitment by virtue of the application of section 60(7) of the principal Act (as in force before its amendment by this section).

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### Explanatory note

This Supplementary Order Paper proposes a *new clause 15A* that amends section 60 of the Immigration Act 1987. Section 60 provides for the detention under a warrant of commitment of persons on whom a removal order has been served, where the person cannot be removed within a 72-hour period. Under the *new subsections (6), (6A), and (7)*,—

- the current presumption against release from custody of persons who claim refugee status only after they are served with a removal order is extended to include persons whose own action or inaction, after service of the removal order, is or was a reason for the inability to effect their removal from New Zealand; and
- the current 3-month limit on the detention of a person under a warrant of commitment would not apply to such people; and
- the maximum period for which a warrant of commitment may be extended at any one time for such people is increased from 7 to 30 days, and the Judge may make any orders and give any directions that the Judge thinks fit.

The proposed amendments are in response to a recent High Court decision to release from custody an individual who is unlawfully in New Zealand (*Mohebbi v Minister of Immigration*, 7 August 2003, CIV 2003-404-4326, Chambers J, unreported). The individual was detained for immigration

removal purposes but could not be removed within the current 3-month time limit in section 60(7) of the Act due to their non-co-operation in the removal process. The non-co-operation in that case involved the refusal to sign an application for a passport (required for removal purposes) in circumstances where the home country would not issue a passport without the signed application.

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