

Submission to the Education and Workforce Committee on the Immigration (Fiscal and System Integrity) Amendment Bill

28 July 2025

As the independent advocate working for and with mokopuna,¹ Mana Mokopuna – Children and Young People's Commission (Mana Mokopuna) makes the following submission on the Immigration (Fiscal and System Integrity) Amendment Bill (the Bill).

Summary & Recommendations

Given the statutory mandate of Mana Mokopuna, this submission is focussed on the Bill's potential impact on the rights, interests, participation, and well-being of mokopuna (children and young people) who migrate to, seek asylum or are granted refugee status in Aotearoa New Zealand. In particular, this includes their rights under the UN Convention on the Rights of the Child (the Children's Convention) and other relevant international human rights law treaties to which New Zealand is a States Party.

As noted throughout our submission, we acknowledge that the Bill proposes some amendments that are likely to create positive impacts for migrant, asylum-seeking and refugee children in Aotearoa New Zealand.

However, we are also concerned that some of the Bill's proposals fail to ensure that the best interests of migrant, asylum-seeking and refugee children are a primary consideration in decision-making. We are concerned about how this could negatively impact on the rights, interests and well-being of migrant and refugee children. In particular:

- Regarding the proposal to revoke the residence visas of refugees or protected persons who are considered a threat or risk to security, and provide them with a temporary visa instead, we are concerned that this is highly likely to have a negative impact on that person's children and their family unit.
- While we acknowledge the Bill's proposal to extend immigration levies could benefit migrant, asylum-seeking and refugee children, particularly in relation to education and health infrastructure and services, we are concerned this proposal could negatively impact large and/or low-income families. It could potentially undermine a child's right to family unity if visas that promote family reunification are subject to extended immigration fees.
- While we welcome the Bill's proposal to significantly improve the checks and balances on out-of-hours entry and search operations, including a requirement that the potential impact of these operations on children must be considered, we strongly advocate for this proposal to be further strengthened to ensure children are only exposed to out-of-hours entry and search operations in exceptional circumstances and after all alternatives have been exhausted. A full child impact assessment should be legislated as a requirement in such instances.
- While we acknowledge that the Bill's proposal to provide the Minister of Immigration with new powers of special direction to grant or vary visas in particular situations is likely to benefit groups of migrant, asylum-seeking and refugee children and their families in times of need,

¹ We have adopted the term 'mokopuna' to describe all children and young people we advocate for. 'Mokopuna' brings together 'moko' (imprint or tattoo) and 'puna' (spring of water). Mokopuna describes that we are descendants, and or grandchildren, and how we need to think across generations for a better present and future. We acknowledge the special status held by mokopuna in their families, whānau, hapū and iwi and reflect that in all we do. Referring to children and young people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from, matters for their identity, belonging and wellbeing at every stage of their lives.

we are concerned that it is at the Minister's sole discretion when, how and for whom they use this power. We recommend further criteria are developed to inform the Minister's decision-making, including that the rights of children must be a primary consideration when the Minister is deciding whether to exercise this power in relation to particular situations.

The matters in this Bill directly affect mokopuna. We emphasise to the Education and Workforce Committee that it is unacceptable that this Bill has been developed without refugee or migrant mokopuna being involved or consulted, and without their views being taken into account. We urge the Committee to prioritise hearing directly from mokopuna about their views on this Bill as part of the Select Committee oral hearings process.

When considering one of the key purposes of the Bill – to improve the integrity of the immigration system in a range of areas, including from a human rights perspective – we are also of the view the Bill presents an important opportunity to recognise the rights of migrant, asylum seeking and refugee children. We strongly recommend that the Committee recommends that a children's rights-based approach is embedded into the principal Act to ensure all immigration-related decision-making upholds children's rights, promotes their best interests, and prevents undue hardship on children, particularly in family migration and settlement contexts.

On account of the potential negative impacts the Bill could have on the rights, interests and well-being of migrant, asylum-seeking and refugee mokopuna, Mana Mokopuna makes the following recommendations:

At an overarching level, Mana Mokopuna recommends the Bill is updated to include amendment to the principal Act to incorporate the Children's Convention and ensure the best interests of children are a primary consideration in all decision-making under the principal Act.

In relation to specific clauses of the Bill, Mana Mokopuna recommends:

1. In relation to the revocation of refugee or protected person's residence visa due to security risk:

- 1.1. *amend clause 75A of the Bill to clearly state the best interests of the child must be a primary consideration in decision-making under this section and the visa status of children and other family members should not be affected by a revocation, and*
- 1.2. *amend the Bill to clarify what would happen if the person is no longer considered a threat or risk to security, i.e. whether their residency class visa would be reinstated, what steps a person would need to take to demonstrate they are no longer a threat or risk to security, and what support they might receive (such as counselling) to achieve this status.*

2. In relation to out-of-hours entry and search:

- 2.1. *amend clause 293B of the Bill to include:*
 - 2.1.1. *a standalone provision relating to children that emphasises out-of-hours searches of dwellings or marae where children may be present should only be used as a last resort after all alternatives have been considered and undertaken, and only occur in exceptional circumstances, such as when there is a clear threat to public safety or national security, and*
 - 2.1.2. *that applications for a judicial warrant to undertake out-of-hours entry and search operations of places where children may be present must demonstrate that all other reasonable alternatives have been considered and undertaken, and must be informed by a full child impact assessment, which outlines for the judge what the likely impacts on children will be if the operation is approved, and*
 - 2.1.3. *ensure operating guidelines relating to approved out-of-hours entry and search of a place where children may be present clearly state the operation must be conducted*

in a way that prioritises children's best interests and provides appropriate holistic supports to uphold their rights, interests and well-being.

3. In relation to extended immigration levies:

- 3.1. *amend clause 399AB(2)(a)(ii) of the Bill to explicitly clarify that levy revenue can be used for child-specific health costs;*
- 3.2. *provide exemptions, tiered levy structures for families with children, and/or cap total levies per household to ensure large and low-income families are not adversely affected by extended immigration levies, and*
- 3.3. *exempt from extended immigration levies visa classes that promote and give effect to children's right to family unity as guaranteed under Articles 8-10 of the Children's Convention.*

4. In relation to the Minister's special directions powers, *amend the Bill to provide that the rights of children must be a primary consideration when the Minister is deciding whether to exercise this power in relation to particular situations.*

5. In relation to consulting with migrant, asylum-seeking and refugee children, *the Government should pause the progress of the Bill to allow time to consult with migrant, asylum-seeking and refugee children, and their families, and give effect to their right to be heard on matters that may affect them.*

Improving the system integrity of the immigration system from a children's rights perspective

The Bill proposes to improve the integrity of Aotearoa New Zealand's immigration system in a range of areas, including from a human rights perspective. In light of this intention, Mana Mokopuna emphasises to the Committee that the Bill presents an important opportunity to recognise the rights of migrant, asylum seeking and refugee children, and to embed a children's rights-based approach into the principal Act. This is important to ensure all immigration-related decision-making upholds children's rights, promotes their best interests, and prevents undue hardship on children, particularly in family migration and settlement contexts.

Amending the Bill to ensure the incorporation of children's rights into the principal Act would be New Zealand taking an important step towards giving effect to the Government's obligation under the Children's Convention to "take all appropriate legislative, administrative, and other measures" to implement children's rights² and ensure that laws and policies are developed and operate in ways that support implementation of children's rights. In particular, immigration-related legislation and policy should reflect the core principles of the Children's Convention (which are also substantive rights too), namely:

- non-discrimination
- the best interests of the child
- the right to life, survival and development, and
- the right to be heard.

In the immigration context, the principal Act should clearly state that a child's best interests must be a primary consideration when any decision is made under the principal Act that would affect them.

² Article 4 of the Children's Convention.

Throughout this submission, we note where we advocate for the Bill's proposed amendments to be strengthened to better provide for children's best interests in decision-making. Overall, however, we recommend the principal Act is amended to incorporate the Children's Convention, so that it is considered whenever decisions are made that may affect children.

Revocation of refugee or protected person's residence visa due to security risk

“A place where all are welcome and safe and can be who they are with no fear of judgment, and where no one is disadvantaged by things they cannot control.”

(Mokopuna from Youth Engagement Strategy Report³)

Mana Mokopuna is concerned about the proposed amendment that would enable the Minister to cancel a refugee or protected person's residence class visa if that person constitutes a threat or risk to security, and issue them with a temporary entry class visa "of a type that the Minister thinks fit".

As acknowledged in the Explanatory Note to the Bill, cancelling a person's residence class visa would remove certain rights from the person, such as the right to vote or purchase a home, and the ability to sponsor a friend or family member to come to New Zealand.

We are concerned the Bill enables visa downgrades and broad ministerial discretion over the type and length of temporary visas without considering how children may be affected. This could lead to instability, restricted access to essential services, and disruption to family unity, particularly for those on refugee or humanitarian pathways. It is also unclear how children and family members sponsored under the Refugee Family Support Category will be affected if a sponsor's residence status is downgraded. These changes risk disproportionately harming children's wellbeing and should be reconsidered from a child-centred perspective.

We are also concerned the Bill provides no clarity on what would happen if the person is no longer considered a threat or risk to security, and whether their residency class visa would be reinstated. Additionally, it is unclear what steps a person would need to take to demonstrate they are no longer a threat or risk to security and what support they might receive (such as counselling) to achieve this status. This lack of clarity is likely to create further uncertainty and instability for the person's children and their families.

Out-of-hours entry and search

Mana Mokopuna welcomes the proposed amendments that place stronger checks and balances on out-of-hours entry and searches of dwellings or marae. In particular, we support the requirement that an immigration officer must obtain judicial authorisation before undertaking this type of activity and their application must:

- include consideration of the potential impact of the proposed entry and search on anyone else who may be present in the dwelling or marae, including children
- demonstrate that reasonable alternatives to the proposed entry and search have been considered, and
- include an assessment of whether the proposed entry and search is reasonable, proportionate and in the public interest.

³ RC_Youth_Engagement_Strategy_Development_Discovery_Phase_v5.pdf

We are of the view, however, that these provisions should be significantly stronger to better reflect the traumatic impact that out-of-hours entry and search operations can have on children, and the findings of the Heron review.⁴ The threshold for any such use of these measures should be extremely high and must consider children's rights and best interests. We are concerned that as it stands, the Bill does not adequately reflect learnings from New Zealand history and the traumatic and long-lasting negative impacts on specific communities of out-of-hours entry and search, and the detrimental intergenerational impacts on mokopuna. As outlined in the Heron review report,⁵ in the context of the Dawn Raids, the Pacific community reported these types of activities are very traumatising for children, with victim-survivors who were children at the time reporting that the Dawn Raid period made them fearful and "terrified" that they would become parentless, caused them "deep embarrassment and fear", and that the trauma was long-lasting and continues to affect people to this day. These concerns have been echoed by representatives of the Chinese and Indian communities.

The negative impact of immigration enforcement actions on children is also evidenced in research from the United States, which found that immigration enforcement actions, and the ever-present threat of enforcement action, can have significant physical, emotional, developmental, and economic repercussions for children, and extend to entire communities and the country as a whole.⁶

Ensuring protection for children in the context of out-of-hours search and entry

In light of the significant and traumatic impact that out-of-hours entry and search operations can have on children and the recommendations of the Heron review, we strongly recommend that clause 293B of the Bill is further strengthened to include a standalone provision relating to children. This should emphasise that out-of-hours searches of dwellings or marae where children may be present should only be used as a last resort and only occur in exceptional circumstances, such as when there is a clear threat to public safety or national security.

Applications for a judicial warrant to undertake out-of-hours entry and search operations of places where children may be present must also demonstrate that all other reasonable alternatives have been considered and undertaken (not just that they were considered as currently provided in the Bill) and provide a child impact assessment, which outlines for the judge what the likely impacts on children will be if the operation is approved.

If an out-of-hours entry and search operation is approved for a place where children may be present, operating guidelines must clearly state that the operation must be conducted in a way that prioritises the rights, best interests and well-being of children. For example, the operation should include the presence of trained child welfare professionals, follow trauma-informed protocols, uphold family unity and provide follow up support, including counselling if required. These holistic supports must be in place before any out-of-hours entry and search operation in such circumstances is undertaken.

Extended immigration levies

In principle, Mana Mokopuna welcomes the proposed amendments extending the classes of persons who can be charged an immigration levy beyond applicants for visas, to enable a wider range of users and beneficiaries of the immigration system to share in meeting the costs of running that system.

In particular, we support the Bill's proposal that the Minister can use levy revenue to improve infrastructure and services relating to key sectors, such as health and education, and that levy payers,

⁴ Heron, M. & Barrow, J. (2023). *A review of processes and procedures around out of hours immigration compliance activity, and to identify and recommend potential changes to the process where required*. <https://www.mbie.govt.nz/dmsdocument/26981-mhkc-inz-out-of-hours-final-report-29-june-2023>

⁵ Ibid paragraphs 172-182.

⁶ See <https://www.americanimmigrationcouncil.org/fact-sheet/us-citizen-children-impacted-immigration-enforcement/>

and their children, are likely to benefit from these improvements (as the Minister is required to have regard to this link before extending immigration levies).

We emphasise the need for improved infrastructure and services for migrant, asylum-seeking and refugee children, including culturally responsive mental health care, health navigators, and universal access to primary healthcare.

While the proposed section 399AB(2) outlines education-related uses for levy revenue such as specialist teachers, school property, teacher training, or learning support, which we welcome, it overlooks child-specific health investments for migrant, asylum-seeking and refugee children, such as developmental assessments, culture and trauma-informed care and access, and early intervention. We advocate for these to be covered in the Bill.

We are concerned that extended immigration levies may place a disproportionate burden on large and/or low-income families, affecting child wellbeing (although we acknowledge there has been some concessions made in this regard⁷). We are also concerned about what impact extended immigration levies could have on family reunification. We would not support levy increases on visa classes that promote this goal and give effect to children's right to family unity as guaranteed under Articles 8-10 of the Children's Convention.

We are, however, pleased to see the Bill proposes the Minister must have regard to the effect extended levies may have on levy payers, and that the Minister can make special directions that exempt persons or classes of persons from the obligation to pay all or part of the levy or regulations that prescribe different amounts or methods of calculation of the levy in respect of different classes of persons.

We strongly encourage the Minister to take into account how levies could impact the rights and wellbeing of children, especially from large and/or low-income families, and consider exempting certain classes of persons or prescribe different amounts or methods of calculation of levies in respect of large and/or low-income families or to protect the rights of children, including their right to family unity.

Minister's power to make special directions

“ I mostly feel safe when somebody understands me like my family and friends.”

(Mokopuna, *Without Racism Aotearoa Would Be Better* report⁸)

We welcome the Bill's proposal to provide the Minister of Immigration with the power to issue visas or adjust visa conditions for individuals or groups without formal application in particular situations if it would be to their benefit (or at least not disadvantage them). For example, we take this to mean the Minister could swiftly grant visas to children and their families who need to immediately leave disaster or humanitarian situations or who need to stay in New Zealand for an extended period due to disruptions in their countries of origin that occurred after they arrived in New Zealand or global events, such as the COVID-19 pandemic.

We note it is at the Minister's discretion for which individual or groups they exercise this power for. It is also the Minister who determines whether the special direction benefits or does not disadvantage the class or classes of the persons to whom it applies and if they consider it appropriate to undertake any consultation. While we acknowledge the Bill puts in place some safeguards (such as special

⁷ See <https://www.mbie.govt.nz/dmsdocument/28952-immigration-fee-and-levy-review-final-proposed-rates-proactive-release-pdf>, paragraphs 42-49.

⁸ Mana Mokopuna, *Without Racism Aotearoa Would Be Better Report 2024*.

directions must be published and may be disallowed by the House of Representatives), we recommend further criteria are developed to inform the Minister's decision-making in this regard, including that the rights of children must be a primary consideration when the Minister is deciding whether to exercise this power in relation to particular situations.

Consultation with migrant, asylum-seeking and refugee children

“ To be accepted. To be understood and taken seriously. It's important because it gives you confidence in your uniqueness”

(Mokopuna, What Matters Most? Mana Mokopuna survey⁹)

We are concerned there has been no consultation and engagement with refugee and migrant communities, including children, on the Bill and strongly encourage the Select Committee recommends the Government pause the Bill's progress until this consultation and engagement is undertaken.

Please refer to our Submission on Restoring Citizenship Removed by Citizenship (Western Samoa) Act 1982 Bill¹⁰ as to why consulting with migrant mokopuna is important.

Conclusion

While we acknowledge the Bill proposes some amendments that are likely to create positive impacts for migrant, asylum-seeking and refugee children in Aotearoa New Zealand, we are concerned that overall the Bill fails to ensure the best interests of the migrant, asylum-seeking and refugee children are a primary consideration in its proposed amendments, particularly in relation to revocation of residents visas, extended levies, and out-of-hours entry and search. This is likely to negatively impact on the rights, interests and well-being of migrant, asylum-seeking and refugee children. Mana Mokopuna is of the view the Bill presents an opportunity to embed children's rights in the principal Act and ensure that all immigration-related decision-making upholds children's rights, promotes their best interests, and prevents undue hardship on children, particularly in family migration and settlement contexts.

We strongly urge the Education and Workforce Committee to recommend all of the measures outlined in this submission to strengthen the Bill from a children's rights and wellbeing perspective.

⁹ Mana Mokopuna, What Matters Most Survey, 2023.

¹⁰ Submission on Restoring Citizenship Removed by Citizenship (Western Samoa) Act 1982 Bill | Mana Mokopuna, pg 2-3.