

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.

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The foundations of this review

1. For many Pacific families living in 1970s New Zealand, the dawn brought with it, not a beginning, but the end of a family unit.
2. Pacific peoples were the victims of a racist application of New Zealand's immigration law, a law that criminalised remaining in New Zealand after the expiry of a visa.¹
3. Making up one-third of people who overstayed their visas in the 1970s, Pacific people accounted for 86% of prosecutions. People from Great Britain and America, also accounting for one-third of such people, made up only 5% of prosecutions.
4. The law was applied discriminatorily. Like many laws and their execution, the targeted application of immigration laws reflected societal values. In the wake of an economic downturn, parts of society feared that migrants, in particular Pacific migrants, were jeopardising New Zealander's financial security and quality of life.
5. The law was implemented unfairly and unreasonably. Between 1974 and 1976, immigration officials and police officers entered homes of Pacific people, dragged them from their beds, often using dogs and in front of their children. They were brought before the Courts, often barefoot, or in their pyjamas, and ultimately deported.
6. In 1976, this activity stopped. In 1987, remaining in New Zealand without a visa was decriminalized. But the harm was done.
7. We have been told of children who were separated from their families to then suffer abuse at the hands of state officials.
8. We have heard accounts of grandparents with strange 'quirks' who have never been able to tell their children or grandchildren of their lifelong fear of being taken away.
9. We have been told of the distrust in authorities that the Dawn Raids created.
10. But we have also been told of hope, of forgiveness, of healing.

¹ A conviction was required before a person could be deported.

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11. On 1 August 2021, then Prime Minister Jacinda Ardern, on behalf of the government took part in *ifoga* and apologised to Pacific people for the harm caused to them during the Dawn Raids period.
 12. Before and after the apology, Immigration New Zealand (“INZ”) conducted what is called “out of hours compliance activity”, visiting the homes of unlawful persons in the early morning, usually around 6am, to deport them. The Immigration Act 2009 (the “Act”) allowed for such activity and no change was made to the law or INZ policy as a consequence of the apology.
 13. On 19 April 2023, an Auckland-based compliance team visited the home of a Tongan national with the intention of executing a deportation order (the “incident case”).
 14. News of the visit spread through the Pacific community, fuelled by media reports that the visit was another Dawn Raid. We are told that the goodwill achieved by the government’s apology was undone and this is supported by much of the feedback we have received.
 15. The Ministry of Business, Innovation and Employment (“MBIE”) has commissioned this Review into INZ’s ongoing out of hours compliance activity.
 - P 16. At the outset we have found that the Minister of Immigration (the “Minister”), MBIE and INZ management did not undertake any work to align the ongoing out of hours compliance activity with that apology. The context at the time and following was understandably a distraction from doing so (the pandemic meant there was limited deportation activity) and much of the feedback that INZ received following the apology related to an amnesty.
 17. The continuation of early morning visits by compliance officers (when publicised) has caused distress to many people and indeed entire communities and for some people completely undermined the impact and meaning of the apology.
 18. We have also found that, for reasons elaborated on below, very few Pacific people are subject to out of hours compliance activity; the majority of those deported pursuant to these activities are Chinese or Indian nationals.

Purpose and scope of this Review

19. The purpose of this Review is narrow: we are reviewing the current state of INZ's out of hours compliance activity and recommending changes to the process where required.²
20. We have been asked to review the adequacy of INZ's current immigration settings, including legislative settings and Standard Operating Procedures, to determine if they need to change:
 - 20.1.1. With regard to their cultural appropriateness in light of the government's apology, the Minister's "clearly stated" position on the practice and the Minister's letter to MBIE dated 2 May 2023 (a copy of the government's apology and the Minister's letter are set out in full at **schedule 2**).
 - 20.1.2. To ensure any decision to undertake out of hours compliance activity is reasonable, proportionate, and justifiable in the circumstances, and takes into account relevant considerations such as the possible impact or harm on others (including children), the health and safety of the attending officers and whether other alternatives may be available.
 - 20.1.3. The level at which sign-off of out of hours visits occurs.
21. The terms of reference, which are set out in full at **schedule 1**, allow us to make recommendations for legislative change.

Executive Summary

22. During the course of the review, we have spoken to a wide range of people including INZ compliance officers and managers, Senior Immigration and MBIE officials, leaders and members of Pasifika, Indian and Chinese communities, members of the Immigration Reference Group, immigration lawyers and representatives of Ministry for Pacific Peoples. We also received approximately 100 responses to our public survey questions.

² We consider the current state to be that which existed at the time the events occurred which gave rise to this review, as well as the "interim" changes which have been implemented while this review occurs. The SOPs and other procedures primarily examined are those as at 28 March 2023 and following.

23. A summary of our five recommendations is as follows:

- a) The government consider amending the Act to specify criteria for out of hours compliance visits by INZ compliance officers and consider whether those involving residential addresses be stopped entirely, or made subject to judicial search warrant, or otherwise limited to specific situations, such as those involving public safety or matters of national security.
- b) Standard Operating Procedures should also be updated to reinforce that out of hours compliance visits are a matter of last resort and reasonable alternatives have been considered beforehand. Standard Operating Procedures should also be updated to reflect policy about *when* and *how* these kinds of visits should occur. Given the lack of legislative time available, this could be given priority.
- c) Any assessment of out of hours visits should consider the impact on anyone else who may be present, in particular children, but also the elderly or other vulnerable individuals, as well as New Zealand citizens or residents. The way in which the operation is carried out should take into account relevant cultural factors.
- d) Any decision to undertake an out of hours compliance visit should also include an assessment of reasonableness, proportionality and public interest.
- e) Any out of hours compliance activity should be authorised by the relevant compliance manager and the national manager before it can occur (the status quo prior to this Review). We acknowledge there are arguments for elevating authorisation further.

are invasive in the sense that the officers enter a private space and may be disturbing because the participants may be awoken by a knock on the door, that was where the similarities ended.

111. In current times, the NPP ensures that the law is executed agnostically and visits only occur when the “intelligence” suggests they should. By this, those officers we spoke to meant that INZ was only undertaking out of hours compliance activities when faced with no other alternative, based on the due diligence they had carried out. Where they did occur, the interactions were considered, by officers, to be polite and as unintrusive as possible.
112. When presented with evidence that Chinese and Indian persons made up the majority of deportees, the Pasifika community told us that this was still racist – the racism had turned to other parties. We were also told that, regardless of how ‘unintrusive’ these visits were, they were causing significant social and psychological stress.
113. In our view, the government’s apology created a reasonable expectation within the Pasifika community that “dawn” intrusions into houses would cease (or at least would be a very last resort). Whilst out of hours visits appear to have been a matter of last resort and require managerial and national manager approval, there does not appear to have been an attempt to implement the principles of the government’s apology or alter out of hours visits in light of it.
114. Indeed, neither legislation nor policies were updated to reflect the apology or the principles underlying it. It does not appear to have been raised or considered as a consequence of the apology (it may be some sectors took it for granted while others did not consider it relevant to current operations).
115. Instead, some individual compliance officers and their managers told us that they, on their own accord, steered away from using out of hours powers on Pasifika families.
116. This is partially supported by the statistics we have seen, which show that Pasifika people have been the subject of very few out of hours visits.²⁵

²⁵ Noting that we are not able to discern the precise reasons behind this.

Our view

117. A considerable degree of disquiet from the incident case results both from misdescription of the actual circumstances combined with the legitimate concern of early morning intrusion into the home with children present.
118. We agree with the Pasifika community that an apology for behaviour, aspects of which continue after the apology, does appear to ring hollow. Whilst the apology did not make any mention of ongoing immigration activity, we think it is reasonable for the Pasifika community to expect that early morning intrusions into households would cease (or at least be exceptional).
119. It seems to us that there were options available to the government, or to INZ officials, to amend the legislation or policies in light of the government's apology. We were told that officials from Immigration New Zealand attended the apology in person; it is perhaps unusual that no thought seems to have been given to out of hours activity by the relevant Minister or senior officials (particularly as it was understood to relate to early morning intrusion into peoples' homes). We are told that requests from the community following the apology were about an amnesty and did not refer to cessation of out of hours compliance activity. It is important to also consider the context at the time and following the apology which included COVID (and consequential limited deportation activity) and other immigration related issues which were not deportation related.
120. There seems to be a mismatch between the relevant Minister, INZ officials and the community. One interviewee described it to us as a loss of social license. Essentially, they said, the apology removed INZ's social license to carry on these kinds of activities; their legality is irrelevant.
121. We have received varied feedback about this. An Indian community representative, for example, told us that the community is very concerned with maintaining its "citizen" identity in New Zealand. They think it is important that unlawful persons are removed from the community lest they cause a stain on the reputation of other, lawful citizens.
122. We received similar feedback from some members of the Pasifika community, who told us that they would support deportation of unlawful persons, especially those who had committed crimes.