

NEW ZEALAND (/NEWS/NATIONAL) / POLITICS (/NEWS)

## Dawn Raids review urges new guidelines, possible law change

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Mike Heron, KC Photo: RNZ / Samuel Rillstone

**P** An independent review of Dawn Raids-style visits has urged the government to consider banning or restricting the practice in law.

Guidelines for compliance officers should also be updated as a priority, and assessment on carrying out a raid should consider reasonableness, proportionality, public interest, and how it would affect others including children and elderly.

The review by senior lawyer Mike Heron into "out of hours immigration visits" for the Ministry of Business, Innovation and Employment (MBIE) was launched in May after news the practice was still in use (<https://www.rnz.co.nz/international/pacific-news/489396/we-are-still-being-dawn-raided-tongan-community-leader-tells-public-meeting>) and targeting Pacific overstayers - including in a case the previous month

(<https://www.rnz.co.nz/news/political/489091/dawn-raid-tactics-still-happening-despite-government-apology>) - despite an official apology (<https://www.rnz.co.nz/news/national/448235/ardern-gives-formal-apology-on-behalf-of-government-for-dawn-raids>) for the practice less than two years prior.

The Dawn Raids in the 1970s had overwhelmingly targeted Pacific people, who accounted for 86 percent of related prosecutions despite making up only a third of overstayers. US and UK citizens were only 5 percent of prosecutions, but about another third of total overstayers.

**In his report** (<https://www.mbie.govt.nz/dmsdocument/26981-mhkc-inz-out-of-hours-final-report-29-june-2023>), **Heron - assisted by barrister Jane Barrow - found no change had been made to immigration law or Immigration New Zealand policy as a result of the 2021 apology, and neither Immigration, MBIE, nor the minister had undertaken work to align ongoing practice with it.**

"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."

He also found the raids were now largely being targeted at Chinese and Indian nationals, and very few Pacific people were being affected.

"The statistics seem to imply that, now that Covid restrictions have, for the most part, been lifted, deportations are increasing, as are out of hours visits. It is, therefore, of the utmost importance that INZ gets this right," he said.

**The review gave five recommendations:**

**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**

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

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

Any decision to undertake an out of hours compliance visit should also include an assessment of reasonableness, proportionality and public interest

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

Currently, the assessments only require the compliance officer to weigh up "the most good and ... the least harm", whether it treats people "fairly and without bias", and whether they would feel okay about it being reported in the media.

The reviewers said the Dawn Raids of the '70s were a racist application of New Zealand's law in which saw officials and police enter the homes of Pacific people and drag 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. In 1976, this activity stopped. In 1987, remaining in New Zealand without a visa was decriminalised. But the harm was done."

The reviewers said they heard from children separated from their family only to be abused by state officials, and of grandparents who suffered "strange 'quirks' who have never been able to tell their children or grandchildren of their lifelong fear of being taken away".

They said the 2021 apology by then-Prime Minister Jacinda Ardern was later undermined by the news of subsequent raids.

"We agree with the Pasifika community that an apology for behaviour, aspects of which continue after the apology, does appear to ring hollow.

"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. "

The reviewers said they spoke to leaders and members of the Pacific, Indian and Chinese communities, and conducted six online fono over two days - but these were not well attended - and carried out an online survey which had more than 100 responses. They also interviewed more than 20 MBIE employees, and several immigration lawyers and advisors.

While it is no longer 'illegal' - a criminal act - to be in New Zealand without a visa, it is still 'unlawful'. The reviewers were told by officials New Zealand had about 14,000 unlawful visitors in a "conservative estimate". People were typically

notified via text, email and letters if their visa was about to expire, and the implications of remaining.

"The highest priority for deportation rests in those who have been convicted of criminal offending or who are a threat to national security. The majority of those unlawfully in New Zealand are not criminals or a threat to national security."

However, in rare cases, overstayers would sometimes be visited "out of hours" if they failed to leave the country. The review found immigration officers had authority under current law to enter any building or premises at any reasonable time for specific purposes such as serving a deportation order.

In the late 2000s, Immigration NZ had classed approaches between 9pm and 7am as "out of hours compliance activity" to guide officers on what a reasonable time would be, the review showed. After the case in April, this was changed to between 6pm and 8am.

"The (former) minister seems to be, at least retrospectively, of the view that this kind of activity should not occur other than in specific circumstances. That view is shared by MBIE management but has not been passed on to compliance officers, who understand they are still expected to deport people as and when required and within their lawful bounds," the review said.

The compliance team had taken the media reporting of the April case "very hard", the review said, feeling it did not have the hallmarks of a "Dawn Raid" and was carried out reasonably and respectfully - and they felt let down by managers when this was not properly communicated to the media.

"The officers we spoke to were very clear that, in their view, this is not like the Dawn Raids of the 1970s because these out of hours visits are intelligence and surveillance led. The officers work hard to build rapport with their clients and treat them with respect and dignity and in line with their code of conduct."

Some officers also reported the Budget appropriation of deporting 1500 people a year was a background pressure on them.

The report gave further details of the case, including that the man had recently married a New Zealand Permanent Resident, and was working unlawfully to provide for her family. Officials had been given anonymous tips about the man's work status, and allegations of threats and violence against his partner.

Four children were in the house at the time of the raid. It was attended by six Immigration officers who all said it was the least difficult out-of-hours operation they had experienced, with no use of force required. Police had been notified and two officers who were nearby watched the operation but did not take part.

The reviewers concluded that if the minister believed out-of-hours raids should only be done for matters of public safety, the law or at least the operating procedures should have been amended.

They found deportations were an important part of compliance work, and considered justified as a last resort by the agency. However, legal advisors found very few if any cases reached the threshold that would require out-of-hours activity.

## 'I am sorry'

Immigration Minister Andrew Little has apologised, saying updated guidance on dawn raids should have been introduced following the national apology.

"I am sorry, I am regretful. We need to make sure that, you know, when we are signaling a change in approach that we give meaningful guidance to do that."

He could not say why new guidance was not issued.

"To a large extent, that's administrative guidance. I can't speak for previous ministers, I know that Michael Wood, my immediate predecessor, did write to Immigration New Zealand after this event had happened to make it very clear that he expected that enforcement action of this nature would be an absolute last resort."

Little said he would be considering the review's recommendations and planned to take advice to Cabinet soon.

It seemed unlikely the government would introduce an out-right ban of the practice, with Little saying he expected there would be rare cases when the approach was needed.

"Practically speaking, you would expect that there will be cases. I expect they will be very rare, where every effort is made, but it has just not been possible to contact the person who is the subject of an investigation.

"I wouldn't want to remove the ability for immigration officers to take action out of hours when it is an absolute last resort and appropriate to do so and conducted in a reasonable and proportionate way."