Immigration Amendment Bill [B32-2010] : Deliberations and Voting : 1 March 2011

Submission by the DEMOCRATIC ALLIANCE

Amendments Proposed by 2010 Bill	Submission(s)/Concern(s)
Amending Section 1 – Definitions, tabled 22.2.11 : “**”port of entry visa”** means the authority to travel from a port of entry of another country to any port of entry of the Republic for the purposes of admission into the Republic, as contemplated in section 10A;”;	Is this nomenclature in line with international norms ? Clause 2(n) pertaining to visa to proceed to port of entry may have to be amended.
Clause 2(b) (amending Section 1 - Definitions) : by the substitution in subsection (1) for the definition of **‘‘corporate applicant’’** of the following definition: ‘‘ **‘corporate applicant’** means a juristic person established under the laws of the Republic **[or of a foreign country which conducts business, not-for-gain, agricultural or commercial activities within the Republic and]** which applies for a corporate permit referred to in section 21;’’	Corporate applicants are likely to be established foreign businesses. It makes no sense to require, then, that they must be established under the laws of the Republic. The words allowing for establishment under the laws of a foreign country must be reinserted : ‘‘ **‘corporate applicant’** means a juristic person established under the laws of the Republic or of a foreign country **[which conducts business, not-for-gain, agricultural or commercial activities within the Republic and]** which applies for a corporate permit referred to in section 21;’’
Clause 2(g) (amending Section 1 - Definitions) : by the substitution in subsection (1) for the definition of **‘‘passport’’** of the following definition: ‘‘ **‘passport’** means any passport or travel document containing the prescribed information and characteristics issued— (a) under the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994); (b) on behalf of a foreign state recognised by the Government of the Republic to a person who is not a South African citizen; (c) on behalf of any international organisation as prescribed, including regional or sub-regional organisations, to a person who is not a South African citizen; or any other document approved by the Minister and issued under special circumstances to a person who cannot obtain a document contemplated in paragraphs (a) to (c);’’	The words “by or” should be inserted before the words “on behalf of” in (b) and (c).
Clause 2(h) (amending Section 1 - Definitions) : by the insertion in subsection (1) after the definition of **‘‘permanent residence permit’’** of the following definition: ‘‘ **‘permit’** means a relative’s permit contemplated in section 18, a work permit	If a visa is intended to describe a “short stay” authorisation, why is an asylum transit permit not an asylum transit visa ?

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contemplated in section 19, a corporate permit contemplated in section 21 or an asylum transit permit contemplated in section 23, whichever is applicable in the circumstances, issued for purposes of temporary sojourn in the Republic;''	
Clause 2(l) (amending Section 1 - Definitions) : by the substitution in subsection (1) for the definition of **''status''** of the following definition: '' **'status'** means the status of the person as determined by the relevant permit, visa or permanent **[or temporary]** residence permit granted to a person in terms of this Act;''	Why is it necessary to state "relevant permit, visa or permanent residence permit" ? Why not simply "relevant permit or visa" ?
Clause 2(n) (amending Section 1 - Definitions) : by the substitution in subsection (1) for the definition of **''visa''** of the following definition: '' **'visa'** means the authority— (a) to proceed to a port of entry as contemplated in section 10A; or (b) to temporarily sojourn in the Republic for the purposes of— (i) a transit through the Republic as contemplated in section 10B; (ii) a visit as contemplated in section 11; (iii) study as contemplated in section 13; (iv) a treaty as contemplated in section 14; (v) business as contemplated in section 15; (vi) a person being a member of the crew of a conveyance as contemplated in section 16; (vii) medical treatment as contemplated in section 17; (viii) retirement as contemplated in section 20; or (ix) an exchange programme as contemplated in section 22, whichever is applicable in the circumstances;''.	What is the length of stay required for a permit versus that for a permit ?
Clause 3(a) (amending Section 4(2) – Immigration Advisory Board) by the substitution for subsection (2) of the following subsection: ''(2) (a) The Board shall consist of— (i) (aa) the Director-General; (bb) the Head of the Immigration Services Branch of the Department; (ii) any representative, at least equivalent to the rank of Deputy Director-General, from any department or organ of state, whom the Minister considers relevant; (iii) a person representing organised business; (iv) a person representing organised labour; and	The DA agrees with the LSSA submission : "...the proposed amendment appears to allow the Honourable Minister to decide which Government Departments should be formally cooperating with the Department of Home Affairs through the Board and which are perhaps seen as a hindrance or of being obstructive. It is recognised that perhaps some Departments see their participation on the Board as being unnecessary. In such situations, the response should instead be to limit the Departments that need to be there to those that have a vested interest in the Department's

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(v) up to five individual persons appointed by the Minister in the prescribed manner on the basis of their knowledge, experience and involvement pertaining to immigration law, control, adjudication or enforcement. (b) The Minister shall designate from the members of the Board a Chairperson and Deputy Chairperson of the Board.''; and	work e.g. Trade & Industry, Labour and International Cooperation, whilst affording the Minister the discretion to invite other Departments (or allowing other Ministries to attend) if it is deemed necessary." At least one representative of the organised legal profession should be a member of the Board. Further, the Board should elect its own Chairperson and Deputy Chairperson at its first meeting convened by the Minister.
Not included in Amendment Bill : **Section 5(b) –** ''**Functions of Board** **5.** The Board shall— *(a)* advise the Minister in respect of— (i) the contents of regulations that may be made in terms of this Act; (ii) the formulation of policy pertaining to immigration matters; and (iii) any other matter relating to this Act on which the Minister may request advice; and *(b)* serve as the interdepartmental cooperation forum for all immigration matters.''.	The Board is obliged to advise the Minister. The minister, however, is not obliged to take any cognisance of this advice. The wording of this section should be altered to : 5. (a) "**[The Board shall]** The Minister shall consult with the Board in respect of –"
Clause 4(c) (amending Section 7(1)(i) – Regulation-Making) by the substitution in subsection (1) for paragraph (i) of the following paragraph: ''(i) the fees that may be charged in respect of the application for and issuing of visas, permits and certificates and other services rendered in terms of this Act, including advance passenger processing and passenger name record information transmission;''	Exactly who will be paying the fees for advance passenger processing and passenger name record information transmission ? How can Home Affairs dictate the fees applicable ?
Clause 4(d) (amending Section 7(1)(k) – Regulation-Making) by the deletion in subsection (1) of paragraph (k); *(k)* the requirements and conditions which should be complied with by any person who, on behalf of any other person, applies for a permit referred to in sections 11 to 22 and 25 to 27, and the registration of an immigration practitioner contemplated in section 46;	Dealt with in clause 23.
Clause 5(b) (amending Section 9(4) – Admission and Departure) by the substitution for subsection (4) of the following subsection:	The difference between permits and visas must be clarified.

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''(4)A foreigner who is not the holder of a permanent residence permit contemplated in section 25 may only enter the Republic as contemplated in this section if— (a) his or her passport is valid for **[not less than 30 days after the expiry of the intended stay]** a prescribed period; and (b) issued with a valid **[temporary residence permit]** visa, as set out in this Act.'	The DA refers to the LSSA submission in this regard : "The amendment proposes that, in order to be admitted, a foreigner must either be a permanent resident or be "issued with a valid visa." Subject to the response to the LSSA's inquiries about the distinction the Amendment seeks to draw between a permit and a visa, the purpose for which one can apply for a "visa" is limited to one of those listed in Clause 1(n) of the Definition section – see also the proposed amendment of section 10(2). The wording of the proposed amendment seems to suggest that, if one applies successfully at an Embassy for a section 19 work permit, the work permit holder would not be allowed to enter South Africa in terms of this amendment as he/she does not have a "visa." The same submission would apply in respect of the other "temporary residence permits" that the amendment seeks to remove from the definition of "visa." If this reading of the proposed amendment is correct, this would also be in conflict with the wording of section 10(1) of the current Act, which the Department does not seek to amend."
Clause 7(b) (amending Section 10(2) – Temporary Sojourn) by the substitution for subsection (2) of the following subsection: ''(2) Subject to this Act, upon application in person and in the prescribed manner and on the prescribed form, a foreigner may be issued— (a) a visa for the purposes of— (i) transit through the Republic as contemplated in section 10B; (ii) a visit as contemplated in section 11; (iii) study as contemplated in section 13; (iv) a treaty as contemplated in section 14; (v) business as contemplated in section 15; (vi) being a member of the crew of a conveyance as contemplated in section 16; (vii) medical treatment as contemplated in section 17;	The question of length of stay for a permit vs a visa again arises. The DA agrees with the submissions of ENS and FIPSA : **EDWARD NATHAN SONNENBERGS :** Applicants for visas and temporary residence permits will have to visit offices of the Department of Home Affairs or a foreign embassy to apply in person for their status. Attorneys, Advocates and Immigrations Practitioners may no longer lodge applications on the applicants' behalf as provided for in the current Act. This is likely to cause severe problems, as it is impractical to expect executive level employees of multinational companies to queue at the Department's offices for hours on end to submit applications, particularly

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(viii) retirement as contemplated in section 20; or (ix) an exchange programme as contemplated in section 22; or (b) permits contemplated in sections 18, 19, 21 or 23.''; and	since this cannot be done by appointment. Bearing in mind that each agent often submits numerous applications per day, it is also likely to exacerbate the poor conditions and overcrowding experienced at Home Affairs offices nationally. **FIPSA :** The bill also requires that all permit applications should be submitted in person at a Home Affairs office or an embassy overseas, although couriered applications have been acceptable in the past. We do not believe that this is an insurmountable problem where verification of documents and identities may be required, but this does not require that Practitioners be excluded where they hold legal power of attorney to represent the applicant/s.
Clause 7(c) (amending Section 10(6) – Temporary Sojourn) by the substitution for subsection (6) of the following subsection: ''(6) (a) Subject to this Act, a foreigner, other than the person contemplated in paragraph (b), may apply to the Director-General in the prescribed manner and on the prescribed form to change his or her status or the conditions attached to his or her **[temporary residence]** permit or visa , or both such status and conditions, as the case may be, while in the Republic. (b) An application for change of status or the conditions attached to a visitor's visa and medical treatment visa or both such status and conditions, as the case may be, shall be made, in the prescribed manner and on the prescribed form, to the Minister who may, in exceptional circumstances, grant such an application. *Change from original Bill tabled 22.2.11*	The DA is concerned that LSSA interpreted "conditions" to include the time period attached to an authorisation. This must be clarified.
Clause 9 (amending Section 13 – Study Permit) The following section is hereby substituted for section 13 of the principal Act: ''**Study visa** **13.** (1) A study visa may be issued, in the prescribed manner, to a foreigner intending to study in the Republic for a period not less than the period of study, by the Director-General: Provided that such foreigner complies with the prescribed requirements. (2) The holder of a study visa may conduct certain work as prescribed.''.	The DA concurs with the submission made by Edward Nathan Sonnenbergs : "Study permits must, in terms of the Amendment Bill, be issued for "a period not less than the period of study". This is impractical and subject to abuse, particularly where such permit is issued to a minor who is only studying whilst accompanying a work permit holder to South Africa. We propose that study permits be issued in accordance with the duration of the period of stay of the main permit holder."

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Clause 11(a) (amending Section 15(1) – Business Permit) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: ''A business **[permit]** visa may be issued by the Director-General to a foreigner intending to establish or invest in, or who has established or invested in a business in the Republic, excluding any type of undesirable businesses published from time to time in the *Gazette* by the Director-General, after consultation with the Department responsible for trade and industry, in which he or she may be employed, and an appropriate **[permit]** visa for the duration of the business **[permit]** visa to the members of such foreigner's immediate family: Provided that-''; *Change from original Bill tabled 22.2.11*	The DA shares the concern of LSSA : "ad 15(a): Re permits for the families of holders of business permits / visas": a. The Bill provides that an appropriate "visa" may be issued to the family member for the duration of the business visa. b. In terms of the Bill, the term "visa" apparently expressly excludes any category of section 19 work permits – that the family member, irrespective of their skills or experience, cannot subsequently apply to work for another business, irrespective of whether all the requirements for the section 19 permit are met. c. The Bill further provides that this limitation will apply for the *duration* of the term of the business permit, which presumably, unless the business fails, will need to be extended from time to time. a. Noting that there is no special dispensation to the immediate family members of the holders of business permits, that all the usual requirements for such permit must be complied with, and whilst submitting that this ought to be reconsidered in any policy review in order to attract qualifying businesses, the LSSA recommends currently that the relevant portion of Section 15(1) of the Act be amended to read that- *"… and an appropriate visa or permit may be issued to the members of such foreigner's immediate family."* The regulations/notice listing "undesirable businesses" must be submitted to Parliament for approval.
Clause 11(c) (Amending section 15 – Business Permit) *Amendment to original Bill tabled 22.2.11* By the substitution in subsection (1) for paragraph (c) of the following paragraph : "(c) such foreigner has undertaken to – (i) Comply with any registration requirement set out in any law administered by the South African Revenue Service; and	The regulations/notice prescribing the percentage or number of citizens or permanent residents must be submitted to Parliament for approval.

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(ii) Employ permanently the prescribed percentage or number of citizens or permanent residents, within a period of 12 months from the date of issue of the visa.".	
Clause 12(d) (amending Section 19(4) and 19(5) – Work Permit) by the substitution for subsections (4) and (5) of the following subsections: ''(4) Subject to any prescribed requirements, **[an exceptional]** a critical skills work permit may be issued by the Director-General to an individual possessing **[exceptional]** such skills or qualifications determined to be critical for the Republic from time to time by the Minister by notice in the Gazette and to those members of his or her immediate family determined by the Director-General under the circumstances or as may be prescribed. (5) An intra-company transfer work permit may be issued by the Director-General for a prescribed period to a foreigner who **[is employed abroad by a business operating in the Republic in a branch, subsidiary or affiliate relationship and who by reason of his or her employment is required to conduct work in the Republic for a period not exceeding two years, provided that—** **(a) the employer undertakes that it will take prescribed measures to ensure that such foreigner will at all times comply with the provisions of this Act, and will immediately notify the Director-General if it has reason to believe otherwise; and** **(b) the employer furnishes the prescribed financial guarantees to defray deportation and other costs should such foreigner fail to depart when no longer allowed to sojourn in the Republic]** complies with the prescribed requirements.''	The DA submits that a discretionary clause must be included, allowing the Director-General to be approached with an application that a skill that is not listed is indeed a critical skill, and will benefit South Africa. What is the position with respect to exceptional skills permits or quota permits that expire ?
Clause 13(a) (amending Section 21(1) – Corporate Permit) by the substitution for subsection (1) of the following subsection: ''(1) A corporate permit may be issued by the Director-General for a prescribed period to a corporate applicant, who conducts business in any sector excluding the prescribed sectors, to employ foreigners who may conduct work for such corporate applicant.'' *Amendment to original Bill tabled 22.2.11*	A discretionary clause must be inserted. The regulations/notice prescribing sectors to be excluded must be submitted to Parliament for approval.
Clause 14 (deleting Section 22(b) – Exchange Permit) by the deletion of paragraph (b). *Amendment to original Bill tabled 22.2.11 :* Section 22 of the principal Act is hereby amended by the substitution in paragraph (b) of the words preceding subparagraph (i) of the following words :	The regulations/notice prescribing "undesirable work" must be submitted to Parliament for approval.

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"(b) who is under 25 years of age and has received an offer to conduct work, excluding any undesirable work as prescribed, for no longer than one year **[provided] :** Provided that –"."	
Clause 15 (substituting Section 23 – Asylum Transit Permit) The following section is hereby substituted for section 23 of the principal Act: ''**Asylum transit permit** **23.** (1) The Director-General may, subject to any terms and conditions as prescribed, *(amendment to original Bill tabled 22.2.11)* issue an asylum transit permit, valid for a period not exceeding five days, to a person who at a port of entry claims to be an asylum seeker, to travel to the nearest Refugee Reception Office in order to apply for asylum. (2) Despite anything contained in any other law, when the permit contemplated in subsection (1) expires before the holder reports in person at a Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), the holder of that permit shall become an illegal foreigner and be dealt with in accordance with this Act.''	The words "the nearest" in Clause 23(1) must be deleted, and replaced by "a". The regulations prescribing the terms and conditions must be submitted to Parliament for approval.
Clause 16 (repealing Section 24 – Cross-Border and Transit Permits) Section 24 of the principal Act is hereby repealed. "**Cross-border and transit [passes] permits** **24.** (1) The **[*Department*]** Director-General may issue a cross-border **[pass with the same effect as a multiple *admission* visitor's]** permit to a citizen or a permanent resident or a foreigner who is a citizen or a resident of a prescribed foreign country with which the Republic shares a border **[and who does not hold a *passport* but has received a *prescribed* identity document by the *Department* and is registered with the *Department*]**. (2) The **[*Department*]** Director-General may issue a transit **[*visa*]** permit authorising— *(a)* a foreigner travelling to a foreign country to make use of the transit facilities at a port of entry**[.]**; or *(b)* a foreigner to travel from a port of entry through the Republic to a foreign country.".	How will the Department deal with multiple admissions, eg by truck drivers ?
Clause 18(b) (amending Section 27(c) – Residence on Other Grounds) by the substitution in paragraph (c) for the words preceding subparagraph (i) of the following words: ''(c) intends to establish or has established a business in the Republic, prescribed to be in the national interest, and investing in it or in an established business, prescribed to be in the national interest, the	This must be amended in line with Clause 11(a)

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prescribed financial contribution to be part of the intended book value, and to the members of such foreigner's immediate family**[, provided]**: Provided that—''	
Clause 19(b) (amending Section 29(1)(f) – Prohibited Persons) by the substitution in subsection (1) for paragraph (f) of the following paragraph: ''(f) anyone found in possession of a fraudulent **[residence]** permit, visa, passport, permanent residence permit or identification document.''	Why not simply state "anyone found in possession of a fraudulent permit, visa, passport or identification document" ?
Clause 20(a) (amending Section 30(1) – Undesirable Persons) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: ''The following foreigners may be declared undesirable by the Director-General, as prescribed, and after such declaration, do not qualify for a permit, visa, admission into the Republic **[, a temporary]** or a permanent residence permit:''	Why repeat the "permit" requirement ? Delete "permanent residence permit".
Clause 20(b) (amending Section 30(1) – Undesirable Persons) by the substitution in subsection (1) for paragraphs (f) and (g) of the following paragraphs: ''(f) anyone who is a fugitive from justice; **[and]** (g) anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic, with the exclusion of certain prescribed offences **[.]**; and''	Is this acceptable for a person who was convicted and has served his/her sentence ?
Clause 20(b) (adding Section 30(1)(h) – Undesirable Persons) by the addition of the following paragraph: ''(h) any person who has overstayed the prescribed number of times.''	The DA concurs with the submission by Edward Nathan Sonnenbergs : "It is proposed that anyone who has overstayed their visa a prescribed number of times will automatically become an undesirable person and therefore ineligible for a permit, visa, admission to the Republic or Permanent Residence. This is particularly challenging if one considers the number of overstays currently being caused by the Department's own inability to renew visas timeously. We propose that any permit holder whose application is pending for more than three months at the time of expiration of their exiting permit be granted an automatic extension of their permit until such time that their application is adjudicated. This will also resolve the prevailing challenge to industry, where key employees are rendered unable to work due to the Department's failure to timeously finalise their applications."

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Clause 21 (substituting Section 35 – Duties with regard to conveyances) The following section is hereby substituted for section 35 of the principal Act: ''**Duties with regard to conveyances** **35.** (1) Save for exceptional circumstances necessitating otherwise, no person in charge of a conveyance shall cause that conveyance to enter the Republic at any place other than at a port of entry. (2) (a) The owner or person in charge of a prescribed conveyance entering into, departing from or in transit through the Republic shall comply with the provisions of this section by enabling electronic transmission and receipt of the prescribed information to the Director- General in the prescribed manner. (b) The owner or person in charge of a conveyance entering into, departing from or in transit through the Republic shall within the prescribed period prior to boarding persons onto his or her conveyance, electronically transmit the prescribed information to the Director-General in respect of each person. (c) The owner or person in charge of a conveyance shall act in accordance with a boarding advice issued by the Director-General in respect of each person contemplated in paragraph (b). (3) (a) The owner or person in charge of a conveyance entering into, departing from or in transit through the Republic by air or conveying persons on domestic flights within the Republic shall comply with the provisions of this section by enabling electronic transmission of the prescribed passenger name record information in respect of all persons booked to travel on his or her conveyance to the Director-General in the prescribed manner. (b) The owner or person contemplated in paragraph (a) shall, within the prescribed period prior to the scheduled time of departure of his or her conveyance, electronically transmit the prescribed passenger name record information to the Director-General in the prescribed manner. (c) The information contemplated in paragraph (a) shall be used by the Director-General for the better achievement of the objectives of this Act and the Director-General shall adopt prescribed measures to safeguard the protection of that information in accordance with legislation governing the protection of personal information. (4) An immigration officer or other authorised person employed by the Director-	The DA concurs with the following submissions : **LHR :** "The requirement found in Section 35(3)(a) for domestic airlines to transmit electronic passenger lists should be removed." **LSSA :** "ad section 35(2)(b): This section requires the owners or persons in charge of conveyances to electronically transmit their passenger lists to the Department prior to departing for South Africa. a. The term "conveyance" is defined in section 1(1) of the current Act as being "any ship, boat, aircraft or vehicle or any other means of transport." b. The term is not limited to conveyances carrying people as part of their day to day business. This would therefore affect families travelling in their car to South Africa for tourism. The term is also not limited to conveyances that have access to such technology and would include long distance taxis. c. The difficulties can be overcome by inserting the word "prescribed" before "conveyance" where it appears in the first line of section 35(2)(b) and thereafter having the Minister limit the list of affected conveyances to those that would logically be able to comply with the requirement, such as airlines, bus companies and shipping lines. ad section 35(2)(c): a. The term "boarding advice" is not defined in the Act, nor is there provision for there to be a prescribed form. This would raise compliance difficulties for the affected conveyances. b. The requirement that the Director General's boarding advice must be complied with "in respect of each person" seeking to board the conveyance, raises several major constitutional concerns. i. The decision to direct that someone be removed from a conveyance or not be boarded, is clearly a decision in terms of

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General may— (a) board any conveyance which is entering or has entered into any port of entry and on good cause shown prohibit or regulate disembarkation from, or the offloading of, such conveyance in order to ascertain the status or citizenship of its passengers; and (b) request the person in control of a port of entry or any person acting under his or her authority to order the person in charge of a conveyance to park, moor or anchor that conveyance in such port of entry at such distance from the shore or landing place or in such position as such immigration officer or other authorised person employed by the Director-General may direct. (5) The person in charge of a conveyance entering or prior to entering a port of entry shall upon demand deliver to an immigration officer— (a) a list stating— (i) the names of all passengers on board of that conveyance, classified according to their respective destinations; and (ii) such other details as may be prescribed; (b) a list of stowaways, if any have been found; (c) a list of the crew and all other persons, other than passengers and stowaways, employed, carried or present on the conveyance; and (d) a return, under the hand of the medical officer of that conveyance or, if there is no such medical officer, under the hand of the person in charge of a conveyance himself or herself, stating— (i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage; (ii) the names of the persons who suffered or are suffering from such disease; (iii) details of any birth or death which occurred upon the voyage between such port of entry and a previous port; and (iv) any other prescribed matter or event: Provided that such immigration officer may— (aa) exempt from the requirements of this subsection the master of a ship destined for any other port in the Republic, subject to compliance with the duty to deliver such lists or return at such port and with any directive such immigration officer may issue to the master; and (bb) if satisfied that a name should be added to or deleted from any such lists, authorise such addition or deletion.	the Act. The proposed amendment does not make clear how there can then be compliance with sections 8(1), 8(2) and/or 8(3) of the Act and/or the Promotion of Administrative Justice Act, 2000, in respect of ensuring that the person is given reasons in writing for the decision at that time and then allowing the person/s (and/or the carrier) to challenge that decision as provided for in the Act. ii. The provision would have implications for the Refugees Act. It could ensure that, for example, a contentious character who wishes to seek asylum in South Africa is not permitted to even reach our ports of entry. Whilst this might bypass section 2 of the Refugees Act, it would contravene the Republic's obligations in terms of the 1951 United Nations Refugee Convention. This principle was in fact clarified by the European Court of Human Rights where the UK government introduced a system of pre-screening passengers in order to stop potential asylum seekers from boarding planes to fly to the UK. The LSSA recommends that, whilst it understands the need for such 'pre-screening', the proposal as currently formulated should be withdrawn until these substantive problems can be resolved. ad section 35(3)(a): a. No case has been made out for this proposed invasion of privacy of South Africans and others. Of what interest and value can it be to the Department of Home Affairs to know whether a person flew between East London and George, for example, instead of driving there or going by train or bus. And precisely for that reason, the data collected can serve no conceivable lawful policy / provision contemplated in the Immigration Act. b. There is with respect no Objective in the Preamble to the Act which can be furthered by putting this information in the hands of the Department. c. The LSSA urges that it be deleted.

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(6) If a conveyance arrives at a port of entry with a passenger on board bound for a destination outside the Republic and that passenger is not on board when the conveyance leaves such port of entry and has not been admitted, the person in charge or the owner of that conveyance shall forfeit a sum fixed by the immigration officer within a prescribed limit. (7) An immigration officer may require the person in charge of a conveyance to muster the crew of such conveyance on the arrival of such conveyance in any port of entry and again before it leaves such port of entry. (8) The competent officer of customs at any port of entry may refuse to give to the person in charge of a conveyance clearance papers to leave that port of entry, unless he or she has complied with this Act and produced a certificate issued by an immigration officer to that effect. (9) A person in charge of a conveyance shall ensure that any foreigner conveyed to a port of entry, for purposes of travelling to a foreign country, holds a valid passport and transit visa or visa, if required. (10) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department.''.	ad section 35(8): The term "certificate" is not defined in the Act, nor is there provision for there to be a prescribed form. This too would raise compliance difficulties for the affected conveyances. ad section 35(10): a. This provision mirrors the current section 35(8) of the Act. b. The provision and the Department's application of same have come in for criticism from the courts. c. In summary, the provision seeks to permit the Department to wash its hands of a person whom it has refused to admit – both in respect of costs and legal responsibility. d. Such a practice was criticised by the Constitutional Court in the matter of *Lawyers for Human Rights v Minister of Home Affairs.* e. A further problem is that the carrier does not have a right, in terms of section 8, to appeal the refusal to admit the person when it may well have a vested interest. The LSSA recommends that this should be provided for. f. Because the Department has not admitted the person into South Africa, it argues that it has no responsibility in terms of managing legal access to the inadmissible at the port of entry – and particularly at airports – which creates an unlawful vacuum and situations where people can find themselves spending literally months in the transit area at a port of entry like OR Tambo Airport."
Clause 22 (amending Section 43(a) – Obligation of Foreigners by the substitution for paragraph (a) of the following paragraph: ''(a) abide by the terms and conditions of his or her status, including any terms and conditions attached to the relevant permit, visa or permanent residence permit, as the case may be, by the Director-General upon its issuance, extension or renewal, and that status shall expire upon the violation of those terms and conditions; and''	Why repeat the "permit" requirement ? Delete "permanent residence permit".

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Clause 23 (repealing Section 46 – Immigration Practitioners) Section 46 of the principal Act is hereby repealed. **46.** (1) No one, other than an attorney, advocate or immigration practitioner, may conduct the trade of representing another person in the proceedings or procedures flowing from *this Act*. (2) In order to be registered on a roll of immigration practitioners to be maintained by the *Department*, an immigration practitioner shall apply in the *prescribed* manner, producing evidence of the *prescribed* qualifications and paying any *prescribed* registration fee. (3) After affording him or her a fair opportunity to be heard, the *Department* may withdraw the registration of an immigration practitioner who has contravened *this Act* or any *prescribed* duty.	The DA supports the following submissions : **<u>WITS ACMS :</u>** "ACMS recognises that there is a need to address the problem of unlicensed immigration practitioners. However, we believe that the situation calls for licensing and regulation of immigration practitioners, rather than their elimination. A large portion of skilled migrants rely on reputable practitioners to manage the immigration system, given the significant time commitment this system requires. These legitimate practitioners have an interest in the system being regulated. While ACMS supports reforms targeting illegitimate practitioners, the elimination of legitimate practitioners will create further barriers to skilled migration and increase the skills gap in South Africa. Any provision intended to regulate the problem of immigration agents should thus take into account the effect that such measures will have on those seeking to migrate legally to South Africa in order to contribute to the country's development. It is essential that such individuals are not deterred from doing so by the inability to navigate the application process." **<u>FIPSA :</u>** "The related advisory professions would also lose their current recognition and right to do business in this field, and jobs would be lost in the economy. **<u>The repealing of Section 46 would result in an unregulated industry in which anyone would be able to advise applicants, causing further problems in a sector which we believe needs increased regulation."</u>**

Amendments Proposed by 2010 Bill	Submission(s)/Concern(s)
Clause 24 (amending Section 49 – Offences).... (10) Anyone who through offers of financial or other consideration or threats, compels or induces an officer to contravene this Act or to breach such officer's duties shall be guilty of an offence and liable on conviction— (a) to a fine or to imprisonment not exceeding **[18 months]** five years; or (b) if subsequently such officer in fact contravenes this Act or breaches his or her duties, to **[a fine or to]** imprisonment not exceeding **[three]** five years without the option of a fine.	The words "and/or comply" in Clause 24(10) should be inserted after "to contravene"; bribes are also solicited by, or offered to, civil servants to have services lawfully rendered.
Clause 25(a) (amending Section 50(1) – Administrative Offences) by the substitution for subsection (1) of the following subsection: ''(1) Any foreigner who leaves the Republic after the expiry of his or her permit or visa shall be **[liable to an administrative fine of a prescribed amount not exceeding R3000, which fine shall be imposed by the Director-General on detection of the overstay and exacted when such foreigner is admitted or makes an application with the Director-General]** dealt with in terms of section 30(1)(h).''	The DA concurs with the following submission : **WITS ACMS :** "In light of the current backlog in processing permit and visa applications and the failure to meet established deadlines, ACMS believes this provision should add the following qualifying language: 'unless such person has applied for an extension or change of status within the prescribed time periods.' This will ensure that individuals are not unfairly punished after following established procedures in accordance with the law."
Section 53 – Transitional Provisions	The DA concurs with the concerns raised by LSSA and Deloitte : **LSSA :** "The Amendment Bill does not make any provision for transitional arrangements relating to existing permits under the Act as it now stands, in relation to permits to be issued under the proposed Amendments." **DELOITTE :** "Of most concern is the lack of workable transitional arrangements. The Bill fails to properly provide for a review of section 53 of the Act (transitional arrangements for existing permits). It is our opinion that section 53 does not equip the Department to legally assist with a formal transition strategy as section 53 refers to permits issued under the "previous Act". The previous Act is at present still interpreted (in terms of section 51) as the Aliens Control Act of 1991."