



COVERSHEET

Minister	Hon Erica Stanford	Portfolio	Immigration
Title of Cabinet paper	Immigration Financial Sustainability and System Integrity Amendment Bill	Date to be published	10 April 2025

List of documents that have been proactively released

Date	Title	Author
3 April 2025	Immigration (Fiscal Sustainability and System integrity) Amendment Bill: Approval for Introduction LEG-22-MIN-0044 Minute	Cabinet Office
26 March 2025	Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Approval for Introduction	Office of the Minister of Immigration
26 March 2025	REQ-0009920 Immigration Amendment Bill: final Cabinet paper and Bill for lodgement	MBIE
24 February 2025	REQ-0009651 Immigration Amendment Bill - draft Cabinet paper and Bill for ministerial consultation	MBIE
12 February 2025	REQ-0008378 Immigration (Fiscal Sustainability and System Integrity) Amendment Bill - drafting decisions	MBIE
21 January 2025	REQ-0007504 Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Exposure draft feedback	MBIE
18 November 2024	REQ-0005172 Immigration amendment Bill: documents for release for targeted consultation	MBIE
13 November 2024	Immigration Amendment Legislation - Addition to Bill and Planning for Future Reviews ECO-24-MIN-0255 Minute	Cabinet Office
13 November 2024	Immigration Amendment Legislation - Addition to Bill and Planning for Future Reviews	Office of the Minister of Immigration
2 November 2024	REQ-0005823 Cabinet paper for lodgement: Immigration Amendment Legislation - addition to Bill and planning for future reviews	MBIE
24 October 2024	REQ-0005298 Draft Cabinet paper amending the definition of mass arrival	MBIE
8 October 2024	REQ-0004179 Immigration Amendment Bill – Mass Arrivals definition and transitional arrangements proposals	MBIE
20 September 2024	Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Policy Proposals ECO-24-MIN-0198 Minute	Cabinet Office
12 September 2024	Immigration Financial Sustainability and System Integrity Amendment Bill - policy proposals	Office of the Minister of Immigration
6 September 2024	2425-0891 Immigration Amendment Bill: Cabinet paper for lodgement	MBIE
22 August 2024	2425-0747 Immigration Amendment Bill: draft Cabinet paper for Ministerial consultation	MBIE
13 August 2024	2024-0352 Immigration Amendment Bill: draft Cabinet paper for feedback	MBIE
17 July 2024	2024-0286 Immigration Amendment Bill: update for meeting on 17 July 2024	MBIE

2 July 2024	2324-3802 Fiscal Sustainability Amendment Bill - update and key decisions	MBIE
4 April 2024	2324-2168 Proposed Immigration (Fiscal Sustainability) Amendment Bill: scope and timeframes	MBIE

<p>Information redacted</p> <p>Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it at this time.</p> <p>Some information has been withheld for the reasons of: national security or defence, privacy of natural persons, confidential advice to Government, information subject to an obligation of confidence, free and frank expression of opinion and legal professional privilege.</p>	<p>YES</p>
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BRIEFING

Immigration Amendment Bill: update for meeting on 17 July 2024

Date:	16 July 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-0286

Action sought		
	Action sought	Deadline
Hon Erica Stanford Minister of Immigration	Agree to discuss the proposals in this briefing with officials at your meeting on 17 July	17 July 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Stacey O'Dowd	Manager, Immigration (Border & Funding) Policy	Privacy of natural persons	✓
Christine Hyndman	Principal Advisor, Immigration Policy	Privacy of natural persons	

The following departments/agencies have been consulted
PCO

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comment



BRIEFING

Immigration Amendment Bill: update for meeting on 17 July 2024

Date:	16 July 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2425-0286

Purpose

To update you on the progress of work underway on Immigration amendment legislation (provisionally named the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the Bill)), prior to our meeting with you on Wednesday 17 July 2024.

Executive summary

In March 2024 you submitted a legislative bid for the Bill [2324-2111]. Following this, we briefed you on an initial scope and timeframes in both April [2324-2168] and June [2324-3082]. The June update sought your agreement to the proposed purpose and objectives and provided a further update on scope.

You agreed at that point to include some additional amendments into the Bill (relating to warrant of commitment provisions, including a community management framework, and migrant exploitation offences). You also directed us to explore which additional proposals **Confidential advice to Government** could be progressed using this vehicle. We have examined the following proposals:

- re-establishing facilitative powers to benefit groups or individual migrants
- addressing the recent Supreme Court decision regarding discharges without conviction
- **Confidential advice to Government**
- **Confidential advice to Government**

Our advice is that the first proposal is progressed, and that you consider progressing the second. **Confidential advice to Government**

Confidential advice to Government We do not consider that there is sufficient time to examine them in adequate depth without jeopardising the ambitious timeframes for the progression of this Bill.

We have also met with Parliamentary Counsel Office (PCO) and confirmed the following timeframes (which are subject to the scope of the Bill not expanding further):

- Cabinet decisions in September 2024
- an exposure draft for targeted consultation by mid-November 2024
- a near-final draft bill, for BORA vet and ministerial consultation, in January 2025
- assent to the new Amendment Act in early October 2025, and
- updated fee and levy regulations (new rates) at the end of November 2025.

In the recent briefing [2324-3802] you agreed to officials undertaking targeted consultation on relevant components of the proposed Bill with some selected stakeholders, immediately following Cabinet policy decisions. Given the scale of the changes intended to be included in the Bill, we now intend to progress a revised approach, and will inform relevant groups of the high-level proposals in the coming weeks (ahead of Cabinet decisions). A more substantive consultation process (using an exposure draft of the Bill) will take place from mid-November.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a. **Note** that the title of Immigration (Financial Sustainability) Amendment Bill does not now address the full scope of the proposed amendments

Noted

- b. **Approve** the new name of Immigration (Financial Sustainability and System Integrity) Amendment Bill

Agree / Discuss

- c. **Note** that the list of agreed components of the Bill currently comprises:

Financial Sustainability

- i. Expanding the levy payer base
- ii. Expanding the purposes the levy can be used for
- iii. Confidential advice to Government
- iv. Confidential advice to Government

Additional safeguards and integrity of the immigration system

- i. Creating migrant exploitation offence provisions, relating to the payment of premiums
- ii. Requiring warrants for out-of-hours compliance activity
- iii. Requiring applications for individual warrants of commitment, and the electronic monitoring of people subject to warrants of commitment, and enable a judge to not order detention for an individual who is subject to detention and has claimed asylum ("Casey"-related amendments)
- iv. Enabling the cancellation of residence status in certain rare instances

Noted

- d. **Agree** to include the proposal to re-establish certain facilitative powers to benefit groups or individual migrants in the scope of the Bill

Agree / Disagree / Discuss

- e. **Direct** us to undertake work on the triggers for the exercise of the facilitative powers relating to classes of person, and to report back to you for decision before the Bill Cabinet paper is finalised

Agree / Disagree / Discuss

- f. **Indicate** whether you wish to include the proposal to address the recent Supreme Court decision regarding discharges without conviction in the scope of the Bill:

Agree / Disagree / Discuss

- g. **Agree** that the following proposals be deferred to Confidential advice to Government, due to their complexity and interdependencies with other parts of the immigration and legal systems:

- i. Confidential advice to Government

Agree / Disagree / Discuss

- ii. Confidential advice to Government

Agree / Disagree / Discuss

- h. **Note that:**
- i. PCO has advised that the timeframes proposed (which would see the legislation passed in October 2025, and new fee and levy rates in place by the end of November 2025), are achievable but very tight, and
 - ii. we therefore recommend that the Bill's scope not be further extended, as that could compromise its delivery

Noted

- i. **Note that** we intend to inform selected stakeholders (listed below) of the high-level policy proposals prior to the Cabinet policy decisions, followed by more targeted consultation with these same stakeholders in November:

- i. Fiscal proposals: Business New Zealand, the Employers and Manufacturers Association, the Council of Trade Unions, and the New Zealand Law Society (NZLS) (and informing the Law Association (LA), formerly the Auckland District Law Society)
- ii. Immigration system proposals (implementing the outcomes of the external Casey and Heron reviews): the Casey Review Focus Group, the Ombudsman, the NZLS and LA

Noted / discuss

- j. **Note that:**

- i. Annex One sets out a summary of confirmed and proposed proposals for the Bill, and
- ii. Annex Two summarises three of the proposals (establishing flexible powers, clarifying that deportation liability is a consequence of criminal offending, Confidential advice to Government)

Noted

- k. **Agree** to discuss the proposals in this paper with officials at the meeting on Wednesday 17 July.

Yes / No



Stacey O'Dowd
**Manager, Immigration Policy
(Border and Funding)**
Labour, Science and Enterprise, MBIE

Hon Erica Stanford
Minister of Immigration

...16 / 07 / 2024

.... / /

You will be discussing the Bill project with officials

1. We are meeting with you at 2.30pm on Wednesday 17 July 2024 to discuss the scope and progress of the work underway to amend the Immigration Act 2009. Prior to that discussion, this note updates you on:
 - a proposed new title for the Bill
 - our conclusions regarding proposals from the Confidential advice to Government that could potentially be progressed more quickly using this vehicle [2324-3802]
 - the outcomes of discussions with PCO on the timing of the proposed amendment Bill, and
 - a revised approach to consultation.

The current Bill title does not reflect the scope of the proposals

2. In response to our most recent advice [2324-2802] on the proposed amendment legislation, you noted that the previous title of the Bill (Immigration (Financial Sustainability) Amendment Bill) did not capture its current extent.
3. We suggest that it be changed to the Immigration (Financial Sustainability and System Integrity) Amendment Bill. We would welcome your feedback on this proposal, and any further suggestions.
4. We note that the current proposals agreed for inclusion comprise:
 - a. Fiscal Sustainability-related proposals –
 - i. expanding the levy payer base
 - ii. expanding the purposes the levy can be used for
 - iii. Confidential advice to Government
 - iv. Confidential advice to Government
 - b. System Integrity-related proposals –
 - i. creating migrant exploitation offence provisions (relating to the payment of premiums offshore)
 - ii. the “Heron” recommendation (Requiring warrants for out-of-hours compliance activity)
 - iii. the “Casey”-related amendments, including spelling out safeguards in applications for individual warrants of commitment, enabling the electronic monitoring of people subject to warrants of commitment, and enabling a judge to not order detention for an individual who is subject to detention and has claimed asylum, and
 - iv. enabling the cancellation of residence status in certain rare instances.

You directed us to examine additional proposals that could be progressed in this legislative vehicle

5. The Bill has grown somewhat in scope since you submitted the legislative bid in March 2024 Bill [2324-2111], and we subsequently briefed you on an initial scope and timeframes [2324-2168]. You confirmed some additional proposals in early July [2324-3082], alongside your confirmation of the proposed purpose and objectives.
6. In the context of discussions about the Immigration Policy work programme, you have also directed us to examine proposals Confidential advice to Government that could be progressed more quickly using this vehicle. We have considered four in detail that have the most merit:

- Re-establishing facilitative powers introduced to respond to the impacts of COVID-19, which enabled the Minister to make immigration decisions which benefit groups of non-citizens, in the absence of an application, and appropriately designated officials to do so for individual migrants.
- Addressing the recent Supreme Court decision regarding discharges without conviction (which found that it was appropriate to consider them in light of the possible impact on an individual's immigration prospects).
- Confidential advice to Government
- Confidential advice to Government

We recommend including the facilitative powers proposal in this Bill ...

7. Parliament agreed in 2020 to the establishment of a set of time-limited powers for the Minister of Immigration as part of New Zealand's response to the impacts of COVID-19. Those powers were extended for a further two years in 2021. Officials subsequently proposed that they be made permanent, and be able to be exercised in a wider range of situations, to enable more flexible and efficient responses when warranted. Proposals were developed to the stage of a completed Cabinet paper and Regulatory Impact Statement, but this work was deprioritised by the then-government.
8. Even in the absence of a pandemic or other national emergency, from time to time it would be appropriate to be able to respond to exceptional circumstances which have an immigration aspect (certain groups of non-citizens needing to come to or remain in New Zealand), where individual applications or Special Directions are inefficient or impractical. This inefficiency has been demonstrated in a range of situations over the last few years.
9. These include where family members of New Zealanders resident in Ukraine, Israel or Gaza have, at very short notice, needed visas to travel to New Zealand, and conversely where people here unexpectedly could not leave (most recently hundreds of RSE workers, due to the collapse of Air Vanuatu and, in 2021/22, Tongan nationals trapped in New Zealand due to the volcanic eruption).
10. The powers as established in the COVID-19 legislation had safeguards built in (the exercise of the powers must benefit, or at a minimum not disadvantage, members of the class of person, and their exercise with regard to classes of person is transparent, through disallowable Orders in Council) and we would recommend that these be maintained.
11. Table one below sets out the five provisions that we recommend are included in this Bill.

Table one: Four specific proposals relating to groups (exercised by the Minister)

Description
The ability to impose, vary or cancel conditions for classes of temporary entry-class visa holders, by Special Direction
The ability to extend the expiry dates of visas for classes of people, by Special Direction
The ability to grant visas to classes of people in the absence of an application, by Special Direction
The ability to waive any regulatory requirements to make an application for certain classes of people, by Special Direction

Table two: One proposal relating to individuals (exercised by the Minister or a Delegated Decision Maker (DDM))

Description
The ability to grant visas to individuals in the absence of an application, by Special Direction

12. We consider that it would be worthwhile reconsidering the triggers for the exercise of the powers relating to classes of person (the 2022 work set the bar very high, at the equivalent of pandemic notices and formal states of emergency). Equally, the threshold should not be too low, to avoid the risks of either gradually substituting the exercise of ministerial discretion for more comprehensive policy responses, or of subjecting future Ministers to high levels of lobbying.
13. At present our thinking centres around establishing an obligation on the Minister to undertake consultation that they consider to be appropriate before making an Order in Council, alongside their being satisfied that the Order in Council is reasonably necessary, as it is not appropriate to follow regular immigration processes. If you agree that this work should progress, we will report back to you as part of the Bill policy development process.

.. and we recommend that you consider including the discharges without conviction proposal in this Bill ...

14. The Supreme Court has recently found that people who have pleaded guilty to, or been found guilty of, a criminal offence can be discharged without conviction if a conviction might mean that they meet a threshold set out in s 161 of the Act (namely Deportation liability of residence class visa holder convicted of criminal offence).
15. Our view is that Parliament intended that the decision concerning whether a residence-class visa holder who had committed an offence should be made liable for deportation be ultimately in the hands of the Minister of Immigration, rather than the courts. We consider that it would be straightforward to clarify this intention through amending s 161, and therefore recommend that you agree to its inclusion.

Confidential advice to Government

[Redacted content]

Confidential advice to Government

We intend to undertake targeted consultation on the proposals

23. You agreed in the recent briefing [2324-3802] to officials undertaking targeted consultation on relevant components of the proposed Bill with some selected stakeholders. We initially proposed to do this immediately following Cabinet policy decisions. We now consider that it would be advisable to inform interested groups of the proposals, at a high level, in advance of Cabinet decisions, followed by targeted consultation on an exposure draft.

24. This is recommended best practice in the Regulatory Impact Assessment guidelines, and should help focus the feedback on the exposure draft once it is published. As noted, we propose advising the following groups, on the topics they have most interest in:
- a. **Fiscal proposals:** Business New Zealand, the Employers and Manufacturers Association, the Council of Trade Unions, and the New Zealand Law Society (NZLS) (and informing the Law Association (LA), formerly the Auckland District Law Society)
 - b. **Immigration system proposals** (implementing the outcomes of the external Casey and Heron reviews): the Casey Review Focus Group, the NZLS and LA, and the Ombudsman (added since our earlier advice).

We have discussed timeframes with PCO

25. We have also met with the Parliamentary Counsel Office (PCO) and confirmed the following timeframes:
- Cabinet policy decisions in September 2024
 - an exposure draft for targeted consultation by mid-November 2024⁴
 - a near-final draft bill, for BORA vet and ministerial consultation, in January 2025
 - assent to the new Amendment Act in early October 2025
 - updated fee and levy regulations (new rates) at the end of November 2025.
26. With regard to the timing and implementation of the next fee and levy review, [REDACTED]
 Legal professional privilege [REDACTED]
27. These timeframes are ambitious, and their achievement will be dependent upon no significant issues being identified during the policy and legislative development processes. Given the importance of passing the changes to the levy provisions in the Immigration Act 2009, we therefore recommend that the scope of the Bill not be further extended.

Next steps

28. We welcome the opportunity to discuss the proposals in this paper with you at our meeting on Wednesday 17 July.
29. Key upcoming milestones for the project are set out in the table below:

Table three: Upcoming milestones for the Bill

<i>Date</i>	<i>Milestone</i>
13 August	Draft Cabinet paper and draft Regulatory Impact Statement (RIS) to Minister for feedback
20 August	Updated paper and RIS to Minister for feedback
21 August – 30 August	Ministerial consultation
5 September	Updated Cabinet paper and RIS to Minister
12 September	Lodge for Cabinet committee
18 September	ECO consideration
23 September	Cabinet consideration

⁴ Targeted consultation would be with the groups as set out in paragraph 24.

Annexes

Annex One: Summary of Bill proposals (confirmed and proposed)

Annex Two: Summaries of potential additions to the scope of the Bill

Annex One: Summary of Bill proposals (confirmed and proposed)

Proposals confirmed as in-scope of the Bill

Fiscal sustainability		
Theme	Proposed amendment	Relates to
Immigration levy (refer to s399)	Expand the range of people or entities that can be charged the levy.	Government's goals to: <ul style="list-style-type: none"> • deliver more efficient, effective and responsive public services • get the government's books back in order and restore discipline to public spending.
	Expand the purpose of expenditure of the funding collected by the immigration levy to include contributions to publicly-funded services or infrastructure.	
Confidential advice to Government	Confidential advice to Government	
Confidential advice to Government	Confidential advice to Government	
System integrity		
Theme	Proposed amendment	Relates to
Warrants of commitment (WOC) (refer to ss316 and 317A)	Introduce a requirement for immigration officers to obtain a judicial warrant prior to conducting unannounced out-of-hours compliance activity.	Heron review recommendation
	Align requirements for individual WOCs with group warrants (following the passage of the Immigration (Mass Arrivals) Amendment Act 2024.	Casey Review
Detention (refer to s317(5)(d))	Enable electronic monitoring as a lesser form of restriction of movement than detention in a prison (also known as "community management").	Casey Review Recommendation 2
	Allow a judge to not order detention for an individual who is subject to detention and has claimed asylum (if a person claim asylum post-detention they are subject to an automatic deportation liability notice).	Casey Review Recommendation 1
Managing immigration risk (refer to s351(1)(a)(iii))	Create a "cancellation of residence class visa status power" to facilitate the future deportation of an individual subject to the Act who poses a threat or risk to security but cannot currently be deported.	New Lynn attack concerns
	Make it an offence when premiums are charged for employment by a New Zealand based employer, irrespective of whether an employee/worker has commenced active employment, to address migrant exploitation.	Migrant exploitation investigations

Proposed scope additions

System integrity		
Theme	Proposed amendment	Relates to
Enable flexible responses to challenges to the immigration system	Enable decisions to be made to grant or amend visas in the absence of applications. These powers were provided for on a time-limited basis during the COVID-19 (e.g., section 61A) in 2020, extended for two years in 2021.	Government's goal to deliver more efficient, effective and responsive public services
Deportation liability (refer to ss161)	Clarify that deportation liability is a consequence of criminal offending (rather than a consequence of conviction).	Recent Supreme Court decision <i>Bolea v R</i> [2024] NZSC 46.

Annex Two: Summaries of potential additions to the scope of the Bill

Possible scope addition 1: Re-establish facilitative powers to benefit groups or individual migrants	
<p>This proposal is to amend sections in the Immigration Act 2009 (the Act) to reinstate a subset of the facilitative powers that were created to enable the government to address the impacts of COVID-19 but which could be used to improve system efficiency and provide certainty to people in exceptional circumstances.</p> <p>The powers can only be used to benefit, or at least not disadvantage, the individuals concerned, and their exercise is transparent and subject to safeguards.</p>	
Problem definition / opportunity	
<p>The Immigration Act 2009 is predicated on individual applications being made for visas and individual decisions being made on those applications. This proved inadequate to deal with the situation of thousands of people following the border closures in 2020, when New Zealand needed to be able to efficiently manage large numbers of visa applicants and visa holders.</p> <p>Time-limited amendment legislation, which was passed in 2020 and extended in 2021, among other things gave the Minister of Immigration discretionary powers to make visa-related decisions for groups of people (including granting visas in the absence of applications, extending visa expiry dates, and granting work or travel conditions) for classes of visa holders, and certain MBIE staff the ability to grant visas in the absence of applications for individuals (noting these powers could only be used where they benefited the recipients).</p> <p>Even in the absence of a pandemic or other national emergency, from time to time it would be appropriate to be able to respond to exceptional circumstances which have an immigration aspect (certain groups of non-citizens needing to come to or remain in New Zealand) and where individual applications or Special Directions are inefficient or impractical. Specifically, the inefficiency of relying on applications and Special Directions has been demonstrated in a range of situations over the last few years. These include where family members of New Zealanders resident in Ukraine, Israel or Gaza have, at very short notice, needed visas to travel to New Zealand, and conversely where people unexpected could not leave (hundreds of RSE workers, due to the collapse of Air Vanuatu, and Tongan nationals, due to the volcanic eruption).</p> <p>The ability to grant a visa in the absence of an application is also useful in a range of situations, such as where an Australian citizen resident in New Zealand has accidentally been granted a visitor visas on arrival by Customs rather than the correct resident visa.</p>	
Key points about the proposal	
<ul style="list-style-type: none"> - The powers have already proved their usefulness (there were more than 40 Orders in Council made by the Minister of Immigration while they were previously in force). - They arguably fill a gap in the structure of the Immigration Act 2009 / decision making regime, by providing a responsive, transparent and safeguarded mechanism to address issues for people in exceptional circumstances. 	
How / why is this a good fit with the Bill	
<p>The proposed provisions are already substantively drafted. The proposal supports the “system integrity” objectives of the Bill through addressing a gap in the government’s ability to respond efficiently to exceptional circumstances.</p>	
Risks to manage	
<i>Risk</i>	<i>Mitigation</i>
The powers for groups are too difficult to access and although they exist are not actually employed	<ul style="list-style-type: none"> - Ensure that the threshold established for their use is not too high (for example, is not dependent upon a state of national emergency or pandemic notice)
The powers for groups are too easy to access and over time are	<ul style="list-style-type: none"> - Ensure that the threshold is not too low and that there are evaluation / monitoring / calibration

employed where a Cabinet decision establishing a new policy would be more appropriate	mechanisms that can assess trends over time (including to identify whether there are policy, process, or IT gaps)
The powers for groups are too easy to access and over time Ministers are subject to excessive lobbying by groups which would benefit from facilitation	- Ensure the messaging around the use of the powers emphasises the “exceptional” nature of the use of the powers
The powers for groups are used in a way which becomes “policy-like” and means that the exercise of the Minister’s absolute discretion is challengeable (note that the transparency obligations could be used to discern apparent trends)	- Ensure that the design of the thresholds and safeguards is appropriate and protects the use of the Minister’s absolute discretion - Ensure that appropriate processes are used when decisions are being considered
The powers for individuals are too easy to access and over time people are granted visas where they should have made applications and paid the relevant charges	- Ensure that the threshold is not too low and that there are evaluation / monitoring / calibration mechanisms that can assess trends over time (including to identify whether there are policy, process, or IT gaps)
Further work required	
<p>The substantive analysis has already been done (a Cabinet paper and RIS were prepared in 2022 but did not progress) and PCO is confident that the drafting will not be challenging. As noted above, policy decisions will need to be made concerning the threshold for making Orders in Council for groups. If it is too high (at the equivalent of pandemic notices or formal states of emergency as previously) it will be too difficult to exercise the powers in most circumstances where they would otherwise be considered justified. However, if the threshold is too low, there is a risk both of either gradually substituting the exercise of ministerial discretion for more comprehensive policy responses, or of subjecting future Ministers to high levels of lobbying work.</p> <p>It may be appropriate to establish an obligation on the Minister to undertake consultation that they consider to be appropriate before making an Order in Council, alongside their being satisfied that the Order in Council is reasonably necessary where it is not appropriate to follow regular immigration processes.</p>	

Possible scope addition 2: Clarify deportation liability is a consequence of criminal offending
This proposal is to amend s 161 of the Immigration Act 2009 (the Act) to clarify that people who have pleaded guilty to, or been found guilty of, a criminal offence and subsequently discharged without conviction can be made liable for deportation if they would otherwise have met existing thresholds set out in s161.
Problem definition / opportunity
<p>Section 161 of the Act sets out a graduated framework for deportation liability for residence class visa holders on the basis of a criminal <u>conviction</u>. A lower bar for deportation liability is established for new residents, effectively creating a statutory “good behaviour bond” for new residence-class visa holders, where even minor offending may put their residence in jeopardy.</p> <p>Because s161 relies on a conviction, in instances where a residence-class visa holder is discharged without conviction, the s 161 provisions will not be triggered, and they cannot be made liable for deportation.</p> <p>A recent Supreme Court decision (<i>Bolea v R</i> [2024] NZSC 46) has determined that, if credible evidence suggests that deportation liability would be triggered by a conviction, this outcome must be considered as part of applications for a discharge without conviction. In effect, this means that:</p> <ul style="list-style-type: none"> - deportation liability for criminal offending as set out in the Immigration Act can be treated as a factor in sentencing, undermining the objective of the s 161 provisions to support the integrity of New Zealand's immigration system and the security of New Zealand, - the statutory “good behaviour bond” is undermined if a residence-class visa holder can avoid deportation liability through a discharge without conviction, and - non-citizen offenders have grounds to obtain a discharge without conviction that isn't available to New Zealand citizens.
Key points about the proposal
This proposal seeks to support the objectives of Part 6 of the Act (deportation provisions) to support the integrity of New Zealand's immigration system and the security of New Zealand, by ensuring that residence-class visa holders who are guilty of criminal offending are liable for deportation, irrespective of whether they are discharged without conviction or not. Residence class visa holders will therefore not be able to avoid deportation liability through the discretion of sentencing decisions of judges in the Criminal Courts
How / why is this a good fit with the Bill
This change aligns with the system integrity workstream of the Bill. -It supports the integrity of New Zealand's immigration system and the security of New Zealand, by clarifying the intention of existing s161 provisions.
Risks to manage
<p>This proposal may attract scrutiny because clarifies an area of law where the Supreme Court has recently made a decision which is not congruent with that clarification and relates to the rights of individuals. This could be managed through consultation with targeted stakeholders such as the Law Association.</p> <p>May impact on timeframes of the Bill as policy work still to be progressed, including consultation with Ministry of Justice, the Legislation Design and Advisory Committee (LDAC), and PCO.</p>
Further work required
<p>Engage with Ministry of Justice, LDAC, and PCO.</p> <p>Progress policy work, including regulatory impact analysis.</p>

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Confidential advice to Government

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