



## COVERSHEET

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

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
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

**Information redacted**

**YES**

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.

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.

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## BRIEFING

### Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Exposure draft feedback

<b>Date:</b>	21 January 2025	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	BRIEFING-REQ-0007504

Action sought		
	Action sought	Deadline
Hon Erica Stanford <b>Minister of Immigration</b>	<b>Note</b> the feedback received from stakeholder consultation  <b>Note</b> the minor changes proposed for the Bill in response to feedback  <b>Agree</b> to remove “ports” from the Bill’s list of chargeable entities	24 January 2025

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Stacey O’Dowd	Manager, Immigration (Border & Funding) Policy	Privacy of natural persons	
Lesley Parker	Principal Policy Advisor, Immigration (Border & Funding) Policy	Privacy of natural persons	✓
Kayle Petherick	Policy Advisor, Immigration (Border & Funding) Policy	Privacy of natural persons	

Minister’s office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister’s Notes

Withdrawn

Comment



## BRIEFING

### Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Exposure draft feedback

<b>Date:</b>	21 January 2025	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	BRIEFING-REQ-0007504

#### Purpose

To provide a summary of the targeted stakeholder consultation undertaken on the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the Bill), and actions to address that feedback.

#### Executive summary

*We undertook targeted consultation on an exposure draft of the Bill in December 2024*

Most stakeholders agreed with the proposals, with some exceptions. Stakeholders representing businesses / employers (the Employers and Manufacturers Association (EMA) and Business NZ) strongly opposed the proposal to expand the immigration levy payer base, citing cost pressures on employers of migrants. Stakeholders representing legal and human rights groups, including the New Zealand Law Society (NZLS) and the Office of the United Nations High Commissioner for Refugees (UNHCR), opposed proposals that they felt might have potential to limit the rights or freedoms of migrants, such as the proposed power for the Minister for Immigration to cancel a residence class visa held by an individual who poses a threat or risk to security. The feedback received reinforces the importance of key messages which will be used when the Bill is introduced to the House, to ensure the rationale for, and the function of the proposed changes are clearly communicated.

The feedback received was largely constructive, and we propose to instruct the Parliamentary Counsel Office (PCO) to adopt some practical changes. These include further defining some terms to reduce ambiguity or provide consistency and clarity around certain thresholds, better defining what constitutes a “threat to security”; and adding explicit protections to ensure that migrant detainees are consistently permitted access to legal counsel and immigration advice. These changes are minor and technical and will not deviate the Bill from its agreed purposes.

*We seek your agreement to remove the term “port” from the Bill*

Cabinet agreed on 18 September 2024 that “ports” (including airports) be one of the additional groups made chargeable for the immigration levy [ECO-24-MIN-0198].

Confidential advice to  
Government

Officials recommend that that the ability to charge ports is removed from the Bill

Confidential advice to  
Government

This

decision goes further than a minor and technical change that is “consistent with the policy proposals in the paper”, and we propose that you invite Cabinet to confirm this change when you are seeking to introduce the Bill in early April 2025.

## Recommended action

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

- a. **Note** that MBIE has completed consultation on an exposure draft of the Bill with key stakeholders (some feedback from the Casey Review Focus Group is yet to be received) *Noted*
- b. **Note** that consultation on the exposure draft has provided valuable feedback to improve the drafting of some clauses and ensure that key messages for each proposal clearly explain the rationale for the proposal so that it is well understood *Noted*
- c. **Note** some stakeholders opposed or expressed concerns regarding some of the proposals:
- i. The NZLS and the UNHCR opposed proposals that they considered have potential to limit migrant rights in New Zealand, including:
    - i. amendment of the mass arrivals definition
    - ii. creation of the power to cancel a residence class visa on threat or risk to security grounds, and
    - iii. establishment of electronic monitoring as an alternative to detention
  - ii. Business NZ and the EMA opposed expansion of the immigration levy payer base *Noted*
- d. **Note** that:
- i. the Cabinet Minute [ECO-24-MIN-0198] at 4.1.2 identifies “a port” as an entity that can be charged, and that the Cabinet paper sets out that the purpose would be to recover direct costs to the immigration system arising from an airport opening or reopening to international flights
  - ii. Confidential advice to Government *Noted / Discuss*
- e. **Agree** to remove the term “port” from the Bill, Confidential advice to Government and this amendment is considered unlikely to impact on any actual cost recovery opportunities *Agree / Disagree / Discuss*
- f. **Note** that we propose to discuss the narrowing of the levy-charging power with you at the officials’ meeting of 24 January 2025. *Noted*

PP



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

21 / 01 / 2025

Hon Erica Stanford  
**Minister of Immigration**

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## Background

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1. On 18 September 2024, Cabinet agreed to policy proposals for the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the Bill). Cabinet also agreed to officials undertaking targeted consultation on an exposure draft of the Bill in December 2024 [ECO-24-MIN-0198].
2. Targeted consultation on the exposure draft has enabled MBIE to:
  - a. provide stakeholders with detailed information on the policy proposals,
  - b. give stakeholders an opportunity to provide feedback on and improve legislation drafting,
  - c. advise you of stakeholder views; and
  - d. prepare for the Select Committee process.
3. This was identified as the most effective approach to consultation within the timeframe we are working towards, and maintained legal professional privilege over the legislation.
4. The government agencies and stakeholders consulted were:

Government agencies	External stakeholders
The Treasury Inland Revenue (IRD) The Department of Prime Minister and Cabinet (DPMC) The Ministry of Justice (MOJ) The Ministry of Health (MOH) The Department of Corrections (Corrections)	Business NZ The Employers and Manufacturers Association (EMA) The New Zealand Council of Trade Unions (CTU) The Casey Review Focus Group (including Amnesty International New Zealand and the Office of the United Nations High Commissioner of Refugees (UNHCR)) The Office of the Ombudsman The New Zealand Law Society (NZLS) (including the Immigration and Refugee Committee) Immigration New Zealand's (INZ) Immigration Focus Group (including Ryman Healthcare, e-Migration, the New Zealand Association of Immigration Professionals (NZAIIP))

5. Consultation was formally conducted between 11 December 2024 and 20 December 2025. Some organisations advised they did not have sufficient time to provide feedback, or that they would need to focus their feedback on key sections of relevance to their organisations. Extensions were provided to facilitate flexibility around the Christmas holiday period, and to focus the feedback that could be returned. As at 21 January 2024, the only outstanding feedback is from members of the Casey Review Focus Group. Depending on when we receive feedback, we may not be able to accommodate clause specific feedback. Legal professional privilege  
[REDACTED] A final version of the Bill is required early February for the Bill of Rights Act (BORA) vet conducted by Ministry of Justice (MOJ).

## Summary of stakeholder feedback

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6. A summary of feedback by proposal is set out below as *Table One*, with MBIE's response noted – this includes either minor drafting amendments or preparing key messages to manage any misunderstanding and explain how the proposals would work in practice.

Table One: Summary of feedback

Proposal	Level of support	Summary of feedback	MBIE response
A. Amend the definition of a mass arrival (to include a large number of claimants who arrive on a commercial service)	Generally supported	The UNHCR and the NZLS expressed concerns that the powers are broad, and may be subject to misuse, for instance where people may be detained under the mass arrivals provision, where an individual Warrant of Commitment would be more appropriate.	No changes to the Bill.  The concerns raised are addressed by the specific protections against arbitrary detention implemented in the Immigration (Mass Arrivals) Amendment Act 2024.  Key messages to be developed explaining the purpose of the Mass Arrivals framework and the protections it contains.
B. Create more flexibility for the immigration system to respond to unusual circumstances (in particular through enabling groups of people to benefit from ministerial special directions)	Mixed	Concerns were raised that the powers: <ul style="list-style-type: none"> <li>are broad, differ to normal processes of public engagement and may not have sufficient safeguards to prevent use in circumstances where lesser measures, which have more formal processes around them, may be more appropriate.</li> <li>might enable restrictions that would be similar to those used during 2020-2022 in response to the COVID-19 pandemic (MIQ places).</li> </ul> <p>The NZLS proposed a 28-day publication rule before special directions could come into effect (equivalent to the obligations for regulations).</p> <p>A review of the powers was suggested.</p>	No changes to the Bill.  Key messages to be developed covering potential examples (highlighting key differences to COVID-era powers), and noting that MBIE's Chief Executive is required to report annually to the Minister on the use of such powers which provides a means to monitor and review their usage.
C. Create the power for the Minister to cancel a residence class visa held by an individual who poses a threat or risk to security but cannot currently be deported	Mixed	Minor drafting suggestions provided to give certainty of immigration status once residence is cancelled.  Concerns were raised that having someone on a rolling temporary visa may mean that they are unable to be granted work or study rights in New Zealand, leaving the migrant in a protracted state of limbo. Both issues may have BORA or	Minor wording changes proposed for the Bill to respond to feedback, including: <ul style="list-style-type: none"> <li>ensuring that the Minister 'must' issue a temporary visa where a person's residence class visa has been cancelled, to ensure that the person is able to remain lawfully in New Zealand (the visa would provide work rights and any dependants would have study rights).</li> </ul>

Proposal	Level of support	Summary of feedback	MBIE response
		<p>International Covenant on Civil and Political Rights (ICCPR) implications.</p> <p>Some concerns were raised about the power being too far-reaching and susceptible to abuse, and that the cancellation of a visa could have unintended consequences for the visa holder or their families (for example, children born subsequently would not be New Zealand citizens).</p>	<ul style="list-style-type: none"> <li>refining the definition of “threat or risk to national security” to reference only “security”, which is clearly defined in section 4 of the Act and has a high bar to be met.</li> </ul> <p>Key messages to be developed articulating that the cancellation is based on security information and that family members’ immigration status generally would not be affected (i.e. their current status would not be downgraded, but if they are on a temporary visa, they would not have a pathway to residence). Key messages will also highlight the existing checks, balances and appeals pathways in the system to manage the potential BORA and ICCPR implications.</p>
D. Clarify that deportation liability for residence class visa holders is a consequence of criminal offending (rather than conviction)	Mixed	Minimal feedback was provided. Some submitters noted the necessity of ensuring that the punishment of deportation be proportionate to the offending and level of harm.	<p>No changes to the Bill.</p> <p>Key messages to be developed about the rationale for the proposal, as well as the existing checks, balances and appeals pathways in the system to manage the potential BORA implications.</p>
E. Require immigration officers to obtain a judicial warrant prior to conducting out-of-hours compliance activity	All stakeholders supported	Several stakeholders advised that they considered this to be a positive move to ensure natural justice and that due process is followed.	No action required.
F. Update Warrant of Commitment (WOC) application requirements for refugee and protected person	Generally supported	<p>While most stakeholders supported the proposal, some noted concerns about how “risks” and “threats” were expressed or measured within the Bill. Others had concerns about the vagueness of terms such as “national security”.</p> <p>The UNHCR disagreed with the ability for “the judge to issue a WOC if it is in the public interest</p>	<p>Minor amendments proposed for the Bill to standardise definitions and remove the public interest test which undermines the intent and would appear to be inconsistent with our international obligations and the UNHCR’s guidelines on detention.</p> <p>Key messages to be developed to explain that the additional safeguards have intentionally been included in this specific</p>



Proposal	Level of support	Summary of feedback	MBIE response
claimants (claimants)		<p>to do so". While this provision ensures that unforeseen future scenarios can be covered, it creates a low legal threshold, which would make the other criteria the judge must be satisfied of redundant.</p> <p>Stakeholders queried whether these additional safeguards provided to claimants could also be extended to the ordinary WOC provisions for immigration detention.</p>	<p>carve-out provision for claimants, in recognition of both our international obligations but also in light of the very different contexts claimants interact with the immigration system in, as well as the inherent additional vulnerabilities being in a position claiming to require international protection places the person in.</p>
G. Establish electronic monitoring as a lesser form of restriction of movement than detention	Mixed	<p>While most stakeholders supported introducing lesser forms of restriction, they thought that there was scope to strengthen the safeguards included in the provisions. There were also concerns (particularly relating to claimants) that:</p> <ul style="list-style-type: none"> <li>• electronic monitoring might be used as an alternative to release, rather than to detention</li> <li>• the use of the term 'national security' was ambiguous (as above)</li> <li>• elements of the proposal might not be sufficient to afford protections guaranteed under international obligations which require that the use of electronic monitoring not be used as a form of arbitrary detention, and that where it is used in a context where no criminal offending has occurred (as intended in our Bill), that it not be punitive in nature</li> <li>• the proposal could be operationally unworkable.</li> </ul>	<p>We are proposing a number of drafting changes to the Bill in response to the issues raised, such as standardising references to 'security' and addressing terminology inconsistencies. Key messages will additionally be developed to clearly articulate these changes.</p> <p>We also plan to introduce wording which requires the judge be satisfied that each and any condition imposed be justified, proportionate and the least restrictive measure necessary to address the risk.</p> <p>Additionally, we have made changes to address potential inconsistencies with our international obligations. A key change is to replace the "residence and reporting and/or curfew" condition with a "whereabouts" condition. This will enable the judge to determine a parameter around a certain area (for example Auckland city), that the person subject to the condition may not leave. This is less restrictive than binding a person to a specific building during particular hours, ensuring that the measure is not punitive or arbitrary in nature. It will also be significantly less complicated to administer.</p> <p>Lastly, we have worked with Corrections to ensure that the designation of powers for managing electronic monitoring are workable and in line with other legislation that enables electronic monitoring.</p>

Proposal	Level of support	Summary of feedback	MBIE response
<p>H. Make it an offence to charge premiums for employment irrespective of whether a person has started work</p>	<p>Significant support</p>	<p>While stakeholders supported the proposal, concerns were raised regarding:</p> <ul style="list-style-type: none"> <li>the provision being drafted so broadly that that it could potentially result in activities with no link to immigration being captured, which is not the policy intent</li> <li>the risk of employers being captured without their knowledge or intent, because of offending further along the supply chain</li> <li>whether to include provisions to compensate or repatriate premiums to the affected people</li> <li>extraterritoriality and jurisdictional limitations, including the evidential challenges in tracing premium payments back to the employer.</li> </ul>	<p>We are proposing changes to how this proposal is implemented in the Bill to ensure that only situations with a link to immigration are captured.</p> <p>Employers who have not charged a premium for employment will not be captured by the legislation. Similarly, questions of repatriation etc will be a factor in the Judge’s determination (as they are currently) and do not need to be explicitly provided for in our legislation.</p> <p>We acknowledge that there may be extraterritoriality and evidential challenges with premiums paid offshore. Where we can obtain evidence of premiums made back to a New Zealand based offender, this will be captured by our legislation.</p> <p>Key messages will be developed about how MBIE would give effect to this new offence provision, including the limitations to charging, to manage both expectations and concerns.</p>
<p>I. Expand the levy payer base  (noting that the proposal to expand what the levy could be spent on was set out in the policy papers but not included in the exposure draft of the Bill)</p>	<p>Significant opposition from those representing businesses and employers (eg Business NZ and EMA)</p>	<p>Stakeholders advised that tight fiscal constraints on employers wishing to hire migrants had led to many employers hiring fewer staff and instead increasing workloads of existing staff to minimise costs. They considered that additional charges on the employers of migrants would be likely to exacerbate these issues.</p> <p>Concerns were also expressed about the lack of specificity of who will be charged, what the costs might be, and what the levy will be spent on.</p> <p>One stakeholder suggested setting a minimum consultation period in legislation, alongside a list of organisations that must be consulted.</p>	<p>No changes to the Bill required.</p> <p>MBIE is at the early stages of the fee and levy review that aims to establish new levy charges. The proposed timing for consultation will likely align with the introduction of the Bill. This means indicative levy charges can be provided. Key messages will highlight that the legislation is enabling and implementation is through the fee and levy review.</p> <p>We do not recommend codifying a minimum consultation period. It is unusual for a consultation provision to contain an explicit period of time for submissions. The Minister must act “reasonably” when consulting, which would include allowing sufficient time for those consulted to be able to meaningfully respond. Similarly, MBIE does not consider that the legislation should specify bodies to be consulted. Any group or organisation that felt that the process had not been reasonable could apply for judicial review of the process.</p>

## **We seek one decision from you at this stage**

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### *Removal of “ports” from the Bill* Confidential advice to Government

10. On 18 September 2024 Cabinet agreed that “ports” (domestic airports opening or reopening to international flights) be able to be charged to recover immigration system-related costs. This change was to be actioned within this Bill.
11. Confidential advice to Government
12. We therefore recommend that you agree to remove the reference to cost recovery from ports from the current Bill. We note that:
  - a. there is no identified risk of compromising our ability to recover related costs, as the two airports that have announced that they intend to reopen will do so this year, before the Bill comes into effect
  - b. Confidential advice to Government
13. Confidential advice to Government
14. As this decision is not technically “consistent with the policy proposals in the paper”, we propose that, if you agree, you invite Cabinet to confirm it in the paper provided to the Cabinet Legislation Committee (LEG) that will seek agreement to introduce the Bill.
15. Officials can discuss this option with you on 24 January 2025 if you wish.

## **We will discuss our work with PCO on narrowing the definition of the levy with you**

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16. We have worked with the Treasury and PCO on narrowing the definition of the expanded levy, to address the risk (also identified in consultation) that the wording agreed by Cabinet is too broad Confidential advice to Government
17. The proposed definition will see examples provided in the Cabinet policy paper established in the primary legislation (employers of temporary migrants will be able to contribute to skills training for New Zealanders, the sponsors of parents and migrant parents will be able to contribute to linked health system costs, and migrants will be able to contribute to meeting costs arising from migrant demand in the education system).
18. We propose to discuss this with you on 24 January, and to provide you with a briefing for formal decision during the following week. This decision would fall within the definition of “consistent with the policy proposals in the paper” so would not require subsequent confirmation by Cabinet, although you could bring it to your colleagues’ attention if you wished, such as through noting it in the LEG paper that will seek agreement to introduce the Bill.

## Next steps

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19. Following your direction, we will work with PCO to make appropriate changes to the Bill alongside further minor amendments which we are currently processing.
20. Key dates for the Bill have been adjusted following release of the 2025 Parliamentary Sitting Calendar. *Table Two* below sets out expected dates of upcoming milestones for the Bill.

*Table Two: Upcoming dates for the Bill*

Date	Milestone
30 January 2025	Briefing to confirm scope of expanded levy-making power
21 February 2025	Ministry of Justice returns completed Bill of Rights Act (BORA) vetting
6 March 2025	Draft Cabinet Legislation Committee (LEG) paper and the final draft Bill for Ministerial consultation provided to office
10 March to 21 March 2025	Draft Cabinet LEG paper and the final draft Bill for Ministerial consultation circulated
25 March 2025	Final LEG paper provided to office
27 March 2025	LEG paper lodged with Cabinet Office
3 April 2025	LEG consideration of the Bill for introduction to the House
7 April 2025	Cabinet consideration of the Bill for introduction to the House
10 April 2025	Introduction of the Bill to the House (TBC)
8 May 2025	First reading of the Bill (TBC)