

## Immigration (Enhanced Risk Management) Amendment Bill – changes to deportation liability

| 1. Expand deportation liability for residence class visa holders  | 2a. Minor deportation liability amendments – false & misleading information   | 2b. Minor deportation liability amendments – historic offending   | 2c. Minor deportation liability amendments – when deportation liability resets after time overseas  | 2d. Minor deportation liability amendments – definition of ‘administrative error’   | 3. Expand the ability of victims to submit on deportation liability proceedings  |
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| <b>Current state</b>  |   |   |   |   |  |
| <p>Section 161 of the Immigration Act 2009 (Act) sets out a graduated framework to determine when resident and permanent resident (“residence class”) visa holders who have committed criminal offences are liable for deportation. Each ‘tier’ of the framework considers how long a person has held a residence class visa, and how serious the offence is.</p> <p>Currently a residence class visa holder who commits a criminal offence cannot be liable for deportation if the offence was committed more than 10 years after they first held a residence class visa, regardless of how serious the offending is.</p>  | <p>Section 158 of the Act makes a New Zealand resident liable for deportation if they have provided false or misleading information in a visa application. However, there are other immigration matters that people may provide false and misleading information on, e.g. in:</p> <ul style="list-style-type: none"> <li>• a request to the Minister</li> <li>• appeals to the IPT or the courts</li> <li>• support forms for their partner or children</li> <li>• requests to have their visa conditions lifted</li> <li>• submissions to the Minister seeking cancellation or suspension of deportation liability.</li> </ul> | <p>If a residence class visa holder is convicted of a historic crime that they committed offshore before holding a New Zealand visa, there are often no grounds under the Act to make them liable for deportation.</p> <p>In some cases, it may be possible to make the person liable for deportation for providing false and misleading information under section 158, but the person must have known they were under investigation for the offending at the time they submitted their visa application (and have concealed that). Section 160 provides another avenue to make someone liable for deportation if new information as to their character becomes available, but it can only be used within five years of residence class status being granted.</p> | <p>When someone holding a residence class visa has spent more than five years overseas, the policy intention is that their deportation liability period for criminal offending should reset when they return to New Zealand. This affects how the graduated tiers of deportation liability apply to them.</p> <p>However, the language in the Act hinges on a person re-entering New Zealand “as the holder of a residence class visa”.</p> <p>This has created ambiguity around the deportation liability of people who have entered New Zealand on a foreign passport as a visitor, rather than using their residence class visa.</p> | <p>Section 155 of the Act makes a person liable for deportation if their visa was granted in error, including where the visa was granted as a result of an administrative error.</p> <p>The definition in the Act is too narrow to capture all cases where an administrative error may occur (eg it doesn’t capture a visa granted to someone who was subject to a deportation order). This has occasionally been a barrier to deportation.</p> | <p>Only victims of the offence that directly triggered a migrant’s liability for deportation have the right to provide a submission to the Minister or IPT on their offender’s deportation appeal proceedings.</p> <p>For example, if a migrant abuses victim A in 2024 and victim B in 2025, and it is the offending against victim B that makes them liable for deportation. Victim A has no ability to submit on the migrant’s deportation proceedings.</p> |
| <b>Future state</b>   |   |   |   |   |  |
| <p>The Bill extends the period that a residence class visa holder may be liable for deportation. A person who has held a residence class visa for up to 20 years could be liable for deportation if they are convicted of a crime and sentenced to imprisonment of 10 years or more.</p> <p>It also extends the lower ‘tiers’ of the framework, so deportation liability is a more likely outcome for lower-level criminal offending.</p> <p>The Bill also sets out factors, including the severity of the crime and the impact on any victim, that the Immigration and Protection Tribunal (IPT) must consider when determining appeals against deportation liability.</p> | <p>The Bill provides that residence class visa holders are liable for deportation if they provide false or misleading information relating to <i>any</i> immigration matter, not just visa applications.</p> <p>The Bill also reinstates a provision that was inadvertently not carried over when the Act was enacted in 2009. Immigration New Zealand (INZ) can decline a residence visa application if the expression of interest that led to an invitation to apply contained false or misleading information.</p>   | <p>The Bill clarifies that criminal offending committed offshore, before a person held a New Zealand visa, can make them liable for deportation, even if it is not discovered or they are convicted until after they are granted residence.</p>   | <p>The Bill clarifies that the period in which a residence class visa holder can be deported if they commit a crime should always reset once a person spends more than five years outside New Zealand, even if that person re-entered New Zealand using a different passport or holding a different visa.</p>   | <p>The Bill clarifies that a person is liable for deportation if their visa was granted unlawfully under the Act. For example, if a visa was granted to someone subject to a deportation order.</p>   | <p>The Bill will enable any victim of serious offences (such as those sexual or violent nature) to submit on their offender’s deportation proceedings, regardless of whether the offence against them directly triggered the migrant’s liability for deportation.</p>  |