



COVERSHEET

Minister	Hon Erica Stanford	Portfolio	Immigration
Title of Cabinet paper	Three Cabinet papers are included in this release, titled as shown in the box below	Date to be published	19 March 2026

List of documents that have been proactively released

Date	Title	Author
12 March 2026	Immigration (Enhanced Risk Management) Amendment Bill - Approval for Introduction LEG-26-MIN-0039 Minute	Office of the Minister of Immigration Cabinet Office
25 June 2025	Immigration (Enhanced Risk Management) Amendment Bill: Further Decisions ECO-25-MIN-0093 Minute	Office of the Minister of Immigration Cabinet Office
4 June 2025	Proposed amendments to the Immigration Act 2009: Immigration (Enhanced Risk Management) Amendment Bill ECO-25-MIN-0084 Minute	Office of the Minister of Immigration Cabinet Office
19 February 2026	BRIEFING-REQ-0026795: Immigration (Enhanced Risk Management) Amendment Bill: Final LEG paper and Bill for lodgement	MBIE
5 February 2026	Regulatory Impact Statement: New immigration infringement offences	MBIE
29 January 2026	BRIEFING-REQ-0025726: Immigration (Enhanced Risk Management) Amendment Bill: Draft Cabinet paper and Bill for ministerial consultation	MBIE
4 December 2025	BRIEFING-REQ-0019618: Immigration (Enhanced Risk Management) Amendment Bill: Drafting update and exposure draft feedback	MBIE
31 July 2025	BRIEFING-REQ-0018175: Immigration (Enhanced Risk Management) Amendment Bill – additional drafting decisions	MBIE
17 June 2025	BRIEFING-REQ-0015523: Approval to lodge second Cabinet paper for Enhanced Risk Management Amendment Bill and further policy advice	MBIE
12 June 2025	Regulatory impact statement: Strengthening immigration penalties for non-compliant and exploitative employers	MBIE
10 June 2025	Regulatory impact statement: Modernising and improving information sharing provisions	MBIE
4 June 2025	Regulatory impact statement: Enabling more effective compliance powers for immigration purposes	MBIE
29 May 2025	BRIEFING-REQ-0014611: Draft Cabinet paper for the second set of policy decisions for the Immigration (Enhanced Risk Management) Amendment Bill	MBIE

List of documents that have been proactively released		
Date	Title	Author
28 May 2025	BRIEFING-REQ-0014746: Approval to lodge first Cabinet paper for Enhanced Risk Management Amendment Bill	MBIE
26 May 2025	Regulatory impact statement: Expanding criminal deportation liability	MBIE
	Regulatory impact statement: Clarifying section 150 of the Immigration Act 2009 to prevent asylum claimants who withdrew their claims from applying for further visas	MBIE
21 May 2025	Regulatory impact statement: Limiting humanitarian appeal rights to the Immigration and Protection Tribunal for temporary visa holders	MBIE
15 May 2025	BRIEFING-REQ-0014081: Should the proposed change to section 150 of the Immigration Act apply retrospectively?	MBIE
8 May 2025	BRIEFING-REQ-0013339: Draft Cabinet paper and update following targeted consultation on the Immigration (Enhanced Risk Management) Amendment Bill	MBIE
23 April 2025	BRIEFING-REQ-0013002: Further measures to address the increase in asylum claims	MBIE
31 March 2025	BRIEFING-REQ-0011382: Proposed Immigration (Enhanced Risk Management) Amendment Bill: Objectives, scope and timelines	MBIE

Information redacted	<u>YES</u> / NO
<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.</p> <p>Some information has been redacted for the reasons of: International relations, maintenance of the law, privacy of natural persons, confidential advice to Government, commercial sensitivity, free and frank expression of opinions, and legal professional privilege.</p> <p>Some information has also been withheld on the basis that it is not in scope of the Immigration (Enhanced Risk Management) Amendment Bill.</p>	

In Confidence

Office of the Minister of Immigration

Chair, Cabinet Economic Policy Committee

Proposed amendments to the Immigration Act 2009: Immigration (Enhanced Risk Management) Amendment Bill

Proposal

- 1 I propose a set of targeted amendments to the Immigration Act 2009 (the Act) to increase the effectiveness of the immigration compliance and enforcement system and improve the integrity of the refugee and protection system.

Relation to Government priorities

- 2 My proposals support the Government objective of ensuring regulatory systems work well and uphold the New Zealand National Party and New Zealand First Coalition Agreement undertaking to *commit to enforcement and action to ensure those found responsible for the abuse of migrant workers face appropriate consequences.*

Executive summary

- 3 The geopolitical context of the world is changing, and New Zealand needs to manage higher levels of immigration risk and increasing complexity. To ensure the Act is kept current and the immigration system can respond swiftly to emerging challenges, Cabinet agreed last year that I should undertake regular targeted reviews of the Act [ECO-24-MIN-0255].
- 4 On that basis, Cabinet has already approved the development of the the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill, which is currently before the House, and will enable immigration costs to be shared more fairly, respond to the outcomes of independent reviews, and strengthen aspects of the immigration system's integrity.
- 5 In this paper, I seek Cabinet's agreement to the development of a further, complementary, amendment bill, and to an initial set of policy proposals for inclusion in it. I propose it is called the Immigration (Enhanced Risk Management) Amendment Bill (the Bill), and that it has a focus on improving our immigration system's capacity to effectively detect and respond to immigration non-compliance. This capacity is essential for enabling economic growth and for supporting this Government's wider immigration changes, including reforming work visa settings, and creating the Parent Boost visa.
- 6 I propose that the objectives of the Bill are to:
 - 6.1 increase the effectiveness of the immigration compliance and enforcement system;
 - 6.2 improve the integrity of the refugee and protection system; and
 - 6.3 improve the operation of the wider immigration system.
- 7 To achieve these objectives, I seek Cabinet's agreement at this stage to:
 - 7.1 enhance immigration compliance and enforcement through:
 - 7.1.1 extending the period in which residence class visa holders can become liable for deportation when convicted of a crime, and making minor amendments to other deportation settings;
 - 7.1.2 enabling the electronic service of deportation liability notices (DLNs) where a physical address cannot be located;

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- 7.2 improve the integrity of the refugee and protection system through implementing the final legislative recommendation from the 2022 Victoria Casey KC review of the detention of asylum seekers;¹ and
- 7.3 improve the operation of the wider immigration system through enabling residence class visa applicants to benefit when visa settings change.
- 8 I will seek Cabinet's agreement to a second set of proposals for inclusion in the Bill in late June. I am seeking policy decisions in two sets in response to administrative capacity constraints, so the Bill can be introduced before November 2025.

I propose a set of targeted amendments to the Immigration Act 2009

- 9 In 2024, Cabinet agreed that I should undertake a programme of regular targeted reviews of the Act, to keep it current and fit for purpose. Cabinet invited me to report back with policy proposals in 2025 [ECO-24-MIN-0255]. In response to Cabinet's mandate, I have recently introduced the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill, which focuses on pressing immigration financial and system improvements, and which is expected to gain Royal Assent later this year.
- 10 To complement that work, I propose to progress this Bill to ensure we have the right settings in place to deter offending and enable effective immigration compliance, and for the wider immigration system to operate effectively. The proposed changes would also directly support the changes this Government has made to the immigration system, including the Accredited Employer Work Visa scheme, by strengthening the incentive for employers to provide accurate and truthful information.
- 11 In this paper, I seek Cabinet's agreement to the objectives of the Bill and decisions on an initial set of amendments. To enable sufficient time for the Parliamentary Counsel Office (PCO) to support the introduction of the Bill before November 2025, I will seek Cabinet's agreement to a second set of proposed amendments in a separate paper in late June.

The Bill has three objectives and this paper seeks agreement to four proposals

- 12 I seek Cabinet agreement to the following objectives for the Bill:
- 12.1 increase the effectiveness of the immigration compliance and enforcement system;
 - 12.2 improve the integrity of the refugee and protection system; and
 - 12.3 improve the operation of the wider immigration system.
- 13 **Appendix One** provides an overview of the complete set of changes I propose for the Bill, including those I intend to bring to Cabinet in late June. This paper seeks Cabinet's agreement to the four policy proposals discussed below. Greater detail about these four proposals is set out in **Appendix Two**.
- 14 Proposals 1, 1a and 2 below reflect the first objective of enhancing immigration compliance and enforcement. Proposal 3 relates to the integrity of the refugee and protection system, while proposal 4 addresses the third objective of improving the operation of the wider immigration system.

¹ Victoria Casey KC (2022) *Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment – Restriction of movement of Asylum Claimants*: <https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants>

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Proposal 1: Extend the period in which residence class visa holders can become liable for deportation when convicted of a crime

- 15 Section 161 of the Act sets out a graduated framework for deportation liability for residence class visa holders. The framework has three tiers of liability, as set out in paragraph 16 below. Each tier takes into account the length of time a person has held a residence class visa, balanced by the seriousness of the offence (i.e. a person who has held a residence class visa for more than two years cannot be deported for fairly minor offending, such as common assault or drink driving offences).
- 16 Under the current framework, a residence class visa holder is only liable for deportation if convicted of an offence that was committed:
- 16.1 when they were in New Zealand unlawfully, or held a temporary entry class visa or within the first two years of holding a residence class visa, and where the Court has the power to impose a term of imprisonment of three months or more;
 - 16.2 within the first five years of holding a residence class visa, and where the Court has the power to impose a term of imprisonment of two years or more; or
 - 16.3 within the first 10 years of holding a residence class visa, and where the Court sentences a person to an imprisonment term of five years or more, or (regardless of sentence) the offence committed was against section 350(1) or 351 of the Act.²
- 17 There are, however, limitations to this framework. A person cannot be deported if they have held a residence class visa for more than 10 years at the time when the crime was committed, even if the offending is particularly severe, such as murder, terrorism, or sexual violation. Additionally, the longer a residence class visa holder has been in New Zealand, the more likely it is that an appeal to the Immigration and Protection Tribunal (IPT) will be successful on humanitarian grounds, under section 207 of the Act.
- 18 I propose to strengthen the deportation liability framework in order to raise the consequences for criminal offending, while retaining the current graduated approach which means that the longer someone has been resident in New Zealand, the more serious their crime needs to be in order to trigger deportation liability.
- 19 I propose to strengthen the deportation liability framework by:
- 19.1 extending the period in which residence class visa holders may automatically become liable for deportation if they have been convicted of a crime, from 10 years to 20 years;
 - 19.2 expanding deportation liability at the lower end of the scale, so that deportation liability is a more likely consequence for offending that carries penalties of three months of imprisonment or more, if someone has been resident in New Zealand for five years or less; and
 - 19.3 enhancing New Zealand's ability to deport residence class visa holders who commit the most serious offences, by setting out factors, such as the severity of crime and victim/s affected, that the IPT must consider when determining appeals against deportation liability on humanitarian grounds.
- 20 This proposal sends a clear signal that criminal offending is unacceptable in New Zealand in all circumstances and carries serious consequences for people's immigration status,

² Section 350(1) and 351 of the Act describe offences relating to employers who allow someone to work despite knowing that person is not entitled to work, and who exploit unlawful employees and temporary workers.

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consistent with the purpose of the Act. It will increase the public's confidence in the immigration system, by strengthening the expectation that those permitted to reside in New Zealand comply with New Zealand law. It also supports the commitment in both the ACT Party / National Party, and New Zealand First / National Party Coalition agreements to restore law and order. I note however that it will not impact on persons who have successfully sought and been granted citizenship before committing relevant offences.

Proposal 1a: Minor amendments to clarify aspects of the deportation liability framework

Clarifying the range of false and misleading submissions that make a resident liable for deportation

- 21 Section 158 of the Act makes a residence class visa holder liable for deportation if they lied (including by omission) on their visa application. However, there are other ways that people can lie to get or retain residence, for example, in:
- 21.1 a request to the Minister;
 - 21.2 appeals to the IPT or Courts;
 - 21.3 support forms for their partner or children;
 - 21.4 requests to have their conditions lifted; and
 - 21.5 submissions to the Minister in support of cancelling or suspending deportation liability.
- 22 While these arguably form part of a visa application, it would be useful to clarify that they are in scope of section 158 of the Act. I propose to clarify that residents are liable for deportation if false or misleading information is provided in other immigration documents, as there is currently some ambiguity about whether this does trigger deportation liability.

Extending deportation liability to include historic crimes

- 23 Currently, if a resident is convicted of a historic crime they committed offshore before they held a New Zealand visa, there are no grounds under the Act to make them liable for deportation. For example, someone convicted in absentia of a murder in their home country after becoming a resident would not become liable for deportation. In some cases, it may be possible to make the person liable for deportation on character grounds under section 158 of the Act. This, however, requires the person to have known that they were under investigation for the offending at the time they submitted their visa application, and can only be used for the first five years after residence is granted. I am advised that there have been cases where we were unable to act when serious historic offending was identified.
- 24 This was likely an unintentional gap in drafting. The policy intent is clear that people who have committed serious crimes before becoming a resident should not be able to hold a resident visa. A resident visa would not be granted if this criminal offending was known to the Ministry of Business, Innovation and Employment's (MBIE's) Immigration New Zealand (INZ) at the time of application.
- 25 I propose to clarify that criminal offending that happened offshore, before a person held a visa here, can make them liable for deportation, even if it is not discovered or proven until after they are granted residence. This probable unintentional gap in the current Act has prevented INZ from acting in some cases where serious criminal offending was identified.

Clarifying when the time resets for deportation liability

- 26 When a residence class visa holder has spent more than five years overseas, the intention is that their deportation liability period resets when they return to New Zealand. However, there is ambiguity in the wording of section 161 of the Act, leading to instances where this

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has not happened if the person did not use their residence class visa to enter New Zealand (e.g. they entered as a visitor on a different passport).

- 27 I propose to clarify 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.

Clarifying the definition of administrative error

- 28 Section 155 of the Act makes people liable for deportation if their visa was granted in error. This includes where the visa was granted as a result of an administrative error. The definition of administrative error in the Act has proven too narrow in some cases, as it does not include cases where the visa was granted despite it not being lawful to grant it under the Act (for example, a visa granted to someone who was subject to a deportation order).
- 29 I propose to clarify that people are liable for deportation if their visa was granted despite it not being lawful to do so under the Act. This is not explicitly included as grounds to make someone liable for deportation in the Act, and has occasionally been a barrier to deportation. I consider this was likely an unintentional oversight.

Proposal 2: Enable deportation liability notices to be served electronically

- 30 Some immigration notices and documents can be served by email, which is efficient and secure, and reflects modern communication trends, including in terms of interacting with Government agencies. However, the Act requires deportation liability notices (DLNs) to be served by registered mail or in person alone, and some individuals choose to frustrate their deportation by ensuring that officials cannot locate a physical address. Many of those clients have engaged with the immigration system electronically via email, for example when seeking to apply for a visa to remain in New Zealand, or in response to electronic communications about their status.
- 31 I propose that immigration officers can serve DLNs (and related cancellation, suspension, and reinstatement of DLNs) by electronic mail, with appropriate privacy protections, and only where in person service or registered mail are not possible (as no place of residence or business in New Zealand is known). MBIE's Immigration Compliance and Investigations Branch will separately update its processes so that, if compliance officers also have a cell phone number for the individual, the recipient will be advised to check their email for an Immigration communication. This reduces any risk that they may not be aware of service.

Proposal 3: Implement the final legislative recommendation from the Casey KC review

- 32 A Residence and Reporting Requirements Agreement (RRRA) is a flexible, less restrictive alternative to arrest and detention for lower risk individuals otherwise liable to be arrested and detained.
- 33 The 2022 Victoria Casey KC review into the detention of asylum claimants (the Review) recommended that a RRRA should not be a matter of 'absolute discretion' of an immigration officer. The Act establishes that, unlike decisions made as the exercise of an immigration officer's discretion, absolute discretion decisions cannot be requested or appealed. This is unnecessarily inflexible. In light of this, and to address the final legislative recommendation of the Review, I propose to shift RRRA decision-making from being at the "absolute discretion" of immigration officers to being just the exercise of their "discretion".
- 34 This change will give claimants or their representatives the formal ability to seek RRRAs and to amend their RRRAs' conditions. MBIE will be required to provide a rationale when an RRRA is deemed not appropriate. This will help to ensure greater oversight of RRRA

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decisions, and provide more safeguards for those who may be subject to them. It also better aligns the Act with the New Zealand Bill of Rights Act 1990 (BORA) and international best practice, such as in the 2012 United Nations High Commissioner for Refugees Guidelines on the Detention of Asylum Seekers.

Proposal 4: Enable applicants for residence to benefit from policy changes

- 35 Under the Act, residence class visa applications must be determined in accordance with the immigration instructions in force on the date the application was made. This provides certainty for applicants and ensures Cabinet's policy decisions are upheld. However, it also means people who have applied for a residence class visa before new policies have been signalled or introduced (such as people who applied under the Active Investor Plus visa before recent changes were announced) cannot easily benefit from the new policies' changes. They must either withdraw, and submit an entire new application, or request or be the beneficiary of an individual ministerial decision to afford them discretionary treatment (such as a special direction waiving fees on a new application, or waiving some application requirements). This is administratively burdensome and expensive for applicants, MBIE, and the Ministers concerned.
- 36 I propose to amend the Act so that, where Cabinet has agreed that a new policy will have transitional provisions, the Minister can certify immigration instructions setting out:
- 36.1 how decisions on residence applications can proceed under the new framework;
 - 36.2 which classes of applicants are eligible; and
 - 36.3 how applicants can indicate that they wish to be deemed to have applied.

Implementation

- 37 The proposals in this paper will come into effect on Royal Assent. MBIE will develop an implementation plan to ensure the changes are implemented effectively.

Financial Implications

- 38 Costs arising from MBIE implementing the changes in this paper are expected to be small, and can be met within existing baselines which cover maintenance and upgrades. Enabling applicants for residence to benefit from policy changes may incur some (relatively small) additional administrative costs; where these cannot be absorbed, the policy design allows for a proportionate fee to be established and charged to the applicant.

Legislative Implications

- 39 The Act will need to be amended to give effect to the proposals outlined in this paper. Some of the proposals that I will seek Cabinet's agreement to in late-June will require both legislative change and changes to regulations.
- 40 I propose that an exposure draft of the Bill be consulted with targeted stakeholders in September 2025, and the final Bill be introduced in late October, followed by a six-month select committee examination. The Bill will be passed in the second quarter of 2026. Any changes to regulations will be timed to come into force at the same time as Royal Assent.

Impact Analysis

Regulatory Impact Statements

- 41 A Regulatory Impact Analysis panel consisting of MBIE representatives has reviewed the attached Expanding Criminal Deportation Liability Regulatory Impact Statement (RIS). The

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panel has determined that the RIS partially meets the quality assurance standards for regulatory impact analysis.

- 42 The panel acknowledges the limitations and constraints on the analysis in the RIS, particularly with respect to the very short turnaround timeframe. This timeframe has prevented the authors from being able to fully and openly consult with persons that are potentially affected by this proposal, including nations that may receive deported persons. The panel anticipates that the select committee process will enable those persons to share their views on the proposal.
- 43 The other proposals have been granted exemptions from the requirement to submit a RIS, on the basis that they have no or only minor economic, social, or environmental impacts.

Population Implications

44

International relations

Human Rights

- 45 The Government has the right to regulate immigration by virtue of national sovereignty. However, deportation liability potentially engages four rights affirmed in the BORA:
- 45.1 section 9, which affirms that everyone has the right not to be subjected disproportionately severe treatment or punishment;
 - 45.2 section 18, which prohibits requiring non-citizens to leave the country “except under a decision taken on grounds prescribed by law”. The deportation-related proposals in this Bill would ensure such grounds are prescribed in law;
 - 45.3 section 19, which affirms the right to be free from discrimination;
 - 45.4 section 26, which prohibits someone who is convicted of an offence from being punished again (double jeopardy);
- 46 I consider that any limitations on sections 18 and 19 are justified under section 5 of the BORA. This is because it is necessary for the proper functioning of the immigration system that the Act allows for the deportation of those who no longer meet the requirements placed upon them in the granting of their visa, specifically that they be of good character and abide by New Zealand laws. I am also advised that deportation liability is considered a consequence of offending rather than a penalty, and is therefore consistent with section 26 of the BORA.
- 47 The proposed changes increase the likelihood that offending at the low end will result in deportation liability (punishable by between three months and two years of imprisonment). I consider this change is justifiable because it provides an important signal that offending will have consequences, while retaining the procedural steps in the deportation process that allow for an individual’s circumstances to be taken into account, as well as appeals by the affected individual (for example on humanitarian grounds).
- 48 The Ministry of Justice will consider the legislation for compliance with BORA prior to the Bill’s introduction.

Consultation

- 49 The following government agencies and external stakeholders have been consulted and their feedback has been incorporated into the proposals' development:
- 49.1 **Government:** the Departments of Corrections and Internal Affairs, and Ministries for / of Ethnic Communities, Justice, Pacific Peoples, Foreign Affairs and Trade; Office of the Privacy Commissioner, and Office of the Ombudsman. Early engagement was undertaken with the Legislative Design Advisory Committee (LDAC) and PCO.
- 49.2 **External stakeholders:** Chief Victims Advisor, the IPT, INZ's Immigration Focus Group, and the New Zealand Law Society.
- 50 I propose to further consult with external stakeholders on an exposure draft of the Bill, expected to be in September 2025.

Communications and Proactive Release

- 51 If approved by Cabinet, the package of changes in this paper will be publicly announced at the point that the Bill is introduced, and relevant papers will be published with any redactions as appropriate. Information will be made available to support submissions to the select committee by interested groups and members of the community.

Recommendations

The Minister of Immigration recommends that Cabinet:

1. **note** that in 2024, Cabinet agreed to undertake a programme of regular targeted reviews of the Immigration Act 2009 (the Act) in order to keep the Act current, and invited me to report back with policy proposals in 2025 [ECO-24-MIN-0255];
2. **note** that the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill, which has been introduced to the House, will enable immigration costs to be shared more fairly, respond to the outcomes of independent reviews, and go some way towards strengthening the integrity of the immigration system [LEG-25-MIN-0044];
3. **agree** to achieve the following objectives, by progressing an Immigration (Enhanced Risk Management) Amendment Bill (the Bill);
 - 3.1. increase the effectiveness of the immigration compliance and enforcement system;
 - 3.2. improve the integrity of the refugee and protection system; and
 - 3.3. improve the operation of the wider immigration system.
4. **note** that, to better enable the Parliamentary Counsel Office (PCO) to support introduction before November 2025, this paper seeks agreement to an initial set of four policy decisions, and that a second set of policy decisions will be sought in late June;

Extend the period in which residence class visa holders can become liable for deportation when convicted of a crime, and other minor amendments to deportation liability

5. **note** that the Act sets out a graduated framework for deportation liability, based on the length of time a person has held a residence visa and the seriousness of offending;
6. **note** that there are limitations to this framework, including that a person cannot be deported if they have held a residence class visa for more than 10 years when the crime was committed, no matter how serious the criminal offending, while the longer a residence class visa holder

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has been in New Zealand, the more likely appeals to the Immigration and Protection Tribunal (IPT) will be successful on humanitarian grounds;

7. **agree** to strengthen the deportation liability framework, by extending the period in which residence class visa holders may automatically become liable for deportation if they have been convicted of a crime, if they:
 - 7.1. plead guilty to, or are found guilty or convicted of an offence carrying a maximum penalty of imprisonment for three months or more, and have held a residence class visa for up to five years;
 - 7.2. plead guilty to, or are found guilty or convicted of an offence carrying a maximum penalty of imprisonment for two years or more, and have held a residence class visa for between five and ten years;
 - 7.3. plead guilty to, or are found guilty or convicted of an offence, and are sentenced to an imprisonment term of five years or more, and have held a residence class visa for between ten and 15 years;
 - 7.4. plead guilty to, or are found guilty or convicted of an offence, and are sentenced to an imprisonment term of ten years or more, and have held a residence class visa for between 15 and 20 years;
8. **agree** to enhance New Zealand's ability to deport residence class visa holders who commit the most serious offences, by setting out factors, such as severity of crime and victim/s affected, that the IPT must consider when determining appeals against deportation liability;
9. **agree** to clarify 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;
10. **agree** to clarify that residence class visa holders are liable for deportation if:
 - 10.1. false or misleading information is provided in any document relating to an immigration matter, and that having provided false or misleading information in any immigration matter is a character issue and grounds for declining a visa;
 - 10.2. their visa was granted despite it not being lawful to do so under the Act
11. **agree** to clarify that criminal offending that happened offshore, before a person held a New Zealand visa, can make them liable for deportation;

Enable electronic service of deportation liability notices

12. **note** that the Act currently requires that a deportation liability notice (DLN) be served by registered mail or in person, and immigration officers face challenges serving DLNs to individuals who choose to frustrate their deportation by ensuring that officials cannot locate a physical address;
13. **agree** that DLNs (and related notices) may be served by electronic mail, only where no physical address in New Zealand is known and therefore serving in person or by registered mail is not possible;

Implementing the recommendations of the Casey Review to ensure sufficient safeguards for asylum claimants

14. **note** that in 2022 the Casey KC review into the treatment of asylum claimant detainees made a number of recommendations to amend the Act, including that Residence and Reporting

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Requirements Agreements (RRRAs) should be at the “discretion”, not “absolute discretion”, of immigration officers;

15. **agree** to amend the Act so RRA decision-making is “at the discretion of immigration officers”;

Enable applicants for residence to benefit from policy changes

16. **note** that the Act requires residence applications to be determined in accordance with the residence instructions in force at the time the application was made, and this means it is difficult for people who have applied for residence, before new policies have been signalled or introduced, to benefit from the new policies’ changes;
17. **agree** to amend the Act so that, where Cabinet has agreed a new or amended policy will have transitional provisions, the Minister of Immigration can certify immigration instructions setting out:
 - 17.1. how decisions on residence applications can proceed under the new framework;
 - 17.2. which classes of applicants are eligible; and
 - 17.3. how applicants can indicate that they wish to be deemed to have applied;

Legislative implications

18. **invite** the Minister to issue drafting instructions to PCO to give effect to the decisions in recommendations 7 to **11**, 13, 15, and 17 above, through their inclusion in the Bill;
19. **invite** the Minister to undertake targeted consultations on an exposure draft of the Bill;
20. **authorise** the Minister to make decisions, consistent with the policy proposals in this paper, that may arise during the drafting and consultation process;

21. Confidential advice to Government

22.

23. **note** that, subject to agreement on the Government’s legislative programme, the Minister intends to introduce the Bill in late 2025; and

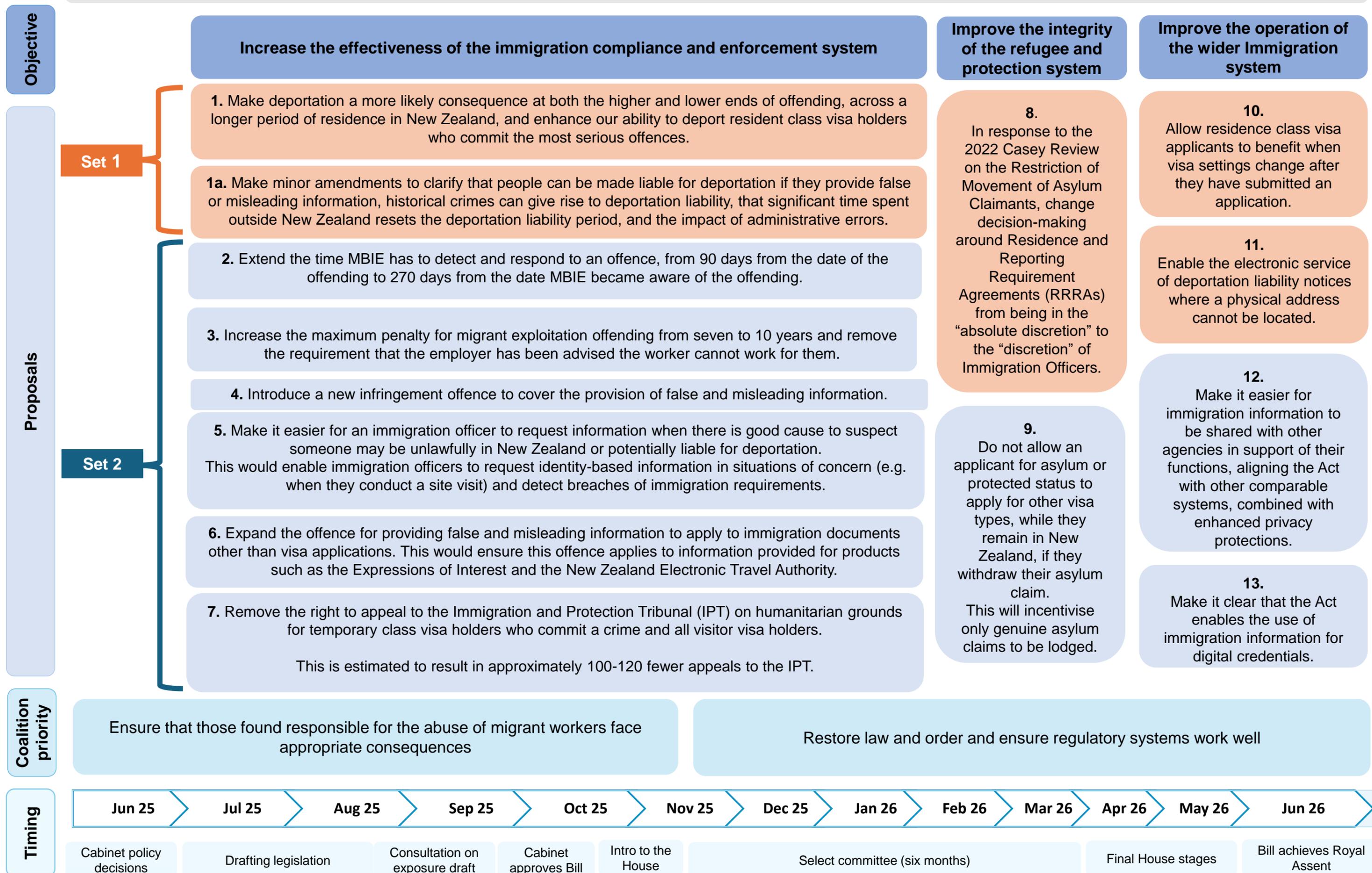
Financial and regulatory implications

24. **note** that the legislative proposals above raise no direct financial implications.

Authorised for lodgement

Hon Erica Stanford
Minister of Immigration

Immigration (Enhanced Risk Management) Amendment Bill



Appendix Two: Summary of proposals

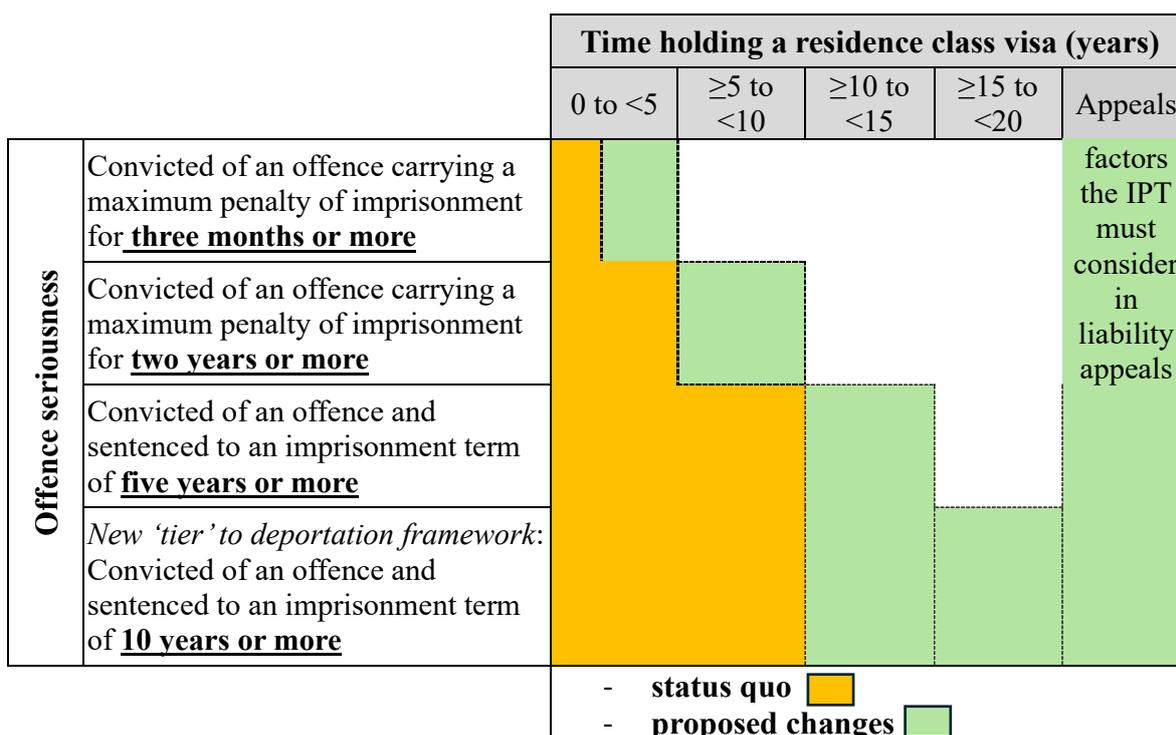
Proposal 1 and 1a: Extend the period in which residents can become liable for deportation when convicted of a crime and clarifying current settings

Summary of the proposals

This proposal would disincentivise immigration non-compliance by:

- Extending the current deportation liability framework: this means extending the time period a person may have held a residence class visa for each tier of criminal offending
- Adding a new serious criminal offending tier, for cases where a person has been convicted and sentenced to an imprisonment term of 10 years or more. This would mean for very serious offending a person who has held a residence class visa for up to 20 years can still be liable for deportation
- limiting the Immigration and Protection Tribunal’s (IPT) scope to overturn their deportation liability on humanitarian grounds by outlining factors the IPT must consider in determining appeals (e.g. seriousness of crime and victims impacted).

The diagram below outlines the proposed change to the deportation liability framework under section 161 of the Immigration Act 2009 (the Act).



Four minor and technical changes are also proposed to address gaps in deportation liability provisions, in line with the policy intent.¹ All four are likely a result of previous unintended drafting errors.

- **Clarify the range of false and misleading submissions that make a New Zealand resident liable for deportation.** Currently under section 158 of the Act, a person can only be made liable for deportation if they have provided false and misleading information in applying for a visa. It does not explicitly cover the other supporting material a person might use before

¹ To strengthen the deportation liability framework sending a strong signal that criminal offending is not tolerated and provide New Zealand with more options when residence class visa holders commit crimes.

obtaining a residence class visa (for example, in a request for a New Zealand Electronic Travel Authority or Expression of Interest, in a request to the Minister, appeals to the IPT or Courts, or in support forms for their partner or children).

- **Extend deportation liability to include historic crimes.** Under section 161 of the Act, someone who has committed an offence offshore, but is only charged, sentenced and convicted once they have been granted a residence class visa in New Zealand, is not liable for deportation. The policy intent is clear that people who have committed serious crimes before becoming a resident should not be granted a residence class visa.
- **Clarify when the time resets for deportation liability:** When a residence class visa holder has spent more than five years overseas, the intention is that their deportation liability period should reset when they return to New Zealand. However, there is ambiguity in the wording of section 161 of the Act, leading to instances where this has not happened if the person did not use their residence class visa to enter New Zealand (e.g. they entered on a different passport).
- **Clarify the definition of administrative error:** Section 155 of the Act makes people liable for deportation if their visa was granted in error (including administrative error). Section 8 of the Act defines administrative errors, but does not appear to include cases where someone's visa was granted in contravention of the Act. Clarification is needed, because the original policy intention cannot have been to allow people stay in New Zealand on visas that were issued unlawfully.

Background

When a migrant applies for and is approved lawful entry into a country, they effectively enter into a social contract.² Residence class visa holders may become liable for deportation if they are convicted of a criminal offence. The Act currently establishes a graduated framework that determines a person's liability for deportation based on the seriousness of the offending, the sentence that they receive and the length of time the person has held a residence class visa when the offending occurred.

The proposal is to amend this framework to extend the period during which a residence class visa holder may become liable for deportation. This would also extend liability for both lower-level and more serious offending. The proposal further recommends outlining additional factors that the IPT must consider when determining an appeal to place greater weight on the seriousness of the offending. This is because on its own, extending the deportation liability period for residence class visa holders may not result in more people actually being deported. The longer a residence class visa holder has been in New Zealand, the stronger the humanitarian grounds for suspending or cancelling deportation liability will be, leading to successful appeal at the IPT.

Who was consulted and what was the feedback?

The Ministry of Business, Innovation and Employment (MBIE) has consulted with the Departments of Corrections and Internal Affairs, the Ministries for Ethnic Communities and Pacific Peoples, the Ministries of Foreign Affairs and Trade (MFAT) and Justice, the Chief Victims Advisor, INZ's Focus Group, the IPT, the Legislative Design Advisory Committee (LDAC), the New Zealand Law Society, the Office of the Ombudsman, and the Office of the Privacy Commissioner. All were broadly comfortable with the proposed option.

The IPT raised concerns about including a non-exhaustive list of factors that should be considered when determining appeals in primary legislation, considering that it is likely to cause confusion. Leaving the primary legislation broad was a deliberate decision made in the development of the Act. The IPT already takes the severity of the offence and its impacts into account when forming their decision.

² Being that their lawful presence is subject to the condition that they abide by all domestic laws.



Proposal 2: Enable Electronic Service for Deportation Liability Notices

Summary of the proposal

This proposal would enable more people who are subject to deportation liability to be served a deportation liability notice (DLN) (or a cancellation, suspension or reinstatement of a DLN), by allowing service by email where in person service or service by registered mail are not possible (for example, when no place of residence or business in New Zealand is known).

Background

Visa holders can become liable for deportation if they: stay beyond the expiry date of their visa, breach other conditions of their visa (for example, work unlawfully), are convicted of a criminal offence, or are found to have provided false or misleading information when applying for a visa. People served a DLN generally have 28 days to appeal from receipt. If they do not appeal, or their appeal is unsuccessful, they can then be served a deportation order. Once a deportation order has been served on a person, they can be deported immediately or taken into custody while their deportation is organised.

The Act establishes that some legal documents must be formally served on (or supplied, notified, or in any other way given to) a person. Some documents (predominantly deportation orders) must be served in person. Infringement notices, reminder notices, and revocation notices relating to employment infringement offences can be served in person, by registered mail, or electronically (specifically, by email). They can only be served by email where the person does not have a known place of residence or business in New Zealand.

Some people avoid service of DLNs by ensuring that officials cannot locate a physical address for service (required for service by registered mail or in person). Some residence class visa holders who have triggered deportation liability (generally as a result of being found guilty of an offence) have seen their deportation liability expire through avoiding service for an extended period. However, many of those clients have engaged with the immigration system electronically via email, for example when seeking to apply for a visa to remain in New Zealand, or in response to electronic communications about their status.

Who was consulted and what was the feedback?

The Chief Victims Advisor, INZ's Focus Group, the IPT, LDAC, the New Zealand Law Society, the Office of the Ombudsman, and the Office of the Privacy Commissioner were consulted. None raised significant concerns with this proposal, and where it was discussed, it was noted that this is a modernising move which is occurring across a range of regulatory systems. LDAC was specifically interested in safeguards relating to how risks relating to people being unaware that they had been served a DLN via email would be managed, and also asked whether the use of wider messaging apps had been considered. (They had, but were considered to pose technical and process challenges at this stage that rules them out.)

What are the risks and how will they be managed?

The primary risk is that some people will be served DLNs to email accounts that they do not check, and will be surprised in the future to find that they are out of time for appealing against deportation. This is equivalent to the current situation where an address for registered mail is out of date (although there are lower associated privacy risks, as an email is generally more secure against being opened by another person).

The two major safeguards proposed are that a person will be able to argue that they did not receive the message through no fault of their own (there is already provision for this under section 386(6) of the Act), and that MBIE's Compliance and Investigations Branch processes will be separately updated so that, if compliance officers also have a cell phone number for the individual, the recipient will also be advised to check their email for an Immigration communication.

Proposal 3: Remove absolute discretion from Residence and Reporting Requirements Agreement decision making

Summary of the proposal

This proposal would shift Residence and Reporting Requirements Agreements (RRRAs) from being a matter of the “absolute discretion” to being in the “discretion” of an immigration officer. This simple shift enables all aspects sought by the recommendation in the 2022 Casey Review, including that:

- refugee claimants can request a RRRRA and request to vary its conditions
- a statement of reasons will be required for RRRRA decisions, and
- RRRRA decisions will be subject to oversight by the courts and the Ombudsman.

As well as addressing recommendation three from the Casey Review, this proposal would ensure greater alignment of the Act with the New Zealand Bill of Rights 1990 and United Nations High Commissioner for Refugees (UNHCR) guidelines. This helps ensure greater oversight of RRRRA decisions and greater safeguards for those who may be subject to them.

Background

In 2021-2022 Victoria Casey (KC) conducted a review into operational practices relating to the treatment of asylum claimants who were detained for the purposes of deportation at the New Zealand border. The Casey review outlined a series of legislative and operational recommendations to address concerns regarding treatment of asylum claimants at the border. MBIE accepted all of the recommendations.

Almost all the recommendations have either been implemented or are in the process of being implemented. Recommendation three remains, namely that RRRAs should not be a matter of “absolute discretion” of an immigration officer.

Absolute Discretion is defined in section 11 of the Act (*Meaning of absolute discretion of the decision maker*). As RRRRA decisions are at immigration officers’ absolute discretion, officers:

- do not have any obligation to consider requests by any persons
- do not have to provide any reasoning for decisions made, and
- are not subject to the Privacy Act 2020 or Official Information Act 1982.

Part 9 of the Act sets out a tiered detention and monitoring regime. The regime aims to uphold the integrity of the immigration system by providing for the management of persons who are liable for deportation or turnaround and to protect the safety and security of New Zealanders.

Those who are liable for arrest and detention may, instead of being arrested, agree to an RRRRA, generally considered the least restrictive alternative available to detention. An RRRRA is an agreement that the person will be subject to a series of restrictions. The specific restrictions can be any or all of those listed in section 315(1) of the Act (such as requirement to reside at a specified place, provide a guarantor, attend interviews, etc.).

Who was consulted and what was the feedback?

As noted on page 4, a range of government and external agencies were consulted. No issues relating to this proposal were identified by the consulted groups.

What are the risks and how will they be managed?

No specific risks relating to this legislative proposal have been identified.

Proposal 4: Enable applicants for residence to benefit from policy changes

Summary of the proposal

This proposal would amend the Act to provide that, where a policy includes transitional provisions, existing applicants may indicate to INZ that they wish their existing application to be considered under the new immigration instructions.

Background

The Act states that residence class visa applications must be determined in accordance with the instructions in force at the time the application was made. This provides certainty for applicants and ensures Cabinet's policy decisions are upheld. The Act therefore establishes (at section 72) that only the Minister, or (under current delegations) a Delegated Decision Maker (DDM), can grant visas to residence applicants who do not meet policy requirements.

By contrast, the Act provides that INZ staff may make exceptions to instructions for applicants for temporary entry class visas (so immigration officers can, if there is good reason, grant a visa to a person who does not meet all of the immigration instructions).

The certainty around residence applications means it is difficult for people who have made applications for a residence class visa before new policies have been signalled or introduced to benefit from the new policies' changes. They must either withdraw, and submit an entire new application (along with the associated fee), or request or be the beneficiary of a ministerial decision to afford them discretionary treatment (such as a special direction waiving fees on a new application, or waiving application requirements). As INZ will have incurred costs from its initial processing of the first application, it is unlikely there would be a refund any of the initial fee and levy charges.

The flexible powers proposed in the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the FSSI Bill) would enable beneficial changes to be made to classes of visa holders. However, the FSSI Bill does not envisage that those powers would apply where applications are in progress.

When the Active Investor Plus (AIP) visa settings were recently changed, many people with existing applications indicated that more flexibility to have their application assessed under new policy settings would have been appreciated. This is because, changes to AIP policy settings now offers more choice with regard to investment options, and less onerous time in New Zealand requirements once their visa has been granted. It would be appropriate, where Cabinet agrees, for people who have residence class visa applications in progress to be able to transition to new policies, where they consider that that would benefit them.

Who was consulted and what was the feedback?

As noted on page 4, a range of government and external agencies were consulted. No issues relating to this proposal were identified by the consulted groups.

What are the risks and how will they be managed?

No specific risks have been identified.