MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

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

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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 **YES / NO**

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.

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.

Some information has also been withheld on the basis that it is not in scope of the Immigration (Enhanced Risk Management) Amendment Bill.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Expanding criminal deportation liability

Decision sought	Analysis produced for the purpose of informing Cabinet decisions
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Immigration
Date finalised	26 May 2025

Section 161 of the Immigration Act 2009 (the Act) sets out a graduated framework for deportation liability for residence class visa (RCV) holders. The framework has three tiers of liability. Each tier considers the length of time a person has held an RCV, balanced against the seriousness of the offence (e.g. a person who has held an RCV for a more than 2 years cannot be deported for fairly minor offending).

This RIS proposes to amend the Act to:

1. **Extend the current deportation liability framework under the Act**. This means extending the time period a person may have held an RCV for each tier of criminal offending (to maintain a graduated framework in which the tiers are proportionate to each other).
2. **Add 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 that for very serious offending, a person who has held an RCV for 10 to 15 years can still be liable for deportation.
3. **Specify aggravating factors the Immigration and Protection Tribunal (IPT) must consider during humanitarian appeals against deportation liability under s 161**, such as the impact on the victim/s and seriousness of the offence, so that RCV holders who commit very serious offences are more likely to be deported.

Summary: Problem definition and options

What is the policy problem?

Current deportation liability settings do not provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years

There are limitations to the deportation liability framework. For example, once a migrant has held an RCV for ten years, no matter how serious the crime (for example, murder), they are not liable for deportation.

There are two recent examples of this.

1. International relations

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Some information has also been withheld on the basis that it is not in scope of the Immigration (Enhanced Risk Management) Amendment Bill.

2. International relations

In addition to some serious offenders not being liable for deportation, the longer an RCV holder has been in New Zealand (excluding any time in prison) the more likely appeals against deportation liability to the IPT will be successful on humanitarian grounds under section 207 of the Act.

What is the policy objective?

The primary objective is to:

- provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV holders for more than 10 years

The secondary objectives are to:

- maintain proportionality: both in respect to the consequence (deportation liability) and the criminal offence committed and the steps in relation to each other
- enhance New Zealand's ability to deport RCV holders that commit the most serious offences and pose a risk to the community if they remain.

What policy options have been considered, including any alternatives to regulation?

Three options were considered:

- Option One: Status quo – no change to sections 161 or 207 of the Act.
- Option Two: extend deportation liability for both the amount of time a person is liable for deportation after being granted an RCV, and the seriousness of the offence (proportionately)
- Option Three: Option Two plus add aggravating factors the IPT must consider when determining an appeal of deportation liability under section 161, such as the seriousness of criminal offending and victim/s impacted **(recommended).**

An option to extend deportation liability only at the more serious end of offending was discounted because this would not maintain a graduated framework that is proportional.

What consultation has been undertaken?

MBIE has consulted as broadly as possible within time constraints (the Minister agreed to introduction of the Amendment Bill by October 2025), by undertaking a short and targeted period of stakeholder engagement with:

- government agencies,
- independent statutory bodies,
- representatives of impacted parties (i.e. immigration lawyers and community representatives).

Through the targeted consultation process, MBIE received a broad range of perspectives and input from experts that have been factored into the analysis. A summary of the stakeholders consulted and their views is below.

The Ministry of Justice (MOJ) emphasised that options needed to be proportionate, both in relation to the consequence (deportation liability) being proportionate to the harm caused by the offence and the steps in the framework being proportionate to each other. This feedback influenced the design of the proposed options.

International relations

International relations

The Department of Corrections noted the difficulty in assessing the impact on them in the absence of quality data on the number of additional people expected to be liable for deportation because of these changes, and of these, the proportion expected to be subject to electronic monitoring, and the number ultimately deported. Since this feedback, MBIE has modelled a potential 30% increase in deportations (an increase of 10 people deported per annum based on 32 deportations under s161 in the 12 months to April 2025).

The Immigration and Protection Tribunal (IPT) noted that they currently consider the severity of offending and the impact on victims in deciding appeals and adding it into legislation is not likely to change the way they consider appeals. The Chief Victims Advisor was supportive of the proposal to make the seriousness of the offending, including the impact on the victim, an aggravating factor in determining appeals against deportation, noting that further work may be required with the IPT to understand how they would determine this, and the level of input from the victim.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?
Yes

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Option Three has low-medium net costs on regulated groups, such as RCV holders who commit crimes that trigger deportation liability. It would pose low costs for regulator: MBIE, which would have to manage a likely small increase in people who become liable for deportation and ultimately be issued deportation orders. The IPT may see a small increase in deportation-related appeals but this is balanced by another proposed amendment in the Bill which aims reduces the number of appeals. International relations

Overall, it is assessed as low-medium for non-monetised costs. There are no monetised costs as this work can be done within baseline resourcing and no additional FTE is needed for MBIE.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Option Three would have low net benefits on regulated groups as they would be more likely to be liable for deportation if they commit criminal offences. On the other hand, it is possible that some RCV holders may be disincentivised from criminal offending. Although the vast majority of RCV holders are law abiding and make a positive contribution to New Zealand, a very small minority will commit criminal offences, sometimes relatively soon after being granted residence. The extension to deportation liability may add to the cumulative impact (when coupled with criminal penalties) of disincentivising criminal offending. MBIE as a regulator would have more options for managing offending by migrants, including those who commit serious crimes and have held an RCV for more than 10 years (this group is not currently liable for deportation). There would be minor impacts on other government agencies.

Overall, the option is assessed as medium for non-monetised benefits. There are no monetised benefits.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

The analysis suggests the benefits slightly outweigh the costs, which are low-medium overall and mainly fall on RCV holders as the regulated group. The ratio of benefit to costs is likely to remain stable. It may improve over time as New Zealand society will not have to bear the costs of offenders remaining in New Zealand and costs to the community if there is an increase in deportations, particularly at the more serious end of offending.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

Amendments to the Act will be required through the Immigration (Enhancing Risk Management) Amendment Bill (the Bill), which is proposed to be introduced by October 2025. Confidential advice to Government

MBIE is responsible for the operation and enforcement of deportation liability framework Based on the current assessment, the changes can be operationalised within baselines.

If there is an increase in individuals made automatically liable for deportation, there may be resourcing implications for MBIE and the IPT. In the time available, this has not been modelled.

Limitations and Constraints on Analysis

The Minister of Immigration's expectation is that the Bill is introduced by end of October 2025 Confidential advice to requiring policy decisions in early June 2025. This proposal was triggered by 'edge cases' of serious offending that does not trigger deportation liability under the current settings. The Minister of Immigration directed officials to progress this proposal as part of the Bill and focus the options on capturing the most serious offences. Feedback from the Ministry of Justice that the steps in the framework needed to be graduated and proportionate, influenced the options developed.

Based on data showing the current number of deportations (including nationalities of deportees), MBIE has been able to develop scenarios to understand the impact of the proposed extension in deportation liability but has not been able to test these widely nor verify their accuracy. We do not have an accurate estimate of the additional people that will be made liable for deportation under the proposed settings (due to the limitations of data sharing between Corrections and MBIE).

As noted in the consultation section, the Minister agreed to a short and targeted period of consultation to achieve introduction of the Bill in October 2025. Given this timeframe, external consultation has been limited to discussions with a range of stakeholders through one-on-one meetings and receiving their feedback on the proposals. The consultation section summarises the stakeholders consulted, and feedback taken on board.

These groups will be consulted again on an Exposure Draft of the Bill, in September, ahead of Cabinet Legislative Committee Decisions in October 2025. In addition, the six month Select Committee process will allow for members of the public to provide written and oral submissions.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature: 

Stacey O'Dowd
Immigration (Border and Funding) Policy
26 May 2025

Quality Assurance Statement

Reviewing Agency:	**QA rating:** partially meets

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

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.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Immigration Act 2009 (the Act) aims to balance the rights of individuals and the national interest

The purpose of the Act is "to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals"[1]. The Act prescribes a range of means to achieve this purpose, including establishing an immigration system "that includes mechanisms to ensure that those who engage with the immigration system comply with its requirements".[2] The Act also prescribes the system for the deportation of people who are not New Zealand citizens and who fail to comply with immigration requirements, commit criminal offences or are considered to pose a threat or risk to security.[3]

Additionally, the Act provides robust procedural rights to individuals ensuring fairness and reasonable opportunity for individuals to present their case, such as the right to appeal decisions to a specialist tribunal followed by the Courts, access to information, be heard fairly, and judicial review[4].

A residence class visa confers a number of rights and responsibilities on a migrant

The holder of a resident class visa is entitled to, in accordance with conditions of the visa (if any):

- travel to New Zealand Stay in New Zealand indefinitely
- work in New Zealand, and
- study in New Zealand5

In some instances, a person holding a resident class visa may also be entitled to social security benefits.

Section 161 of Immigration Act 2009 sets out the deportation liability framework for residence class visa holders

Part Six of the Act is related to deportation and its purpose is to support the integrity of New Zealand's immigration system and the security of New Zealand by providing for the deportation of certain persons from New Zealand.

The Act sets out a graduated framework for determining the deportation liability of resident and permanent resident class visa (RCV) holders who have been convicted of criminal offending, taking into account the seriousness of the offence and the time the person has held an RCV in New Zealand. This effectively creates a statutory good behaviour bond. An RCV holder is only liable for deportation under s 161 of the Act if convicted of an offence that was committed:

[1] The Immigration Act 2009, Section 3 (1)
[2] Section 3 (2) (e)
[3] The Immigration Act 2009 s(3)(2) (e) (ii)
[4] The Immigration Act 2009, Part 7.
[5] The Immigration Act 2009, Section 74.

- when they were in New Zealand unlawfully, as the holder of a temporary entry class visa or not later than 2 years after first holding an RCV, and the Court has the power to impose a maximum imprisonment term of 3 months or more;
- within the first 5 years of holding an RCV, and the Court has the power to impose a maximum imprisonment term of 2 years or more; or
- within the first 10 years of holding an RCV, and the Court imposes imprisonment for a term of 5 years or more, or they were convicted of an offence against sections 350(1) or 351 of the Act.

The current deportation framework has limitations that mean, for example, that a person who has been convicted of an offence with a maximum penalty of up to two years' imprisonment (e.g. common assault) is not liable for deportation if they have been an RCV holder for over two years at the time of the offence. Similarly, a person convicted of an offence carrying a term of between two and five years (e.g. carrying a firearm with criminal intent) is not liable for deportation if they have held an RCV for over five years at the time of the offence. People that commit serious offences and have held an RCV for more than 10 years are not liable for deportation at all, despite the serious nature of their offending. **Annex Two** sets out information on offences.

Safeguards against deportation

Section 161 (2) of the Act sets out that after a person is served a deportation liability notice (DLN), they can make an appeal to the Immigration Protection Tribunal (IPT) on humanitarian grounds that it would be unduly harsh for the person to be deported from New Zealand. The IPT weighs these grounds against the public interest in allowing that person to remain.[6] The IPT must consider the appeal[7], and upon its determination can order the cancellation or suspension of deportation liability. MBIE cannot serve a deportation order until any appeals are heard, and a final determination [8] of immigration status is made.

As shown in Table One, approximately a third (31.2%) of the appeals between 2018 and 2024 were allowed by the IPT. This suggests that the IPT is more likely to uphold a deportation liability notice rather than to overturn it.

Table One: Trends of outcome of appeals (deportation resident) at the IPT

Year	Total considered	Appeal allowed / deportation liability overturned	Dismissed / declined deportation liability maintained
2018 -2019	40	11 (27.5%)	29
2019-2020	67	21 (31.3%)	46
2020-2021	27	11 (40%)	16
2021 – 2022	19	5 (26.3%)	14
2022-2023	30	11 (36%)	19
2023-2024	19	4 (21%)	15

[6] Immigration Act 2009, section 161 (2) and 206 (1) (c).
7 Immigration Act 2009, section 207.
[8] https://www.justice.govt.nz/tribunals/immigration/immigration-and-protection/annual-reports-statistics/.

Appellants also have the right to seek leave to appeal a decision on point of law or judicial review. The Minister of Immigration or a Delegated Decision Maker (DDM) within MBIE can also suspend or cancel deportation liability at any time.

The Act does not specify aggravating factors that should be considered as part of appeals

The Immigration Act 1987 set out a non-exhaustive list of factors the IPT needs to take into account when considering deportation liability appeals, such as the:

- persons age
- length of the period during which the person has been in New Zealand lawfully
- persons personal and domestic circumstances
- work record
- nature of the offence(s) which have triggered deportation liability
- nature of any other offence(s) the person has been convicted of
- interests of the persons family
- any other matters the tribunal considers relevant.

Although the current Act enables the IPT to consider an appeal on humanitarian grounds (section 207), it does not currently provide any examples of what these grounds could be, or what factors are considered in making their decision. This was an intentional decision made when undertaking the 2009 review of the Act to avoid constraining decision makers and considering a person's circumstances in their totality, as well as confusion around which factors should or should not be considered. The IPT will generally, however, consider:

- the length of time the appellant has been in New Zealand
- the strength and nature of the person's ties to New Zealand
- the person's immediate family is in New Zealand
- the extent of any impediments that the person may face if removed from New Zealand to their home country.[9]

In not prescribing considerations, the current Act leaves the weighting of particular factors to a values-based judgement, on a case-by-case basis. This can mean that the outcome of the deportation may not be achieved. The length of time someone has spent in New Zealand, tips the determination in favour of cancelling the deportation order. Such serious crimes should be held to a higher standard, meaning that the humanitarian considerations need to be weighed against and proportionate to the criminal offending.

New Zealand has one of the most lenient criminal deportation liability regimes

Australia, the United Kingdom (UK), Canada and Ireland all have deportation settings that enable a resident to be liable for deportation indefinitely, and for relatively minor convictions (see **Annex One**). For example, the UK allows for the deportation of any foreign national if convicted in the UK of an offence and sentenced to a period of imprisonment of

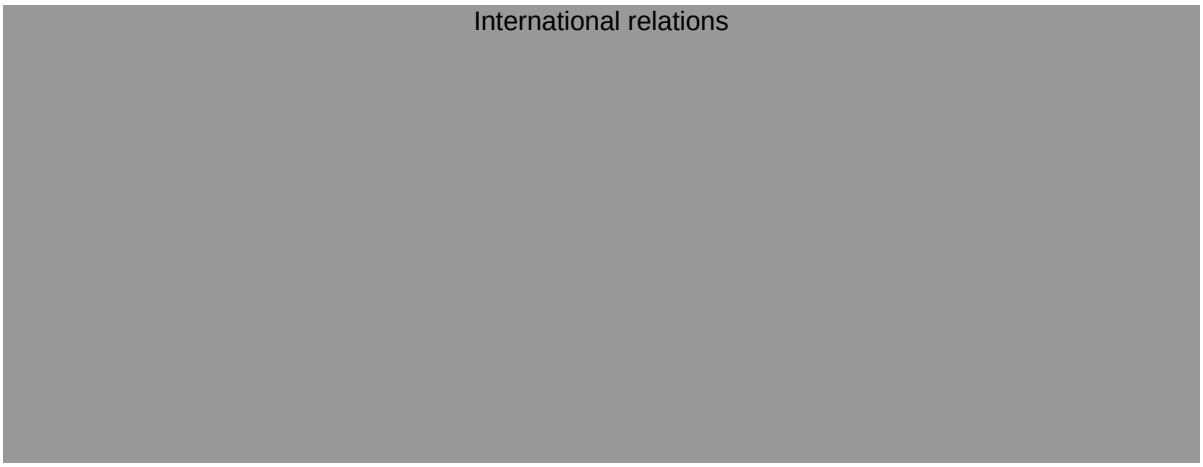
[9] This may include: the strength, duration and nature of the person's ties to New Zealand, the age at which the person came to New Zealand originally, the person's immediate family is in New Zealand (and if those family members are New Zealand citizens, permanent residents, or people who have a right to remain in New Zealand indefinitely), the extent of any impediments that the person may face if removed from New Zealand to their home country, in establishing themselves and maintaining basic living standards in light of: the person's age and health, any substantial language or cultural barriers, and any social, medical and/or economic support available to them in that country, being ineligible for citizenship in some cases.

at least 12 months (with a few exceptions). This is irrespective of time spent in the UK but deportation can be appealed on the grounds of a person's long residence in the UK and/or private and family life in the UK.

What is the policy problem or opportunity?

Current deportation liability settings do not provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years

New Zealand has granted more than half a million people RCVs over the last decade – over 40,000 people per annum. Although the vast majority of migrants are law-abiding and make a positive contribution, in recent times there have been (infrequent) cases of RCV holders committing serious crimes, whom New Zealand has been unable to deport because they have held an RCV for more than 10 years. Two recent cases are outlined below:



What objectives are sought in relation to the policy problem?

The primary objective is to provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years.

The secondary objectives are to:

- maintain proportionality: both in respect to the consequence (deportation liability) and the criminal offence committed, and the steps in relation to each other
- (this is in response to feedback from Ministry of Justice (MoJ))
- enhance New Zealand's ability to deport RCV holders that commit the most serious offences and pose a risk to the community if they remain.

What consultation has been undertaken?

To achieve introduction of the Amendment Bill by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within the time constraints, by undertaking a short and targeted period of stakeholder engagement with:

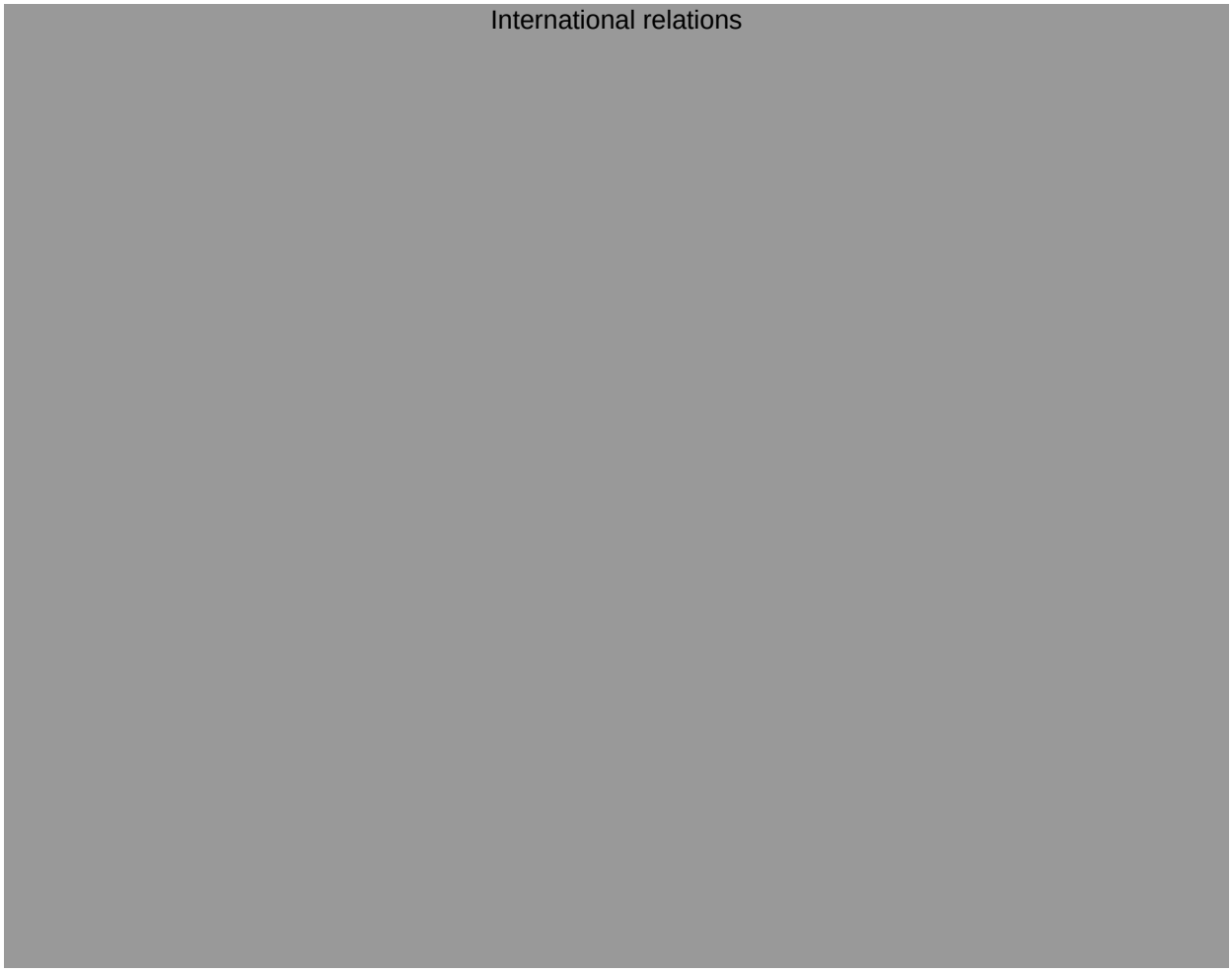
- government agencies,
- independent statutory bodies,
- representatives of impacted parties (i.e. immigration lawyers and community representatives).

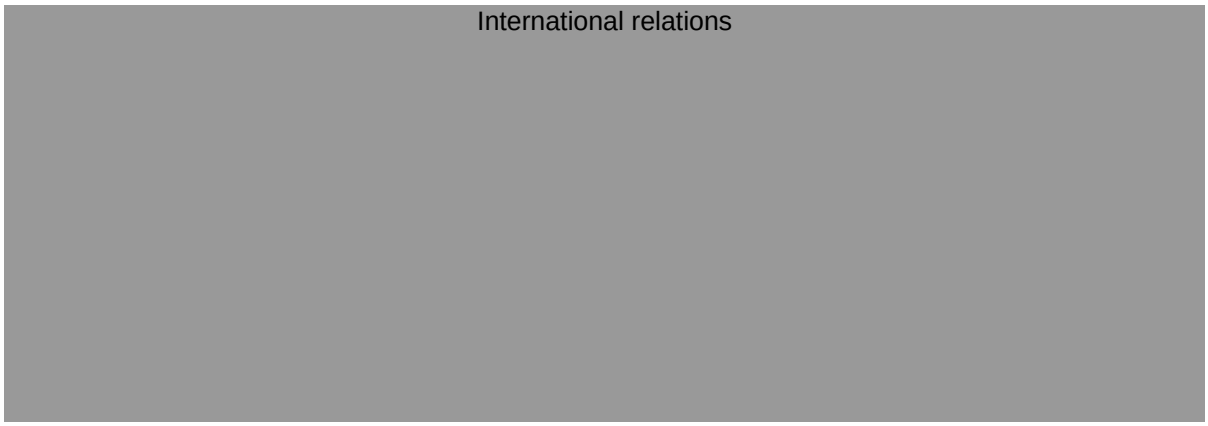
Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives and input from experts. A summary of their views and how they have been factored into the analysis is below.

MOJ emphasised that options needed to be proportionate in two ways:

a. Ensuring that the consequence (deportation liability) is proportionate to the harm caused by the offence. For example, deportation would not be considered proportionate or justifiable if an RCV holder has been in New Zealand for 10 years and committed a minor offence.
b. Options need to be proportionate to each other. For this reason, a tiered approach is preferred (mirroring the current graduated framework). This ensures that the options on their own are proportionate to the harm caused versus the connection to New Zealand, and that consequences for lower-level offending are not harsher than more serious offending.

The Department of Corrections noted the difficulty in assessing the impact on Corrections in the absence of good-quality data on the number of additional people expected to be liable for deportation as a result of these changes, and of these, the proportion expected to be subject to electronic monitoring to mitigate a flight risk, and the number ultimately deported. Since then, MBIE has developed estimates of people who may become liable under proposed settings and eventually be deported based on a possible 30% increase in deportation liability and eventual deportation (though actual deportations likely to be lower due to the safeguards in the system). More detail on this estimate is at page 14.





From 1 to 6 May 2025, MBIE had discussions with key stakeholders in the INZ focus group, the New Zealand Law Society, the Office of the Ombudsman, and the IPT on the proposals. A summary of the feedback is below.

- The IPT noted that they already consider the severity of offending and the impact on victims in deciding appeals and so adding it into legislation is not likely to change anything and may raise uncertainty about criteria or considerations that are included or not included. It was a deliberate decision in the development of the 2009 Act to not include criteria for determining deportation appeals.
- The Chief Victims Advisor (MOJ) was supportive of the proposal to make the seriousness of the offending, including the impact on the victim, an aggravating factor in determining appeals against deportation, noting that further work may be required with the IPT to understand how they would determine this, and the level of input from the victim.
- The Office of the Ombudsman noted that some countries do not allow dual citizenship, which is a reason for people maintaining their residence status. The Office also sought clarification that the immigration status of family members would not be affected (they would not as the liability attaches to the conviction)[10]and that appeal rights remain (existing appeal rights under the Act would be available to people liable for deportation).
- The INZ focus group had no feedback on this particular proposal and the Law Society asked some clarification questions about the proposals.

There will be two more opportunities for consultation:

- targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
- the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

MBIE proposes the following criteria be used to assess the options against the status quo:

[10] Note: There may be some instances where the family, without the individual, no longer meets the thresholds to either obtain residence (often they are on a temporary entrance class visa), or residents may not be able to support themselves (although this should be advanced as a ground in any humanitarian appeal).

a. **Effectiveness** in achieving the policy objective, which is to **provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years**
b. **Efficiency:** achieving the policy objective in the most cost-effective way, with minimal costs for MBIE and the IPT
c. **Fair/Proportionate:** the consequence (deportation) is proportionate to the offence, and the steps of the framework are proportionate to each other
d. **Ease of implementation**: how much resource or time is required to implement the option.

What scope will options be considered within?

This proposal's scope is limited to RCV holders who have committed an offence and become liable for deportation under section 161 of the Act. Significant changes to section 161 and changes to the offences and penalties under the criminal justice system have been ruled out of scope due to time constraints.

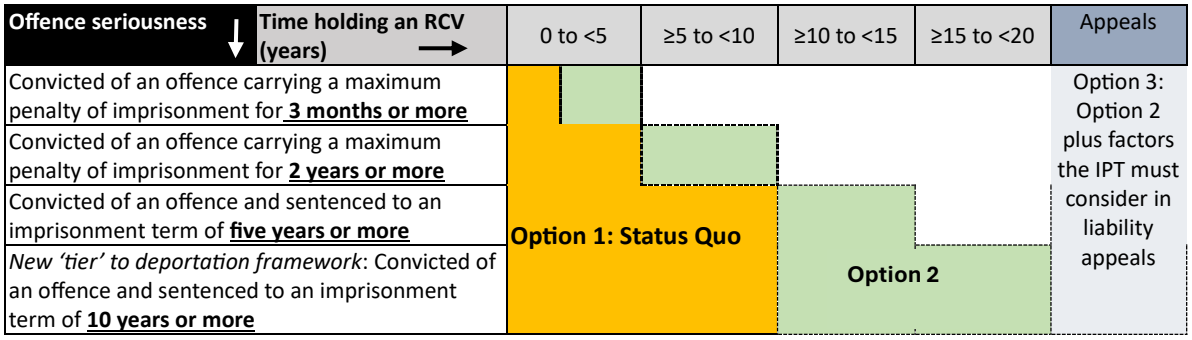
The scope of options was further shaped by consultation with agencies, in particular the MOJ, who advised that the options had to be proportionate (as above in the consultation section).

Following initial advice on the policy levers (time someone has held an RCV and term of imprisonment), the Minister of Immigration's preference was to focus on the period of time a person has held an RCV and add new tiers to the deportation framework for terms of imprisonment (10 years plus). Further advice provided the Minister with options to extend deportation liability at the lower and higher end of offences and time someone has held an RCV as well as two additional tiers. The Minister was most interested in consequences for serious offending. In response we developed the proposed options, which also extend deportation liability at the lower end of offending and time someone has held an RCV to keep it proportional and maintain a graduated framework as emphasised by the MOJ.

There are no non-regulatory options for making RCV holders who commit serious crimes and have held an RCV for more than 10 years automatically liable for deportation as this is something that is set out in the Act (section 161).

What options are being considered?

Figure 4: Comparison of status quo and options considered



Option One – Status Quo / Counterfactual

Option One is the Status Quo: Section 161 (1) of the Act currently establishes that deportation liability is dependent on two different factors:

- the seriousness of the crime, and
- the length of time a person has held an RCV.

The longer someone has held an RCV when the offence is committed, the more serious the offending (and therefore conviction) will need to be in order for the person to become liable for deportation. The rationale behind this is that as a general legal principle, and fundamental human right, for a punishment to be reasonable (as opposed to unreasonably harsh) it must be proportionate to the offence committed.

Section 207 of the Act also sets out fairly permissive settings in which a person can appeal their deportation liability to the IPT on humanitarian grounds. The chances of a successful appeal also depend on the seriousness of the offending, and the amount of time a person has spent in New Zealand.

The status quo essentially means that the longer a person has held an RCV, the more serious the conviction term will need to be (the more serious the crime) for them to be liable for deportation. It also limits liability for deportation to be only for offences committed within ten years after first holding an RCV[11], after which, they cannot be deported no matter how serious the crime (excluding time spent imprisoned).

Option Two – Extend deportation liability framework

Option Two extends deportation liability for both the seriousness of the offending, and the amount of time a person can hold an RCV and still be liable for deportation.

This option is likely to be justifiable under section 5 of the Bill of Rights Act (BORA), and therefore less likely to be challenged as an unduly harsh punishment relative to the offence committed (covered by section 9 of the BORA). MOJ has advised that maintaining a graduated framework is essential for maintaining proportionality (both in relation to the seriousness of the offence, and to each other).

[11] Meaning 10 years after the person first held an RCV.

Option Two also adds a new tier to the deportation framework for imprisonment terms of 10 years or more (currently the last tier is for terms of 5 years of more). RCV holders that commit these offences would be liable for deportation if they committed these offences not later than 20 years after they first held an RCV (extended from the current 10 years for crimes that result in more than 5 years' imprisonment) when the crime is committed. It also extends deportation liability where a person has been convicted and:

- the offence carries a maximum **imprisonment term of 3 months** where a person has **held an RCV for up to five years** (currently 2 years)
- the offence carries a maximum **imprisonment term of 2 years** where a person has **held an RCV for up to 10 years** (currently 5 years)
- **sentenced to a term of 5 years** or more where a person has **held an RCV for up to 15 years**.

Option Three - Extend deportation liability AND prescribe factors the IPT must consider when deciding appeals against deportation on humanitarian grounds

Option Three has the same features as Option Two but sets out factors that the IPT must consider when considering appeals against deportation under section 161.

As mentioned above, section 207 is broad in terms of outlining what the IPT must consider when looking at such appeals. The Act only sets out that a person may bring an appeal on humanitarian grounds, and that the IPT must have regard as to whether allowing the appeal would be contrary to the public interest. There is little direction given to the IPT on what 'humanitarian grounds' are, and what factors should be in considering them. This can mean that the outcome of the deportation liability may not be achieved as a result of the broad ambit IPT members have to interpret 'humanitarian grounds'. The length of time someone has spent in New Zealand tips the determination in favour of cancelling the deportation order. Where such serious crimes should be held to a higher standard, the humanitarian considerations need to be weighed against and proportionate to the criminal offending.

The 1987 Act included factors such as the nature of the offending, impact on victims, interests of the persons family, and any other criminal offending history. These factors will form the basis of any changes, which will be finalised as part of drafting and refined during consultation on the exposure draft. Similar to the criminal jurisdiction, these considerations could include both aggravating factors, such as the severity of the crime and who is impacted (e.g. victims' vulnerability and number of victims), and mitigating factors, such as the age of the appellant when they arrived in New Zealand.

The IPT already considers: the strength and nature of the person's ties to New Zealand; whether the person's immediate family is in New Zealand; and the extent of any impediments that the person may face if removed from New Zealand. Although the IPT must consider the public interest in the appellant remaining in New Zealand (against the humanitarian grounds), we note there are no considerations of the severity of the crime and who is impacted set out in the Act.

MBIE considers adding these factors into the Act would help to provide legal certainty and clarity to the weight that should be given the primary factors. Cabinet will agree to the final factors ahead of the Bill being introduced to the House. Australia has a similar approach

which can help inform the legislative design. Australian legislation[12] lists considerations to be taken into account when considering the cancellation of a person's RCV status.

MOJ is comfortable with the proposal to include factors the IPT must consider as long as consideration of the victims does not rely on victim statements (as it can be hard to find victims years later and they can be reluctant to appear in a hearing/give evidence). They consider the IPT currently weighs humanitarian concerns quite strongly and there is potential for MBIE to emphasise other factors in legislation.

Estimating who would be affected by expanded deportation liability

Due to the terms of current data sharing agreements with Corrections, we have not been able to reliably estimate the number of people likely to become liable for deportation if deportation liability settings were expanded. However, based on the number of individuals that became liable for deportation in 2023/24 under current settings, we consider a 30% increase is possible. This would take the number of people liable for deportation per annum (under s161) from 182 to 237 (an increase of 55 people). We would expect to see a similar increase in actual deportations, going from approximately 15 to 20 people per annum[13] (an increase of 5 people), however this does not account for an extra tier of offending or the fact that deportation liability is often suspended for lower-level offending.

Data shows that Pacific and Asian males are overrepresented in lower-level offending. Recent data on deportations from May 2024 to April 2025 showed that Pacific Island nationalities were 37.5% of those deported per annum (12 of the 32 people deported under s161). International relations In reality, the number is likely to be lower, given that most low-level offending results in suspended deportation liability.

Expanding deportation liability does not necessarily lead to more deportations as there are a range of safeguards in the system (as discussed above). The proportion of the people made liable for deportation that are eventually deported varies according to the seriousness of the offence (4.2% at the lowest end of offending, 14.7% for medium-level offending and 66% for the most serious offences, of those identified as liable, were deported in 2023/24). This indicates that around a third of the most serious offenders are not being deported under current settings.

[12] Australian Migration Act 1958 [sections 501 and 116] – had previously referenced 2014 Bill.
[13] This number is based on 2023/24 financial year data and not the figure mentioned elsewhere in the paper for deportations in the 12 months to April 2025 (which was 32).

Table Two: Options analysis compared to status quo

	Option One – Status Quo	Option Two – Extend deportation liability both at the lower and higher end	Option Three – Option Two plus add factors for IPT consideration to the Act
Effectiveness	0	+ Strengthens the framework to address gaps and extends the limit from 10 to 20 years for the most serious crimes. However, it may not result in more deportations as liability may be overturned on humanitarian grounds if someone has been in NZ for a long time.	++ Strengthens the framework to address gaps and extends the limit from 10 to 20 years for the most serious crimes. Adding factors for IPT consideration may increase the likelihood that people who commit the most serious crimes will be deported.
Efficiency	0	+ The costs of increased deportation liability notices will be small and will fall mainly on MBIE. There may be a small increase in appeals to the IPT but this is expected to be minor	+ The costs of increased deportation liability notices will be small and will fall mainly on MBIE. There may be a small increase in appeals to the IPT but this is expected to be minor
Fair/Proportionate	0	+ The consequence of offending is proportionate to the crime and the steps in the framework are proportionate to the other steps. It is fair that people that have held an RCV for more than 10 years when they commit serious crimes become liable for deportation.	+ The consequence of offending is proportionate to the crime and the steps in the framework are proportionate to the other steps. Including aggravating factors ensures that greater weight is placed on the harm caused by truly egregious offences, rebalancing the assessment away from focusing on the length of time spent in New Zealand. Including mitigating factors mirrors the criminal justice system for sentencing, while ensuring that there are sufficient checks and balances in taking a case-by-case approach to ensure that where there are genuine humanitarian concerns about deporting the person, these are respected.
Ease of implementation	0	- The Act will need to be amended to enable the change and minor changes will need to be made to ensure that the revised deportation liability framework is operationalised. A small amount of resource may be needed for MBIE to process additional people liable for deportation.	- The Act will need to be amended and minor changes will be needed to operationalise the revised deportation framework. The IPT may need additional internal guidance about how to consider the factors in the Act. A small amount of resource may be needed for MBIE to process additional people liable for deportation
Overall assessment	0	**++ (2)**	**+++ (3)**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

MBIE has assessed that **Option Three** is most likely to meet the policy objective of providing the immigration system with options to manage serious criminal offending by migrants who have held an RCV holders for more than 10 years (reflected in Table Two above).

In rebalancing the primary factors the IPT needs to consider, Option Three ensures that the secondary objective of enhancing New Zealand's ability to deport RCV holders that commit the most serious offences and pose a risk to the community if they remain can be achieved.

Prescribing aggravating factors for consideration ensures that the intention of the policy is met and the humanitarian factors are weighed against the harm caused to the community. Prescribing mitigating factors provides an additional layer of safeguards to ensure that the humanitarian considerations still protect people. This is reflected in the high rating against the effectiveness criteria. It is also considered fair/proportionate as the consequence of deportation liability is relative to the imprisonment sentence and the time spent as an RCV holder. Including aggravating and mitigating factors mirrors the criminal justice system for sentencing, while ensuring that there are sufficient checks and balances in the system in taking a case-by-case approach.

Table Three: Marginal costs and benefits of the preferred option

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups	RCV holders	Medium. More RCV holders can be made liable for deportation on conviction. This may adversely affect particular groups, like Pacific and Asian males.	High
Regulators	MBIE	Low. Operationalise the revised deportation framework, including issuing (slightly) more deportation liability notices.	Medium
Others (eg, wider govt, consumers, etc.) *For fiscal costs, both increased costs and loss of revenue could be relevant*	MOJ IPT Department of Corrections MFAT International relations	Medium. The IPT may face a slightly higher number of appeals for deportation – resident stream. International relations	Medium

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Receiving countries	International relations	
Total monetised costs		N/A	N/A
Non-monetised costs		Low-Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	RCV holders	Low. Potential to disincentivise offending.	Medium
Regulators	MBIE	Medium. Strong signal that criminal offending is not tolerated. Ability to make more RCV holders that commit crimes automatically liable for deportation.	High
Others (eg, wider govt, consumers, etc.)	Ministry of Justice IPT Victims of criminal offending	Low. No particular benefit. The preferred option places greater weight (in the form of aggravating factors) on the impact on victims of criminal offending by those who are subsequently made liable for deportation.	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Medium

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

Yes.

Section 3: Delivering an option

How will the proposal be implemented?

Section 161 of the Act will need to be amended to include the extended framework. Either section 161 (2) or section 207 will also need to be amended to include factors the IPT must consider when determining appeals for deportation liability.

The ERM Bill will be the vehicle used to make these legislative changes. The Bill is scheduled for introduction to the House in October 2025. Confidential advice to Government

Further communication with external stakeholders will occur in three phases:

- Targeted consultation via an exposure draft of the Amendment Bill, commencing 1 September 2025
- Targeted communications to stakeholders when the Bill reaches milestones in the House, along with general public communications as part of a wider communications plan.

There are minor-medium resource impacts for MBIE to operationalise the revised deportation liability framework (mostly from the Resolutions and Compliance teams) as the framework is already in place and deportation liability is automatic upon conviction (based on the scenario of a 30% increase in individuals made automatically liable for deportation). There are potentially impacts for the IPT as well, which we have been unable to model during this time.

Risks and mitigations identified by MBIE

The scenarios MBIE has developed on what expanded deportation liability settings would mean for numbers of people made liable and eventual deportations have not been tested widely or verified. Therefore, there is a risk that the inferences made in this RIS do not accurately reflect the impact of the preferred option, nor its costs and resource implications. MBIE does not expect high workload impacts, given the proposed change is an expansion, and codification of existing practises and processes.

How will the proposal be monitored, evaluated, and reviewed?

MBIE will continue to monitor the number of RCV holders that are made liable for deportation under section 161 and the proportion that ultimately get deported. As of April 2025, the Minister of Immigration receives quarterly reporting on compliance and investigations activity. Reporting on deportation outcomes as a result of this proposal will be included in this report.

A review of the changes will be undertaken 12 months after implementation, with findings provided to the Minister of Immigration. The review will consider:

a. Number of RCV holders made liable for deportation under section 161 in the last financial year, compared with the two years prior (we would expect to see initially higher numbers of people made liable for deportation but this would hopefully reduce over time as people are deterred from offending).
b. Number of RCV holders who are liable under s161 that are actually deported because the IPT declines their appeal. This information is currently published in the IPT annual reports.

Annex One: Summary of criminal deportation settings in comparator jurisdictions

Australia	Liability for deportation: **s 201 Migration Act** A non-citizen who is a permanent resident in Australian for less than 10 years may be deported if they are convicted in Australia of any offence for which they are sentenced to imprisonment for one year or longer (s 201 Migration Act). Under section 201, a person cannot be deported after being lawfully resident in Australia for more than 10 years, except in very exceptional circumstances. **s 501 Migration Act** Wider power than s201 – provides that a visa can be cancelled on character grounds, where a person has been convicted of a criminal offence. There is a two-stage process for this: - Decision-maker must find that the visa holder doesn't pass a defined character test (defined in 501(6)), and - If found not to pass the character test, the decision-maker must decide whether it is appropriate to cancel the visa. Time limit on liability: indefinitely for s 501, 10 years for s 201. Appeal rights: Australia considers the following factors when determining deportation for criminal offending: - Primary considerations: protection of the Australian community from criminal or other serious conduct, the best interests of minor children in Australia, whether Australia has non-refoulment obligations to the person. - Other considerations that may be relevant: impact of refusal or cancellation on; the person's immediate family in Australia (if those family members are Australian citizens, permanent residents, or people who have a right to remain in Australia indefinitely), Australian business interests, members of the Australian community including victims of the person's criminal behaviour and those victims' families.
Canada	Liability for deportation: A foreign national in Canada is "inadmissible" if convicted of: - an offence punishable by a maximum term of imprisonment of at least 10 years, or - an offence for which a term of imprisonment of more than six months has been imposed. Time limit on liability: indefinite, irrespective of time spent in Canada. Appeal rights: permanent resident or protected person can appeal. However, they lose appeal rights if they were sentenced to six months or more.
Ireland	Liability for deportation: A foreign national that has committed a crime that carries a prison sentence (no limitations based on term of sentence or type of offending). Time limit on liability: indefinite. Appeal rights: Once notified of deportation liability, representations can be made (within 15 days) as to why a deportation order should not be made. In considering any such representations, the Minister is required to consider a number of statutory factors, including any 'humanitarian' issues arising.
United Kingdom	Liability for deportation: A foreign national in the UK is liable for deportation if convicted in the UK of an offence and sentenced to a period of imprisonment of at least 12 months. UK immigration rules state that, if the offender is sentenced for more than 12 months, their deportation is "conducive to the public good and in the public interest". There are a few exceptions: - if removal would breach rights under European Convention on Human Rights or the UK's obligations under the Refugee Convention - where the person was under 18 on date of conviction. Time limit on liability: indefinite, irrespective of time spent in UK. Appeal rights: Deportation decisions can be challenged on the grounds of a person's long residence in the UK and/ or their private and family life in the UK under Article 8 of the European Convention on Human Rights.

Annex Two: Detailed list of offences and maximum penalties

Offence	Maximum penalty
Abduction of a young person under 16	7 years
Accessing a computer system for dishonest purpose	5 - 7 years
Aggravated assault	3 years
Aggravated burglary	14 years
Aggravated careless use of vehicle causing injury of death	3 years
Aggravated injury	7 years
Aggravated robbery	14 years
Aggravated wounding	14 years
Altering documents with intent to deceive	10 years
Arranges/persuades to meet young person	7 years
Arson	7 years
Assault on person in family relationship	2 years
Assault police	6 months
Assault with a blunt instrument/weapon	5 years
Assault with a firearm	3 years
Assault with intent to commit sexual violation	10 years
Assault with intent to injure	3 years
Assault with intent to rob	7 years
Assaulting a child	2 years
Attempt to have sexual connection with a child under 12	10 years
Attempt to have sexual connection with a young person under 16	10 years
Attempted murder	14 years
Attempted sexual violation	10 years
Behave threateningly	3 months
Blackmail	14 years
Breach of community work	3 months
Breach conditions of community detention	6 months
Breach of conditions of supervision	3 months
Breach of intensive supervision	6 months
Breach of post detention conditions	6 months
Breath alcohol level (person under 20)	3 months
Breath alcohol level over 400mcg (1st or 2nd)	3 months
Breath alcohol level over 400mcg (3rd or subsequent time)	2 years
Burglary	10 years
Careless or inconsiderate driving causing injury or death	3 months
Carrying a firearm etc. with criminal intent	5 years
Causing Grievous Bodily Harm (GBH) with intent to rob	14 years
Causing harm by posting digital communication	2 years
Common assault	1 year or 6 months
Conspiracy to supply cannabis plant	7 years
Conspiracy to supply methamphetamine	7 years
Contravening a protection order	3 years
Conversion of vehicle or other conveyance	7 years
Criminal harassment	2 years
Cruel/ill-treatment of animals	6 months
Cultivate cannabis	7 years
Dangerous driving	3 months

Offence	Maximum penalty
Dangerous driving causing injury	5 years
Defrauding the revenue of Customs (tobacco)	5 years
Demands to steal	7 years
Destroying property	7 years
Dishonestly taking or using a document	7 years
Disorderly assembly	3 months
Disorderly behaviour	3 months
Driving recklessly or dangerously causing death	10 years
Driving while disqualified (1st or 2nd)	3 months
Driving while disqualified (3rd or subsequent time)	2 years
Driving while impaired and with blood that contains evidence of use of qualifying drug (1st or 2nd)	3 months
Driving while impaired and with blood that contains evidence of use of qualifying drug (3rd or subsequent time)	2 years
Drove a vehicle at a dangerous speed	3 months
Drove contrary to limited licence	3 months
Drove contrary to zero alcohol licence	3 months
Drove while licence suspended or revoked (1st or 2nd)	3 months
Drove while licence suspended or revoked (3rd or subsequent time)	2 years
Escape from lawful custody	5 years
Exposure of young person to indecent material	3 years
Failing to assist Police exercising a search power	3 months
Failing to stop to ascertain injury	3 months
Failing to carry out obligations in relation to computer system search	3 months
Failure to answer District Court bail	1 year
Failure to answer police bail	3 months
Failure to give details on demand	Fine
Failure to stop for police	Fine
Forgery of a document for advantage	10 years
Impersonating a Police Officer	1 year
Importing/exporting/manufacture/supply class A drug	Life
Importing/exporting/manufacture/supply class B drug	14 years
Importing/exporting/manufacture/supply other controlled drugs	8 years
Indecent act on a child under 12	10 years
Indecent act on a young person under 16	7 years
Indecent act with intent to insult or offend	2 years
Indecent act in a public place	2 years
Indecent assault	7 years
Injures with intent to cause GBH	10 years
Injures with intent to injure	5 years
Injures with reckless disregard	7 years
Intentional damage	7 years
Kidnapping	14 years
Knowingly distributes objectionable material	14 years
Knowingly using a forged document	10 years
Loss of traction	5 years
Male assaults female	2 years
Manslaughter	Life
Meeting young person under 16 following sexual grooming	7 years

Offence	Maximum penalty
Misleading a social welfare officer	1 year
Murder	Life
Obstruct/pervert course of justice	7 years
Obstruct/hinder police	3 months
Obtaining by deception $500 - $1,000	1 year
Obtaining by deception less $500	3 months
Obtaining by deception over $1,000	7 years
Obtaining property or causing loss from access to computer system	7 years
Offensive behaviour or language	Fine
Offer to sell cannabis plant	8 years
Offer to supply methamphetamine	Life
Operating a vehicle carelessly	Fine
Operated a vehicle recklessly	3 months
Operating a vehicle causing loss of traction	3 months
Operating a vehicle in race or in unnecessary exhibition of speed or acceleration	3 months
Personating Police	1 year
Possession of a class B drug (Ecstasy)	3 months
Possession of equipment to cultivate cannabis	5 years
Possess for supply methamphetamine	Life
Possess needle/utensil for cannabis	1 year
Possess needle/utensils for methamphetamine	1 year
Possess offensive weapon	3 years
Possess utensil for methamphetamine	1 year
Possession for supply cannabis plant	8 years
Possession of a knife	3 years
Procure/possess cannabis plant	3 months
Procure/possess other drugs (not cannabis)	6 months
Procure/possess methamphetamine	6 months
Purchase, sale, exchange, etc of uncustomed goods or prohibited imports (tobacco)	6 months
Receiving between $500 and $1,000	1 year
Receiving less than $500	3 months
Receiving over $1,000	7 years
Recklessly causing death	10 years
Recklessly discharging a firearm	5 years
Refused blood sample (1st or 2nd)	3 months
Refused blood sample (3rd or subsequent time)	2 years
Refused to accompany enforcement officer	Fine
Resist police	3 months
Robbery	10 years
Sell cannabis plant	8 years
Sexual connection with a child under 12	14 years
Sexual connection with a young person under 16	10 years
Sexual violation	20 years
Stealing/receiving controlled drugs	7 years
Strangulation/suffocation	7 years
Supply methamphetamine	Life
Supply of class C drug	3 months

Offence	Maximum penalty
Take/obtain/use document for pecuniary advantage	7 years
Theft $500 - $1,000 (also known as shoplifting)	1 year
Theft by person in a special relationship	7 years
Theft over $1,000 (also known as shoplifting)	7 years
Theft under $500 (also known as shoplifting)	3 months
Threatening language	Fine
Threatening to destroy property	3 years
Threatens to kill/do GBH	7 years
Unauthorised street or drag racing - no injury or death	3 months
Unauthorised street or drag racing causing death	10 years
Unlawful assembly	1 year
Unlawfully carry/possess firearm/restricted weapon/explosives	4 years
unlawfully gets into/upon motor vehicle	2 years
Unlawfully in building	3 months
Unlawfully interfere with motor vehicle	2 or 7 years
Unlawfully takes motor vehicle	7 years
Unlawfully possess pistol/restricted weapon	3 years
Unlicensed driver failing to comply	Fine
Used forged document	10 years
Using altered document to deceive	10 years
Using a document for a pecuniary advantage	7 years
Wilful damage	3 months
Wilful trespass	3 months
Wounds - intent to GBH	14 years
Wounds - intent to injure	7 years

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Limiting humanitarian appeal rights to the Immigration and Protection Tribunal for temporary visa holders

Decision sought	*Analysis for the Cabinet decisions on rebalancing appeal rights for temporary visa holders*
Agency responsible	*Ministry of Business, Innovation and Employment (MBIE)*
Proposing Ministers	*Minister of Immigration*
Date finalised	*21 May 2025*

To remove the ability of some temporary visa holders to appeal against their deportation liability on humanitarian grounds to the Immigration and Protection Tribunal (IPT), specifically:

- those who become liable for deportation because of criminal offending, and
- all visitor visa holders.

This proposal relates to temporary visa holders only. Temporary visas allow people to enter and stay in New Zealand for a limited time and for specific purposes. The primary categories are: Student visas (right to study), Work visas (right to work), and Visitor visas (the right to visit with no right to work or study).

Affected individuals will retain the ability to give good reason why deportation should not proceed within 14 days of being served a Deportation Liability Notice (DLN) to MBIE, during which time deportation cannot proceed, and may additionally pursue Judicial Review, lay a complaint to the Ombudsman or have their deportation liability cancelled by the Minister of Immigration or Delegated Decision Makers (DDM) in MBIE.[1]

Summary: Problem definition and options

What is the policy problem?

Currently, MBIE is not able to swiftly deport temporary visa holders that become liable for deportation. Deportation orders cannot be made and executed until all appeal rights are exhausted and a final determination of immigration status is made. Following the issuing of a DLN, a temporary visa holder is granted 28 days to make appeal to the Immigration and

[1] Unless section 15 of the Immigration Act 2009 applies (excluded persons). This typically applies to serious criminal offenders.

Protection Tribunal (IPT) regardless of whether they appeal or not. This process is far too drawn out for visitors who typically have a limited connection to New Zealand and those on temporary visas who commit criminal offences. Currently, it takes 226 days on average for a case to be processed by the IPT, and an appellant has a further 28 days to seek leave for point of law review by the High Court on the IPT's decision. Even if processing time improves however, there are set protections from deportation orders of: 28 days before and after appeal review. The generally drawn-out nature of this process is disproportionate and not reflective of the temporary nature of this visa category.

Despite temporary visa holders generally coming for a short stay or particular purpose, with less expectation to stay long term, they hold the same right to appeal their deportation liability to the IPT on humanitarian grounds as resident visa holders. There are other avenues for appeal that are less burdensome on the IPT that still enable those who have reasonable grounds to argue their right to stay, while enabling swifter deportation action for those who do not.

What is the policy objective?

The objective of this proposal is to send a clear message that temporary guests to New Zealand must follow New Zealand law and the conditions of their visa or face swift deportation action. The intended outcome is that MBIE can take timely deportation action when individuals become liable for deportation and to ensure natural justice is retained.

Success will be measured by the time taken to deport individuals (from serving of DLN).

What policy options have been considered, including any alternatives to regulation?

We considered four options:

- **Option One:** Status quo – most temporary visa holders (excluding limited visa holders[2]) can appeal deportation liability to the IPT on humanitarian grounds
- **Option Two:** remove the ability to appeal deportation liability to the IPT on humanitarian grounds for temporary visa holders whose deportation liability is for criminal offending
- **Option Three**: Option Two above plus remove the ability to appeal deportation liability to the IPT on humanitarian grounds for all visitor visa holders (ie those that do not have study or work rights) **(preferred)**
- **Option Four:** Option Two above plus remove the ability to appeal to the IPT on humanitarian grounds for individuals on visitor visas granted a stay of more than 12 months.

The preferred option is Option Three. This is expected to at least half the current average time until a deportation order can be issued from 283 days (for those who submit appeals to the IPT) and drop the minimum period until a deportation order can be issued from 29 days to 15 days, in cases where liability is not cancelled or overturned. Alongside supporting swifter deportation action, this change will likely support the IPT by reducing their case-load burden. MBIE will monitor the number of non-resident deportation appeals which go to the IPT (envisaged to decrease by approximately 110-120 cases per annum, or approximately 30-50 per cent of temporary visa deportation liability appeal cases, after the changes come into force), requests for Ministerial intervention, and/or Judicial Review.

What consultation has been undertaken?

[2] A Limited Visa is a specific type of temporary visa granted for a particular purpose when Immigration New Zealand (INZ) identifies a risk of the applicant overstaying their visa. It allows entry for a specific reason, but with restrictions, like the inability to apply for other visa types while in New Zealand.

To achieve introduction of the Amendment Bill by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints, by undertaking a short and targeted period of stakeholder engagement with:

- government agencies,
- independent statutory bodies,
- representatives of impacted parties (ie immigration lawyers and community representatives).

Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.

There will be two more opportunities for consultation:

- targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
- through the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

Targeted consultation was undertaken with the Ministry of Justice (MoJ) during the early stages of the policy development in April 2025, which influenced the development of options.

From 1 to 6 May 2025, we informed and sought feedback on the proposal from the following stakeholders:

- Immigration New Zealand's (INZ) Focus Group (which includes members from Business NZ, the Employers and Manufacturers Association and the New Zealand Council of Trade Unions),
- The New Zealand Law Society (the Immigration and Refugee committee),
- The Office of the Ombudsman,
- The IPT.

Stakeholders were generally supportive of the proposal but raised concerns that the burden may simply shift from the IPT to the Courts through uptake of Judicial Review. The IPT also noted that criminal offenders only make up a minority of their cases – approximately 13 a year and are in complex situations that may be difficult to appropriately manage without an IPT avenue, such as those with dependent children, due to implications regarding the Convention on the Rights of the Child. Additionally, the Office of the Ombudsman shared concerns that the changes may lead to them receiving a substantial number of complaints, something not currently possible due to the IPT acting as the primary appeal body for deportation decisions. This is dependent on the Office of the Ombudsman's discretion to investigate such complaints. We have been unable to model how many additional complaints the Ombudsman may receive within our time restraints however assume it will be a relatively small percentile of the total amount of people made liable for deportation each year.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Analysis suggests the benefits of **Option Three** slightly outweigh the non-monetary costs, which are expected to be minimal, and mainly fall on the regulated group of temporary visa holders.

Option Three has low net non-monetary costs on regulated groups, such as MBIE, and others including the IPT and MoJ. However, where benefits are gained in reduced workload at the IPT there is a risk that the burden, both cost and otherwise, may shift to other areas like the Courts. We have been unable to model how many additional Judicial Reviews the Courts may receive, however we expect the figure to be a far smaller figure than we currently see in appeals to the IPT due to the narrow scope of Judicial Review. Only approximately 200 to 300 Judicial Reviews are heard each year nationwide.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Option Three would provide low net benefits for regulated groups, such as the subset of temporary visa holders who become liable for deportation. This is because despite losing the ability to appeal to the IPT, they gain wider scope to lay a complaint with the Ombudsman. Medium net benefits are gained for the regulator, MBIE, as compliance action will be far swifter and more streamlined in most cases where appeals are not sought and should still be faster in cases where other avenues of appeal are sought. This proposal provides a small benefit to other parties such as the IPT, in the form of reduced appeal cases, however, this may be balanced by a small increase in Judicial Reviews for the High Court and complaints to the Ombudsman.

We have been informed that the IPT is highly costly to operate and as such reduction in their workload has potential to provide benefits to the Government through faster processing times, though we have not been able to gather specific costings. As with the costs above, this is however balanced by the potential for some of the burden and therefore costs to be shifted to the Courts or Ombudsman.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

Analysis suggests the benefits slightly outweigh the costs, which are expected to be minimal.

The main points of risk are dependent on how affected persons will appeal using other avenues, such as Judicial Review or complaints to the Ombudsman, if the right to appeal to the IPT is removed. This is difficult to model as those with IPT appeal rights cannot pursue Judicial Review until after they have pursued an appeal to the IPT, and they cannot currently pursue a complaint to the Ombudsman. There is further difficulty in modelling this as

appeals to the IPT are based on humanitarian grounds while Judicial Review and complaints to the Ombudsman are based upon MBIE decisions, such as the decision to issue a DLN.

This change may increase requests for Ministerial intervention. This is likely to be influenced by the Ombudsman's discretion regarding scope, in that they typically direct potential complaints to use alternative avenues first, such as seeking Ministerial intervention, before addressing complaints themselves. As there is no statutory right of appeal to the Minister or stay on deportation action while an appeal to the Minister is being considered, we view the risk for significant increase is low, particularly with appropriate operational safeguards in how these requests are considered. MBIE monitors Ministerial interventions and will continue to do this, particularly with regard to how the proposal affects request numbers.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

Amendments to the Act will be required. The vehicle is the Immigration (Enhancing Risk Management) Amendment Bill (ERM) that is proposed to be introduced by October 2025. Co nfid

The Act sets out which visa holders have a right to appeal to the IPT, and on what basis. MBIE is the agency responsible for taking immigration compliance action, including the deportation of individuals who have become liable for deportation. The IPT is the body that determines appeals (against a range of decision types, including deportation decisions on humanitarian grounds) and therefore, will be impacted by any change to appeal rights.

We do not expect there to be resourcing implications for MBIE's Compliance function, as swifter compliance action can be undertaken within baseline resourcing. However, there is some chance that MBIE may need increased resourcing to defend some deportation decisions due to legal challenge following the removal of IPT appeal rights.

Risks and mitigations include:

- **Communications**: the proposal may face a negative reaction from human rights groups and other interest groups. This will be mitigated through careful communications to ensure clarity of the safeguards retained and why these groups are being affected.
- **Increase in requests for Ministerial intervention:** As there is no statutory right of appeal to the Minister or stay on deportation action while an appeal to the Minister is being considered, we view the risk for significant increase is low, particularly with appropriate operational safeguards in how these requests are considered. MBIE will monitor how the proposal affects number of requests received and responses to them.
- **Impact on the Courts:** there may an increase in Judicial Reviews if individuals are not able to appeal to the IPT, putting pressure on the Courts. This would place some pressure on MBIE's Legal function also, which will be required to defend MBIE's compliance decisions and actions. We will monitor the number of Judicial Reviews at the High Court to understand the impact.
- **Impact on the Ombudsman:** there may be an increase in complaints to the Ombudsman. The Ombudsman determines what complaints are within their scope, which has historically been limited in the immigration space due to the IPT operating as the primary oversight body for considering appeals. Without that right of IPT appeal they may consider more complaints are within their scope because the IPT is not available to certain complainants. Ultimately, the Ombudsman receives complaints about a range of matters and an increase in immigration complaints is not expected

to have a large impact. As part of implementation planning, we will remain engaged with the Ombudsman as the Bill progresses and determine a likely figure for increased appeals during this process, this is something we have not been able to model in the time available so far.

- **MBIE management of deportation cases immediately following enactment:** MBIE will ensure clear communication as to when changes will come into effect as there will be a period where some liable individuals will retain IPT appeal rights following enactment, while others following will not. As this proposal will not affect all temporary visa holders the current process will be retained in many cases so processes will not be entirely abnormal for compliance staff.
- **Those with genuine humanitarian grounds being deported:** We consider this risk is minimal as the affected temporary visa holders will retain the ability to give good reason why deportation should not proceed (to MBIE, who considers any humanitarian grounds), the right to pursue Judicial Review and complain to the Ombudsman against deportation/deportation liability decision-making.

Limitations and Constraints on Analysis

The Minister of Immigration's expectation is that the Bill is introduced by end of October 2025 Confidential advice to requiring policy decisions in early June 2025. These timeframes mean that external consultation before Cabinet decisions has been limited to informing key stakeholders through one-on-one meetings and receiving their initial feedback on the proposals. We have not undertaken significant engagement (such as through discussion documents seeking detailed comments). Engagement with migrants or representatives of migrants has not been undertaken due to constrained timeframes.

Given the constrained timeframes, MBIE has developed this RIS based on limited and imperfect data. We note if appeal rights to the IPT are removed for some temporary visa holders, there may be an increase in Judicial Reviews. Approximately 100 to 120 appellants to the IPT each year would no longer be able to pursue this avenue and therefore may pursue Judicial Review or make a complaint to the Ombudsman regarding MBIE's decision to issues a DLN. We have however been unable to adequately and accurately model this in the time available.

Targeted engagement on an Exposure Draft of the Bill will occur later in 2025 ahead of Cabinet Legislative Committee Decisions in October 2025.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager signature:

Stacey O'Dowd
Immigration (Border and Funding) Policy
21 May 2025

Quality Assurance Statement

[Note this isn't included in the four-page limit]

Reviewing Agency: MBIE	**QA rating:** Partially meets

Panel Comment: A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled *Limiting humanitarian appeal rights to the Immigration and Protection Tribunal for temporary visa holders* on 22 May 2025.

The Panel considers that the information and impact analysis summarised in the RIS **partially meets** the Quality Assurance criteria.

The Panel has determined this rating because there has been no public consultation on the problem and policy options, and the proposals have undergone only limited targeted stakeholder consultation over a short timeframe, noting that the expected timeframe for introducing and enacting a Bill to implement the preferred option has constrained opportunities for more fulsome consultation. The RIS is otherwise of a high quality and meets all remaining Quality Assurance criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Immigration Act 2009 explicitly requires a balance of the national interest and rights of individuals

1. The purpose of the Immigration Act 2009 (the Act) is "to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals".[3] The Act prescribes a range of means to achieve this purpose, including establishing an immigration system "that includes mechanisms to ensure that those who engage with the immigration system comply with its requirements."[4]

2. Individuals who do not comply with New Zealand law or their visa conditions may face deportation from New Zealand. There are broad grounds for deportation liability for temporary visa holders, while grounds for deportation liability for resident visa holders are tightly prescribed, reflecting the lower tolerance for those who have only been granted temporary access to the country compared with those with expectations to permanently reside. New Zealand citizens cannot be deported, as per section 13 of the Act.[5]

3. To ensure natural justice and fairness, the Act provides robust procedural rights to individuals, such as access to information and the right to be heard fairly.

The Minister has agreed to regular targeted reviews of the Act

4. In 2024, Cabinet agreed to regular, targeted reviews of the Act to ensure it remains fit for purpose.

5. This proposal is included in the Enhanced Risk Management Amendment Bill (ERM) under the objective: improve the operation of the compliance and enforcement system.

Right of appeal against deportation liability is too universal for temporary visa holders

6. Citizens and non-citizens are treated differently in the immigration system, justified by the fact that state action involved, such as decisions relating to the grant of entry to New Zealand, inherently involve different treatment based on personal characteristics

[3] Section 3(1) of the Act.
[4] Section 3(2)(e)
[5] Office of the Auditor General (2013), Part 3: Citizenship and permanent residency — Office of the Auditor-General New Zealand

(section 392(3) of the Act). Similarly, section 153(3) of the Human Rights Act provides that nothing in that Act affects any enactment that distinguishes between citizens and non-citizens. The Human Rights Act discrimination complaints procedure therefore does not generally apply to immigration matters (see also section 392(2) of the Act).

7. Further, while resident visa holders have the right to live, work, and travel freely and indefinitely, temporary visa holders have limited rights, including specific work or study permissions and requirements placed upon them when they are granted a visa. The visa-waiver and visa-required system also places a clear distinction on who we openly allow into New Zealand with minimal checks and grant a visa and entry permission on arrival versus who must apply for a visa in advance of travel (and therefore face more screening).

8. We recognise any limitation on appeal rights needs to be justified. We note that temporary visa holders who are typically in New Zealand for a short stay and/or a specific purpose (and are therefore less likely than resident visa holders to have strong connections to New Zealand that would make it unduly harsh to be deported) have the same appeal rights as resident visa holders when it comes to deportation liability. Typically, decisions related to temporary visa holders are far more restrictive than resident visa holders, reflecting the temporary nature of the visa, something that is not currently adequately reflected regarding the deportation process for this visa category.

Section 157 of the Act sets out reasons for which temporary visa holders may be made liable for deportation

9. Part Six of the Act relates to deportations and the purpose is to support the integrity of New Zealand's immigration system and the security of New Zealand by providing for the deportation of certain persons from New Zealand.

10. Section 157 provides that the Minister or delegated decision maker (DDM) may make a temporary visa holder liable for deportation if they determine that there is "sufficient reason" to deport the person. It also prescribes their right of appeal or otherwise give good reason why deportation should not proceed.

11. 'Sufficient reason' includes, but is not limited to:

    a. breach of conditions of the person's visa

    b. criminal offending[6]

    c. other matters relating to character

    d. concealing relevant information in relation to the person's application for a visa

    e. a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

12. Figure One below provides a breakdown of the proportion of temporary visa holder deportations undertaken in 2023 and 2024 that were due to criminal offending (compared to other reasons).

[6] A criminal conviction is not required for a compliance officer to issue a deportation liability notice based on criminal offending.

13. Individuals can be made liable for multiple reasons, such as criminal offending and other matters relating to character, so for cases where multiple factors were cited for the persons' liability including criminal offending, they have been classified as liable due to criminal offending. We were unable to gather data on those currently liable for deportation, only final deportation outcomes.

Figure One: Reasons for deportation liability of temporary visa holders deported in 2023 and 2024[7]

	Reasons for deportation		
Departure date	Criminal	Other s157 breaches (excluding criminal)	Total
2023	93	132	225
2024	140	243	383

The current deportation and appeals process for temporary visa holders is very lengthy and segmented

14. The full appeal process for a temporary visa holder liable under section 157 is outlined in Figure Two below, along with approximate timing for each stage of the process.

[7] Excludes individuals who became liable due to being "unlawful". These individuals were excluded as unlawful individuals have a separate appeal process (s154) to those liable under s157.

Figure Two: Appeals process for temporary visa holders liable under section 157

Action	Calendar days
DLN served (section 170 of the Act)	Day 0
⬇	
Individual has the opportunity to give good reason why deportation should not proceed (section 157(2) of the Act) (within 14 days of DLN)	Day 0 to day 28
Individual can make an appeal to IPT on humanitarian grounds (section 157(4) of the Act) (within 28 days of DLN)	
⬇	
IPT processes the deportation appeal (average of 226 days for a non-resident)	Day 29 to day 254
⬇	
Time following IPT decision before a deportation order can be served (section 175A(2)(b)(ii) of the Act) (28 days)	Day 255 to day 283
⬇	
Point of law appeal to High Court (if approved) (section 245 of the Act) (90 days expected)	Day 284 to day 374

Minimum total time to deport an individual	**28 days**
Expected total time (including IPT appeal right)	**283 days**
Possible total time estimated if all avenues utilised	**374 days+**

15. The proposal tightens this current process significantly. The Act would now only afford protection for 14 days for the affected person to provide good reason why the deportation should not proceed to MBIE, and then enough time until a decision is made whether to accept this argument or not. Once that decision is made MBIE may serve the affected person a deportation order immediately (minimum of 15 days from DLN to deportation order).

16. There are alternative avenues of appeal that afford means of protection where affected persons believe there is substantial argument either against the decision to make them liable or the outcome of the good reasons review.

17. Persons may, for example, seek Ministerial intervention, lay complaint with the Ombudsman or seek Judicial Review regarding the MBIE's decision to make them liable for deportation or the outcome of the good reasons review. While there are no statutory requirements for deportation orders to be delayed until decisions venison these matters are made, operationally, MBIE has the discretion to delay deportation decisions or actions until decisions by the Minister are made or an Ombudsman investigation is complete. In cases where Judicial Review is sought, typically legal representation for the defendant will seek an injunction or interim order to delay action (in this case deportation) until the Judicial Review is resolved.

18. While liable persons lose the ability to appeal to the IPT on humanitarian grounds, these avenues provide adequate protections external to the Act related to MBIE decision-making for those who would be affected by this change.

19. Additionally, the opportunity to give good reasons why deportation should not proceed would remain also. This process requires consideration by a different immigration officer than the immigration officer who served the DLN and affords discretion for the immigration officer to appropriately consider the arguments of the liable person, including any humanitarian grounds they may have.

20. The length of time of an Ombudsman review, Ministerial intervention, or Judicial Review vary significantly. They are however, expected to be used in very limited cases and serve largely as a backstop in rare cases where those with significantly strong argument are at risk of deportation but have substantial grounds that may qualify them to stay.

IPT performance statistics make it difficult to be certain on the scale of appeals upheld

21. The IPT is an independent tribunal administered by the Ministry of Justice (MoJ). It hears and considers appeals concerning decisions about:

    - resident visas,
    - recognition of a person as a refugee or protected person (including whether to cancel or stop recognising a person as a refugee or protected person), and
    - liability for deportation (for both resident and temporary visa holders).

22. Grounds for determining deportation appeals are set out in section 207 of the Act and are based whether a person has exceptional circumstances of a humanitarian nature that make deportation:

    a. unjust or unduly harsh, and

    b. not in all the circumstances contrary to the public interest to allow the appellant to remain in New Zealand.

23. Per the IPT's 2023/24 annual report, the IPT finalised decisions on 205 temporary visa holder deportation appeals during the 2023/24 financial year. The report states 57 per cent of appeals were allowed/upheld, and 43 per cent were dismissed during this period, however the IPT has indicated these figures are misleading and their approval rate is closer to 25 per cent.

19. The IPT has the power to order Immigration New Zealand (INZ) to issue a temporary or resident visa to an IPT appellant. In cases where appeals are allowed/upheld the IPT typically orders what they consider an appropriate visa be granted, and in cases where an appeal is dismissed, they may still order a visa under section 216 to be issued to enable the appellant to settle their affairs in New Zealand before deportation proceeds. The IPT has indicated that this power to enable appellants to settle their affairs in New Zealand before deportation action proceeds has led to misleading approval statistics in their report.

20. Approximately 93 visas were ordered for appellants during the 2023/24 period for stand-alone[8] temporary visa holder deportation liability appellants, though we do not know what portion of these were for successful appellants compared to unsuccessful appellants who were granted visas to settle their affairs.

The status quo may lead to greater non-compliance of visa holders

24. The number of temporary visa holders that become liable for deportation in small. Out of two million temporary visas granted per annum,[9] 890 temporary visa holders were deported in 2024.[10] It remains however important that timely compliance action, including deportation, can be conducted for those who breach New Zealand law or the conditions of their visa, particularly if the number of individuals liable for deportation grows.

25. By comparison, the IPT made 205 temporary or other non-resident appeal decisions in the 2023/24 financial year, indicating approximately a quarter of temporary visa holders make appeal, though it is difficult to compare data points given the time period differences.

26. The current settings mean temporary visa holders may ultimately stay longer in New Zealand by appealing their deportation liability on humanitarian grounds, granted by sections 154, 155, 156 and 157 of the Act, which may incentivise non-compliance of visa holders. For example, if a temporary visa holder knows they cannot be deported for close to a year while pursuing appeal action against deportation, they may be less likely to follow the conditions of their visa. Further, the longer the appeal process takes the more likely an appellant is to build stronger connections to New Zealand and as such strengthen their humanitarian grounds to stay, despite that at the time of service of their DLN the humanitarian grounds to stay may have been minimal.

What is the policy problem or opportunity?

Policy Problem

27. Under the Act, temporary visa holders are entitled to the same right of appeal for deportation liability to the IPT (ie on humanitarian grounds) as resident visa holders. This has led to situations where MBIE is unable to conduct swift compliance action in relation to temporary visa holders as all appeal rights need to have been exhausted before a deportation order is served. The full process before a deportation can proceed can take up to an estimated 372 days with the IPT appeal process taking 226 days on average alone.

28. If the status quo continues, MBIE will be unable to take swift compliance action against individuals who become liable for deportation which may incentivise non-compliance. Further the IPT may continue to see high levels of deportation liability appeals by

[8] Excludes cases where appellants were also associated with a refugee and protection or other appeal with the IPT

[9] MBIE internal reporting data.

[10] This includes deportation, self-deportation, and voluntary departure, of person's liable for deportation.

temporary visa holders, which take many months to consider and determine exacerbating the issue.[11]

29. Limiting appeal rights for temporary visa holders would send a strong signal that visa breaches are not tolerated, and reinforce the nature of temporary visas, which are for a temporary stay and/or particular purpose. Further, visitor visa holders (or a subsection of them) arguably should not hold the same right to appeal as temporary visa holders with greater pathways to residency (eg student or work visas), as these visa holders generally have less connection to New Zealand or intention to stay long term.

30. This should see most deportations actioned far quicker, while those who have wish to argue against their deportation can still pursue avenues to appeal against the decision to make them liable in a faster manner than is currently occurring.

Opportunity

31. With IPT appeal rights removed for some temporary visa holders, MBIE will be able to serve deportation orders (enabling deportation to be actioned) in a minimum of 15 days following service of a DLN (currently it takes a minimum of 29 days) and reduce the case load burden for the IPT. This nearly halves the length of time until deportation action can proceed for those who do not seek avenues of appeal (such as Judicial Review), and will result in a shorter, more concise process for those who do seek these avenues.

32. There is further potential to support the proposed Parent Boost visa (a proposed visitor visa that grants a number of years entry). This visa intends to enable parents of an adult New Zealand citizen or resident who are not in New Zealand to stay in New Zealand for up to five years, in line with the 2023 Coalition Agreement between the National and ACT Parties. This proposal can support risks associated with this visa by sending a strong signal about consequences of persons not abiding by the conditions of their visa or overstaying beyond its expiry.

What objectives are sought in relation to the policy problem?

33. The primary objective is to send a clear message that temporary guests to New Zealand must follow New Zealand law and the conditions of their visa or face swift deportation action.

34. There are two secondary objectives:

    a. Support an efficient compliance and enforcement system (by enabling swift deportation action for those that become liable for deportation), and

    b. Uphold the principles of natural justice (by ensuring that individuals have an opportunity to give good reason why deportation should not proceed, and to have their liability cancelled in the case of genuine argument against it).

35. There are tensions and trade-offs between objectives a and b above, as the proposal that an efficient compliance and enforcement system be enabled by the removal of an appeal right, has natural justice implications.

[11] The IPT had 299 temporary visa cases on hand as of 2023/24, the highest number of these cases on hand since 2013/14.

One of the fundamental principles of natural justice is that affected parties should be given the opportunity to be heard

36. People liable for deportation would have three avenues to be heard:

    a. 14 days to give good reason to MBIE why deportation should not proceed,[12]

    b. the ability to lay a complaint with the Ombudsman regarding the MBIE decision to make someone liable for deportation or the outcome of the good reasons review, and

    c. the ability to seek Judicial Review regarding the MBIE decision to make someone liable for deportation or the outcome of the good reasons review.

37. The good reasons review includes scope for many considerations including humanitarian grounds and changes in circumstance, though is fairly wide in scope.

38. Judicial Review and complaints to the Ombudsman may be made against both DLNs and decisions made regarding the outcome of the good reasons review.

What consultation has been undertaken?

39. To achieve introduction of the Amendment Bill by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints, by undertaking a short and targeted period of stakeholder engagement with:

    - government agencies,
    - independent statutory bodies,
    - representatives of impacted parties (i.e. immigration lawyers and community representatives).

40. Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.

41. There will be two more opportunities for consultation:

    - targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
    - through the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

42. Targeted consultation was undertaken with key stakeholders in April and May of 2025, which have informed the development of the proposal and our analysis.

43. MoJ advised that:

    a. The proposal to maintain the 14-day period for giving good reason why deportation should not occur, as well as maintaining access to Judicial Review, mitigates limits

[12] If the person is made liable under sections 156 or 157.

on natural justice. Interactions with the international human rights instruments to which New Zealand is a party could be affected however (such as the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights). Any limitation/removal of appeal rights would have to be justified and may face push back from some interest groups (such as those that represent migrants).

b. They additionally shared concerns that removal of IPT appeal rights may shift the burden from the IPT to the Courts as Judicial Review will become the primary avenue for liable persons to challenge their deportation. However, this is difficult to model as the Act restricts Judicial Review until after appeals are made to the IPT for those with IPT appeal rights. MoJ also questioned whether Judicial Review is an appropriate primary means of appeal, and whether the costs of pursuing Judicial Review will be prohibitive to some.

c. MoJ also noted that as they support the administration of the IPT, any reduction in the number of appeals to the IPT would reduce the workload and would enable the IPT to reduce the backlog of work on hand, potentially reducing the time taken to finalise an appeal.

44. From 1-6 May we consulted the following groups on the ERM proposals:

- INZ's Focus Group (which includes members from Business NZ, the Employers and Manufacturers Association and the New Zealand Council of Trade Unions),
- the New Zealand Law Society (NZLS, specifically the Immigration and Refugee Committee,
- the Office of the Ombudsman, and
- the IPT.

45. These stakeholders were broadly supportive of the policy intent and provided useful feedback about the possible impacts of the change.

46. The IPT shared that:

a. They support the objective of enabling swift compliance action but considers there are other ways to achieve this (eg. preventing people from getting a stay to appeal to the High Court or Court of Appeals). The removal of IPT appeal rights may shift the burden to the High Courts as Judicial Review would become one of the only ways to challenge deportation liability. MBIE may also be challenged on its Good Reasons Reviews. They also shared that the number of non-resident deportation cases where liability is due to criminal offending is low – only 13 cases a year, and mostly Accredited Employer Work Visa (AEWV) holders who have children in school (so may have humanitarian grounds). In many of these cases a further temporary visa is granted to enable children to finish the school year.

b. The IPT are currently facing a significant backlog of cases and any proposal that reduces the number of appeal cases is welcome.

47. The NZLS shared concerns about cases where children may be impacted. They also questioned whether alternative avenues of appeal are appropriate to consider

deportation cases, given the IPT specifically consider humanitarian grounds for these cases (which will not be the specific focus through other avenues such as Judicial Review).

48. INZ's Focus Group questioned whether the proposals outlined would have human rights implications.

49. The Office of the Ombudsman expressed concern that the proposal would result in a significant influx of complaints to them and further sought clarification about what the specific expected appeals/complaints process for affected individuals would look like should this proposal be enacted.

50. Based on recent statistics, we estimate approximately 200-300 temporary visa holders may be able to lay complaint to the Ombudsman, however given only 100-120 make appeal to the IPT we expect the additional complaints to the Ombudsman will likely be minimal. The scope of the Ombudsman in this space is ultimately at their discretion and we will continue to engage with them to determine how they may be affected by this proposal.

51. The Legislation Design and Advisory Committee (LDAC) were also consulted. They shared that by default, an appeal should be available (a pathway to challenge a statutory decision that affects a person) unless there are factors that would make an appeal inappropriate. MBIE argues that the ability to provide good reason why a deportation should not proceed, pursue Judicial Review, seek Ministerial intervention and to lay complaint with the Ombudsman offer pathway to challenge a statutory decision. LDAC noted further that whether these factors are sufficient to remove this right of appeal is ultimately at the discretion of Cabinet and Parliament.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

52. MBIE proposes the following criteria be used to assess the options against the status quo:

    a. **Aligns with the objectives** set out in Section 1

    b. **Supports an efficient compliance system**

    c. **Upholds the principles of natural justice** by ensuring the limitation of appeal rights is considered fair and proportionate, and appropriate avenues to contest deportation liability are maintained

    d. **Ease of implementation**: the option can be implemented with limited additional resource, cost, change and time to MBIE.

What scope were options considered within?

53. In March 2025, the Minister requested that the Immigration (Enhanced Risk Management) Amendment Bill (the ERM Bill) be introduced by October 2025.

54. Following advice, the Minister of Immigration indicated options should focus on temporary visa holders that became liable for deportation due to criminal offending,

and not be limited on a time-based approach (ie temporary visa holders who have been in New Zealand less than 12 months).

55. Additionally, analysis regarding a proposed Parent Boost visa (a five-year multiple entry visa) identified significant risks of potential overstaying or other breach of visa conditions. Options considered how this proposal could support this visa by addressing the risks associated with it.

56. The scope of options has also been shaped by early consultation with MoJ and the Legal and Compliance teams within MBIE. MoJ indicated that limiting immigration appeal rights should not have New Zealand Bill of Rights Act 1990 (BORA) implications (as the right of appeal is not guaranteed under BORA), but it would still need to be justified for the group/s affected. Compliance teams within MBIE indicated that the changes could be implemented relatively easily within baseline and current resourcing.

What options are being considered?

57. In line with feedback provided by the Minister, the following options for limiting IPT appeal rights for temporary visa holders were considered:

- **Option One:** Status quo – all temporary visa holders can appeal to the IPT on humanitarian grounds.
- **Option Two:** Remove the ability to appeal to the IPT on humanitarian grounds for temporary visa holders whose deportation liability arises from criminal offending.
- **Option Three:** Option two, plus remove all visitor visa holders' ability to appeal to the IPT on humanitarian grounds (this would capture all temporary visitors to New Zealand who do not hold study or work rights, most of whom stay for less than three months).
- **Option Four:** Option two, plus remove the ability for those on visitor visas granted a stay of more than 12 months to appeal to the IPT on humanitarian grounds (this would capture only visitors that are granted longer-term visas, such as the Parent or Grandparent visa).

58. All options presented retain temporary visa holders'[13] right to give good reason why deportation should not proceed within 14 days of being served a DLN. Additionally, those liable for deportation may pursue Judicial Review, and the Minister or DDM would retain the absolute discretion to cancel deportation liability at any time. This supports the maintenance of natural justice while making clear distinctions in deportation protections between citizens, residents, and temporary entrants.

59. **Table One** below assesses each option against the criteria in paragraph 51. The following points system is used.

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo

[13] Excluding limited visa holders and excluded persons.

-	worse than the status quo
- -	much worse than the status quo

Table One: Options analysis

Criteria/ Options	**Option 1:** Status quo	**Option 2:** Remove IPT appeal rights for temporary visa holders whose deportation liability is based on criminal offending.	**Option 3:** Option 2, plus remove IPT appeal rights for all visitor visa holders who become liable for deportation (those on temporary visas who do not have study or work rights).	**Option 4:** Option 2, plus remove IPT appeal rights of holders of visitor visas (those on temporary visas who do not have study or work rights) granted a stay of 12 months or more.
Aligns with objectives	**0**	+ Captures criminal offenders but not those that otherwise breach the conditions of their visa.	++ Captures criminal offenders and all visitors to New Zealand without impacting those who typically have stronger connections to New Zealand or clearer paths to resident visas.	+ Captures criminal offenders and assists with the objectives of the proposed Parent Boost visa.
Supports an efficient compliance system	**0**	+ Captures significant proportion of deportees (over one third in 2023/24), expediting deportation processes for criminal offenders.	++ Captures criminal offenders and all visitor visa holders (47 per cent of all deportations in 2023 and 39 per cent in 2024 were on visitor visas and/or due to criminal offending).	+ Captures criminal offenders and some long-term visas such as the proposed Parent Boost visa, among other visas. Statistics are limited as to how many will be affected by this change but there are approximately 12 specific visas currently in scope, with very few deportations associated with these visas (less than 10 across 2023 and 2024).
Upholds the principles of natural justice	**0**	- May raise concerns as to whether this option supports adequate access to natural justice due to the very short (14 days) window to argue a case. While an	- Specific targeting of visitor visa-holders over other temporary visa-holders would require adequate justification. We	- - Similar concerns as Option 3, however the scope of affected visa holders, while unknown, is likely to be minimal by

Criteria/ Options	**Option 1:** Status quo	**Option 2:** Remove IPT appeal rights for temporary visa holders whose deportation liability is based on criminal offending.	**Option 3:** Option 2, plus remove IPT appeal rights for all visitor visa holders who become liable for deportation (those on temporary visas who do not have study or work rights).	**Option 4:** Option 2, plus remove IPT appeal rights of holders of visitor visas (those on temporary visas who do not have study or work rights) granted a stay of 12 months or more.
		individual can pursue Judicial Review, this will be cost prohibitive for some. An individual will, however, be able to lay a complaint to the Ombudsman, which is currently free.	believe this can be met as those with work or study rights typically hold stronger connections to New Zealand. This option may still be met with criticism given how many entrants to New Zealand each year are granted visitor visas (approximately 1,700,000 in 2024).	comparison. Providing adequate justification may be more challenging, however, as this option specifically targets long-stay visitor visas who likely hold stronger connections to New Zealand than many other visitor holders (such as general visitor visa holders).
Ease of implementation	**0**	**-** Relatively straightforward to implement as criminal offending is already considered throughout the Act as a reason for deportation liability. There may be some operational issues to work through however, such as how DLNs are written and served and how criminal offending may be considered (any and all offending or whether it should be narrower in scope). There may additionally be some short-term challenges as the Ombudsman, High Court, and MBIE, clearly establish their relevant scopes of responsibility. This same concern applies across all three options.	**-** The expansion to include all visitor visas should not have significant operational impacts long-term. There may, however, be some difficulties in the short-term as the changes will be prospective, meaning that DLNs served before enactment will retain all current appeal rights while those served DLNs after enactment will not be able to appeal to the IPT. Compliance officers will have to manage these cases simultaneously.	**-** Should be relatively straightforward due to the narrower scope, though is likely to pose the same operational challenges as Option 3. There may be additional challenges in communicating to stakeholders and the public who is affected, why they are affected, and why these specific visas were singled out.
Option total	**0**	**0**	**+2**	**-1**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

60. MBIE has assessed that Option 3: Remove IPT appeal rights for temporary visa holders whose liability is based on criminal offending, is most likely to meet the policy objectives. This option is also less complex to implement and communicate than Option 4 as it focusses on one of the three already clearly defined visa categories (visitors), as opposed to applying only to specific visa products/durations.

61. Option 2 is the most straight-forward option to justify (upholding integrity of the immigration system) but is narrow in scope and does not capture the spectrum of ways someone may become liable for deportation other than criminal offending. This would make the option minimally impactful compared to Option 3 or 4.

62. Option 4 was proposed to support the objectives of the proposed Parent Boost visa and the risks associated with it. Analysis has suggested, however, that placing limitations on a subsection of visitor visas, particularly when they are those with typically stronger connections to New Zealand than general visitor visa holders for example, is unlikely to be justifiable. Communicating this option to stakeholders would be challenging also. There is also a risk that specific visa holders whose appeal rights are restricted may additionally pursue legal challenge as to why they have less appeal rights than other visitor visa holders.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

63. Yes.

What are the marginal costs and benefits of the preferred option

64. We have identified the following affected groups and the nature of their interests:

    a. Regulated group:

        i. Temporary visa holders who become liable for deportation. This includes holders of visitor visas, and visas that enable work or study in New Zealand. Approximately two million per annum, the majority of which (86 per cent) are visitor visa holders. The majority of these are law abiding and only a small proportion become liable for deportation under section 157 (less than 0.1 per cent).

    b. Regulators:

        i. MBIE's Resolutions team, which supports decision-making on deportation liability and requests for Ministerial intervention,

        ii. MBIE's Immigration Compliance and Investigations (ICI) team, which undertakes investigation and compliance activities for instances of non-compliance with the Act,

        iii. DDMS, such as the Associate-Minister of Immigration who currently holds delegation for Ministerial intervention,

        iv. Judges who complete Judicial Review.

c. Other:

i. The IPT, which has to consider and determine deportation appeals,

ii. The MoJ, who provides administrative support to the IPT,

iii. The Courts, which may receive more Judicial Reviews if IPT appeal rights are removed.

65. **Table Two** below outlines the marginal costs and benefits of the preferred option.

Table Two: cost benefit analysis

Affected groups	Description	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Temporary visa holders	**Medium** Judicial Review being the primary means of appeal is cost-prohibitive[14] and may be inaccessible for many individuals liable for deportation. With option to lay a complaint with the Ombudsman and Judicial Review available, however, there may be greater avenues of challenge for liability decisions, rather than the current appeal options based on deportation.	**Medium** It is hard to predict how liable persons will operate within the new environment as they cannot currently pursue Judicial Review (until after IPT decision) or complain to the Ombudsman if they have IPT appeal rights.
Regulators	MBIE DDMs	**Low** This proposal should have no additional requirement for compliance as the process is still the same for them, just shorter. Judicial Review may mean decisions will need to be more carefully considered and may put pressure on MBIE's legal staff to defend cases, however. There may be some implications for DDMs if there is an influx of requests for Ministerial intervention, however this can be managed with operational safeguards.	**Medium**
Others (eg, wider government, consumers, etc.)	MoJ IPT Courts	**Low** There is risk that without the right for some temporary visa holders to appeal to IPT they instead seek	**Medium**

[14] The cost to appeal to the IPT is currently $910, excluding further costs such as cost of legal aid. Costs of Judicial Review vary Court by Court and based on legal representation and length of the case. Judicial Review is typically far more expensive than IPT appeal however, easily costing a plaintiff over $10,000.

Affected groups	Description	Impact	Evidence Certainty
	Ombudsman	Judicial Review or lay complaint with the Ombudsman, which would shift pressure to the Ombudsman and the Courts. This is however balanced and surpassed by reduced pressure on the IPT in our view.	
Total monetised costs		**Low**	**Medium**
Non-monetised costs		**Low - Medium**	**Medium**
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Temporary visa holders	**Low** Less right to appeal is a worse outcome for those that wish to stay and may have humanitarian grounds to argue their case.	**High**
Regulators	MBIE (compliance)	**Medium** The regulator will be enabled to more efficiently take deportation action.	**Medium**
Others (eg, wider govt, consumers, etc.)	MoJ IPT	**Medium** Removing appeal rights for a subsection of temporary visa holders liable for deportation reduces the number of potential appellants to the IPT. The IPT may benefit by having fewer appeals, which could support lower caseloads and enable more efficient processing. There is concern that some case load may end up at the Courts due to Judicial Review, however.	**High**
Total monetised benefits		**Low – Medium**	**Medium - High**
Non-monetised benefits		**Medium**	**Medium - High**

66. The analysis above shows that non-monetised benefits slightly outweigh non-monetised costs.

Section 4: Delivering an option

How will the proposal be implemented?

67. Amendments to the Act will be required. The vehicle is the ERM Bill that is proposed to be introduced by October 2025. Confidential advice to Government

68. MBIE is responsible for administering the Act and is responsible for taking immigration compliance action, including deportation. The IPT is the body that determines appeals (against a range of decision types) and therefore, will be impacted by any change to appeal rights.

69. We do not expect the proposal to have resourcing implications for MBIE, as swifter compliance action can be undertaken within baseline resourcing. As the changes are likely to be prospective, this will mean that temporary visa holders that are already liable for deportation when the changes come into effect will still have IPT appeal rights but those that become liable after the changes come into effect will not. The compliance team in MBIE has said this will add complexity but they can manage this situation with clear guidelines for compliance staff. Ongoing consideration will be made as to whether greater pursuit of Judicial Review or Ministerial intervention will impact MBIE resourcing.

70. We plan to communicate the changes to a targeted group of stakeholders via an exposure draft of the Amendment Bill in September 2025 and will develop a plan to communicate the changes to the public ahead of them coming into force. The Select Committee process will also provide an opportunity for members of the public and interest groups to have their say.

71. Implementation risks and mitigations include:

Risk	Mitigations
Increased frequency of requests for Ministerial intervention, complaints to the Ombudsman and/or Judicial Review	• Communication with the Resolutions (INZ) team, who manages Ministerial intervention, to develop operational options to mitigate potential for an influx of requests for Ministerial intervention. • Complaints to the Ombudsman may surge once the change takes effect, but we expect will decrease over time as they build a body of decisions for precedent and better understand their scope regarding deportation decisions. The scope of the Ombudsman is at their discretion, so it is important they are well across the proposal and any operational implications can be identified and managed where possible. • Judicial Review is cost prohibitive so may be unlikely to see substantial increases however this is difficult to forecast due to Judicial Review not being available until after IPT appeal decision in the current Act.
Managing deportation cases during the transition period	• Ensuring clear communication as to when the changes will come into effect. As this proposal will not affect all temporary visa holders the current process will be retained in many cases

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Enabling more effective compliance powers for immigration purposes

Decision sought	Analysis produced for the purpose of informing Cabinet decisions
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Immigration
Date finalised	4 June 2025

The proposal is to improve the effectiveness of compliance powers held by immigration officers, by broadening the range of circumstances in which they can request identity-based information and evidence from a person under section 280 of the Immigration Act (the Act).

We are proposing the power go from being able to be used when an officer has good cause to suspect someone is liable for deportation or turnaround, to being available when an officer has good cause to suspect someone may be liable for deportation or turnaround, and/or is in breach of their visa conditions.

Summary: Problem definition and options

What is the policy problem?

There is an opportunity to improve the effectiveness of the compliance powers provided to immigration officers under section 280 of the Act, to request identity-based information and evidence from persons who they have good cause to suspect are liable for deportation or turnaround.

Immigration officers encounter a wider range of behaviours while undertaking compliance activities that provide good cause to suspect someone may be non-compliant with immigration requirements. To support the exercise of powers under section 280, the behaviour observed by immigration officers needs to support a conclusion that it is likely a person is already liable for deportation or turnaround. This means the person is either:

- unlawfully in New Zealand,
- has been issued with deportation liability notice (DLN), or
- has been assessed as not being a genuinely temporary entrant or does not meet the requirements for a visa.

Legal professional privilege

Expanding the circumstances that an immigration officer can develop good cause to suspect non-compliance would support enhanced compliance outcomes and better use of compliance resources.

What is the policy objective?

To support improved compliance outcomes, including greater identification of non-compliance and swifter deportation of people who do not have a right to be in New Zealand. This is achieved by enabling immigration officers to better use their powers to request identity-based information in situations of concern and detect breaches of immigration requirements.

What policy options have been considered, including any alternatives to regulation?

Two options were considered:

- Option One: Status quo – no change to section 280 of the Act.
- Option Two: Expanding the situations where an immigration officer can exercise their powers under §280(1)(a) and (b) of the Act, to instances where a person *may be* liable for deportation or turnaround, *or may be in breach of their visa conditions* **(recommended)**

What consultation has been undertaken?

A short period of targeted consultation was undertaken with key stakeholders as agreed with the Minister of Immigration, including:

- government agencies (including MBIE's Immigration Compliance and Investigations (ICI) and Litigation teams, the Ministry of Justice, the Department of Corrections, and the Legislation Design and Advisory Committee (LDAC)),
- independent statutory bodies,
- representatives of impacted parties (i.e. immigration lawyers and community representatives)

The key feedback received is summarised below.

The ICI team strongly supports the amendment of this power, as its current construction is unfit for purpose and infrequently used. By comparison, they anticipate that the amended power could be used daily. This change would lead to productivity increases and improved compliance outcomes, as people who do not have a right to be in New Zealand are identified and deported more quickly.

The Ministry of Justice team responsible for the Immigration and Protection Tribunal (IPT) flagged concerns about the resource impact of an increase in deportation appeals, and the Human Rights team noted concerns about the potential infringement on the rights to privacy and to be secure against unreasonable search or seizure.

LDAC did not have any legislative design concerns about this proposal.

Between 1-6 May, we sought feedback on this and other proposals under the Immigration (Enhanced Risk Management) Amendment Bill from the following stakeholders:

- Immigration New Zealand's (INZ) Focus Group (which includes members from Business NZ, the Employers and Manufacturers Association and the New Zealand Council of Trade Unions)
- The New Zealand Law Society
- The Office of the Ombudsman
- Chief Victims Advisor, and

- The IPT.

The only comment made by these stakeholders, from the New Zealand Law Society, on this proposal was noting that this seemed like a reasonable change given the range of circumstances where the powers could not be used.

Wider or public consultation was not feasible in the time available. However, there will be further opportunities for consultation, including targeted consultation on an exposure draft of the Bill and through the six-month Select Committee stage.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS? Yes

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The cost associated with the preferred option is a greater number of deportation processes will likely progress, as larger volumes of non-compliance are identified. This will require more resources being attributed to deportation processes for MBIE ICI and possibly for the IPT appeals process. For ICI, this is expected to be offset by efficiency gains resulting from this change.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The main benefit of the proposal is efficiency gains for MBIE ICI. These arise from utilising existing opportunities (via site visits) to identify and subsequently address more instances of non-compliance.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

We consider that the benefits outweigh the costs, which are marginal and have sufficient mitigations. The benefit/cost ratio over time is likely to remain stable.

Implementation

Amendments to the Act will be required. The vehicle is the Immigration (Enhancing Risk Management) Amendment Bill that is proposed to be introduced by October 2025. Co [redacted] nfid There will be limited operational changes, with implementation planning to be completed once the Bill is introduced. Delivery will progress in parallel to the Parliamentary process to ensure readiness at the point the Bill is enacted. It will include updating internal guidance and procedures, delivering training, developing monitoring and reporting requirements, and an external communications plan.

Limitations and Constraints on Analysis

We do not have evidence for how often section 280 powers are currently used – this information is not currently recorded. This means judgement-based estimates on the impact of the proposed change have been used, based on regulator knowledge of the frequency of

scenarios we are proposing to capture. This is an imperfect base from which to forecast the use of expanded powers and success metrics.

The Minister of Immigration's expectation is that the Bill is introduced by end of October 2025 Confidential advice to , requiring policy decisions in early June 2025. These timeframes mean that external consultation before Cabinet decisions has been limited to informing key stakeholders via high level written proposals or meetings and receiving their initial feedback. We have not undertaken significant engagement (such as through discussion documents seeking detailed comments). Engagement on an Exposure Draft of the Bill will occur later in 2025 ahead of Cabinet Legislative Committee Decisions in October 2025.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Stacey O'Dowd
Manager, Immigration (Border and Funding) Policy
4 June 2025

Quality Assurance Statement	***[Note this isn't included in the four-page limit]***
Reviewing Agency: MBIE	**QA rating:** Partially meets

Panel Comment:

A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled Enabling more effective compliance powers on 22 May 2025.

The Panel consider that the information and impact analysis summarised in the RIS **partially meets** the Quality Assurance criteria.

The Panel notes that this RIS has been very well written with high standards of clarity and conciseness. However, although there has been high level targeted consultation with some stakeholders, this RIS has the limitation of not having undergone public consultation. Should future consultation through the select committee process change the analysis or assumptions, then a future Supplementary Analysis Report may be necessary.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The objective of the Immigration Act 2009 (the Act) is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals. The Act does this by imposing obligations on migrants coming to New Zealand that they must uphold and including in the immigration system "mechanisms to ensure that those who engage with the immigration system comply with its requirements."[1]

Migrants who come to New Zealand are required to uphold immigration requirements…

2. People who are not New Zealand citizens may only enter and remain in New Zealand if they have a valid visa. Most visas are subject to conditions - these are rules and restrictions which outline what a visa holder is permitted and not permitted to do while they are onshore.

3. Visa holders are required by law to comply with their visa conditions under section 56 of the Act, generally regardless of whether they are aware of these conditions or understand the implications of non-compliance.[2] Effectively, in applying for a visa, migrants are entering into a legal obligation to uphold the associated immigration requirements.

4. Common conditions cover:

    - **Duration of stay:** How long the visa holder is allowed to stay in New Zealand, and when they must depart by.
    - **Work restrictions:** If and how the visa holder is allowed to work (for example, conditions may cover who the visa holder can work for, in what occupation, at what location, and whether such work may be part-time or full-time).
    - **Study restrictions:** If, where, and what the visa holder is allowed to study.
    - **Travel conditions:** Whether the visa holder return to New Zealand if they leave, and for how long.

5. Visa conditions help us manage immigration flows (for example, by limiting the time someone may be onshore or prompting them to fulfil the purpose for which they came to New Zealand), and protect the public interest (for example, by incentivising compliance with our laws).

…and there are repercussions for failing to meet these obligations.

6. Failing to comply with visa conditions and immigration requirements has significant repercussions, namely that the migrant could be deported. Liability for deportation can arise in several ways:

    - If they no longer hold a valid visa (for example, their visa has expired, and they have not been issued a new one) – at this juncture they are in New Zealand 'unlawfully';[3]

[1] Section 3 (2) (e) of the Act

[2] Per sections 56(2)-(4) of the Act

[3] Per section 154 of the Act

- If it has been determined that they were in breach of their visa conditions (after an investigation process);[4]
- If they have been convicted of certain types of criminal offending or failed to maintain the good character requirements.[5]

7. If someone is unlawful, they are automatically liable for deportation. If they are on a temporary entry class visa, they may be issued with a Deportation Liability Notice (DLN) following relevant processes. Deportation can impact the visa holder's ability to return to New Zealand in the future – they may be prohibited from returning to New Zealand for up to 5 years or permanently and required to repay any costs associated with their deportation.

Immigration officers are delegated powers to enforce immigration settings...

8. The Act empowers immigration officers to carry out compliance action to enforce immigration settings. The purpose of compliance action is to maintain the integrity of New Zealand's immigration settings by ensuring that breaches of immigration requirements are detected and dealt with in accordance with the law, utilising any appropriate enforcement tools to encourage compliance, including prosecution.

9. The Act provides immigration officers with a range of powers to help them carry out their duties to enforce immigration settings, including powers to request documents, access specific types of information, enter and inspect premises.[6]

...although some can only be used in a very narrow range of circumstances.

10. **Section 280 of the Act** enables an immigration officer who has good cause to suspect that a person is liable for deportation or turnaround[7] to, for the purpose of establishing whether that is the case, ask the person to:

    - supply their full name/s, date of birth, country of birth, nationality, and residential address; and/or
    - produce any identity documents for inspection; and/or
    - surrender any identity document produced for inspection; and/or
    - provide details of where their identity documents can be found if they do not currently have them in their possession.

11. Section 280 of the Act requires immigration officers to; inform the person prior to asking for identity information or documents that they suspect the person is liable for deportation or turnaround; and, warn them that if they do not comply with the immigration officer's request without reasonable excuse, then they are liable to arrest and detention under the Act.

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[4] Per sections 157 and 159 of the Act

[5] Per sections 157,158, 160 and 161 of the Act

[6] Under Part 8 of the Act

[7] Immigration New Zealand has the authority to refuse entry at the border to individuals who are not considered genuine temporary entrants or who do not meet the requirements for a visa. If entry is refused, the passenger is subject to "turnaround," which means they are liable for being returned to their origin country.

12. This power is utilised in very limited circumstances. Legal professional privilege

13. Legal professional privilege

14.

15. The exercise of section 280 powers is not tracked by Immigration New Zealand, as it is so infrequently used due to the high bar the current framing sets. However, compliance officials have confirmed that this power is underutilised due to its legislative construction and there are a range of previously encountered behaviours that might meet an adjusted threshold.

What is the policy problem or opportunity?

There is an opportunity to improve the effectiveness of the compliance powers provided to immigration officers under section 280 of the Act, which supports enhanced compliance outcomes (including the deportation of people that no longer have a right to be in New Zealand) and better use of compliance resources

16. Immigration officers encounter a wider range of behaviours while undertaking compliance activities that provide good cause to suspect someone *may be* non-compliant with immigration requirements, but which may not meet the threshold to support a conclusion that the person 'is liable for deportation or turnaround.'

17. The following are common scenarios encountered by immigration officers that fall in this category, identified by MBIE's ICI team, which undertakes investigation and compliance activities for instances of non-compliance with the Act.

18. *Scenario One*: immigration officers have lawfully entered a residential property for the purposes of serving a deportation order.[10] They have encountered another individual at

Legal professional privilege

[10] As they are empowered to do by section 286 of the Act

the premises (i.e., not the subject of the deportation order), and this person (who is not hearing impaired, and interpreter is being used):

- Refuses to engage with the immigration officer and pointedly ignores them while remaining in the house, and/or
- Keeps walking away when the immigration officer politely asks the person if they are available to talk briefly, and/or
- Is the likely owner of a vehicle parked in the driveway of the property that is registered to someone who is unlawfully in New Zealand (which the immigration officer ascertained after running a registration check for the vehicle with New Zealand Police as part of standard risk appreciation practice).

19. *Scenario Two:* immigration officers have lawfully entered a residential property for the purposes of serving a deportation order but do not know what the person named in the order looks like. There are two occupants at the property, but both refuse to identify themselves as the person named on the order. One is likely the named person on the order, but immigration officers need to identify both individuals to determine who.

20. *Scenario Three*: immigration officers have entered a residential property for the purposes of serving a deportation order and on entry determine that the premises is operating as an unlicensed brothel (noting indicators like CCTV on the entrance, publicly displayed price lists for services or payment details, etc). The officers encounter other migrants on the premises, who are not the named person for the deportation order but there is evidence to suggest that they are also sex workers. If confirmed, the provision of commercial sex services would be a breach of visa conditions, and they would likely be liable for deportation.

21. *Scenario Four*: when visiting a commercial premises to serve a deportation order, immigration officers encounter a group of other workers who display some risk behaviours such as:

    - Complete avoidance, no eye contact, attempting to evade the officer;
    - Ignoring the officer and attempting to leave the premises; or
    - Wearing the same uniform and undertaking similar work as the named individual who is working in breach of their visa conditions.

22. In each of these scenarios, immigration officers cannot gather identity information that would allow them to determine whether the migrants encountered are non-compliant with immigration obligations and possibly liable for deportation. This is because the observed behaviours are not sufficient to provide good cause to suspect the person *is already* liable for deportation or turnaround.

23. MBIE's view is that there is an opportunity to improve the effectiveness of compliance action related to deportation and better utilise compliance resources by expanding the situations in which the section 280 power can be used. Rather than limiting its use to situations where a person's behaviour provides good cause to suspect they are already liable for deportation, it could be extended to situations where there is good cause to suspect someone *may be* liable for deportation or turnaround, *and/or in breach of their visa conditions*. This would cover the situations above.

24. Compliance officials cannot quantify the impact of the change as there is no data recorded about the current use of section 280 powers. However, officials anticipate that the proposed amendment could see this power used daily, increasing productivity and support improved compliance outcomes (namely the deportation of people who no longer have the right to be in New Zealand).

25. This change would build on work already underway through the Fiscal Sustainability and System Integrity (FSSI) Bill, to better balance settings that support the integrity of the system (as determined by the Crown) with those that protect the rights of individuals, and to enable efficiencies where appropriate. It is also a coalition priority to restore law and order and ensure regulatory systems work well. The FSSI Bill also amends the Immigration Act 2009 and was introduced in the House on 7 April 2025.

Affected stakeholders and their views

26. We have identified the following affected groups and the nature of their interest:

- **Regulated group:**
  - Migrants who would be subject to the requests for information
  - (Secondary) Employers who are identified and penalised for employing a migrant outside their visa conditions
- **Regulators:**
  - MBIE's Immigration Compliance and Investigations (ICI) team, which undertakes investigation and compliance activities (including deportation processes) for instances of non-compliance with the Act.
  - The Immigration and Protection Tribunal, which considers appeals on deportation liability (a potential outcome of identified non-compliance).
  - (Secondary) The Labour Inspectorate, which enforces and monitors compliance with minimum employment standards (should employers who are in breach of these standards be identified through this enhanced compliance power.

27. This proposal primarily impacts migrants who may be asked by MBIE to provide identity-based information. These individuals are not able to be identified or consulted but representatives of impacted parties and government agencies have been consulted on the proposals and their feedback summarised in paragraphs 32-36.

What objectives are sought in relation to the policy problem?

28. The primary objective is to support improved compliance outcomes, including greater identification of non-compliance and swifter deportation of people who do not have a right to be in New Zealand. This is achieved by enabling immigration officers to better use their powers to request identity-based information in situations of concern and detect breaches of immigration requirements.

29. A secondary objective is reducing negative outcomes for migrants, as unlawful people are more vulnerable to exploitation or living in precarious situations. Both objectives need to be balanced against ensuring that checks against misuse of power are retained and

individual rights are upheld (given the possible consequences of the powers in questions are arrest, detention, and deportation from New Zealand), and efficient use of resources.

What consultation has been undertaken?

30. To achieve introduction of the Amendment Bill by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints, by undertaking a short and targeted period of stakeholder engagement with:

    - government agencies (including, for the proposals in this RIS: MBIE's ICI and Litigation teams, the Ministry of Justice, the Department of Corrections, and the Legislation Design and Advisory Committee (LDAC))
    - independent statutory bodies (e.g. the Immigration and Protection Tribunal)
    - representatives of impacted parties (the New Zealand Law Society's Immigration and Refugee Committee, and the INZ Focus Group, which includes employers, migrant groups and immigration lawyers).

31. Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.

32. There will be two more opportunities for consultation:

    - targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
    - through the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

33. Government agencies had the following feedback on this proposal:

    - The ICI team strongly supports the amendment of this power, as its current construction is unfit for purpose and the power is not used. By comparison, they anticipate that the amended power could be used daily. This change would lead to productivity increases and improved compliance outcomes, as people who do not have a right to be in New Zealand are more quickly identified and deported.
    - The Ministry of Justice has expressed some concerns about the potential infringement on section 21 of the New Zealand Bill of Rights Act 1990 and resourcing implications for the IPT (detailed below).
    - LDAC had no legislative design concerns about this proposal.

34. Other stakeholders provided limited feedback, with the only comment noting that this seemed like a reasonable change given the range of circumstances where the powers could not currently be used (from the New Zealand Law Society).

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

35. The options will be assessed using the following criteria, in line with the objectives for this work:

    - **Improved compliance outcomes:** will this lead to greater detection and addressing of breaches of immigration laws and instructions?
    - **Maintains checks on the use of power and upholds individual rights:** are there appropriate checks preventing the unfettered exercise of the power? Is the proposal consistent with an individual's right to be secure against unreasonable search or seizure, provided in section 21 of the New Zealand Bill of Rights Act 1990?
    - **Administrative cost**: how much additional burden will be placed on MBIE and the IPT due to increased identification of individuals who may be liable for deportation?

        i. We do not think these options would have other administrative impacts for the regulators as there will be no changes to the process for exercising this power, and all options would be delivered within existing resourcing and prioritisations.

        ii. There is no change to any administrative cost on the regulated parties because of this proposal. If a breach of obligations is identified because of the use of this amended power, then associated administrative burden and costs for these groups would apply, but these are unchanged by this proposal.

What scope will options be considered within?

36. We have only considered options that can be delivered within existing resourcing and prioritisations, Confidential advice to Government

What options are being considered?

Option One – Status quo

37. Immigration officers who have good cause to suspect that a person *is liable* for deportation or turnaround can, for the purpose of establishing whether that is the case, ask that person to:

    - supply their full name/s, date of birth, country of birth, nationality, and residential address; and/or
    - produce any identity documents for inspection; and/or
    - surrender any identity document produced for inspection; and/or
    - provide details of where their identity documents can be found if they do not currently have them in their possession.

Option Two – expanding the situations where an immigration officer can exercise their powers under s 280(1)(a) and (b) of the Act, to instances where a person *may be* liable for deportation or turnaround, *or may be in breach of their visa conditions*

38. Immigration officers who have good cause to suspect that a person *may be liable* for deportation or turnaround, or *may be in breach of their visa conditions*, can, for the purpose of establishing whether that is the case, ask that person to:

    - supply their full name/s, date of birth, country of birth, nationality, and residential address; and/or
    - produce any identity documents for inspection.

39. This would mean immigration officers could ask for these identity details and to see identity documents in a wider range of situations to verify compliance.

40. Before asking for identity information or documents, the immigration officers would be required to:

    - inform the suspected person that they may be liable for deportation or turnaround, or may be in breach of their visa conditions, and
    - warn them that if they do not comply with the immigration officer's request without reasonable excuse, then they are liable to arrest and detention under the Act.

Further (non-regulatory) options were considered but excluded

41. We have considered whether there was a non-regulatory option to address the problem but have not progressed these as the identified root cause of the problem faced is the wording of the Act.

How do the options compare to the status quo/counterfactual?

	Option One – *Status Quo*	Option Two – expanding situations where an immigration officer can exercise powers under s 280(1)(a) and (b) of the Act
Improved compliance outcomes	0	++ An immigration officer would be able to request identity information in all the scenarios of concern, which would support greater identification of immigration non-compliance. This increases the integrity of the process and demonstrates efficient use of the ICI resources, producing a reduction in the overstayer population.
Maintains checks on the use of power and upholds individual rights	0	- The same standard of proof ('good cause to suspect') remains as it is under the status quo, but there is greater potential infringement on an individual's right to privacy and to be secure against unreasonable search or seizure under section 21 of the NZBORA. We suggest, given the need for this change for to identify people in breach of their legal obligations, this is a reasonable infringement.
Administrative cost	0	0 Deportation cases may arise more frequently, owing to improved identification of potentially liable migrants. This will place an added burden on ICI and IPT resources. For the ICI, this would likely be offset or exceeded by efficiency gains from improved performance of compliance functions resulting from the change. However, subject to volumes, there may be a need to increase resourcing for the IPT which will not have the same efficiency gains. This will be reassessed as monitoring enable modelling of volumes.
Overall assessment	0	+ **(RECOMMENDED OPTION)**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

42. We recommend Option Two, as it is most likely to deliver the highest net benefits.

43. Option Two will ensure that immigration officers are able to seek identifying information in the scenarios of concern, which based on judgments from the regulator MBIE's ICI, will support improved efficiency and productivity of compliance action. It also supports wider compliance objectives than just deportation compared to status quo.

44. Significant compliance resource is allocated to locating migrants who are liable or likely liable for deportation, with anywhere from two to six staff attending a site visit. By expanding the ability to request identity-based information during planned compliance activities (e.g., site visits), ICI will be able to identify more people from site visits, increasing productivity. This will be more fiscally responsible and further better the integrity of the immigration system. ICI judges that this will offset or exceed the increased resource burden that may arise from more frequent deportation processes as more non-compliance is identified.

45. There are some concerns about the potential for Option Two to lead to greater infringement on the migrant's rights to privacy and to be secure against unreasonable search or seizure, under section 21 of the New Zealand Bill of Rights Act 1990.

46. We suggest that in this context, it will be reasonable for an immigration officer to ask someone for identifying information (i.e., their full name/s, date of birth, country of birth, nationality, and residential address) or to see their identity documents. While this is personal information, it is the sort of information that is regularly shared with a range of organisations and agencies (for example, banks and insurance providers, utility and service providers).

47. It is also necessary to request this information to identify people who are in breach of their legal obligations. ICI estimates that amended versions of these powers would be used daily, as they are frequently encountering situations that would meet the revised threshold. This compares to the current very infrequent use of powers, which is so low that it does not get recorded.

48. Immigration officers will still be required to have 'good cause to suspect' someone may be liable for deportation, turnaround or in breach of their visa conditions. While this would allow for a wider range of suspicious behaviours to trigger the power, there still needs to be that suspicious behaviour to prompt the officer.

49. We have limited this proposal to the powers under section 280 (1)(a) and (b) of the Act (seeking identity details and inspection of identity documents), to mitigate the potential infringement on the right to be secure against unreasonable search or seizure. The powers under §280 (1)(c) and (d) of the Act enable an immigration officer who has good cause to suspect the migrant is liable for deportation to request the surrender of identity documents or information of the location of said documents.

50. This change could lead to an increase in the number of deportation appeals made to the IPT. A person who is facing deportation cannot be deported while they have an appeal lodged with the Tribunal. The administrative cost of an appeal to the IPT is significant and an increase in volumes would increase these costs and could lead to a greater backlog of

cases[11] and longer wait times.[12] The IPT membership[13] may need to be increased to respond to the increased volumes, which would have associated fiscal costs.

51. We are proposing to start monitoring the use of section 280 powers provided Cabinet agrees to advance Option Two. This will help us develop a clearer estimate of the impact during the legislative process. We will continue to engage with IPT officials on the potential volumes as this work progresses.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

52. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups	Migrants who are asked to provide identity information under the expanded application of the powers may be identified as liable for deportation.	Medium impact. These changes will not make a greater number of people liable for deportation, but it will provide more opportunities for them to be identified.	Medium (the assumed increase in the levels of identification of non-compliance leading to deportation processes are based on judgements only).
Regulators	MBIE ICI will likely need to progress a greater number of deportation processes because of increased identification of non-compliance.	Low impact.	
Others (e.g., wider govt, consumers, etc.) *For fiscal costs, both increased costs and loss of revenue could be relevant*	IPT may face an increase in the number of appeals for deportation.	Low-medium impact	
Total monetised costs		N/A	N/A
Non-monetised costs		*Low-medium*	*Medium*

[11] In 2024, 1,128 appeals were received by the IPT, and 821 were disposed of, meaning work on hand increased by 75% (from 412 to 719 on hand at 30 June 2024). This year, to 30 April, the IPT has received 1,240 appeals and disposed of 850. The work on hand has increased to 1,109 (an increase of 54%).

[12] The average age of cases on hand at the IPT is 172 days. This increased from 116 days as at 30 June 2024.

[13] The IPT is a judicial decision-making body, and there are currently 19 members and a Chair who is a District Court Judge. The salaries or payments for all Tribunal members are set by the Remuneration Authority, with a permanent legislative authority (PLA) supporting this.

Additional benefits of the preferred option compared to taking no action			
Regulated groups	N/A	No particular benefit	High
Regulators	MBIE ICI will experience efficiency gains from utilising existing opportunities (via site visits) to identify more instances of non-compliance	High impact	High
Others (e.g., wider gov't, consumers, etc.)	IPT	No particular benefit	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		*High*	*High*

Section 3: Delivering an option

How will the proposal be implemented?

53. The changes will be implemented through the Immigration Enhanced Risk Management Bill, which is scheduled for introduction in October 2025, Confidential advice to Government

54. The implementation of the changes will require minimal operational changes for MBIE. MBIE is developing an implementation plan for all proposals in the Bill. For the proposals in this RIS, the following implementation steps have been identified:

    - Update Immigration Instructions, Standard Operating Procedures, Practice Notes and template letters for MBIE's Operational Teams
    - Deliver training to immigration officers
    - Update monitoring and reporting requirements on prosecutions and infringements
    - Develop an external communications plan to ensure migrant communities and advocates, employers and industry representatives, and Licensed Immigration Advisers understand the changes and what they mean for them.

55. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process, to ensure readiness at the point the Bill is enacted.

How will the proposal be monitored, evaluated, and reviewed?

56. MBIE's ICI team currently does not record information on the use of the section 280 powers because of its infrequent use at present. Subject to agreement to this change, ICI will begin recording instances when the power is exercised prior to implementation. This tracking will continue after implementation to monitor the frequency of use.

57. MBIE will continue to monitor the number of visa holders that are made liable for deportation. As of April 2025, the Minister of Immigration receives quarterly reporting on compliance and investigations activity. Reporting on deportation outcomes because of this proposal could be included in this report.

58. A review of the changes will be undertaken 12 months after implementation, with findings provided to the Minister of Immigration. The review will consider any change in the frequency of use of the section 280 powers and subsequent deportations, and the corresponding resourcing impact for ICI and the IPT. This will be developed in consultation with the Ministry of Justice.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Clarifying section 150 of the Immigration Act 2009 to prevent asylum claimants who withdraw their claims from applying for further visas

Decision sought	*Informing Cabinet policy decisions*
Agency responsible	*Ministry of Business, Innovation and Employment*
Proposing Ministers	*Minister of Immigration*
Date finalised	*26 May 2025*

Amend section 150 of the Immigration Act 2009 (the Act) to limit the ability of an asylum claimant who withdraws a claim to apply for a further visa. This will treat claimants who withdraw in the same way as claimants who are declined, preventing them from applying for a further visa.

Summary: Problem definition and options

What is the policy problem?
A large number of asylum claims each year are declined as they do not meet the legal test to be recognised as a refugee or protected person.[1] In most circumstances, asylum seekers are granted temporary visas whilst their claim is being determined. When a claim is declined, section 150 of the Act prevents the grant of a further visa to an asylum seeker who has been granted a temporary visa.

However, section 150 is currently ambiguous as to the ability of an asylum claimant who withdraws a claim to be able to apply for further visas. Legal professional privilege [redacted]

There is also a concern that some asylum claimants are misusing the system by lodging a claim and then taking advantage of changing circumstances during consideration of their claim (currently almost two years from lodgement to decision) to gain access to an alternative immigration route that would not have otherwise been available to them. An example of this is a claimant who claims asylum as a way of gaining a temporary work visa rather than genuinely seeking protection, works for over a year in New Zealand, finds alternative work opportunities and then withdraws their claim and applies for another visa. Spurious claims contribute significantly to delays in processing and backlogs and cause prolonged uncertainty for genuine claimants (almost two years from lodging for a

[1] For this financial year the current approval rate for all claims determined is 19.5% of the 728 claims decided.

determination on a claim). Delays in determining claims can incentivise more claims and impact other parts of the immigration system and result in costs being incurred by other public services such as legal aid, welfare, health, and education.

What is the policy objective?

The proposal is intended to clarify ambiguity in the law as section 150 is currently silent as to the ability for an asylum claimant who withdraws a claim to apply for other visas. This will provide more clarity for system users. A subsequent aim is to prevent claimants from withdrawing their claim during the consideration process and applying for a different visa by taking advantage of changing circumstances. It is also intended to disincentivise those claimants from making a claim in the first place. Legal professional privilege

What policy options have been considered, including any alternatives to regulation?

Officials considered three options:

- Option 1: status quo, section 150 of the Act is currently ambiguous but existing practice is to allow claimants who withdraw to apply for other visas.
- Option 2: clarifying section 150 to limit the ability of a claimant who withdraws a claim to apply for a further visa (Minister's preferred option). This will treat claimants who withdraw in the same way as claimants who are declined, preventing them from applying for a further visa.
- Option 3: clarifying section 150 in the opposite way i.e. preserving the ability for a claimant who withdraws a claim to apply for further visas (MBIE's preferred option).

What consultation has been undertaken?

Officials have worked closely with Immigration New Zealand (INZ) and consulted with the Ministry of Justice and the Ministry of Foreign Affairs and Trade. Agencies had no substantive comments on this proposal.

Targeted external consultation has been undertaken with members of the immigration refugee bar. The Minister's preferred option is not supported by members of the immigration bar, who did not see a value in preventing claimants who withdraw from applying for further visas. They did see value in clarifying the law.

Officials also consulted with the Immigration and Protection Tribunal, who had no substantive comments. The Office of the Ombudsman and New Zealand Law Society gave feedback around ensuring that the change is clearly communicated.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

No

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Costs are very difficult to estimate but numbers are anticipated to be low.

There will be some cost to wider government if claimants who would have otherwise withdrawn their claim elect not to do so.

From 2023 to date (19 May 2025) there were 330 claims withdrawn (8% of total claims), of which 68 applied for another visa. We are not able to provide an estimated cost of determining an asylum claim at the time of writing this analysis, however there is work underway in this space. Total cost to Government will include the Refugee Status Unit operating budget, Immigration and Protection Tribunal operating costs, legal aid costs and other publicly funded services such as benefits, health and education.

The cost of claimants who would have otherwise withdrawn but elect not to do so may be offset if some spurious claimants elect not to lodge a claim in the first place, but again it is difficult to predict this behaviour. We know that the current approval rate for claims is 19.5%, but INZ does not hold data relating to the percentage of declined claims that are unmeritorious or abusive, as opposed to simply not meeting the legal test.

Some genuine claimants who may have preferred an alternative immigration pathway (for example because they do not wish to be labelled a "refugee") will lose this ability. This comes at a cost to government due to the cost of successful asylum claims, but again numbers are estimated to be very low.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Low benefit anticipated. There will be some benefit (improving processing speeds and lowering cost to wider government) if some spurious claimants elect not to lodge a claim due to no longer being able to withdraw and apply for other visa types. However, it is difficult to predict this change in behaviour and numbers are anticipated to be low. This benefit may be offset if some claimants who have already claimed (and would have otherwise withdrawn) elect not to withdraw.

The change may also have some signalling effect that New Zealand does not tolerate spurious claims.

The change clarifies ambiguity in the law and removes uncertainty in operational practice.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

We do not see a strong argument for making/not making this change. The costs/benefits are very difficult to predict because they involve predicting behavioural change. On balance, MBIE preferred an alternative option, Option 3.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

Implementation will require a sound communication strategy, including general communication on the INZ website and targeted communication at the point claimants submit a claim. It is crucial for claimants to understand they will no longer be able to withdraw and apply for other visas if the policy is going to deter any spurious claims. Work is underway to revive an existing industry body working group which will be able to monitor successful implementation of this proposal and manage any unintended consequences.

Limitations and Constraints on Analysis

Policy development was progressed at pace and we were unable to undertake significant consultation, in particular with asylum representatives/advocacy groups. We did engage with some members of the Bar, the Immigration and Refugee Committee of the New Zealand Law

Society. The public will have the opportunity to submit on the proposal during Select Committee.

As discussed above, the cost/benefit analysis is difficult to undertake as it relies on predicting behaviour of claimants and their agents. It is not possible to obtain data that reflects the number of claimants who withdraw their claims who are genuine claimants, as compared to those who either would not have met the legal test for recognition as a refugee or protected person, or are misusing the system.[2] It is even more difficult to predict the number of unmeritorious claims that may be deterred by the proposal.

[2] The number of claims withdrawn between 2023/24 and 2024/25 (as of 19 May) was 330, of which 68 applied for another visa (e.g. interim, resident, student, visitor, work) and 46 were approved (13 were declined, 1 withdrawn and 9 remain in progress).

Summary: MBIE's preferred option

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

No cost as there is no change to the status quo (the change would be to clarify existing practice).

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The proposal clarifies ambiguity in the law. It may protect genuine claimants who choose to take another immigration pathway by withdrawing their claim and applying for a different visa. It may also incentivise the use of complementary pathways to protection for genuine refugees, remove asylum claim processing pressure and take pressure off the system in other places, for example welfare and housing benefits.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

There is a benefit to clarifying existing practice by removing ambiguity in the law. The key trade-offs are between:

- allowing some claimants to withdraw their claim and stay in New Zealand through another immigration pathway, and therefore not taking up a place in the queue (which reduces pressure on INZ and wider government and benefits existing claimants by improving processing speeds); and
- disincentivising claimants who may have otherwise withdrawn from doing so, solidifying existing backlogs.

The extent to which the proposal will disincentivise future claims is less certain than the prediction that some claimants who would have otherwise withdrawn will be deterred from doing so.

There was not a strong case for preferring MBIE's preferred option (Option 3) over the Minister's preferred option (Option 2).

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

This proposal would need minimal implementation as it clarifies existing practice. It would require some internal communication to INZ officers and general communication to stakeholders.

Limitations and Constraints on Analysis

Policy development was progressed at pace and we were unable to undertake significant consultation, in particular with asylum representatives/advocacy groups.

The cost/benefit analysis is difficult to undertake as it relies on predicting behaviour of claimants and their agents.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature: 

Stacey O'Dowd
Manager (Border and Funding)
Immigration Policy
26 May 2025

Quality Assurance Statement	
Reviewing Agency:	**QA rating:** Partially meets
Panel Comment: A quality assurance panel from MBIE has reviewed the regulatory impact statement (RIS) titled Clarifying section 150 of the Immigration Act 2009 to prevent asylum claimants who withdraw their claims from applying for further visas on 26 May 2025. The panel consider that the information and impact analysis summarised in the RIS partially meets the quality assurance criteria. The RIS offers a clear explanation of the status quo and problem definition. However, the analysis of options is limited due to insufficient evidence and constrained consultation. The panel notes that the Cabinet paper proposal differs from MBIE's preferred option. On the basis of the RIS, it is difficult to be confident that either option is optimal or free from unintended consequences. The select committee process provides an opportunity to consider a wider range of views on the proposed change.	

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Obligations to asylum seekers

1. The right to seek asylum is recognised as a basic human right under the United Nations Declaration of Human Rights. New Zealand has obligations under the Refugee Convention, the Convention Against Torture and Articles 6 and 7 of the International Covenant on Civil and Political Rights incorporated into the Act not to expel or return a refugee or asylum seeker to any place where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, or if there are substantial grounds to believe that the individual would be in danger of torture. Therefore, New Zealand would need to consider and determine all onshore refugee and protection claims to comply with our obligations under these conventions.
2. Due to the nature of the claims, and the consequences of an incorrect determination (potential return to a country in which the person will be persecuted or tortured), consideration of claims is complex and time-consuming process and claimants are afforded full rights of fairness and natural justice and appropriate time to put their best possible claim forward.

Increasing numbers of refugee and protection claims

3. There has been a significant increase in refugee and protection claims since the re-opening of the border. In 2023/24, 2,345 claims were received. Claim numbers last

reached this level in 1998/99. Historically, claims had averaged around 400 per annum. The Refugee Status Unit (RSU) is forecast to receive 2,302 claims in 2024/25 and 1,774 claims have been received this financial year to 31 March. The associated challenges and pressures of the increase in claims has resulted in delays in making determinations and a backlog of unassigned and undetermined claims,[3] delaying recognising genuine claims.

4. Time between lodging to allocation is approximately 460 days as of March. In 2025 there were 3,492 undecided claims on hand. Once allocated, the determination process itself takes around 7.5 months. Delays in determining claims can incentivise more claims (as it allows claimants to be on open work visas for longer) and impacts other parts of the immigration system, as well as other public services such as legal aid, welfare, health, and education that asylum seekers can access. Processing delays may also place more vulnerable claimants in precarious and exploitative situations for longer periods in New Zealand. High numbers of claims also results in higher numbers of appeals.
5. For this financial year the current approval rate for all claims determined is 19.5%.
6. A number of resourcing and operational changes were made in mid-2024 to address the number of claims and backlog. Although more claims are being determined per month than previously, backlogs are unlikely to be cleared under existing settings and a range of interventions is required.
7. MBIE/INZ is also progressing a number of new operational changes to improve processing speeds.

What is the policy problem or opportunity?

8. In most circumstances, asylum seekers are granted temporary visas whilst their claim is being determined. When a claim is declined, section 150 of the Act prevents the grant of a further visa to an asylum seeker who has been granted a temporary visa.
9. However, section 150 of the Act is currently ambiguous as to whether a claimant who withdraws their claim can apply for another visa. Current practice is to allow claimants who withdraw their claims to apply for other visas. Legal professional privilege
10. Once a claim is withdrawn, the claimant will remain on the temporary visa until they leave New Zealand, it expires or until they are granted another visa.
11. The number of claims withdrawn between 2023/24 and 2024/25 (as of 19 May) was 330 which is approximately 8% of the total claims received over that period. Of the 330 withdrawn claims:
    a. 68 applied for another visa (e.g. interim, resident, student, visitor, work) and 46 were approved (13 were declined, 1 withdrawn and 9 remain in progress);
    b. 50 withdrew their claim and then left New Zealand.
12. The data shows the remaining claimants either:
    a. claimed asylum while already holding a valid visa, and subsequently withdrew their claim; or
    b. had left New Zealand before withdrawing their claims (under section 142 of the Act, a claim is deemed to be withdrawn if the claimant leaves New Zealand).
13. This shows that over the time period 68 out of 330 (approximately 20%) of claimants who withdrew their claim may have used the asylum process to enter New Zealand and then rely on changing circumstances to qualify for another type of visa that they would

[3] Figures valid as of 31 March: 3,492 on hand; 2,405 unassigned; 1,087 in-progress.

not have otherwise had access to. It is not clear how many of these were genuine claimants whose claims would have been approved if they had not withdrawn. We know that the current approval rate for claims is 19.5%, but INZ does not hold data relating to the percentage of declined claims that are unmeritorious or abusive, as opposed to simply not meeting the legal test.

14. The Act could either be clarified to continue to allow claimants who withdraw their claims to apply for other visas, or to prevent them from doing so.
15. As well as clarifying the law, preventing claimants who withdraw from applying for other visas i.e. treating withdrawn claims in the same way as declined claims, may prevent some claimants from misusing the refugee and protection system.
16. Unsuccessful claims contribute significantly to delays in processing and backlogs and create prolonged uncertainty for genuine claimants. Inevitably, some claimants may misuse the system, in particular, leveraging off the free claim process and work visa with open work rights to gain access to the labour market. The objective of avoiding this misuse must be balanced against the need to determine each case fairly and on its merits.
17. There is a particular concern that some spurious claimants may be using the ability to apply for a different visa after withdrawing an asylum claim to "buy-time" and/or take advantage of changing circumstances during the determination process and secure alternative immigration pathways that would not have otherwise been available to them (without ever having a genuine intention of successfully claiming asylum). This is particularly problematic when current backlogs and processing times are so significant (almost two years for a determination from the point of claiming). An example of this is a claimant who claims asylum as a way of gaining a temporary work visa rather than fearing persecution, works for over a year in New Zealand and during that time finds alternative work opportunities and then withdraws their claim and applies for another visa (such as an Accredited Employer Work Visa) on that basis.
18. However, this problem must be balanced against the concern that some claimants who would have otherwise withdrawn their claim may no longer do so, solidifying backlogs, pressure on INZ and wider government and impacting genuine claimants in the system.
19. There are also overarching objectives of upholding domestic and international human rights obligations.
20. The key people affected by this change are asylum claimants who will no longer be able to apply for another visa after withdrawing their claim. As discussed above, we estimate that the number is small.
21. This proposal does not impact the determination process itself and therefore claimants (who do not withdraw) Legal professional privilege . A claimant who withdraws their claim elects not to have their claim determined.

What objectives are sought in relation to the policy problem?

22. This proposal will clarify the existing ambiguity in section 150 by preventing a claimant who withdraws their claim from applying for another visa. There is a secondary objective to prevent claimants from taking advantage of changing circumstances during consideration of their claim to gain access to an immigration pathway that would not otherwise be available to them. The proposal also seeks to deter spurious claimants from making a claim in the first place, improving efficiency of processing and resources. The proposal aims to achieve these objectives while continuing to protect genuine asylum seekers.

What consultation has been undertaken?

23. To achieve introduction of the Immigration (Enhanced Risk Management) Amendment Bill (the Bill) by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints, by undertaking a short and targeted period of stakeholder engagement with:
    a. government agencies,
    b. independent statutory bodies,
    c. representatives of impacted parties (i.e. immigration lawyers and community representatives).
24. Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.
25. There will be two more opportunities for consultation:
    a. targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
    b. through the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.
26. As well as working closely with INZ, we have consulted the Ministry of Foreign Affairs and Trade and the Ministry of Justice on both policy development and a draft Regulatory Impact Statement. Neither agency had substantive comments on this proposal.
27. Given the tight timeframes for progressing this work, the only consultation we have been able to undertake is targeted consultation with some members of the immigration refugee bar (via oral discussion). We have not been able to consult with any asylum/advocacy groups in relation to this change. Consultation with these groups may have greater insight as to the reasons why claimants withdraw and apply for other visas.
28. The immigration refugee lawyers consulted did not see a significant benefit in limiting the ability to apply for further visas after withdrawing a claim for asylum, but were supportive of clarifying section 150.
29. We also consulted with the Immigration and Protection Tribunal, which did not have substantive comments on this proposal. The Office of the Ombudsman and the New Zealand Law Society gave feedback around ensuring that the change is clearly communicated due to the consequences of preventing applications for further visas and possibility of receiving poor advice.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

30. MBIE considered the following criteria when evaluating the options:

- Protection of genuine asylum seekers: genuine claimants receive protection from persecution and torture
- Maintaining integrity of asylum system: the system operates in accordance with our domestic and international obligations
- Efficiency of processing and resources: the system should enable claims to be processed in a timely manner and should not put undue pressure on INZ, the courts or wider government
- Certainty of the law: the law should be understood by all system users

What scope will options be considered within?

31. In March 2025, the Minister asked for a second immigration amendment bill to be developed, the Immigration (Enhanced Risk Management) Amendment Bill (the Bill) for introduction by October, with a focus on compliance, enforcement and system integrity.
32. The Minister directed officials to consider section 150 of the Act in relation to the system integrity focus of the Bill. The Bill also presents an opportunity to clarify the ambiguity in section 150 that has been raised internally over several years, resulting in inconsistent operational practice.
33. Non-regulatory proposals to improve the processing of asylum claims have also been considered alongside this proposal and are being progressed. These will not solve the problem of deterring spurious claims or clearing the current backlog on their own, but over time aim to improve processing speeds (which in itself may deter spurious claims by reducing the length of time those claimants can be in New Zealand on temporary work visas).
34. We note that the asylum determinations process is carefully designed to meet international and domestic human rights obligations, ensuring that each case is considered on its merits to protect genuine claimants. Although this limits the ability to easily identify and dismiss abusive claims, there are operational measures in train to identify these types of claims and expedite their processing.
35. Out of Scope
36. There is no non-regulatory way to prevent claimants who withdraw a claim from applying for another visa as this requires amendment to the Act. The clarity issue is not likely to come before the courts as it benefits those who are relying on it.

What options are being considered?

Option One – Status Quo / Counterfactual

37. Section 150 of the Act remains ambiguous and claimants continue to be allowed to withdraw their claims and apply for other visa types.

Option Two – Amend section 150 to clarify that once an asylum claim is withdrawn, a further visa cannot be applied for (Minister's preferred option in the Cabinet paper)

38. Clarifying section 150 in this way would treat withdrawn claims the same way as declined claims, preventing an asylum claimant who has withdrawn a claim from applying for a further visa.

Option Three - Amend the Act to clarify that section 150 preserves an ability to make applications for other visas once an asylum claim is withdrawn (MBIE's preferred option)

39. This would have the opposite effect of the above option and reduces ambiguity to support existing practice.

How do the options compare to the status quo/counterfactual?

	Option One – *Status Quo / Counterfactual*	Option Two – Amend s150 to limit further applications (Minister's preferred option)	Three – Clarify ability to make further applications by amending s150 i.e. clarifying existing practice (MBIE's preferred option)
Protection of genuine asylum seekers	0	- Less flexibility for a small number of claimants who are genuine, but find a different immigration path while their claims is processed	0 As per existing practice, flexibility for a small number of claimants who are genuine, but find a different immigration path while their claims is processed
Maintaining integrity of asylum system	0	+ May have a signalling effect around NZs stance on not tolerating unmeritorious claims	0 As per existing practice, may incentivise spurious claims or abuse of system by agents (but numbers highly speculative)
Efficiency of processing and resources	0	0 Will disincentivise current claimants from withdrawing their claims who otherwise would have, solidifying system backlog and increasing cost to NZ May disincentivise future unmeritorious claims, numbers highly speculative (cost/benefit offset)	0 As per existing practice, ultimately less costly to the government for those few genuine claimants who change immigration paths
Certainty of the law	0	++ Clarifies the Act	++ Clarifies the Act

	Option One – *Status Quo / Counterfactual*	Option Two – Amend s150 to limit further applications (Minister's preferred option)	Three – Clarify ability to make further applications by amending s150 i.e. clarifying existing practice (MBIE's preferred option)
Overall assessment	0	++	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

40. We consider providing some certainty in the law, either by Option Two or Three, to be preferrable to no change/the status quo. The pros and cons of Options Two and Three are finely balanced and there is no strong case for one over the other.
41. The Minister's preferred option in the Cabinet paper is Option 2 because of the potential to deter spurious claims and prevent misuse of the system. It also has a signalling effect. However, it may have the unintended policy consequence of causing claimants who would have otherwise withdrawn their claims not to withdraw, solidifying the existing backlog. It also allows less flexibility for genuine claimants who may find an alternative immigration pathway (which would ultimately be less costly to the government than a successful asylum claim).
42. On balance, MBIE's preferred option is Option Three. This is because it provides more flexibility for genuine asylum claimants.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

43. No.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the Minister's preferred option compared to taking no action			
Immigration NZ	Will be some impact on processing from claimants who would have otherwise withdrawn their claim but choose not to do so. This may be offset in the longer-term by some individuals being deterred from making a claim in the first place. However, claimants that do withdraw do not have zero cost to the government (some remain on temporary visas for a time using public services and	Medium in short term.	Medium

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	may incur compliance costs). We are not able to provide an estimated cost of determining an asylum claim at the time of writing this analysis, however there is work underway in this space. Total cost to Government will include the Refugee Status Unit operating budget, Immigration and Protection Tribunal operating costs, legal aid costs and other publicly funded services such as benefits, health and education.		
Wider government	Some cost to wider government from claimants who would have otherwise withdrawn their claim but do not and therefore continue to be processed. A small number of these may be genuine claimants whose claims are eventually approved, but could have taken an alternative pathway. Cannot be quantified (difficult to predict behaviour) but expected be low numbers and therefore relatively low cost. However, this cost may be offset by some	Low	Low

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	individuals being deterred from making a claim in the first place.		
New Zealand communities	N/A	N/A	N/A
Refugee and migrant communities	N/A	N/A	N/A
Asylum claimants who are unable to apply for a further visa	Impacts ability to apply for another visa pathway. May deter some claimants from withdrawing their claim. Claimants will still be able to apply for other visas from offshore and the Minister of Immigration has discretion to grant a visa which could be used in exceptional circumstances.	Medium impact for a small number of individuals. Some of these will be spurious claimants. Other will be genuine claimants who could have taken an alternative immigration pathway.	Low
Total monetised costs	Cannot be quantified at this time but anticipated to be low.	Low	Low
Non-monetised costs	Low	Low-medium	Low
Additional benefits of the preferred option in the Cabinet paper compared to taking no action			
Immigration NZ	Some spurious claimants may be deterred from making a claim, reducing asylum claim numbers. However may be offset by existing claimants who choose not to withdraw.	Low-medium	Low

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Difficult to quantity as hard to predict behaviour. Clarifies ambiguity in the law.		
Wider government	May be some signalling effect that NZ does not tolerate spurious claims.	Low	Low
NZ communities	N/A	N/A	N/A
Refugee and migrant communities	Some benefit to genuine claimants if spurious claimants deterred and processing speeds increased. However may be offset by existing claimants who choose not to withdraw.	Low	Low
Asylum claimants who are unable to apply for a further visa	None	None	High
Total monetised benefits	Cannot be quantified at this time but anticipated to be low.	Low	Low
Non-monetised benefits	Low	Low	Low

What are the marginal costs and benefits of MBIE's preferred option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of MBIE's preferred option compared to taking no action			
Immigration NZ	None – no change to status quo	None – no change to status quo	High
Wider government	None – no change to status quo	None – no change to status quo	High
NZ communities	N/A	N/A	N/A
Refugee and migrant communities	N/A	N/A	N/A
Asylum claimants who can apply for a further visa	None – no change to status quo	None – no change to status quo	High
Total monetised costs	None	None	High
Non-monetised costs	None	None	High
Additional benefits of MBIE's preferred option compared to taking no action			
Immigration NZ	Clarifies ambiguity in the law	Low-medium	High
Wider government	None – no change to status quo	N/A	N/A
NZ communities	N/A	N/A	N/A
Refugee and migrant communities	N/A	N/A	N/A
Asylum claimants who can apply for a further visa	None – no change to status quo	N/A	N/A
Total monetised costs	None – no change to status quo	N/A	N/A
Non-monetised costs	Clarifies ambiguity in the law and preserves alternative pathway for genuine claimants.	Low-medium	High

Section 3: Delivering an option – the Minister's preferred option

How will the proposal be implemented?

Preferred option in the Cabinet paper:

44. The proposal is intended to take effect from the date of introduction of the Bill (rather than when the Bill becomes law), meaning that the change will apply to claims made after introduction. Maintenance of the law [redacted] The amendment would not apply to any of the existing claimants in the queue before introduction.
46. Clear communication to the sector will be very important to help communicate to claimants how their rights are impacted and to achieve the goal of disincentivising spurious claimants. This should include general communication, for example via the INZ website and also targeted communication at the point an asylum claimant makes a claim. It will also include communication to the immigration refugee bar using the industry body working group.
47. Internal communication to INZ officers will also be required.
48. An unintended policy consequence has been identified that some claimants who are being processed and would have withdrawn their claim may no longer do so, compounding existing backlogs in the short term. This risk cannot be mitigated, however it does not involve large numbers of people.
49. This change is unlikely to have significant funding implications.
50. This change would come into effect at time of enactment.

How will the proposal be monitored, evaluated, and reviewed?

Preferred option in Cabinet paper

51. INZ already collects comprehensive data around asylum claims.
52. Existing data collection will show whether there is a significant decrease in numbers of claimants who withdraw and apply for another visa. This may be interpreted as evidence that the policy is effective at dissuading claimants from withdrawing to take advantage of alternative immigration paths. A corresponding increase in numbers of declined claims may be indicative, but not conclusive, that the claimants electing not to withdraw are unmeritorious (as opposed to simply not meeting the legal test for asylum).
53. Existing data collection will also show whether there is an overall decrease in the number of claims, and whether the number of approved claims increases i.e. evidence that there are fewer unmeritorious claims.
54. However, significant changes are not expected and we anticipate the change to have minimal impact.
55. There are already separate operational proposals in train to improve reporting on asylum claims to the Minister of Immigration. We can lean on existing agency-industry

connections (for example an industry working group) to identify if there have been any issues with communication of the change.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Modernising and improving information sharing provisions

Decision sought	Analysis produced for the purpose of informing Cabinet decisions
Agency responsible	The Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers	Minister of Immigration
Date finalised	10 June 2025

On 13 November 2024, Cabinet agreed that what is now the Immigration (Enhanced Risk Management) Amendment Bill would take a stronger approach to compliance and law enforcement, including through updating provisions in the Immigration Act 2009 (the Immigration Act) that enable immigration information to be shared [ECO-24-MIN-0255].

The Minister of Immigration's (the Minister's) regulatory proposal is to modernise the Immigration Act through amendments which take a stronger enforcement and risk-management focus. This RIS is focused on the case to modernise and improve the Immigration Act's information sharing provisions (i.e. the information sharing framework set out across sections 301 to 306), which is a key aspect of this reform.

Summary: Problem definition and options

What is the policy problem?

The problem is that government agencies seeking access to immigration information (i.e. information that is collected, used to administer, or generated through administration of the Immigration Act, for example information related to identity and visa status) are not always able to access it easily. This can affect their ability to efficiently manage risks to New Zealand.

The information sharing framework is also too limited, as it is outdated. Decisions about the design of the existing framework were made almost 20 years ago and the framework reflects a vastly different technological and risk environment to that faced today. While some changes to information sharing provisions were made as recently as 2023, through the Worker Protection (Migrant and Other Employees) Act 2023, these were focused on addressing migrant exploitation, and did not constitute a review of the sharing framework's overall effectiveness. They also contributed to what is now a patchwork of information sharing enablers, constraints, and protections within the Immigration Act, which makes it difficult to understand why and how information can be shared.

The Immigration Act should explicitly provide for the making of more information sharing agreements, rather than relying on the Approved Information Sharing Agreement (AISA) process under the Privacy Act 2020 (the Privacy Act). AISAs are resource-intensive to establish and can take several years to create. As MBIE is the authoritative source of

immigration information, barriers to sharing have impacts on government efficiency and the quality of service provided to customers.

The Immigration Act's domestic information sharing framework is less permissive than some of its counterparts' (in particular, the Customs and Excise Act 2018). Notably, it is considerably more difficult for MBIE to share immigration information with, and receive information from, other government agencies than it is to set up information sharing arrangements internationally.

MBIE acknowledges that the proposal would result in individuals' information being shared more easily than the status quo permits, which some stakeholders have identified as a risk to personal information. We consider that modernising and simplifying the Immigration Act's information sharing framework would enhance public transparency (and trust) in relation to what MBIE does with the information it holds, and facilitate justified access to information with provisions included to manage risks to personal information.

The public will also benefit from the proposal insofar as more efficient information sharing will support the delivery of high-quality public services. Agencies will have simpler, quicker access to information supporting the discharge of their responsibilities, including those related to combating activities undermining compliance and law enforcement. MBIE should be able to efficiently provide authoritative immigration information to other government agencies and the private sector to enhance its contribution to wider government initiatives (such as supporting compliance and law enforcement activities), and to receive information, including from the courts, for a range of lawful purposes (such as verifying that applicants for visas meet policy requirements, and to detect and address non-compliance).

The government is also interested in the removal of legislative barriers that might impede the uptake of the Digital Identity Trust Services Framework). The Digital Identity Trust Services Framework aims to create a digital identity environment where people can share their information in a way that is safe and secure. While the sharing of information will occur through 'verifiable credentials', the Immigration Act is silent as to whether Immigration New Zealand (INZ) can issue, receive, and contribute to other agencies' verifiable digital credentials, and it would be desirable to clarify that these are permitted purposes.

What is the policy objective?

The overarching goal is to improve MBIE's ability to contribute to managing risks to New Zealand within its role the authoritative source of immigration information in New Zealand. This will be achieved by broadening the sharing framework in the Immigration Act to better facilitate the sharing of information between MBIE, other government agencies, the courts and the private sector, without the need to substantially rely on alternative methods for disclosure contained in the Privacy Act. The sub-objectives are to:

- better support government agencies (including MBIE) to exercise their responsibilities, and to prevent information-related harms (e.g. fraud, where bad actors capitalise on opportunities to take advantage of government processes),
- enhance public trust and confidence in how MBIE collects, uses, accesses and corrects information so that, for example, non-New Zealand citizens are not discouraged from providing complete and accurate information to public services, and
- make it clear that MBIE is able to issue digital credentials itself, provide information to support the issuance and use of digital credentials by other agencies, and support the innovation and uptake of digital identity services in New Zealand.

What policy options have been considered, including any alternatives to regulation?

Cabinet has agreed to update the provisions that enable immigration information to be shared [ECO-24-MIN-0255], and the only non-regulatory option is the status quo. The options considered were:

1. **Status quo:** The information sharing provisions remain unchanged, and AISAs or Privacy Act exceptions (such as "maintenance of the law") facilitate suboptimal levels of additional information sharing.
2. **Broaden the disclose provisions (preferred):** Achieved by:
   a. replacing the 'specified agencies' list (applying across sections 302 to 303B) with a wider list of functions/purposes (i.e. beyond those stated across sections 301 to 306) justifying the disclosure of, or access to, information,
   b. expanding the groups of individuals about which information can be shared (beyond references to 'persons of interest' in sections 303A and 303B),
   c. including a 'transparency provision' (akin to the existing section 25) in the Immigration Act, so the public at large will be better positioned to understand how information held by MBIE will be handled, and
   d. making explicit in the Act that INZ can issue, receive, and contribute to other agencies' digital credentials.

What consultation has been undertaken?

MBIE sought written feedback from a range of targeted stakeholders and invited them to meet with MBIE, if necessary. A discussion document was provided to them to comment on and up to five business days was allowed for comment. Where further time was requested for comment, it was agreed. To achieve introduction of the Amendment Bill by October 2025 (in line with the Minister's expectations), the Minister agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints. There will be two more opportunities for consultation:

- targeted consultation on an exposure draft of the Bill in September 2025, and
- through the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

Of the stakeholders who provided substantive feedback, the majority were supportive of the proposal (Department of Corrections (Corrections), Department of the Prime Minister and Cabinet (DPMC), Health New Zealand (HNZ), Ministry of Social Development (MSD), Ministry of Foreign Affairs and Trade (MFAT), New Zealand Police (Police), Ministry of Education (MoE)). Some made neutral comments (Ministry of Justice (MoJ), Office of the Ombudsman (the Ombudsman), Inland Revenue Department (IRD)), while the Office of the Privacy Commissioner (OPC) did not express support for it at this stage of the policy process.

Of those who supported the proposals, the theme of feedback was that it was a "sensible and useful modernisation of the [Immigration] Act", with many citing examples of instances where a broader information sharing framework could facilitate better access to information held by INZ (and MBIE more broadly) to assist them in fulfilling their functions.

Several of the stakeholders (MSD, IRD, OPC) questioned why legislative reform was required, given AISAs could achieve the same information sharing outcomes without legislative change, and emphasised that any revised sharing framework should retain adequate privacy protections (MoJ, MSD, OPC, the Ombudsman and the New Zealand Law Society). MBIE notes that AISAs are subject to various limitations (for example, they are resource intensive to establish) and are not always able to meet MBIE's needs. Therefore, the modernisation and improvement of the information sharing framework in the Immigration Act is preferrable

to maintaining the status quo (as acknowledged by the Legislation Design and Advisory Committee (LDAC)).

The Ombudsman and OPC initially shared concerns about MBIE being able to share information it holds about an individual's character with other agencies. MBIE notes that the Immigration Act already permits the sharing of character information (sections 302 and 303), and that appropriate safeguards would be put in place when sharing agreements are made.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

The costs of broadening the provisions of the sharing framework are one-off costs to MBIE, including the need to make changes to operational procedures and the ongoing cost of creating and administering information sharing agreements with government agencies. For wider government, there is an (existing) cost stemming from the need to develop and administer disclosure agreements. There are no identified costs to the public. The nature of these impacts is assessed as low.

Benefits (Core information)

The benefits to MBIE are that it will be able to make more efficient use of administrative resources (by avoiding the need to rely on developing and implementing AISAs) and build public trust and confidence by being more transparent in the Immigration Act about how MBIE handles individuals' information (also benefiting individuals whose information is held by MBIE). Benefits to wider government and third parties (including individuals, where digital credentials are involved) include more efficient mechanisms to access MBIE's information where this will benefit them or the exercise of their functions/operations. The nature of these impacts is assessed as high.

Balance of benefits and costs (Core information)

The benefits of the Minister's preferred option are, in MBIE's view, highly likely to outweigh the costs.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The revised framework will be implemented through the Immigration (Enhanced Risk Management) Amendment Bill. Confidential advice to Government

Implementation of the provisions will include the development of new information sharing agreements, which will require input from across MBIE. This may include reviewing pre-existing sharing arrangements to ensure consistency with the new legislative framework.

Standard operating procedures for staff will then also need to be developed or reviewed (for example, where compliance staff can request information about an employer from another agency). Various parts of MBIE will assist with their creation (e.g. operations, privacy, policy, legal staff).

MBIE website information which reflects the enhanced transparency obligations will be developed and published.

MBIE is taking the government's objectives around the development and promotion of digital credentials into account as it develops the new immigration IT system (Our Future Services).

MBIE considers there is sufficient time and resource to give effect to the changes required.

Limitations and Constraints on Analysis

The Minister's expectation is that the Bill is introduced by end of October 2025 Confidential advice to , requiring policy decisions in early June 2025. Accordingly, external consultation before Cabinet decisions has largely been limited to engaging with key stakeholders through a discussion document, and receiving their initial feedback on the proposals in writing over a period of approximately five working days. However, a consultation session was also held with OPC about the proposal in this RIS on 5 May.

We have not undertaken significant engagement beyond this, but note that the discussion document explained the drivers, objective and timing for introducing legislation, and (for explanatory purposes) contained a three-page document that had been sent to the Minister as part of the scoping briefing for the Bill. This document outlined the purpose of the proposal and how it fits with immigration portfolio priorities, and explained the problem, the proposal, and the identified risks and proposed mitigations.

Given the absence of available data to support MBIE's analysis, including information about costs, this RIS has been developed based on limited but informed input from internal and external experts.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Stacey O'Dowd
Manager, Immigration (Border and Funding) Policy
10 June 2025

Quality Assurance Statement	
Reviewing Agency: MBIE	**QA rating:** Partially meets

Panel Comment:

A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled 'Modernising and improving information sharing provisions' on 4 June 2025. The Panel consider that the information and impact analysis summarised in the RIS partially meets the Quality Assurance criteria.

Overall, the analysis in this paper is of sufficient detail to support an informed decision. The analysis would benefit from further evidence to support the rationale for this policy intervention, and additional detail on the implications and risks of this proposal for the public (in addition to the impact for central government).

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Immigration Act facilitates a limited extent of information sharing through an information sharing framework

1. Fundamentally, the Immigration Act facilitates the sharing of immigration information both domestically and internationally to:[1]
    a. support and sustain good public services for persons in New Zealand, and
    b. empower agencies to carry out their various responsibilities (i.e. their regulatory functions).
2. 'Immigration information' is information that is collected, used to administer, or generated through the administration of, the Immigration Act. It comes from a wide variety of sources, given the breadth and sophistication of immigration services and processes.[2] Immigration information includes 'personal information', being any information which tells us something about a specific individual in an identifiable way.[3]

Overview of the sharing framework

3. Sections 301 to 306 of the Immigration Act set out a non-exhaustive framework for the disclosure of information.
    a. s301 facilitates the disclosure of information by MBIE to a provider of any publicly funded service to enable the service provider to **determine** either **a person's eligibility to access** a publicly funded service, or a person's **liability to pay** for a publicly funded service,
    b. s302 facilitates the **disclosure** of information **by a 'specified agency' to MBIE** to enable MBIE to **establish** or **verify a person's identity**, **check** matters relating to a person's **character**, **or** ascertain whether a person is an 'excluded person',[4]
    c. s304 facilitates the **disclosure** of information **by MBIE to an employer** to enable them to **verify that a person is entitled to work for them**, and
    d. s305 permits MBIE's chief executive to **disclose** information specified in section 306 **to an overseas agency, body, or person** whose functions include **the prevention, detection, investigation, or punishment of immigration or other offences;** or **the processing of international passengers;** or **border security**. It also sets out that an agreement is the basis for disclosure.

[1] https://www.mbie.govt.nz/about/open-government-and-official-information/data-sharing

[2] A non-exhaustive list of examples of immigration information can be found in section 306 of the Immigration Act.

[3] https://www.privacy.org.nz/tools/knowledge-base/view/199/

[4] An 'excluded person' is a person to whom section 15 (Certain convicted or deported persons not eligible for a visa or entry permission to enter or be in New Zealand) or 16 (Certain other persons not eligible to for visa or entry permission) of the Immigration Act 2009 applies.

4. In some situations, the Immigration Act permits MBIE to make agreements to share information. Section 303C sets out the requirements for agreements entered into under sections 303, 303A, or 303B.
    a. s303 facilitates the **disclosure** of information **by MBIE to a 'specified agency'** to enable the 'specified agency' to either establish or **verify a person's identity** or check matters relating to the person's **character** ,
    b. s303A (**Disclosure of information to specified agencies for purposes of law enforcement, counter-terrorism, and security**) facilitates the disclosure of information by MBIE to a specified agency to allow that agency a longer period of time (than set out in an agreement made pursuant to s303C) to identify any person of interest who is intending to board a craft for the purpose of travelling from New Zealand; and perform any of the agency's functions or powers in relation to an identified person of interest before that person departs New Zealand, and
    c. s303B (**Direct access**[5] **to information for purposes of law enforcement, counter-terrorism, and security**), for the purpose of s303A, permits the chief executive of MBIE to allow the chief executive of a specified agency to access the APP[6] information database(s) to search for information relating to a person of interest.

MBIE's ability to share personal information is also enabled by the Privacy Act

5. Where sharing is necessary, but is not specifically facilitated under the Immigration Act, the Privacy Act contains a number of bases on which personal information sharing can also be permitted:
    a. by exceptions to the information privacy principles (IPP) under section 22,[7]
    b. by a code of practice under Part 3, Subpart 2,
    c. by existing authority under Part 7, Subpart 2 (identity information access provisions); Subpart 3 (law enforcement information); Subpart 4 (information matching), and
    d. by an AISA[8] under Part 7 Subpart 1, including where there is either no authority under the above or where authority is unclear.

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[5] Direct access can mean, for example, allowing staff from an agency external to MBIE to log directly into an MBIE IT system to access information, or using cloud-based system to enable access by specified staff to limited specific information. Direct access is an efficient way to support information disclosure where there is a large volume of ongoing requests of a similar nature.

[6] Advance passenger processing information about persons intending to board a craft for the purposes of travelling from New Zealand.

[7] Information privacy principles address how agencies may collect, store, use and disclose personal information. They allow a person to also request access to and have their personal information corrected. Many of these principles contain exceptions.

[8] An AISA is an information sharing agreement between two or more agencies approved by the Governor General, through an Order in Council (which is secondary legislation made by the Executive Council) on the recommendation of the relevant Minister. AISAs can be used to grant an exemption to, or modify, one or more of the privacy principles or a code of practice. Schedule 2 of the Privacy Act 2020 lists all the AISAs in existence, the agencies party to them, the information that can be shared under them, and the purpose/s for the sharing.

6. The IPPs that cover matters relating to the security, storage and accuracy of personal information still apply to information sharing activities performed under the Immigration Act, as does the Privacy Commissioner's jurisdiction and the information access and correction regimes.

Information sharing is generally underpinned by an information sharing agreement

7. These documents typically outline:
    a. the purpose of the sharing,
    b. the information to be shared,
    c. who the information is to be shared with,
    d. the legal basis for the sharing, and
    e. controls in place to ensure sharing is done safely and information is used and stored appropriately.
8. Restrictions on information sharing set out in information sharing agreements exist to ensure the information being shared is accurate and reliable, as well as securely stored. These restrictions and other safeguards will continue to be put in place under the proposal.

How is the status quo expected to develop without government intervention?

9. MBIE is the authoritative source of immigration information in New Zealand (including the identity information of non-citizens). This is significant because it means MBIE has substantial potential to support compliance and law enforcement activities across the public and private sectors which can help minimise risks to New Zealand (e.g. combatting migrant exploitation and organised crime). The proposed legislative reform is an important enabler of this potential.
10. The Immigration Act's sharing provisions have not been comprehensively updated since substantive decisions about the Act were made in 2006, and would benefit from modernisation. Since then, expectations and requirements for information sharing have changed considerably and amendments to the framework that have occurred since then have been limited in their scope and focused on addressing immediate issues [ECO-24-MIN-0255]. The amendments that have been made[9] have increased complexity, with a patchwork of purposes and authorised agencies, which does not facilitate smooth sharing. It is also notable that the Immigration Act's domestic information sharing framework for immigration information is less permissive than some of its counterparts' (in particular, the Customs and Excise Act 2018).
11. While the current framework is not an absolute barrier to sharing (which can often be facilitated under either the Privacy Act or via another agency's legislation), and the impact of the problem with the framework is therefore not severe in nature, this should not undermine this opportunity to modernise and improve the framework. This proposal for change is one of a number of amendments sought following Cabinet's decision to take a stronger approach to compliance and law enforcement [ECO-24-MIN-0255].
12. Following an invitation from Cabinet in November 2024 [ECO-24-MIN-0255], the Minister submitted a legislative bid for an amendment bill, now provisionally named the Immigration (Enhanced Risk Management) Amendment Bill. This is the vehicle through which changes to the information sharing framework are proposed to occur.

[9] Such as through the Worker Protection (Migrant and Other Employees) Act 2023.

Are there other ongoing government work programmes with interdependencies and linkages to this area that might be relevant context from a systems view?

The government's direction towards digitisation and digital verification

13. Free and frank opinions, as part of an initiative to remove barriers to the uptake of the Digital Identity Services Trust Framework. This Framework aims to create a digital identity environment where people can share their information in a way that is safe and secure. It is understood that the sharing of information will occur through 'verifiable credentials' (among other ways), which are secure, digitally signed, trusted, and standardised packets of data about individuals and organisations that can be used by persons or organisations to prove their identity and identifying factors (such as age or name) digitally.[10]
14. Confidential advice to Government. While MBIE considers that the Immigration Act does not currently preclude the use of immigration information as the basis of a trusted digital credential, we will make it explicit in the Immigration Act that INZ can issue, receive, and contribute to other agencies' verifiable digital credentials, including those related to identity and immigration status.
15. This change will help INZ convey that it is the authoritative source of identity for non-New Zealand citizens, address any concerns about the clarity of the current legislative framework for the issuance of digital credentials, and signal the government's direction.

Refresh of the 2020-2025 Transnational Organised Crime Strategy

16. A refresh of the five-year (2020-2025) Transnational Organised Crime (TNOC) Strategy, which brought together government agencies (including MBIE) to tackle organised crime by setting out a framework for greater coordination and prioritisation of government responses to transnational organised crime, commenced in 2024.[11]
17. One of the draft objectives for this refresh is to strengthen intelligence, capability and partnerships through "improv[ing] intelligence sharing, cross-agency collaboration, and evidence-based decision making to enhance prevention and enforcement." In a March 2025 report, the Ministerial Advisory Group on Transnational, Serious and Organised Crime (TSOC), whose work will feed into the refreshment of the Strategy, noted that in order to make meaningful progress in countering the threat posed by organised crime, one of the challenges that must be addressed is improving information sharing and that in this regard a "significant transformation is necessary…"[12]
18. The above draft objective, as well as the Strategy's longstanding focus on strengthening system resilience, legislative settings, and prevention across government, is demonstrative of a clear nexus between the refresh and the proposal to modernise and improve the information sharing provisions in the Immigration Act.

What is the policy problem or opportunity?

19. On 13 November 2024, Cabinet agreed that the Bill this proposal is a part of will, as a priority, take a stronger approach to compliance and law enforcement, including

[10] https://www.dia.govt.nz/Digital-Identity-Services

[11] New Zealand Police, '*2nd Tier BIM – Border to Backyard: it takes a network to beat a network*.'

[12] Ministerial Advisory Group on Transnational, Serious and Organised Crime, March 2025 report (TSOC-MAG 25/01).

through updating provisions that enable immigration information to be shared [ECO-24-MIN-0255].

20. The coalition Government has also expressed a commitment to restore law and order,[13] and it is a priority of the Minister to have efficient immigration settings that deliver improved public services and better manage immigration risks [ECO-24-MIN-0158].

The Immigration Act's information sharing provisions undermine agencies' ability to efficiently manage risks to New Zealand

There is an unmet demand for access to MBIE's immigration information

21. MBIE collects a large amount of information[14] as a result of its administration of the Immigration Act and this information can play a critical part in supporting initiatives across government and in the private sector, including those that help manage risks to New Zealand. Targeted consultation with a wide range of government agencies and within MBIE confirmed that there is an unmet demand across the public sector for access to information that MBIE holds.
22. MBIE's capacity to meet this demand is limited by the Immigration Act's information sharing framework which limits its ability to respond to disclosure requests and is, by contemporary standards, outdated. In practice, this means that government agencies that seek access to immigration information are not always easily able to access it, meaning the government as a whole is unable to manage risks to New Zealand as well as it otherwise could.
23. In 2025, the government and the public expect government agencies, especially those involved in compliance and law enforcement activities, to be able to share information with each other efficiently in order to undertake their responsibilities and deliver high-quality public services.
24. Therefore, MBIE requires a modernised information sharing framework that improves its ability to both seek information from, and disclose information to, other government agencies (and in some cases the courts and the private sector) for the purposes of:
    a. strengthening its position as the authoritative source of immigration information,
    b. better manage immigration risks,
    c. improve the delivery of public services (e.g. disclosing information to support an agency to enforce social security requirements), and
    d. enhancing its contribution to wider government initiatives (e.g. supporting compliance and law enforcement activities, such as combatting migrant exploitation).
25. A revised framework will create clear accountabilities for how MBIE must handle the information it collects, including the disclosure of that information, and will require written sharing agreements that set out the protections for the information. The clauses

[13] https://www.national.org.nz/policy-2023

[14] For example, immigration information, which comes from a wide variety of sources, given the breadth and scope of immigration services and processes, and includes (among other things) personal identification details, details of any visa held by a person, border movements, and the general history of specified people. A non-exhaustive list of examples can be found in section 306 of the Immigration Act.

will be modelled on the existing provisions in the Immigration Act for information disclosure.

The framework has not been substantially updated for some time

26. The existing information sharing framework is a product of work conducted almost 20 years ago. While there have been various amendments to the Immigration Act over the years, including enhancements to the Act's information sharing capacity (for the purpose of combatting exploitation) in 2023, those changes have been in response to immediately-presenting issues, and have not addressed problems with the wider information sharing framework.[15]

27. Compared with the legislation of other agencies with border functions, and in particular the Customs and Excise Act 2018, the information sharing framework in the Immigration Act is out of step.[16] This means that agencies may face barriers when seeking authoritative information from MBIE that they would not if similarly authoritative information was sought from another agency (e.g. Customs).

The current sharing framework has a number of limitations that affect MBIE's operations

28. As previously identified, there are alternative information sharing mechanisms available under the Privacy Act. However, the modernisation of the sharing provisions in the Immigration Act will make sharing simpler, quicker, and avoid the current reality whereby many of the information sharing gaps present in the Immigration Act are filled by the Privacy Act on a case-by-case basis, creating a patchwork of authorities which are inefficient to administer.

29. MBIE cannot clearly demonstrate that the Immigration Act supports its ability to assist with the government's priority of building trust in digital identity services. This is especially problematic given INZ is integral to establishing and/or verifying the identity and status (e.g. confirming the right to stay, work, and/or study) of non-New Zealand citizens.

While there are other bases for information sharing under the Privacy Act, MBIE does not consider that they meet its information sharing needs

Bespoke information sharing provisions are preferable to an over-dependence on AISAs

30. While MBIE accepts that AISAs are a valuable mechanism for facilitating sharing, they are not always able to meet MBIE's needs and a revised sharing framework under the Immigration Act is appropriate. For example:

    a. Considerably more steps (and costs) are required to establish an AISA than a sharing agreement under the Immigration Act. For example, AISAs require an agreement to be reached between two or more agencies, consultation (often with the public and the Privacy Commissioner, but also with impacted individuals and related representative groups),[17] engagement of legislative

[15] Changes to sections 294AAA and 294AAB were made via the Worker Protection (Migrant and Other Employees) Act 2023 in the context of combatting migrant exploitation and were focused on the production of documents. These changes were constrained to a limited set of purposes and agencies.

[16] For example, the Customs and Excise Act 2018 has provisions broader in scope than those in the Immigration Act, including section 315 (Direct access to information for other purposes), which allows for joint Ministers to approve information sharing for a range of "maintenance of the law" related purposes, section 316 (Disclosure of information other than under information matching agreement or direct access agreement), and section 317 (Disclosure to private sector organisations).

[17] See section 150 of the Privacy Act 2020.

processes, Parliamentary Counsel Office resource to draft an Order in Council, and decisions from Ministers and often Cabinet. While these processes have value, they are comparatively inefficient as they require consultation and engagement of parliamentary processes for each new or amended AISA, whereas sharing agreements under the Immigration Act could be made without all the above steps and (by inference) at a lower cost.

b. Using AISAs to cover gaps in the Immigration Act's sharing capability is inefficient and administratively burdensome compared to enabling sharing agreements to be made under a legislative framework. For example, the lack of clarity in section 301 as to whether the scope of "publicly funded services" includes "benefits" has caused challenges in respect of sharing information to confirm eligibility for superannuation. Due to the way the Immigration Act is currently written, MBIE and MSD may need to establish an AISA to facilitate sharing related to "benefits", resulting in two separate sharing agreements under different frameworks for the two agencies.

c. The breadth of sharing in AISAs can be uncertain, whereas having specificity in the Immigration Act of the purposes that MBIE can engage in sharing will provide more transparency to the public and other stakeholders.

d. AISAs only apply to personal information, while MBIE needs to be able to share other types of information as well (e.g. information about employers).

e. The private sector may be unwilling to enter an into AISA (given their lengthy establishment process, for example) to access authoritative immigration information that they may need to optimise the delivery of their services. For example, a bank may wish to use MBIE information to check the visa status or address of a person setting up a bank account as part of an anti-fraud initiative.

What objectives are sought in relation to the policy problem?

31. The overarching goal is to improve MBIE's ability to contribute to managing risks to New Zealand where it can do so as the authoritative source of immigration information. This will be achieved through broadening the disclosure provisions in the Immigration Act (i.e. the information sharing framework) and better facilitating the sharing of information between MBIE, other government agencies, the courts and the private sector, without the need to substantially rely on alternative methods for disclosure contained in the Privacy Act.[18]

32. The sub-objectives are to:

    a. better support government agencies (including MBIE) to exercise their responsibilities both generally and to prevent information-related harms in the delivery of their services (e.g. fraud, where bad actors capitalise on opportunities to take advantage of government processes),

    b. enhance public trust and confidence in the way that MBIE collects, uses, accesses, and corrects their information so that non-New Zealand citizens are not discouraged from providing complete and accurate information when engaging with public services, and

[18] For example: AISAs and Information Privacy Principles, such as the maintenance of the law ground under section 22 (applying to principles 2, 3, 10, and 11).

c. make clear that MBIE is able to issue digital credentials itself, provide information to support the issuance and use of digital credentials by other agencies, and support the innovation and uptake of digital identity services in New Zealand.

33. These objectives align with the coalition Government's commitment to restoring law and order, the Minister's priority to have efficient immigration settings that deliver improved public services and better manage immigration risks [ECO-24-MIN-0158] and address the Minister for Digitising Government's focus on ensuring the Immigration Act can enable MBIE to issue or contribute to digital credentials.

What consultation has been undertaken?

34. To achieve introduction of the Amendment Bill by October 2025 (in line with the Minister's expectations), the Minister agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints, by undertaking a short and targeted period of stakeholder engagement with:
    a. government agencies,
    b. independent statutory bodies, and
    c. representatives of impacts parties (i.e. immigration lawyers and community representatives).
35. External consultation before Cabinet decisions has largely been limited to informing key stakeholders via email of the proposal and receiving their initial feedback in writing. MBIE also offered to meet with stakeholders to discuss the proposals in more detail, if required.
36. MBIE has not undertaken significant engagement beyond this given the time available but provided all stakeholders with a discussion document formally outlining MBIE's proposal and promptly responded to any clarifying questions received.
37. Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.
38. There will be two more opportunities for consultation:
    a. targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025, and
    b. through the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

Stakeholders impacted by the problem

39. We have identified the following affected stakeholders and the nature of their interest:
    a. **OPC**, given its role in regulating the Privacy Act, and protecting personal information, and because a number of the provisions within the Immigration Act's sharing framework contain requirements to consult with the Privacy Commissioner before entering into or varying an agreement.
    b. **Government agencies with an interest in** improving the Immigration Act's information sharing provisions to help address **organised crime**:
        i. Police (noting they also stand to benefit from easier access to immigration information)

ii. Customs
iii. New Zealand Security Intelligence Service (NZSIS)
iv. IRD
v. MoJ
vi. Ministry for Primary Industries (MPI)
vii. DPMC.

c. **Government agencies that stand to benefit from easier access to immigration information** for verification or compliance purposes:
   i. MoE
   ii. MFAT
   iii. MSD
   iv. Corrections
   v. HNZ.

d. **The Ministry for Regulation (MfR)**, given its focus on lifting quality of regulation and performance across regulatory systems, including the Immigration system.

e. **The Department of Internal Affairs (DIA)**, given it is responsible for the overall stewardship of the government's technology strategies, the development of the digital credential concept, and secure and accurate identity verification in New Zealand.

f. **The Ombudsman**, given its role in promoting good administration and providing feedback and guidance to agencies to improve practices.

40. We informed the above stakeholders of the proposal on 7 April 2025, allowing up to five business days to respond. Only OPC expressed a desire to meet with MBIE to discuss the proposal in more detail (this took place 5 May), with other stakeholders providing written feedback only.

41. Meetings were also held with the New Zealand Law Society and LDAC (both on 1 May), as well as the Ombudsman (6 May) as part of broader consultation on the Bill.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

42. The criteria chosen to assess the options for modernising and improving information sharing provisions are as follows (in ranked order of importance):

    a. better facilitates the sharing of information between MBIE, other government agencies, the courts and the private sector,

    b. is administratively workable and efficient (e.g. from a resource-use perspective),

    c. does not enable information sharing powers that go beyond reasonable expectations and adversely affect the public (e.g. there are clear purposes justifying sharing and adequate privacy safeguards in place to protect personal information),

    d. supports wider and related government objectives and helps prevent information-related harms generally (e.g. enables better management of immigration-related risks by adequately empowering government agencies to exercise their responsibilities), and

e. provides enough flexibility to enable the framework to survive future changes in the demand for information and in how it is supplied (i.e. has longevity).

What scope will options be considered within?

43. Cabinet has agreed that the Bill this proposal is a part of will, as a priority, take a stronger approach to compliance and law enforcement, including through updating provisions that enable immigration information and data to be shared [ECO-24-MIN-0255]. This represents an expectation that changes to MBIE's information sharing framework will be made by legislative amendment.
44. Two options for a revised legislative sharing framework are to be considered, as set out in the section below. Only one option is proposed as an alternative to the status quo on the basis that this option (Option Two) is considered by MBIE to be the most effective way to address the policy problem.
45. Other options scoped out of contention include:
    a. **Making information sharing powers under the Immigration Act very broad and without limitation**. MBIE will not consider this option as it would give rise to substantial concerns about the absence of adequate privacy safeguards and would likely disestablish those currently in place.
    b. **Making all information sharing performed under the Immigration Act subject to the approval of the individual that it relates to.** While this would give individuals greater control over their own information, this would result in substantial delays to existing information sharing processes, place an undesirable administrative burden on individuals, and frustrate compliance activity.

What options are being considered?

Option One – Status Quo

46. The information sharing framework remains unchanged and instruments under the Privacy Act are utilised to facilitate information sharing where it is not available within the scope of the provisions of the Immigration Act.

Option Two – Broaden the disclosure provisions (preferred)

47. Specifically, this would be achieved by:
    a. **Replacing the 'specified agencies' list** (which applies across sections 302 to 303B to exclude the possibility of sharing under the Immigration Act for agencies not included on this list) **with a wider list of functions/purposes** (i.e. beyond those stated across sections 301 to 306) justifying the disclosure of, or access to, information (which may not be limited to any one agency). **Table 1** provides an example of what this could look like in practice.

Table 1: Non-exhaustive examples of new functions/purposes justifying the disclosure of, or access to, information, with potential use cases

	Examples of functions/purposes proposed			
	Assisting a government agency to carry out its functions	Assisting in the prevention, detection, investigation, prosecution, or	Assisting a government agency to carry out its functions related to, or	Agreement between private sector organisation and MBIE to support

	related to, or involving, national security	punishment of offences	involving, the protection of border security	services to clients
Example beneficiary	DPMC	Police	Customs	Banks
Examples of existing sharing instruments (generally)	None	Multi-agency AISA for the purpose of reducing Gang-related harm	Access to Passenger Name Record data (memorandum of understanding)	None
Example benefit of sharing for the function/purpose	Would facilitate sharing where it could be helpful in developing a holistic information picture of a foreign national or nationals in New Zealand	Would enable Police to check firearms licence applicants' international travel movements to help assess whether an applicant is a national security risk or has been charged or convicted of an offence overseas	Would enhance Customs' ability to manage risk at the border (in conjunction with the removal of 'persons of interest' – discussed below)	Would help validate the authenticity of visa documents being used by non-citizens who seek to open bank accounts (minimise potential for fraud in service delivery / facilitate access for migrants to banking services)

b. **expanding the groups of individuals about which information can be shared**, for example:

   i. limiting references to 'persons of interest' which constrain sharing (sections 303A and 303B) could be removed,

   ii. the details regarding the specific groups about which information can be shared could be determined at the time an information sharing agreement is drafted, given the intended recipient of the information will be best placed to identify who is of interest,

c. **including a 'transparency provision'** in the Immigration Act to enhance trust and confidence in the information sharing framework and ensure the public are well-positioned to understand how information held by MBIE will be handled. This could be achieved by:
   i. including a provision akin to the existing section 25 of the Immigration Act, and
   ii. creating an associated series of webpages on the MBIE website containing relevant privacy statements,[19]

d. **making explicit that INZ can issue, receive, and contribute to other agencies' digital credentials**, including those related to identity and immigration status.

[19] Note that privacy statements often go further than what is specified under IPP 3 of the Privacy Act.

How do the options compare to the status quo/counterfactual?

Criteria	**Option One – *Status Quo***	**Option Two – *Broaden the disclosure and direct access provisions*** *Minus (-) = worse than status quo* *Zero (0) = similar to status quo* *Plus (+) = better than status quo* *Double plus (++) = much better than status quo*
Better facilitates the sharing of information between MBIE, other government agencies, the courts and the private sector	0	+
Is administratively workable and efficient	0	++
Does not enable information sharing powers that go beyond reasonable expectations and adversely affect the public	0	+
Supports wider and related government objectives and helps prevent information-related harms	0	+
Provides enough flexibility to enable the framework to survive future changes in demand for information and in how it is supplied	0	+
Overall assessment	0	Improves on status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

48. **Option two (i.e. legislative reform)** represents a clear improvement on the status quo, as shown in the above analysis, and is MBIE's preferred option.

49. Fundamentally, broadening the disclosure provisions in the manner described under option two will modernise the Immigration Act's sharing framework, resolve its existing limitations, and improve MBIE's ability to contribute to managing risks to New Zealand where it is able to do so as the authoritative source of immigration information in New Zealand. To ensure the new framework does not permit sharing beyond reasonable expectations, it will build on the existing framework's safeguards as described below.

Better facilitating the sharing of information

50. As previously identified, the status quo for information sharing is a mixture of approaches including facilitating sharing through the provisions of the Immigration Act or through mechanisms under the Privacy Act, such as via AISAs or the 'maintenance of the law' exception. By broadening the information sharing provisions, MBIE and wider government will benefit from a framework that is considerably wider in scope and allows for a reduced dependence on the Privacy Act to facilitate disclosure.

51. While MBIE acknowledges that broadening the sharing framework may give rise to concerns about potential risks to personal information, we note that this is a further justification for disclosure needing to be set out in the Immigration Act and being clearly subjected to appropriate accountabilities or safeguards (these are set out in the consultation section below).

Information sharing with the private sector

52. As noted above, section 304 of the Immigration Act already facilitates disclosure by MBIE to an employer to enable them to verify that a person is entitled to work for them. Under option two, the scope of private sector actors that sharing could occur with will be expanded. The purposes justifying the disclosure of, or access to, information, would need to be agreed between the parties to the sharing at the point of drafting an information sharing agreement.
53. Broadening sharing powers in this way will help minimise the potential for information-related harms to occur by empowering private sector organisations to combat activities which undermine compliance and law enforcement activities conducted by government departments (and create risk to New Zealand) in relation to the delivery of these services by the private sector. For example, banks could use this enhanced access to immigration information to validate the authenticity of visa documents being used by non-citizens to attempt to open bank accounts and establish a legitimate profile in New Zealand.

Option two will also help MBIE improve trust in the way non-NZ citizens' information is handled

54. Changes in technology and government priorities around information means that MBIE must change its legislative status quo so that it can continue to build trust in the way information is handled, while also maximising the value of the information that it holds.

55. By including a 'transparency provision' (akin to section 25) in the Immigration Act as part of its broadening of the information sharing provisions, those whose information is held by MBIE will be better positioned to understand how any information about them

will be handled. As the authoritative source of identity for non-New Zealand citizens, maintaining and enhancing the trust and confidence of non-New Zealand citizens in this regard is critical so that travellers and migrants are not discouraged from providing complete and accurate information to MBIE in the future.

Administrative workability and efficiency

Information sharing agreements vs AISAs

56. While AISAs are widely regarded as valuable mechanisms to facilitate information sharing (as shown by the consultation section below), bespoke information sharing provisions under a modernised framework are preferrable to AISAs, especially given their relative inefficiency and high administrative burden, as demonstrated at paragraph 30.

Replacing the 'specified agencies' list

57. Under option two, MBIE will also remove the references to 'specified agencies' in the existing information sharing framework and instead focus on 'functions'. This will remove a substantial barrier to the efficiency of information sharing, as these lists currently limit sharing to those agencies listed in sections 302 to 303B. If retained, MBIE would need to continue to rely on a mix of agreements made under the Immigration Act and ad hoc agreements relying on exceptions to non-disclosure contained in the Privacy Act.

58. The removal of these lists is also consistent with the criteria that the option should provide flexibility to enable the framework to survive future changes, given agencies' names and functions can change over time, necessitating ongoing updates to the Immigration Act that could be avoided. This change would also bring the provisions in line with those in the Customs and Excise Act 2018, which are not limited to any particular agency.

Minor and technical changes

59. Option two would also permit opportunities to address minor and technical changes needed for certain parts of the sharing framework. For example, clarity is required regarding the scope of "publicly funded services" under section 301. The lack of clarity as to whether this includes "benefits" has caused challenges in respect of sharing information to confirm eligibility for superannuation. Without reform, the current wording in s301 may require MBIE to use an AISA to facilitate sharing for "benefits" and result in separate sharing agreements being made under different sharing frameworks.

Does not enable information sharing powers to go beyond reasonable expectations and adversely affect the public

60. Relative to the status quo, there is a possibility that by broadening the information sharing provisions that stakeholders (including the public) regard the expansion of those powers as going beyond reasonable expectations of how far sharing should extend.

61. While, under option two, individuals' information provided to INZ would likely be shared more broadly than the Immigration Act currently allows for, this will often be to their benefit insofar as that sharing can assist other agencies in more efficiently being able to exercise their responsibilities and deliver public services. Both citizens and non-citizens will be beneficiaries of this. For example:

a. Government agencies will be better enabled to support non-citizens' access to public services. For example, broader sharing powers could assist in validating the authenticity of INZ visa documents being used by non-citizens to open bank accounts, register with agencies, and establish a legitimate profile in New Zealand.

b. Permitting broader grounds for direct access to personal information between agencies and expanding the groups of persons who can be subject to disclosure beyond 'persons of interest' could enable multi-agency initiatives to proactively develop intelligence and identify bad actors targeting New Zealand as well as 'unknown unknowns', without needing to wait until criminal offending occurs.

62. To address the risk of personal information being mishandled under option two, MBIE is proposing to retain and enhance privacy protections. For example, existing requirements to consult with the Privacy Commissioner before entering into/varying agreements made under the Immigration Act under sections 301 to 303C and 305 would be retained, and a new provision to improve public trust in how MBIE handles information will be introduced (i.e. the 'transparency provision' referred to above). A series of other privacy safeguards are proposed for implementation under the section titled '*What is the level of stakeholder support for the recommended option?*' below. These include, for example, introducing a standardised process for making information disclosure agreements, with strict requirements regarding the security of the information (for example), and that these are made publicly available.

63. More broadly, MBIE considers that option two enables the ease of sharing within itself and between government agencies that the public would expect of it in 2025, particularly given the significant advances in technology facilitating information sharing since 2006.

Supports wider government objectives and helps prevent information-related harms

Supporting the government's direction towards digitisation and digital verification

64. Relative to the status quo, a core benefit of option two is that it will help support wider government outcomes. For example, MBIE being able to issue digital credentials is in line with the government's overall direction towards digitisation and digital verification, and in particular initiatives to remove barriers to the update of the Digital Identity Services Trust Framework. If option two is not facilitated, concerns about where digital credentials are permitted under the Immigration Act will remain.

65. As part of option two, MBIE will make explicit that INZ can issue, receive, and contribute to other agencies' digital credentials, including those related to identity and immigration status. INZ's stakeholders, including public and private sector organisations, as well as non-NZ citizens, stand to benefit from the issuance (and INZ's consumption of) digital credentials.

Enhancing MBIE's capacity to provide authoritative information can mitigate the potential for information harms to occur in other regulatory systems and the private sector

66. As the authoritative source of identity information for non-NZ citizens, MBIE ought to be able to access information held by other agencies of that nature so that it can become a 'one-stop-shop' for agencies seeking access that information to help them exercise their responsibilities, minimise risks of non-compliance and to law enforcement, and better contribute to government objectives generally.

67. For example, improved access to information held by other agencies would put MBIE in a better position to assist agencies across government (and in some cases the private sector) in verifying a non-NZ citizen's eligibility for services and minimise opportunities for bad actors to exploit their processes.

Supporting initiatives to address transnational organised crime

68. In its March 2025 report, the Ministerial Advisory Group on TSOC, established to provide independent expert advice on tackling organised crime within New Zealand, noted that in order to make meaningful progress in countering the threat posed by organised crime, one of the challenges that must be addressed is improving information sharing and that in this regard "a significant transformation is necessary – where vital intelligence on organised crime is proactively exchanged between government agencies – and key partners in the private sector, such as banks, ports, and airports."[20]

69. One of the TSOC initiative's draft objectives is to strengthen intelligence, capability and partnerships through "improv[ing] intelligence-sharing, cross-agency collaboration, and evidence-based decision-making to enhance prevention and enforcement." Option two, in better facilitating efficient sharing of information between MBIE, government agencies and the private sector, will better position MBIE to contribute towards this objective, as well as the work of this initiative generally.

What is the level of stakeholder support for the recommended option?

70. The Minister agreed to MBIE informing key external stakeholders of the proposal in advance of Cabinet decision-making. The stakeholders who provided feedback to the proposal outlined in this RIS included: Corrections, DPMC, HNZ, IRD, MSD, MoE, MFAT, MoJ, Police, the Ombudsman, OPC, LDAC, and the New Zealand Law Society.

71. The following stakeholders were consulted but provided no feedback: DIA, MfR, Customs, and the NZSIS.

72. Of the stakeholders consulted who provided feedback, the majority were supportive of the proposal, while several provided neutral feedback. OPC voiced opposition to the proposal for legislative reform insofar as it is of the view that the use of existing sharing mechanisms (notably AISAs) provide a better vehicle for identifying and managing privacy impacts. It also expressed concerns about "potentially significant privacy impacts" of sharing sensitive information with a larger group of agencies and for broader purposes.

The majority of stakeholders supported broadening the information sharing provisions

73. Of those who supported the proposals, the theme of feedback was that it was a "sensible and useful modernisation of the [Immigration] Act", with many citing examples of instances where a broader information sharing framework could facilitate better access to information held by INZ (and MBIE more broadly) to assist them in fulfilling their functions. For example:

    a. Corrections asked that MBIE consider adding "transnational organised crime" and "violent extremism" to the expanded groups about which information can be shared.

    b. DPMC noted MBIE could widen the purposes justifying disclosure of, or access to, information to include "agencies' regulatory and national security

[20] Ministerial Advisory Group on Transnational, Serious and Organised Crime, March 2025 report (TSOC-MAG 25/01).

responsibilities" to facilitate sharing where it could be helpful in "developing the information picture".

c. HNZ noted that as public health services are subject to eligibility rules that depend, in part, on immigration status, they could benefit from being included in a revised specified agencies list.

d. IRD noted that adding them to the specified agencies list would allow for disclosure that may not be captured by an AISA.

e. MSD noted that the proposal could increase their ability to validate the identity and application information of clients against immigration and travel records held by INZ/MBIE.

f. MoE noted that the ability to have improved data sharing processes with INZ would have a significant positive impact on multiple elements of education data, such as identity verification, eligibility for education and non-enrolment.

g. MoJ noted that facilitating information sharing that assists with combatting organised crime will contribute to a draft TSOC strategy objective to "improve intelligence sharing, cross agency collaboration, and evidence-based decision making to enhance prevention and enforcement." This is referenced from paragraph 68 above.

h. Police noted that access to immigration information for a wider range of purposes than those currently in place could enable them to:

    i. identify deceased people who are not NZ citizens, including to assist with coronial processes,

    ii. check recruit applicants' international travel movements to assess whether an applicant is a national security risk,

    iii. check firearms licence applicants' international travel movements to assess whether an applicant is a national security risk or has been charged or convicted of an offence overseas, and

    iv. verify whether an alcohol licence applicant is legally entitled to live and work in NZ for the period of the licence.

Several stakeholders questioned why legislative reform was required, and stressed the need for privacy protections under any new sharing framework

74. Several stakeholders (MSD, IRD, OPC) questioned why legislative reform was required, given AISAs could achieve the same information sharing outcomes without the need for legislative change, and emphasised that any revised information sharing framework should include adequate privacy protections (MoJ, MSD, OPC, the Ombudsman and the New Zealand Law Society).

75. MBIE has addressed the rationale behind its preference for legislative reform over the status quo in the problem definition section above. During consultation, LDAC stated that while their guidelines "state that new legislation should only provide for personal information sharing where sharing cannot be done using one of the mechanisms in the Privacy Act… LDAC accepts that legislation may be preferrable in this circumstance."

76. In respect of privacy protections, MBIE will consider the implementation of the following privacy safeguards, among others, as part of any updated information sharing framework:

a. A standardised process for making information disclosure agreements and that these agreements be published (with any appropriate redactions under the Official Information Act 1982).

b. The Privacy Commissioner will continue to be consulted before agreements are made or amended.

c. Agreements must specify:

    i. the class or type of information that is being disclosed,

    ii. the purpose to which the information will be put,

    iii. requirements regarding the security of the information (including storage and disposal),

    iv. who can access the information,

    v. how (or whether) information can be further disclosed by the recipient, and if so, relevant conditions, and

    vi. a review requirement, the details of which are decided by the parties to the agreement but will include aspects such as how often arrangements would be reviewed, how disclosure breaches will be dealt with, and whether the results of reviews or breaches would be published.

d. Direct access will continue to be subject to controls and specific accountabilities given the risk to personal information inherent in that form of disclosure, such as:

    i. any disclosure agreement that includes direct access include procedures to record what information has been accessed and by whom and specify sanctions for misuse.

e. Where information is disclosed for a purpose listed in the framework, it must be accompanied by appropriate protections, including that it be kept, used and further disclosed by the receiving agency in accordance with the Privacy Act or other applicable law.

77. The Office of the Ombudsman and the Office of the Privacy Commissioner shared concerns about MBIE being able to share information it holds about an individual's character to other agencies, on the basis that:

    a. MBIE must consider the accuracy of character information it holds about an individual and have safeguards in place for sharing this. This will be important where the information is untested, has not been referred to the individual for comment, and/or may otherwise lead to prejudicial decisions being made by another government agency.

    b. Before sharing character information, or any other prejudicial information, MBIE should consider whether the individual should be consulted and, where proposals include automated decision making, a human check should also be required when conducting a case-by-case assessment.

78. MBIE acknowledges that it has accuracy obligations in regard to character information under the Privacy Act (which will remain under option two) and that the sharing of this information is already permitted under the Immigration Act (sections 302 and 303). MBIE clarified this position with OPC during consultation on the proposals on 5 May. The Office of the Ombudsman did not raise this as a specific concern during the consultation session on 6 May.

Upcoming consultation with stakeholders

79. Wider consultation with the public will be included in the normal select committee process, and engagement on an Exposure Draft of the Bill with key stakeholders will occur later in the policy process and ahead of Cabinet Legislative Committee decisions.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

80. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
MBIE	One-off costs of making changes to procedures (e.g. drafting standard operating procedures for the new framework)	Low	High
	Ongoing costs of creating and administering information disclosure agreements	Low	High
Wider government	Costs of developing information disclosure agreements	Low	High
Additional benefits of the preferred option compared to taking no action			
MBIE	More efficient use of administrative resources (reduced need to use AISAs, as sharing agreements can be made under the new framework)	High	High
	Maintain public trust and confidence that information is being used and managed within appropriate boundaries and protections	High	High

Affected groups	Comment	Impact	Evidence Certainty
Wider government	More efficient means to access/use MBIE's information for a range of government purposes (sharing can be quickly and easily facilitated via sharing agreements under the new framework)	High	High
	Improved outcomes in law enforcement and regulatory oversight[21]	High	High
Non-NZ citizens	Greater certainty and transparency in how information is being managed by MBIE and disclosed to government and the private sector	High	High
Private sector	More efficient means to access/use information held by MBIE to mitigate risk of information-related harms (e.g. fraud)	High	High

81. A limitation of this analysis is that the costs and benefits can only be analysed qualitatively due to an absence of hard data.
82. While a new sharing framework would widen the potential opportunities for information disclosure, the outcomes will depend on when agencies choose to make use of those opportunities.
83. The proposed updates to the information sharing framework are not assessed as having any additional compliance costs on non-NZ citizens, i.e. they would not be required to supply additional or new information to MBIE and may need to provide *less* information to MBIE and other government departments as a result of greater information sharing. However, it may require minor changes to MBIE's procedures and will require agencies who wish to use MBIE's information on an ongoing basis to incur costs to establish information disclosure agreements with MBIE.

[21] Improved information sharing to a wider range of government agencies under the new framework for a wider range of purposes will help agencies to better perform their regulatory functions.

Section 3: Delivering an option

How will the proposal be implemented?

84. Option two will be implemented through an amendment to the Immigration Act, i.e. the Immigration (Enhanced Risk Management) Amendment Bill. Confidential advice to Government

85. MBIE is developing an implementation plan for all proposals in the Bill. For the proposals in this RIS, the following implementation steps have been identified (these have been informed by external and internal consultation):
    a. Develop new information sharing agreements. This will require input from across MBIE (e.g. operations, privacy, policy, legal staff) in order to prioritise within available resources and then engagement with respective agencies, and consultation with OPC. This may include reviewing pre-existing sharing arrangements to ensure consistency with the new legislative framework.
    b. Develop (or review) standard operating procedures for staff (for example, where compliance staff can request information about an employer from another agency). Various parts of MBIE will assist with their creation, e.g. operations, privacy, policy, and legal staff.
    c. Deliver any required training to MBIE staff.
    d. Develop a communications plan to ensure that the public is aware of the enhanced transparency obligations (i.e. identifying relevant website updates and communications to key stakeholders).
    e. As part of the Our Future Services programme (designed to make sure INZ is set up to deliver a cost-effective immigration system that is productive, effective at managing immigration risk, and provides a more seamless experience for both customers and staff), develop and promote digital credentials into its design.
    f. Design the monitoring and reporting framework.

86. Implementation planning will continue in parallel with the development of the Bill. The Immigration System Governance Group (Deputy Chief Executives of all parts of MBIE that have an immigration function) have been informed of the early implementation planning.

How will the proposal be monitored, evaluated, and reviewed?

87. Under the proposed legislative framework, information sharing agreements will be required to establish an in-built review process at point of creation, to ensure they are reviewed at appropriate intervals, are operating as intended, and are delivering the desired outcomes for all parties involved. The parties to the sharing agreements will determine the appropriate frequency of these reviews and any indicators of success.

88. There are also overlapping requirements for oversight, including the information sharing standard issued by the Government Chief Digital Officer (which must be implemented by all public service agencies from 1 July 2025). This sets out a standard for providing non-government third parties with access to, or collection of, government-held personal information and has been designed to protect personal information in that context.

89. Cabinet has agreed to a programme of regular and targeted reviews of the Immigration Act, to contribute to government's priority of a strong performing regulatory system and

up-to-date legislation [ECO-24-MIN-0255]. MBIE anticipates that work on a further Amendment Bill will commence in 2027. This means there will be vehicles going forward to address any future issues that may be identified as a result of these changes to the information sharing framework.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Strengthening immigration penalties for non-compliant and exploitative employers

Decision sought	Analysis produced for the purpose of informing final Cabinet policy decisions
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Immigration
Date finalised	12 June 2025

The proposal is to strengthen immigration penalties for non-compliant employers by:

- extending the timeframe for the Ministry of Business, Innovation and Employment (MBIE) to issue an infringement notice to a non-compliant employer
- increasing the maximum penalty for an employer convicted of migrant exploitation.

Summary: Problem definition and options

What is the policy problem?

Exploitative employers who victimise vulnerable migrants cause significant and lasting harm to their victims and gain unfair advantages over employers who comply with their legislative obligations. Employment and immigration legislation establish a range of offences which are intended to deter employers from exploiting migrant workers.

However, rates of reported exploitation are rising, [1] which indicates an unacceptably high level of harm. Officials consider that there are opportunities to strengthen the deterrence effect of the penalties in the Immigration Act 2009 (the Act), namely:

- the employer infringement offence regime for low to mid-level offending is not as effective as it could be. In order to meet statutory timeframes, there is a de facto time limit of 90 days from the date of the offending to issue an infringement notice. Offending is often not reported to MBIE until after this period, and, in some cases, it takes longer than 90 to investigate and confirm the offending. While there is the option to file criminal charges outside the 90-day timeframe, the offending is not usually serious enough to meet this threshold.
- the maximum custodial sentence for serious exploitation (7 years) is too short to be an adequate deterrent.

[1] The number of reports of exploitation to MBIE have increased, from 807 in the 2022/23 financial year to at least 2,424 reports in the 2024/25 year (to the end of March 2025).

What is the policy objective?

The objective is to enable the constrained immigration investigation and compliance resources to be deployed to make it more likely that exploitative behaviour will be meaningfully sanctioned (through increasing the numbers of infringement notices and through enabling higher penalties to be imposed on convicted exploitative employers), and, in the longer term, deter employers from enriching themselves through the exploitation of migrant workers.

What policy options have been considered, including any alternatives to regulation?
To address insufficient timeframes for issuing employer infringement notices, officials have considered the following options:

1. Status quo, ie 90 days from date of offending to issue a notice
2. Amending the procedural requirements so that timeframes are based on the date MBIE became aware of the offending, rather than status quo. This would allow MBIE 90 days to issue a notice from the date MBIE became aware of the offending
3. As for option two but extending the timeframe for the procedural requirements so that notices can be issued within 270 days (9 months) of the date MBIE became aware of the offending **(preferred option in Cabinet paper)**.

We also considered the non-regulatory option of increasing proactive checks on employers to identify offending earlier. However, this was discounted, as the additional resourcing that would be required to achieve this was not realistic or cost effective.

To address the inadequate maximum sentence for migrant exploitation offending, we have considered the following options:

1. Status quo
2. Removing the distinction between "reckless" and "knowing" (the latter being based on having been formally advised), and increasing the maximum duration of imprisonment to ten years **(preferred option in Cabinet paper)**
3. As for option two above but increasing the maximum duration of imprisonment to 14 years.

What consultation has been undertaken?
A short period of targeted consultation was undertaken with key stakeholders as agreed with the Minister of Immigration, including:

- government agencies (including MBIE's Immigration Compliance and Investigations (ICI) and Litigation teams, the Ministry of Justice (MOJ), the Department of Corrections, and the Legislation Design and Advisory Committee (LDAC)),
- independent statutory bodies (eg the Immigration and Protection Tribunal),
- representatives of impacted parties (ie immigration lawyers and community representatives).

The key feedback received is summarised below.

<u>Proposal 1: Extending the timeframe for issuing employer infringement notices:</u>

- MOJ noted the potential disadvantage to employers but felt that this was reasonable and proportionate to the likelihood of cases being completed at a faster rate. They did not have any concerns about the impacts on the court system.

- LDAC provided feedback that if the offending cannot reliably be identified at the time it occurs, this suggests the conduct in question is not suitable for an infringement offence.

Proposal 2: Increasing the maximum penalties for migration exploitation offences:

- MOJ commented on the removal of the mens rea distinction (the maximum sentence will now be the same, regardless of whether an employer was "reckless" about their employee's immigration status or can be proved to have "known" that they were not legally allowed to work for them). MOJ noted that, while it is generally best practice to set different penalties where there are two thresholds of this type, to reflect escalating levels of moral culpability, in this case specifically MBIE's rationale seemed reasonable and might justify a deviation from the standard.
- The Department of Corrections noted that increasing the likelihood and the duration of incarceration increased the associated costs to the community.

Wider or public consultation was not feasible in the time available. However, there will be further opportunities for consultation, including targeted consultation on an exposure draft of the Bill and through the six-month Select Committee stage.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?
Yes, for both proposals.

Summary: Minister's preferred option in the Cabinet paper

Policy problem 1: Extending the timeframe for issuing infringement notices

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (eg what people or organisations, or environments), and the nature of those impacts (eg direct or indirect)

The time and resource to issue an infringement notice once offending has been identified is relatively low, so issuing more notices as a result of the change can be absorbed within current resourcing levels. However, responding when an employer wishes to challenge a notice can be more resource intensive. Currently an internal review takes about an hour, with appeals to the district court requiring a minimum of 20 hours of work. We anticipate a minor increase in challenges – about three to four more per annum, which are likely to all be internal reviews. This could be absorbed within existing resourcing.

However, we note that the level of increase in infringement notices is highly uncertain. If the volumes are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either approve additional resource (which would be funded through the immigration levy), deprioritise some core investigations and compliance work, or constrain the number of notices issued.

We do not expect any measurable increase in the number of cases being appealed to the District Court, and therefore do not expect additional costs for the court system. However, changes may be needed to MOJ's centralised IT system for recording unpaid infringement fines. Officials are investigating implementation options that could avoid this, but, if

necessary, Commercially sensitive and further advice would be given to relevant Ministers on options for funding this.

Employers may also find it harder to gather evidence to mount a defence when longer has passed since the offending. However, we consider this risk to be minimal, as infringement notices will only be issued within the time period where employers are legally required to keep employment records (six years).

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (eg what people or organisations, or environments), and the nature of those impacts (eg direct or indirect)

The key benefit of the proposal is a reduction in exploitative behaviour by non-compliant employers. These benefits are felt by the migrant workers, as well as compliant employers (whose businesses can be undercut by employers using exploitative practices), New Zealand workers (whose terms and conditions are not undermined by the anti-competitive behaviours of exploitive employers), and the wider New Zealand economy, including because New Zealand is a more attractive destination both to workers, if they can be confident their rights will be upheld, and to investment, if New Zealand clearly upholds international human rights norms.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

We consider that the benefits outweigh the costs, which are marginal and have sufficient mitigations (as there will still be a reasonable limit on the length of time in which MBIE can issue an infringement notice).

The main risk is that the number of additional infringement notices issued is significantly larger than projected, and MBIE is not resourced to respond appropriately to employers challenging the notices. This will be monitored, and further decisions about resourcing and prioritisation can be taken if the number of employers challenging notices becomes unmanageable.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The changes will be implemented following the passage of the Immigration (Enhanced Risk Management) Amendment Bill, Confidential advice to Government. The changes will require minimal operational changes for MBIE. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process to ensure readiness when the Bill is enacted. Implementation will include updating internal guidance and procedures, delivering training, and developing monitoring and reporting requirements, and an external communications plan.

Limitations and Constraints on Analysis

We do not have a robust evidence base for how many infringement offences are going unpenalized as a result of the current restrictions on when infringement notices can be issued, as this data is not recorded in a structured way. We have based estimates on the cases we were able to identify but expect that this is a significant underestimation. We are also unable to estimate the impact of these changes on the proportion of infringement notices that are challenged.

It is not possible to determine a causal link between these policy settings and migrant exploitation indicators, as these are influenced by a wide range of factors (economic conditions and other policy settings). It is not therefore possible to provide concrete estimates of the amount of harm reduction we expect as a result of the proposals. We have noted that we expect the proposal to reduce the amount of exploitation and associated harm.

Policy problem 2: Increasing penalties for migrant exploitation

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (eg what people or organisations, or environments), and the nature of those impacts (eg direct or indirect)

The main monetised costs associated with raising the maximum prison sentence for migrant exploitation are costs to the Corrections system (averaging around $120,000 per prisoner per annum). The number of people actually prosecuted and imprisoned is likely to be marginal compared with the numbers generated within the wider justice system. As at the end of March 2025, two people had been convicted of migrant exploitation offences during 2024/25 (both had been sentenced to home detention and required to pay reparations).

Costs will fall also on the offenders themselves (excluded from the economy, and the community, for the length of their sentence), and on their families and businesses.

It is not possible to accurately estimate either set of costs, which are dependent upon the numbers of successful future prosecutions, and the sentences imposed.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (eg what people or organisations, or environments), and the nature of those impacts (eg direct or indirect)

The benefits accrue to:

- migrant workers (not exploited: ie paid correctly, including their holiday entitlements; and not restricted from knowing their rights or communication with others),
- New Zealand employers in the same sectors / areas (who will not be unfairly undercut by the lower costs of exploitative employers), and
- Other workers (whose terms and conditions will similarly not be threatened by unfair competition).

The wider New Zealand community will also benefit from the small but positive boost to New Zealand's international reputation, related to the maintenance of international standards.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

As above, the overall benefits of the proposal are assessed as outweighing the costs.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The changes will be implemented following the passage of the Immigration (Enhanced Risk Management) Amendment Bill, Confidential advice to Government. The changes will require minimal operational changes for MBIE. The implementation planning will be

completed once the Bill is introduced, with delivery progressing in parallel to the Parliamentary process to ensure readiness at the point the Bill is enacted. Implementation will include updating internal guidance and procedures, delivering training, and developing monitoring and reporting requirements, and an external communications plan.

Limitations and Constraints on Analysis

The actual level of exploitation of migrants in the labour market is difficult to measure (in common with much illegal activity) and it will be difficult to identify how these changes impact on employer behaviours, which are influenced by a wide range of factors (including other changes being made to seek to address migrant exploitation). It is therefore not possible to provide concrete estimates of the amount of harm reduction we expect as a result of the proposals. We have noted that we expect the proposal to reduce the amount of exploitation and associated harm.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager signature:
Stacey O'Dowd
Manager, Immigration (Border and Funding) Policy
12 June 2025

Quality Assurance Statement *[Note this isn't included in the four-page limit]*

Reviewing Agency: MBIE	**QA rating:** partially meets

Panel Comment:

A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled Strengthening immigration penalties for non-compliant and exploitative employers on 22 May 2025.

The Panel consider that the information and impact analysis summarised in the RIS **partially meets** the Quality Assurance criteria.

The Panel notes that this RIS has been very well written with high standards of clarity and conciseness. However, although there has been high level targeted consultation with some stakeholders, this RIS has the limitation of not having undergone public consultation. Should future consultation through the select committee process change the analysis or assumptions, then a future Supplementary Analysis Report may be necessary.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Employers of migrants are required to comply with both immigration and employment law

1. People who are not New Zealand citizens or residents may only work in New Zealand if their visas allow them to do so. As at October 2024, there were approximately 157,000 temporary migrants working in New Zealand, representing about 7% of employees in New Zealand.[2] The population of temporary migrant workers has been growing since the borders reopened post-COVID. People who are in New Zealand unlawfully (overstayers), and some people who are in New Zealand lawfully but who do not hold work rights, may also work illegally to support themselves.

2. When hiring a migrant worker, an employer must ensure that that employment is compliant with the Immigration Act. This includes only hiring people who have a visa that allows them to work, and ensuring employment complies with the conditions on the worker's visa (visa conditions may specify things like the role, location, employer, minimum pay rate, and minimum/maximum working hours). These requirements help to manage labour market risks (in particular, ensuring New Zealanders are not displaced and their employers are not undercut), and reduce the risk of migrants being exploited or otherwise exposed to poor working conditions.

3. Employers of migrants must also meet minimum employment standards that apply to all employees in New Zealand, such as minimum wage, holiday and sick leave entitlements, and must not unlawfully deduct wages or charge employment premiums. An employer must also uphold a migrant worker's rights to seek alternative employment and to leave employment and may not withhold their passport or prevent them from communicating with other people (including contacting Immigration New Zealand (INZ) to take steps to ensure their compliance with their visa conditions).

Employer non-compliance with the law is an ongoing issue that causes serious harm

4. The vast majority of employers of temporary migrants are compliant with immigration and employment law. A significant group of employers however break the law, either intentionally (especially if they consider that they are unlikely to be detected or that, if detected, any penalties will be negligible), or through ignorance of the law.

5. Temporary migrant workers are at greater risk of exploitation than New Zealand workers. Analysis done as part of the Temporary Migrant Worker Exploitation Review in 2020 indicated that 64% of the Labour Inspectorate's investigations in 2018/19 involved a migrant worker, although only 7% of jobs were held by a migrant worker.[3] Factors that increase vulnerability to exploitation include migrants originating from countries that are poorer than New Zealand, having limited understanding of their legal entitlements and New Zealand workplace norms, having limited English, and / or having limited connection to people in the community outside their workplace (which can make it difficult for

[2] Migrant Employment Data. This figure includes both work and student visa holders. Many student visa holders have work conditions on their visas (generally, allowing them to work for any employer part time during term time and full time over holidays).

[3] Temporary migrant worker exploitation review – final proposals

individuals to both recognise they are being treated unlawfully and to know how to seek help). Migrants who face poor employment prospects and economic conditions in their home country may have taken on debt to fund their move to New Zealand, which can make them highly motivated to remain in New Zealand, despite being treated unlawfully. Some employers are actually responsible for, or are linked to, that debt (for example, have received, or know others offshore have received, unlawful payments for New Zealand job offers, commonly called premiums; or have organised travel at high prices and require associated costs to be paid off).

6. It is difficult to accurately measure the extent of migrant exploitation, as it often goes unreported.[4] However, the available indicators suggest that exploitative practices are persistent among a minority of employers. The number of reports of exploitation to MBIE are increasing significantly – from 807 reports in the 2022/23 financial year, to at least 2,424 reports in 2024/25.[5] The 2024 Employment Monitor reported that 14% of migrant workers surveyed said that their employer sometimes does things against New Zealand employment law. Of those on student or work visas, 12% reported being paid less than the minimum wage.[6] These rates were similar to those reported in the previous year's report.

7. Employer non-compliance when hiring migrant workers causes a range of harms, including:

    a. Economic, social, psychological and physical harm to migrant workers. Migrants may be underpaid or required to pay illegal premiums to their employers. At the extreme end, an employer may exert total control over the employee, including confiscating their passport and making threats to prevent the employee leaving their service. The impact on victims can be extreme and leave them with ongoing physical and mental health problems.

    b. Harm to businesses that comply with the law, who are undercut by businesses using illegal and anti-competitive practices to get ahead.

    c. Harm to New Zealand workers, including vulnerable workers, by undermining their working conditions (through their employers being forced to compete with non-compliant companies) and displacing them from employment opportunities (through their having to complete with people who are prepared to work for less, especially if that is below the minimum code).

8. Addressing non-compliance by employers of migrant workers is a priority for the Government. The National Party and New Zealand First Coalition Agreement makes a commitment to "enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences."

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[4] Migrant exploitation | Employment New Zealand lists reasons migrants may be reluctant to report.

[5] This figure is as at the end of March 2025. It is unclear how much of the increase in reporting rates reflects an actual increase in the rate of exploitation versus an increase in awareness of, and confidence in, reporting mechanisms. For example, a new 0800 number for reporting exploitation, and a new visa option for exploited migrants (Migrant Exploitation Protection Visa) have been established in recent years, which have likely contributed to the increase in reports of exploitation. However, as above, officials consider that much migrant exploitation is never reported.

[6] Employment Monitor report 2024

There are a range of offences and penalties for employers who break the law

9. There are already a range of penalties, across both the immigration and employment law systems, to deter and punish non-compliance by employers.

10. Lower to mid-level breaches of employment standards (whether they relate to a migrant or New Zealand employee) are generally enforced by the Labour Inspectorate, Employment Relations Authority, and Employment Court through a civil penalties regime and other orders/declarations. An employer who has received a penalty for breaches of minimum employment standards will also be placed on a public stand-down list that prevents them from supporting visa applications for a set period of time.[7]

11. Lower to mid-level breaches of immigration law are enforced through a relatively new employer infringement offence regime (operating since April 2024). The regime is set out at section 359A of the Act, which outlines the following offences:

    a. allowing a person to work who is not entitled under the Act to work in the employer's service (eg employing someone who is in New Zealand unlawfully, or employing someone who has a visa that doesn't allow them to work, such as a visitor visa)

    b. employing a person in a manner inconsistent with a work-related condition of their visa (eg employing someone who has a visa that only allows them to work for another employer or in another role or region, or paying someone less than the required rate on their visa)

    c. failing to comply with a request by an immigration officer for employment-related documents within 10 working days.

12. An employer who has committed an infringement offence can be issued an infringement fine of between $1,000 and $3,000 per offence. As with employment standards breaches, employers who have been issued with an immigration infringement notice will be placed on a public stand-down list and prevented from supporting visa applications for a set period.

13. For more serious offending, the Act provides for a range of criminal offences, with penalties ranging from fines to imprisonment. The Act includes an offence for the exploitation of temporary or unlawful migrant workers, at section 351. Exploitation includes where an employer has committed a serious breach of minimum employment standard, eg requiring a worker to make payments back to the employer to maintain their employment, and/or has taken action to prevent the worker from leaving their employment or enforcing their legal rights, eg by confiscating a worker's passport or preventing them from accessing a telephone.

14. The penalty for employers convicted of exploitation under section 351 is a maximum of 5 or 7 years' imprisonment - depending on whether the employer was reckless in determining the migrant's right to work legally, or had knowledge (which for practical purposes, means "had been officially advised") that the person was not able to be

[7] The stand-down list only prevents employers from supporting visa applications. It does not prevent them from employing temporary migrants with open work conditions, such as working holiday makers or students.

employed by them, and/or a fine of up to $100,000.[8] Employers convicted under section 351 are permanently barred from supporting visa applications. Due to the significant costs involved, only a small number of criminal prosecutions are taken for more serious offending –around 1-2 per year for section 351 offences[9], and numbers are similar for other employer offences (eg section 350 – knowingly employing someone who is not entitled to work in the role).

15. The employer infringement notice regime was introduced to help address the large number of cases where offending is serious but does not meet the threshold for prosecution. In the first year of the scheme, a total of 86 infringement notices have been issued.

What is the policy problem or opportunity?

16. The current penalties, while strengthened relatively recently through the addition of the immigration infringement regime, do not appear to be effectively deterring employers from carrying out these offences. We have identified two key issues with the current immigration employer offence framework that are likely contributing to this.

The period of time during which infringement notices can be issued after an offence has been committed is too short, so many employers are avoiding penalties

17. The employer infringement regime in the Act is subject to standard timing provisions under the Summary Proceedings Act 1957. These create a de facto time limit of 90 days from the date of the offending for MBIE to issue an infringement notice.[10]

18. For two of the employer infringement offences – employing a person who is not entitled to work for the employer (section 359A(1)(a)) and employing a person in a manner inconsistent with their visa conditions (section 359A(1)(b)) – the de facto 90-day limit from the date of the offending has frequently proven to be too short to issue an infringement notice.[11] This is because these offences are most often identified after they have happened – often many months afterwards – because MBIE generally becomes aware of this kind of offending in one of the following ways:

    a. **Through external allegations**. Migrants are often motivated to not make a complaint about their employer until after the employment relationship has

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[8] The penalties are set out at section 357 of the Act. An individual employer can be imprisoned AND fined; a company can only be fined.

[9] In 2024/25 to the end of March 2025, two people in two cases had been found guilty of section351 (migrant exploitation) offences, alongside related offences, (variously aiding and abetting a person to remain in New Zealand unlawfully, seeking to corrupt witnesses, and otherwise attempting to obstruct justice). Both were sentenced to home detention and ordered to pay reparations (employment premiums / underpaid wages), totalling $87,062 between them.

[10] Under the Summary Proceedings Act, regulators have six months from the date of the offence within which to perform all procedural requirements, which impacts whether an infringement fee can be deemed a debt owed if the offender does not respond. Likewise, if the offender disputes the infringement, then the regulator has six months from the date of the offence to apply to the courts to dispute their liability. In practice, this means MBIE has only 90 days from the date of the offence to issue an infringement notice, so there is sufficient time (a further 90 days) for the notice period and any reminder notice periods to be provided or for the offender to either pay the notice or dispute it, and MBIE has time to review the file and apply to the court, which takes additional time and requires litigation review.

[11] These considerations do not apply to the third immigration employer infringement offence at s359A(1)(c), which relates to an employer failing to provide employment documents when requested. In this case, the offending is always identified at the time it occurs, so the existing 90-day timeframe is sufficient to act

completely broken down. In these cases, by the time they make an allegation to MBIE, the offending has already stopped (as it took place in the context of the employment) and the 90-day time limit for issuing an infringement notice is often well out of time.

b. **Through post-decision accreditation checks**. As part of the Accredited Employer Work Visa (AEWV) scheme, a small proportion of accredited employers are proactively checked (rather than in response to a complaint or concern) during their accreditation period. If an employer is selected for one of these checks, it could be years before they are selected again. Consequently, the checks can uncover offending that occurred in the past and is no longer happening, eg records may show that a migrant had started working for the employer before they had a visa that allowed them to do so.

c. **Through evidence provided with a visa application or other interaction with INZ.** This can also uncover offending that occurred in the past and is not ongoing, eg a migrant applying for residence may provide payslips from a previous job that show they were paid below the pay rate on their visa conditions.

19. Even when MBIE becomes aware of the alleged offending while it is still happening, or shortly afterwards, the complexity of cases and the time needed to fully investigate them means that the 90-day timeframe has often elapsed before enough evidence is gathered to issue an infringement notice. In 2024, 36% of investigations that did not result in a prosecution (and therefore are good candidates for infringement notices) took longer than 90 days to close.

20. A total of 86 infringement notices were issued in the first year of the scheme for section 359A(1)(a) and (b) offences. We have identified at least another 22 cases in the same time period where offending was established but no infringement notice was issued, due to the 90-day timeframe having elapsed. However, the total number of cases is likely significantly higher. Cases where infringement offending was established, but no notice issued, are not recorded, so we relied primarily on individual staff identifying manually identifying relevant cases they had worked on, which is likely to significantly underrepresent the true prevalence.

21. While there is the option to file criminal charges outside the 90-day timeframe, the offending is not usually serious enough to meet this threshold. This means that, where it is not possible to issue an infringement notice due to the 90-day threshold, there are very limited options, or no options, to penalise a non-compliant employer.

22. If an employer applies to support a visa in the future, they may have their application declined on the grounds that they do not have a history of compliance with immigration law, and employers accredited under the AEWV scheme will generally have their accreditation revoked. However, the consequences are less severe than if an infringement notice had been issued – there is no fine or set stand-down period, and no publication of their offending. Furthermore, if an employer does not try to support a visa application in future, they will not face any consequences at all.

23. We think there is an opportunity to strengthen the deterrence effect of the employer infringement offence scheme by extending the timeframe available to issue infringement notices. While we are not aware of any other infringement offence regimes that depart

from the standard procedures under the Summary Proceedings Act, we note that other regimes generally involve offending that can be readily identified while it is occurring, eg the Labour Inspectorate issues notices for record keeping breaches. We also note that there is some precedent in other legislation for the timeframe for taking a civil claim being based on the date a person becomes aware of an action/event, rather than the date the action/event occurred (refer section14 of the Limitation Act 2010).

The maximum penalties for migrant exploitation are lower than those for other similar offences although exploitation causes harm and is premeditated

24. We have reviewed penalty levels across a range of offences and consider that the maximum penalties for migrant exploitation offences under section 351 of the Act are out of step with other offences that cause similar harm to victims (see the table in Appendix One.) We also note that exploitation generally involves premeditation, and always involves the perpetrator choosing to continue to do it (which may not be the case for offences such as theft, violence, or even blackmail, for example).

25. We further do not consider that the differentiation in the maximum penalties for migrant exploitation, which vary on the basis of whether the employer had been formally advised that the migrant was not lawfully able to work for them, are justified. This is because the employer's exploitative behaviours are at the heart of offending, rather than whether that employer has received advice, or has not checked, whether they are allowed to employ the worker.

26. Judges use the maximum sentence in the legislation as the starting point for sentencing decisions, taking into account all the facts of the case to determine the final sentence. In the three years to the end of 2024, MBIE has prosecuted five individuals on a total of 19 migrant exploitation charges, with sentences ranging from six to twelve months home detention, plus reparations. These cases involved charging migrants significant premiums (minimums of several thousand dollars) to secure a job, underpayment of wage and leave entitlements, and coercing staff to work without a valid visa or beyond the hours allowed in their visa conditions. Given the lower sentences for migrant exploitation offences compared to other comparable offences, the public may consider that these sentencing outcomes do not sufficiently reflect the seriousness of the offending.

27. There is an opportunity to increase the penalty provisions under section 357 in the Act to ensure that they are commensurate with the potential harm caused and comparable with offences in other parts of the Statute that cause a similar level of harm, and to send a clearer signal that migrant exploitation is not acceptable.

28. We also consider that the different maximum prison sentence (5 years versus 7 years) for section 351 offending, depending on whether the employer was reckless or knowing in relation to determining the migrant's right to work, is unnecessary, as this is a factor that can already be taken into account by the Judge during sentencing. It is also out of step with other offences in the Act that include both reckless and knowing conduct and have a single maximum penalty, eg aiding and abetting offences – refer sections 343(1)(b) (offence) and 355(2) (penalties).

Affected stakeholders and their views

29. We have identified the following affected groups and the nature of their interest:

a. **Regulated group:**

- Migrant workers impacted by migrant exploitation and unlawful employment practices.
- Employers of migrant workers

b. **Regulators:**

- MBIE, including Immigration Compliance and Investigations (ICI), and the Labour Inspectorate, who collaborate with ICI on migrant exploitation cases.
- Ministry of Justice, which has a regulatory oversight function and advises on infringement regimes/penalties. The majority of criminal cases go through the District Court, with very serious crimes to the High Court.
- The correctional system, which is designed to keep society at large safe, by separating the community from individuals who have committed crimes, and to punish people who have offended against the community.

30. Migrant exploitation and unlawful employment practices in relation to migrants are a high-profile issue, and migrant advocates have been vocal in calling for stronger penalties for non-compliant employers. Ordinary law-abiding employers have also frequently expressed frustration to officials that more is not being done to act against non-compliant employers, and to even the playing field. When MBIE consulted on migrant exploitation policies in 2020, the 167 submissions received (including about 60% from migrants or migrant advocates, and about 30% from employers or industry organisations) indicated a high-level of support for action against exploitation.[12]

31. Relevant government stakeholders have been consulted on the proposals and their feedback (and MBIE's response) is summarised from paragraph 38 below.

What objectives are sought in relation to the policy problem?

32. The primary objective is to effectively deter employers from exploiting migrant workers and undermining the integrity of the immigration system. It is intended to achieve this by enabling the constrained immigration investigation and compliance resources to be deployed to make it more likely that exploitative behaviour will be meaningfully sanctioned (through increasing the numbers of infringement notices and through enabling higher penalties to be imposed on convicted exploitative employers).

33. This needs to be balanced against ensuring that penalties are fair and reasonable, including that they are proportionate to the seriousness of the offending, and employers have sufficient opportunity to mount a defence.

What consultation has been undertaken?

34. To achieve introduction of the Amendment Bill by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within time constraints, by undertaking a short and targeted period of stakeholder engagement with:

[12] See Appendix Two of Cabinet paper: Temporary migrant worker exploitation review – final proposals.

- government agencies (including, for the proposals in this RIS: MBIE's ICI and Litigation teams, the Ministry of Justice (MOJ), the Department of Corrections, and the Legislation Design and Advisory Committee (LDAC))
- independent statutory bodies (eg the Immigration and Protection Tribunal)
- representatives of impacted parties (the New Zealand Law Society's Immigration and Refugee Committee, and the INZ Focus Group, which includes employers, migrant groups, licenced immigration advisors and immigration lawyers).

35. Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.

36. There will be two more opportunities for consultation:

- targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
- through the six-month Select Committee stage, during which members of the public are invited to provide written and oral submissions on the Bill.

37. Feedback received is summarised below.

Proposal 1: Extending the timeframe for issuing employer infringement notices

38. MOJ noted the potential disadvantage to employers as a result of departing from the standard procedures in the Summary Proceedings Act 1957 but noted that the justification of the potential impact appears reasonable and proportionate to the likelihood of cases being completed at a faster rate. They recommended analysis continues to consider the balance between the improved deterrence of the proposed regimes, and the application of appropriate and proportionate penalties. They had no concerns about the impact of the proposal on the courts.

39. LDAC provided feedback that, if the offending at sections 359A(1)(a) and (b) cannot reliably be identified at the time it occurs, that suggests that the conduct in question is not suitable for an infringement offence. We have noted this feedback but consider that this was taken into account by Parliament when they approved the establishment of the employer infringement offence regime through the Worker Protection (Migrant and Other Employees) Act 2023.

40. MBIE ICI were supportive of the proposal, noting that it would give them a wider range of tools to address non-compliance in more cases.

Proposal 2: Increasing the maximum penalties for migrant exploitation offences

41. Legal professional privilege

42. MOJ noted the significant harms that migrant exploitation could cause, particularly to the exploited individuals. It also noted that any potential risks of over-penalisation were balanced by Judges' ability to exercise discretion in sentencing, balancing proportionality with the severity of the offence. MOJ considered that the discussion of the mens rea thresholds addressed the issues around recklessness (a person is aware of the

associated risk, and unreasonably decides to act) versus knowledge (a person acts knowing that there is a high probability that their conduct will cause a specified result). MOJ noted that in the exploitation offence however, the crime is committing exploitation, although the mens rea aspect relates to knowing whether a worker is not lawfully able to work for the employer (and is therefore "exploitable" – can be effectively blackmailed).

43. MBIE notes that employers have a lawful obligation to positively check that migrants can work for them (section 350) and that INZ facilitates that checking.[13] "Knowing" for the purpose of the Act is "MBIE has advised you that the worker in question is not able to lawfully work for you, and you have nonetheless continued to exploit them", which applies to a very small fraction of exploitative employers. The fact that employers both underpay their workers and restrict their liberty or communications (the two determinants of exploitation) could be considered to indicate that they generally are aware that they have power over those individuals that they would not have over New Zealanders.

44. MOJ also noted that the offence could be restricted by removing the reckless element, such that the offence only applied to those knowingly exploiting workers. It considered that, if someone unknowingly hires a person who is not allowed to work but still exploits them, this issue seems to be addressed by the equivalent offences for exploiting workers in general. MBIE did not agree with this proposal, as set out in the paragraph above, and because it does not recognise the inherent vulnerability of people who are outside the country of their citizenship. Following further clarification by MBIE, MOJ responded that the additional rationale regarding the two behaviours seemed reasonable and may justify a deviation from the standard in this case.

Section 2: Assessing options to address the policy problem

Policy problem 1: Extending the timeframe for issuing infringement notices

What criteria will be used to compare options to the status quo?

45. The options will be assessed using the following criteria, in line with objectives:

    a. **Effectiveness at deterring offending**, ie how likely it is that an employer will be punished for their offending and therefore how motivated they will be to comply

    b. **Fairness and reasonableness of penalties**, ie whether employers will have an appropriate opportunity to mount a defence and be protected from historic claims

    c. **Administrative cost**. The analysis is focused on measuring:

        - the cost to employers of challenging an infringement notice that they believe has been incorrectly issued (this can be done by applying for an internal review to MBIE, or challenging the notice in the District Court)

        - the cost to MBIE and the courts of responding to those challenges. These are existing costs, and the cost per challenge will not change. The analysis is

[13] With the VisaView | Immigration New Zealand checker (for employers and education providers).

focused on changes to the aggregate cost as a result of more infringement notices being issued

- potential costs to MOJ to update the IT system that records unpaid infringement fines to reflect non-standard timeframes. Officials are investigating whether there are implementation options that could avoid a system change, but it is possible that one may be required.

We have not included the other existing administrative costs of the employer infringement notice scheme in the analysis, as they are not materially impacted by any of the options. This includes:

- The cost of investigating infringement offences. None of the options will change the number of investigations MBIE undertakes – only the likely compliance/enforcement outcomes of those investigations.
- The cost of completing the paperwork to issue the infringement notice. We do not believe this cost is material, as all the information required for the paperwork is already being recorded in file notes and can simply be copied over.

What scope will options be considered within?

46. We have only considered options that can be delivered within existing resourcing and prioritisations, as Confidential advice to Government .

47. The options below only apply to the infringement offences at sections 359A(1)(a) and (b) (which relate to employing someone who did not have a work visa, or in breach of their work visa conditions). They do not apply to the infringement offence at section 359A(1)(c), which relates to not providing employment records when requested. This is because section 359A(1)(c) offences can always be identified at the time they are occurring, so the 90-day period to issue infringement notices does not create a barrier.

What options are being considered?

Option one – Status quo

48. Any application to enforce payment or challenge an infringement notice must be made within six months of the date of the offending, as per the Summary Proceedings Act. MBIE must issue employer infringement notices within 90 days of the date of the offending so that all procedural requirements under the Summary Proceedings Act can be met.

Option two – extend time limit to 90 days from MBIE becoming aware of the offending

49. This option would create bespoke timing provisions for the immigration employer infringement scheme, separate from those in the Summary Proceedings Act. They would retain the six-month timeframe for applications to the Court but change the start date for the six-month period from the date of the offending to the date MBIE became aware of the offending (eg the date an allegation was made).

50. Historic/stale claims (where so much time has passed that the employer cannot mount a defence) would be prevented by requiring MBIE to issue and enforce the notice within six

years of the date of offending. This timeframe aligns with the timeframe for which an employer is required to retain wage and time records.

51. This would mean that MBIE could issue an infringement notice up until 90 days after they became aware of the offending, OR 90 days less than six years after the date of the offending – whichever is earlier.

Option three – extend time limit to 9 months from MBIE becoming aware of the offending

52. This option is the same as option two, except that the timeframe for making applications to the Court would be extended from six months to twelve months (and other procedural requirements would change to align with this increase).

53. This would mean that MBIE could issue an infringement notice up until 270 days (nine months) after they became aware of the offending, OR 90 days less than six years after the date of the offending – whichever is earlier.

54. Increasing the timeframe from 90 days (as under option two) to 270 would be intended to capture more complex cases where an investigation cannot be completed within 90 days of MBIE becoming aware of the offending. We also considered an interim option where the de facto timeframe would be set at 180 days, but discounted this, as the benefits over option two in terms of the volume of cases that could be captured would be more marginal.

Further (non-regulatory) options were considered but excluded

55. We have considered potential non-regulatory options to address the problem. The main option we identified was increasing the number of proactive checks that MBIE undertakes on employers to enable offending to be identified earlier. We discounted this option for the following reasons:

    a. In order to achieve meaningful improvements, the increase in the number of checks would need to be significant. In the 2024 calendar year, INZ undertook 3,250 proactive checks on accredited employers. There are around 24,000 accredited employers, and many more employers who hire migrants on other visa types that do not require accreditation or hire migrants unlawfully without accreditation. Regular checks of employers at risk of committing an infringement offence would require tens of thousands of checks per annum. The cost of this would need to be recovered through immigration fees and levy charged to employers and migrants. Confidential advice to Government [redacted]

    b. Proactive checks do not always result in finding evidence of offending, even if it is occurring. Migrants are often motivated to conceal the fact they are being exploited to maintain employment or may have been threatened and coerced to lie by their employer. It is often only after the employment relationship has ended that a migrant is willing to provide evidence of their employer's offending.

How do the options compare to the status quo/counterfactual?

	Option one – Status quo, ie 90 days from date of offending	Option two – 90 days from date MBIE became aware of offending	Option three – 9 months from the date MBIE became aware of the offending
Effectiveness at deterring offending	**0** **86 infringement notices** were issued in the last year for the relevant offences.[14] We estimate at least 22 more cases had infringement offending identified, but no notice was issued due to the 90-day timeframe elapsing	**+** We estimate at least **14 more infringement notices** could be issued per annum (this is a conservative estimate) than the status quo, with at least 8 possible infringement cases remaining outside the 90-day window	**++** We estimate at least **19 more infringement notices** could be issued per annum (this is a conservative estimate) than the status quo, with at least 3 possible infringement cases remaining outside the 9-month window
Fairness and reasonableness of penalties	**0** Employers always have a fair chance to mount a defence, and are protected from stale claims, as the notice can only be issued for 90 days from the date of the offending.	**-** The longer it has been since the offending, the harder it may be for an employer to mount a defence. We have not been able to compile data on the average length of time between offending occurring and MBIE becoming aware of it. However, anecdotal evidence suggests the vast majority of cases are discovered within six months. We therefore think the potential disadvantage to employers will be marginal in most cases. In cases where a longer time has elapsed, the inclusion of a maximum timeframe of six years (less 90 days) from the date of the offending to issue a notice will ensure that cases are only taken in a	**-** As for option two, but this option would extend the timeframe to issue a notice for a further six months. An extra six months would marginally increase how difficult it could be for an employer to mount a defence. However, the extra time would only be used in cases where an investigation was more complex and could not be completed more quickly – we estimate this would only be about five cases per annum (or 5% of all projected infringement cases).

[14] April 2024 – March 2025

	Option one – Status quo, ie 90 days from date of offending	Option two – 90 days from date MBIE became aware of offending	Option three – 9 months from the date MBIE became aware of the offending
		timeframe where an employer is legally required to retain wage and time records, and therefore should be able to mount a defence. The evidential threshold MBIE has to meet before issuing an infringement notice will remain at "beyond reasonable doubt", which will further ensure that employers will not be unreasonably penalised.	
Administrative cost	**0** There were **24 challenges** in the first year of the infringement scheme against notices issued for the relevant offences (28% of all notices issued for those offences). Only three of these have been appealed to the District Court (13% of the notices challenged), and the remainder were challenged through MBIE's internal review process. An internal review takes roughly one hour for MBIE to complete. However, preparing for a District Court hearing is more resource intensive and would take a minimum of 20 hours. Costs and resource to respond to challenges are included in existing baselines and resource prioritisations.	- Based on current rates of challenge, this could result in an **additional 3-4 challenges** per year compared to the status quo. This is based on the conservative volume estimates above, so total numbers could be higher. The rate of challenge could also increase if notices are issued longer after the offending took place. Based on current rate, we would expect these to almost all be internal reviews, rather than applications to the District Court. Based on the existing rate of challenge, we estimate this would only create in the range of **4-30 hours more work per annum** for MBIE which could be absorbed within existing resourcing.	- Based on the existing rate of challenge, we estimate this could result in an **additional 5-6 challenges** per year compared to the status quo. As with option two, this estimate is conservative and total numbers could be higher. We would expect these to almost all be internal reviews, rather than applications to the District Court. Based on the existing rate of challenge, we estimate this would only create in the range of **6-30 hours more work per annum** for MBIE which could be absorbed within existing resourcing. MOJ has indicated that any impacts on the District Court would not be material.

	Option one – Status quo, ie 90 days from date of offending	Option two – 90 days from date MBIE became aware of offending	Option three – 9 months from the date MBIE became aware of the offending
	In 16 cases (67% of notices challenged), the notice was upheld, and in four cases (17%), it was overturned as a result of the review. The remaining cases are still under review. This suggests the number of incorrectly issued notices is relatively low, and the associated cost for employers to challenge them is low, in the aggregate. **No changes needed to MOJ's IT system** for recording unpaid infringement fines.	MOJ has indicated that any impacts on the District Court would not be material. The rate of notices being issued incorrectly is expected to remain low. At current rates, we would expect maximum one more incorrectly issued notice per year, but we expect this rate to decrease as the infringement scheme continues to embed. **Changes may be needed to MOJ's IT system** (TBC).	As for option two, the rate of notices being issued incorrectly is expected to remain low – maximum one more incorrectly issued notice per year based on current rates, with the expectation that this decreases over time. **Changes may be needed to MOJ's IT system** (TBC).
Overall assessment	**0**	**+** Overall better than status quo – the scale of the benefits is greater than the scale of the costs	**++** Overall, much better than status quo – both the benefits and costs are greater than option two, but the scale of the benefits remains greater than the scale of the costs

Key

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
- -	much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

56. We recommend option three, as it is most likely to deliver the highest net benefits.

57. Option three will ensure that infringement notices can be issued for the majority of the offending that is currently being investigated but falls outside the 90-day timeframe. We estimate the current rate of 86 notices issued per annum will increase to at least 105 per annum. However, we expect at least at least three cases per annum would remain outside the infringement window, due to more complex investigations that take more than 12 months. We expect that increasing the likelihood and severity of the sanctions that employer will face for mistreating migrant workers will drive higher rates of compliance over time. It is important to note that the change will not result in any more infringement offences being identified or investigated – it will only increase the likelihood of an employer being sanctioned for the offences that are already being identified.

58. There are costs associated with the proposed change, however we consider these are reasonable and outweighed by the benefits. While employers may find it more difficult to gather evidence to mount a defence for older offending, infringement notices will only be issued within the timeframe that employers are legally required to keep employment records (six years). We therefore do not consider that there is a breach of the principles of natural justice.

59. The key benefit of option three over option two is that it will ensure infringement notices are an option to sanction employers in more complex investigations that cannot be concluded within 90 days. Option three would also lay the best foundation for a new infringement offence currently under consideration for providing false and misleading information, as investigations into this kind of offending tend to be more complex and take longer to resolve. Most costs are marginally higher for option three than option two, but the differences are small, and we consider them reasonable, in light of the benefits of ensuring that infringement notices are an option in more complex investigations that do not meet the threshold for a criminal prosecution.

60. We anticipate that the increase in volume of work for MBIE to respond to employers challenging their infringement notice will be minimal and can be absorbed within current resourcing. However, we note that the increase in the number of infringement notices is highly uncertain. If the volumes are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either approve additional resource (which would be funded through the immigration levy), deprioritise some core investigations and compliance work, or constrain the number of notices issued.

61. There may be one-off implementation costs if changes are needed to MOJ's IT system (Electronic Filing for Infringements), which records unpaid infringement fines. Officials are currently investigating whether there are implementation options that would avoid this. However, if changes are required, Commercially sensitive, and we will provide further advice to relevant Ministers on options for meeting this cost.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

62. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty.
Additional costs of the preferred option compared to taking no action			
Regulated groups	Employers who are issued an infringement notice after a longer period than is currently allowed may find it harder to gather evidence to mount a defence.	Low	Medium While our analysis is primarily based on theory, we are confident that any disadvantage to employers will be minimal, as notices will only be issued within the time period, they are already legally required to keep employment records.
Regulators	MBIE is required to respond to more challenges against infringement notices.	Low Projected 4-30 additional hours of work per annum, which could be absorbed within existing resourcing.	Medium There is uncertainty about projected challenge volumes, which could be significantly higher. Our projections are based on existing rates of challenge (which could increase if notices are issued longer after the offending), and available data on cases where an infringement was not issued due to the current timing constraints. This data is unreliable as we think there is currently underreporting of these instances.
	MOJ may be required to update their IT system for recording unpaid infringement fines to account for the non-standard timing provisions. This would be a one-off cost.	Low If changes are necessary, Commercially sensitive	Medium Officials are still confirming whether an IT change is needed, or whether there are other implementation options that could avoid this. Further consultation would be required with the vendor to determine the full cost of the change.

Affected groups	Comment	Impact	Evidence Certainty.
Total monetised costs		Low	Medium
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Migrant workers benefit from reduction in exploitative practices by their employers. Compliant employers benefit from fewer competitors using exploitative practices to undercut them	Medium	Low It is difficult to establish a causal link between a particular policy intervention and exploitation indicators, because they can be impacted by a wide range of factors (eg economic conditions and other policy interventions). We do not have any way to measure employer disadvantage from immigration non-compliance by their competitors.
Regulators	Changes should drive increased voluntary compliance rates overtime, decreasing need for investigations and compliance activity, and potentially reducing the need for support for exploited migrants (eg Migrant Exploitation Protection Visas, which are Crown-funded)	Medium	Low As above, it is difficult to prove a causal link between a particular intervention and exploitation indicators.
Others (eg, wider govt, consumers, etc.)	New Zealand economy benefits from being able to promote itself to potential migrant workers as a place where their rights will be upheld.	Medium	Low It is difficult to prove a causal link between penalty settings and New Zealand's attractiveness to migrant workers, as other factors have a greater influence.

Affected groups	Comment	Impact	Evidence Certainty.
Total monetised benefits		None	Low
Non-monetised benefits		Medium	Low

Policy problem 2: Increasing penalties for migrant exploitation

What criteria will be used to compare options to the status quo?

63. The options will be assessed using the following criteria:

    a. **Effectiveness at deterring offending** ie to what extent will the option hold people to account, promote a sense of responsibility and create greater awareness that committing an offence under section 351 of the Act is serious criminal behaviour with strong penalties.

    b. **Fairness and reasonableness of penalties** ie are the penalties a proportionate response to the offending and consistent with penalties for similar offences in the Immigration Act and other legislation.

    c. **Administrative cost**. The analysis is focused on measuring the cost to Corrections related to enforcing custodial sentences (imprisonment or home detention) for people who are convicted of migrant exploitation offences. This is an existing cost, and the cost per individual will not change. The analysis is focused on changes to the aggregate cost as a result of more individuals being prosecuted.

       We have not included the other existing administrative costs of the offence / penalty system in the analysis, as they are not impacted by any of the options. This includes the cost to MBIE of investigating cases and taking prosecutions, the cost to the courts of hearing a case, and the cost to employers of defending the charges. As none of the options under consideration will change the number of cases that MBIE investigates or prosecutes (only the sentencing outcomes), there will be no impact on these costs.

What scope will options be considered within?

64. These options focus on legislative change. The analysis excludes options such as changing policy settings (reducing the number of people able to enter New Zealand who might then be exploited, and therefore making it more difficult for New Zealand employers to hire migrants). Such options would not be aligned with other objectives around increasing economic growth; or increasing resourcing for investigations and compliance resourcing (as noted at paragraph 46, there are no proposals to do this at this stage, which means that options such as increasing the number and frequency of proactive checks on accredited employers, so that offending can be identified more quickly, have been excluded).

What options are being considered?

Option one – Status Quo

65. This means that employers would continue to be penalised under current penalty provisions, with no change to sections 357(3) and 357(4) of the Act.

Option two – Increase maximum penalty to 10 years imprisonment

66. Amend the Act to combine the penalty provisions under section 357 into one (akin to penalties reflected in sections 355(1)-(2)) and increase the combined maximum liability from 7 years to 10 years imprisonment.

Option three – Increase maximum penalty to 14 years imprisonment

67. Amend the Act to combine the penalty provisions under section 357 into one (akin to penalties reflected in s355(1)-(2)) and increase the combined maximum liability from 7 years to 14 years imprisonment.

How do the options compare to the status quo/counterfactual?

	Option one – Status quo	Option two – Remove recklessness distinction and raise maximum sentence to 10 years	Option three - Remove recklessness distinction and raise maximum sentence to 14 years
Effectiveness at deterring offending	**0** The status quo may deter some people from offending, but the low level of prosecutions, coupled with relatively low sentences once found guilty,[15] compared with the high level of reported exploitation, indicates that it is not as effective as would be desirable.	**++** Option two is expected to serve as a much stronger deterrent against committing migrant exploitation, as it is expected to lead to custodial sentences. Even if the likelihood of being detected does not rise, the higher penalties should help to make more employers consider their choices more carefully.	**++** The analysis for options two and three are the same.
Fairness and reasonableness of penalties	**0** The current penalties do not appear to be commensurate with the harm caused (both financial, through charging illegal penalties and underpaying victims, and psychological, including the impact of being mistreated in a country where the individual is not a citizen, and whose vulnerability has been used against them). The maximum penalty of 7 years is the same as the following offences in the Crimes Act 1961: obtaining by deception (section 241), receiving stolen goods	**++** Option two better reflects both the harms caused and the seriousness of the exploitation offences. The offences committed under section 351(1) capture extreme forms of conduct undertaken to facilitate exploitation. For comparison, the maximum penalty for robbery is 10 years (section 34(2) Crimes Act 1961). An equivalent maximum sentence would be more proportional to the harm caused.	**+** There is an argument that some more extreme exploitation behaviours are equivalent to the kidnapping, blackmail, and demanding with intent offences at sections 209, 238 and 239 of the Crimes Act 1, which all have a maximum penalty of 14 years. However, there is a very high penalty (maximum of 20 years imprisonment) for the very serious offence of migrant trafficking (section 98D of the Crimes Act), where a person arranges or procures the

[15] For example, a franchise owner was sentenced to 10 months home detention for six migrant exploitation charges, including the requiring of premiums. Found here: Domino's pizza franchise owner gets home detention on migrant exploitation charges | RNZ News

	Option one – Status quo	Option two – Remove recklessness distinction and raise maximum sentence to 10 years	Option three - Remove recklessness distinction and raise maximum sentence to 14 years
	(section 247), or accessing a computer system for a dishonest purpose (section 249).		entry of a person into New Zealand, or the harbouring of a person in New Zealand, for the purpose of exploitation.
Administrative cost	**0** There are no differences associated with the status quo.	**-** On the basis that some people would be imprisoned, at an average cost of around $120,000 per annum, there would be a cost to the taxpayer.	**--** The same argument stands as for option two, but as sentences could be longer, the accumulated costs would be higher.
Overall assessment	**0**	**++**	**+**

Key

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
- -	much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

68. MBIE recommends option two as it best meets the criteria. Increasing penalties also supports the Minister's agreed scope for the Bill, and broader efforts to strengthen the integrity of the immigration system and enhance the effectiveness of immigration laws and enforcement regimes.

69. Option two would:

    a. Support statutory coherence, by ensuring consistency with penalty provisions for similar offences in other legislation.

    b. Strengthen the immigration system's integrity, by ensuring that penalties adequately reflect the seriousness of the offence.

    c. Deter individuals from committing migrant exploitation offences, thus potentially reducing the number of offences.

    d. Protect the national interest and meet public expectations by addressing serious forms of migrant exploitation, and that penalties are commensurate with the harm caused.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

70. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Nature of cost: Impact on offenders' families Type: ongoing Comment: A longer sentence can have significant social costs, including prolonged separation from families, which can affect the well-being of children and other dependents.	Low	High. MBIE understands the social and financial impact this may have on the offenders' families. However, this impact is not inappropriate, as illicit actors against the immigration system should be penalised appropriately for the harm caused, and the change is intended to dissuade others from causing harm. It is also best considered by judges when they are determining appropriate sentences.
	Nature of cost: Potential for over-penalisation Type: one-off and ongoing once penalised Comment: There may be a risk of disproportionately severe punishments for offences that may not warrant a decade-long sentence, which could lead to criticisms of the justice system. However, Judges have the ability to take mitigating factors into account when deciding sentences, which are in any case subject to appeal.	Medium	High. MBIE understands that penalties should be assessed depending on the moral culpability of offenders (ie the higher the blameworthiness, the higher the penalty). However, the 10-year proposal is commensurate with the harm caused, especially under section 351(1)(b), as hindering someone from using a phone or leaving the premises (which can be part of migrant exploitation) is serious and similar to forms of kidnapping (which is also liable to 10 years imprisonment). MBIE's ICI will investigate allegations that are made. The level of penalty will depend on the evidence provided to courts.

Affected groups	Comment	Impact	Evidence Certainty
	Nature of cost: Increased prison and home detention costs Type: ongoing Comment: Longer sentences could lead to higher costs for the prison system. This can exacerbate existing issues within the correctional system.	Medium	High. Corrections will incur financial costs if offenders are sentenced to prison. While MBIE is unable to predict the magnitude of these costs (which depend on the number of people sentenced to prison and the length of their sentences), previous experience of compliance activities leading to prosecutions indicates that the overall numbers incarcerated are not likely to represent more than a minimal increase to the total prison population.
Regulators	Nature of cost: Judicial and legal expenses Type: ongoing Comment: There could be increased costs associated with longer trials and more appeals, as higher penalties might encourage defendants to contest charges more vigorously.	Low	Medium. MBIE is aware of this potential risk, but the overall costs are likely to be marginal within the wider courts system.
Others (eg, wider govt, consumers, etc.) *For fiscal costs, both increased costs and loss of revenue could be relevant*	No additional cost: these groups will benefit from the proposed amendments, which enhance the existing legal frameworks and penalty provisions for prosecuting migrant exploitation.	Low	High. MBIE knows that the public will not face costs in relation to the preferred option.
Total monetised costs		Low	
Non-monetised costs		Low	

Affected groups	Comment	Impact	Evidence Certainty
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Nature of benefit: Victim justice Type: ongoing Comment: Higher penalties can be seen as a mechanism to achieve justice for victims of migrant exploitation, by imposing stricter consequences on perpetrators.	High	High. MBIE knows that higher sentencing can encourage both deterrence from future harms (meaning lower risk for vulnerable workers), and justice for victims.
	Nature of benefit: Enhanced deterrence Type: ongoing Comment: A higher maximum penalty can serve as a stronger deterrent against migrant exploitation offences, potentially reducing the incidence of this crime.	Medium	High. MBIE knows that higher sentencing can send a strong message that breaching the law and exploiting migrant workers is not tolerated and those committing this offence will be prosecuted appropriately. If it increases public awareness this may also mean a lower likelihood of employers exploiting workers (as migrants are more likely to report exploitation).
Regulators	Nature of benefit: Consistency and alignment with other offences and penalties Type: ongoing Comment: Aligning the penalties with those of similar serious offences can create a more consistent and fairer legal framework.	Medium	High. MBIE considers that the option chosen aligns well with relevant penalties elsewhere (provisions for theft and robbery in the Crimes Act 1961).
	Nature of benefit: Reflecting offence severity Type: ongoing Comment: Increasing the maximum penalty can better reflect the seriousness of the offences, ensuring that the punishment is proportional to the harm caused.	Low	Medium. MBIE is aware that increasing the maximum penalty can better reflect the seriousness of the offences committed.

Affected groups	Comment	Impact	Evidence Certainty
	Nature of benefit: Upholding international standards and reputation Type: ongoing Comment: Demonstrating a strong stance on migrant exploitation offences can enhance New Zealand's reputation internationally, particularly in terms of commitment to upholding immigration law and human rights. This also supports government's commitment to greater protections against migrant worker exploitation.	Medium	High. MBIE understands that option two will uphold New Zealand's international obligations, including International Labour Organization conventions and the United Nations Convention against Transnational Organized Crime.
Others (eg wider govt, consumers, etc.)		N/A	
Total monetised benefits		Medium	
Non-monetised benefits			

71. This section focuses on the costs and benefits of the preferred option (option two).

72. Given that most of the costs and benefits associated with option two relate to intangible factors such as improved worker wellbeing and enhanced enforcement measures, MBIE has not attempted to accurately describe the non-monetised costs and benefits of this option.

Section 3: Delivering an option

How will the proposal be implemented?

73. The changes will be implemented through the Immigration (Enhanced Risk Management) Amendment Bill, which is scheduled for introduction in October 2025, Confidential advice to Government .

74. The implementation of the changes will require minimal operational changes for MBIE. MBIE is developing an implementation plan for all proposals in the Bill. For the proposals in this RIS: the following implementation steps have been identified:

    - Update Immigration Instructions, Standard Operating Procedures, Practice Notes and template letters for MBIE's Operational Teams
    - Deliver training to Immigration Officers
    - Update monitoring and reporting requirements on prosecutions and infringements
    - Develop an external communications plan to ensure migrant communities, advocates, employers and industry representatives, and Licensed Immigration Advisers understand the changes and what they mean for them.

75. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process, to ensure readiness when the Bill is enacted.

76. The impacts on Corrections are business as usual, and include managing people sentenced to community service, home detention, or custodial sentences.

77. Officials are still confirming whether changes will be needed to MOJ's IT system for recording unpaid infringement fines (Electronic Filing of Infringements). If changes are needed, the implementation plan will ensure an appropriate lead-in time to allow IT work to be completed ahead of the changes coming into force. Further advice will also be given to relevant Ministers on funding options if necessary.

How will the proposal be monitored, evaluated, and reviewed?

78. MBIE's ICI function currently reports internally and to the Minister quarterly on the number of prosecutions and infringement notices issued, and sentencing outcomes. This process will continue once the proposals have been implemented.

79. MBIE also monitors and reports on migrant exploitation indicators. We will continue to monitor these, noting that from a practical perspective it will be difficult to determine to what extent any changes in the exploitation indicators could be attributed to the proposed changes. This is because a wide range of factors could influence these indicators (eg economic conditions, operational prioritisation changes, and other policy settings). We therefore do not propose a formal review/evaluation of the changes.

80. MBIE's costs in responding to challenges against infringement notices are third-party funded through the immigration levy. The regular immigration fee and levy review will provide an opportunity to review whether resourcing is sufficient for MBIE to respond to challenges against infringement notices without negatively impacting other priorities. The first opportunity for review after the changes are implemented will likely be in 2027.

81. If the volume of challenges is significantly higher than anticipated and becomes unmanageable within existing resourcing in the interim, further advice will be given on options to address this. These would likely include an out-of-cycle appropriation increase to allow for more staff, reprioritising existing investigations and compliance work, or limiting the number of notices that are issued, even when offending has been identified. Even if the number of notices being issued had to be limited to manage these impacts, this would still be significantly higher than the number of notices being issued currently. The change would therefore still represent a significant benefit over the status quo and does not undermine the case for the proposed option.

82. We have not identified any wider implementation risks that need to be monitored. It is important to note that neither of the changes are expected to result in any material increase in the number of reports of exploitation, nor would they result in any increase in the number of offences that MBIE is expected to investigate (existing triaging processes and resourcing will remain unchanged). Rather, they will result in stronger penalties for offences that will already be investigated. While existing resourcing levels and triaging processes mean that not all potential offences can be investigated to the point where an infringement notice or prosecution can be pursued, options to address this are being considered separately, and the situation will not be exacerbated in any way by the changes in this RIS. However, we note that any future increase in resourcing will be able to be used more effectively if these changes are progressed.

Appendix One: Comparisons of offences and penalties

Offence	Maximum penalty	Similarities to migrant exploitation
Migrant exploitation section 351 of the Immigration Act 2009	5 (reckless as to lawful ability to work) - 7 (knew not able to lawfully work) years imprisonment, and / or $100,000 fine	Note that migrant exploitation involves, at a minimum, at least one aspect of serious underpayment and exercising unlawful control over the worker.
Blackmail section 238 of the Crimes Act 1961	14 years imprisonment	The taking / retaining possession, or control of a person's belongings, or threatening a migrant worker / employee (eg threats to report them to INZ) to ensure they keep working is essentially blackmail.
Demanding with intent to steal section 239 of the Crimes Act 1961	14 years imprisonment	Similarly to blackmail, the use of threats to steal the compensation that a worker is entitled is similar to demanding with intent to steal.
Kidnapping section 209(b) of the Crimes Act 1961	14 years imprisonment	Preventing someone from being able to leave a premises or having access to a telephone could be considered as being detained without consent, similar to kidnapping.
Participation in organised criminal group section 98A of the Crimes Act 1961	10 years imprisonment	Migrant exploitation is often highly organised, including overseas linkages to recruiters, and careful management of the journeys to New Zealand and all interactions within New Zealand (such as with the accommodation providers, and people who transport the migrants) (See also section 310 of the Crimes Act, conspiring to commit offence).
Robbery section 234(2) of the Crimes Act 1961	10 years imprisonment	Robbery is an aggravated form of theft, accompanied by violence or threats of violence, used to extort the stolen property, or to prevent or overcome resistance to its being stolen. This could be considered similar to wage theft, including charging premiums, accompanied by threats or other attempts to prevent the employee leaving employment or enforcing their rights.

Offence	Maximum penalty	Similarities to migrant exploitation
Failure to protect child or vulnerable adult section 195A of the Crimes Act 1961	10 years imprisonment	Migrants who are exploited are generally vulnerable compared with people who are lawfully able to work (and in particular compared with New Zealand citizens and residents). Employment relationships could be expected to have enhanced pastoral care responsibilities for people who may have limited English and are unfamiliar with New Zealand.
Theft Section 233(b) of the Crimes Ac t1961	7 years imprisonment, where the value of the property stolen is more than $1,000	As for robbery above (that is, Theft is similar to robbery, without aggravating factors such as violence).
Criminal breach of trust section 229 of the Crimes Act 1961	7 years imprisonment	Exploitation by its nature involves a breach of trust between the employer and the employee.
Punishment of obtaining by deception or causing loss by deception section 241 of the Crimes Act 1961	7 years imprisonment	As above.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: New immigration infringement offences

Decision sought	Analysis produced for the purpose of informing final Cabinet policy decisions
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Immigration
Date finalised	5 February 2026

This RIS assesses two narrowly targeted adjustments to the *Immigration Act 2009* (the Act) infringement toolkit, by introducing new infringements related to two existing offences:

(i) providing false or misleading[1] information (currently s.342 – punishable by a court-ordered fine and / or imprisonment), and

(ii) failing to provide employment-related documents when requested (currently s.277 – technically punishable through a generic penalty of a court-ordered fine, but with, in effect, no penalty).

The changes do not revisit broader visa policy settings or compliance resourcing. They close identifiable enforcement gaps by providing new proportionate and efficient responses below the threshold for criminal prosecution.

Summary: Problem definition and options

What is the policy problem?

Employers who victimise migrants not only cause harm to their victims but also gain unfair advantages over employers who comply with their legislative obligations. Employment and immigration legislation establish a range of offences which are intended to deter employers from exploiting migrant workers. However, rates of reported exploitation are unacceptably high, with more than 2,700 reports of exploitation to the Ministry of Business, Innovation and Employment (MBIE) in 2024/25[2].

The sanctions available to immigration compliance staff for behaviours that enable exploitation, which include lower-level actions such as the withholding of employment-related information from those compliance staff, are not adequate to deter some bad actors.

Separately, all people who submit information to the immigration system are expected to provide full and honest information. The system depends on the provision of complete and correct information to uphold its integrity in all respects (from labour market testing, to

[1] The exact wording is under discussion with PCO – see relevant discussion under Consultation on page 4.

[2] An increase from 807 reports in the 2022/23 financial year.

working conditions and other requirements on employers). However, some employers seek to mislead Immigration New Zealand (INZ) or do not take care to ensure that the information they provide is accurate and complete. There are few tools to address this.

Officials consider that, among other changes being made to the Act, there are opportunities to adjust the penalties for two existing offences to enable more meaningful enforcement.

- With regard to the existing offence at s.342, related to providing false or misleading information, the current penalties (fine and / or imprisonment) are appropriate for serious dishonesty but are disproportionate for minor breaches. Prosecutions are costly and rare, leaving an enforcement gap.
- The existing offence at s.277, related to failure to provide documents, is technically covered by the offence at s.344 (Obstruction or failing to meet requirements), which is subject to a maximum fine of $5,000 under the generic penalty at s.355(5). In practice this offending never meets the threshold for formal charges. This means that employers can ignore document requests without consequence, which undermines investigations and compliance monitoring.

The lack of proportionate enforcement tools for these two offences means there is inadequate deterrence for non-compliance, limiting MBIE's ability to efficiently maintain integrity in the immigration system.

What is the policy objective?

The objective is to address gaps in current sanctions against employers through deploying proportionate tools to encourage employers to provide complete and correct information whenever required or requested. This could be in applications for employer accreditation or for visas, or during post-application monitoring and review activities, compliance activity, or formal investigations.

In the longer term, this is intended to preserve the benefits of the current high-trust employer accreditation model, including through deterring employers from seeking to gain financially through the exploitation of migrant workers.

What policy options have been considered, including any alternatives to regulation?
Officials have considered the following options:

For the proposed change relating to s.342 (provision of false or misleading information)

1. Status quo, i.e. no change. This means that providing false or misleading information remains chargeable in court if serious, but lower-level concealment of relevant facts or provision of incorrect or incomplete material has no formal consequences (although the employer's application for accreditation or to support a work visa application may not succeed)
2. Introducing an infringement penalty for the provision of incorrect or incomplete information, that may be issued at the discretion of Immigration Compliance and Investigations (ICI) officers where there are reasonable grounds to believe an offence has occurred, while retaining the court pathway for serious or knowing cases (**recommended option**).

For the proposed change relating to s.277 (failure to provide documents when requested)

1. Status quo, i.e. no change. While the offence of obstruction or failing to meet requirements is chargeable in court, in practice failing to provide employment

documents when requested would on its own never warrant criminal charges, so in effect it has no penalty

2. Introducing a new (discretionary) infringement penalty issued by ICI, for the offence of failure to produce documents where there are reasonable grounds to believe an offence has occurred, complementing the existing s.359A infringement offences (**recommended option**)
3. Making the failure to produce documents punishable through a specific (higher) fine and / or imprisonment (following charging in court).

We also considered two non-regulatory options.

The first is using the existing option of **formally advising employers** (via a letter) that they are believed to have committed the relevant offence, and that this may be taken into account in future decisions regarding (for example) applications for employer accreditation or work visas. This is part of the regulatory graduated response framework (so is a status quo power), but is not generally employed as it has not been found to produce changes in behaviour.

The second is **increasing proactive checks on employers** through (in the case of applications) verifying up to 100 per cent of information provided (through third-party checks, and a requirement that original (paper) documents be submitted); and (in the case of compliance visits) undertaking more visits to work sites and employers, to identify offending earlier and deter employers from offending.

However, significantly increasing proactive checks was discounted, because Cabinet has explicitly directed a high-trust design for some categories of application, to enhance the speed of decision making. Adding more checks would have significant resourcing implications, and negative impacts on application timeliness. It would also not directly address or deter the specific offences (provision of false or misleading information, or failure to produce documents when requested).

What consultation has been undertaken?

Key stakeholders (agreed to by the Minister of Immigration) have been consulted on this proposal, initially during the policy development phase and then on an exposure draft of the *Immigration (Enhanced Risk Management) Amendment Bill* (the Bill). These stakeholders included:

- government agencies (including MBIE's ICI, Risk and Verification (R&V) and Legal teams, and the Ministry of Justice's (MOJ's) Courts Systems and Offences and Penalties teams
- the Immigration and Protection Tribunal (IPT), the Office of the Ombudsman, the Chief Victims Advisor, and the Legislation Design and Advisory Committee (LDAC)
- representatives of impacted parties (immigration lawyers, advisers, Business NZ, and the Employer and Manufacturers Association).

Where explicit feedback was received, it was generally either in favour, or reserving judgement, with the major exception of LDAC. No-one objected to the introduction of a penalty for the non-production of documents.

The MoJ, the New Zealand Law Association, and the Chief Victims Advisor supported both proposals, although the MoJ subsequently raised concerns around the use of "false or misleading" for an offence with no mens rea element. Business NZ specifically advocated for employers being required to produce documents within a specific timeframe.

The New Zealand Law Society supported the new infringements proposal in principle, noting the need for proportionality and robust procedural safeguards with regard to establishing a fine for the provision of false or misleading information. An Immigration Focus Group representative noted it was hard to give unequivocal support for that proposal in the absence of operationalisation details, particularly around the thresholds for triggering fines.

LDAC raised concerns around the false or misleading information proposal in four areas: that dishonesty is too serious for an infringement offence; that revoking employer accreditation (permission to employ foreign workers under the Accredited Employer Work Visa category) may be a more appropriate response; that determining falsity is subjective, and therefore unsuitable for an infringement offence; and that the provision of false or misleading information must always have a mens rea (intent) element. Officials consider that there are appropriate responses to mitigate all of these concerns.

In response to the concerns raised in consultation, MBIE will:

(i) address the mens rea issue by adjusting the terminology from "false or misleading" to wording like [TBC] "incorrect and / or incomplete" for the infringement offence

(ii) publish operational rules and guidelines clarifying the evidence test for falsity and giving typical threshold examples;

(iii) standardise the wording on discretion and safeguards in communications to employers, including in decision letters; and

(iv) report publicly on stand-down outcomes, alongside infringement volumes.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?
Yes.

Summary: Minister's preferred option in the Cabinet paper

Policy problem:

The available sanctions relating to false or misleading information are not deterring some employers from attempting to mislead immigration officials; and the lack of sanctions for not producing employment-related information means some uncooperative employers can slow down or prevent investigations concerning their compliance with immigration law.

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The time and resource to issue an infringement notice once offending has been identified is relatively low, so issuing more notices as a result of the change can be absorbed within current resourcing levels.

However, responding when an employer wishes to challenge a notice can be more resource intensive. Currently an internal review takes about an hour, with appeals to the district court requiring a minimum of 20 hours of work. MBIE anticipates a small increase in challenges; potentially 60-80 per annum for the first new offence and three to four more per annum for the second, which are likely to all or virtually all be internal reviews. This could be absorbed within existing resourcing.

However, the level of increase in infringement notices is highly uncertain. If the volumes, or rates of challenge to the district court, are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either approve additional resource (which would be funded through the immigration levy), or constrain the number of notices issued.

As MBIE does not expect any measurable increase in the number of cases being appealed to the District Court, it therefore does not expect additional costs for the court system.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The key benefits of the proposal are a reduction in false, misleading, incomplete or incorrect information being provided to MBIE to support applications, and (in interactions with compliance staff) enhanced cooperation in terms of information accuracy, and the provision of information to support investigations. This is expected to over time help to reduce exploitative behaviours.

This first benefit will improve timeliness and resource allocation across the immigration system (which is third-party funded and, with regard to accredited employers, a high-trust model). The second benefit will similarly improve the efficiency of compliance staff's work. Longer term benefit will be felt by the migrant workers, and by compliant employers (whose businesses can be undercut by employers using exploitative practices), New Zealand workers (whose terms and conditions are not undermined by the anti-competitive behaviours of exploitive employers), and the wider New Zealand economy, including because New Zealand is a more attractive destination both to workers, if they can be confident their rights will be upheld, and to investment, if New Zealand continues to clearly uphold international human rights norms.

However, as these proposals aim to slightly strengthen a complex regulatory system, it is unlikely that their benefits / contribution to those outcomes will be able to be formally measured.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

MBIE considers that the benefits outweigh the costs, which are marginal and have sufficient mitigations.

The main risk is that the additional infringement notices issued lead to employers challenging the notices, and that MBIE is not resourced to respond appropriately. This will be addressed in the first instance by ensuring that the infringement notices issued are highly defensible. Further decisions about resourcing and prioritisation could be taken if the number of employers challenging notices became unmanageable.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?
The changes will be implemented following the passage of the Bill, which is anticipated to be some time in 2026. The changes will require minimal operational changes for MBIE. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process to ensure readiness when the Bill is enacted.

Implementation will include updating internal guidance and procedures, delivering training, developing new monitoring procedures and adjusting reporting, and creating and delivering an external communications plan. The development of guidelines to staff to support their decision making, will include establishing the threshold (including evidence tests) for issuing an infringement notice. Appropriate communications about the changes are likely to help to contribute to the benefits of, and stemming from, improved employer compliance.

Limitations and Constraints on Analysis

We do not have a robust evidence base for how many potential infringement offences are not currently penalised, as ICI does not capture instances when infringement notices cannot be issued (including the cases where documents were requested but not provided).

We do have some indicative figures relating to employer applications that appear to have included deliberate false or misleading information. We have based estimates on the cases we were able to identify, but expect that this is a significant underestimate. We are also unable to estimate the impact of these changes on the proportion of infringement notices that are challenged.

It is not possible to determine a causal link between these policy settings and migrant exploitation indicators, as these are influenced by a wide range of factors (economic conditions and other policy settings). It is not therefore possible to provide concrete estimates of the amount of harm reduction we expect as a result of the proposals. We have noted that we expect the proposal to reduce the amount of exploitation and associated harm.

I have read the Regulatory Impact Statement, and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager signature:
Stacey O'Dowd
Manager, Immigration (Border and Funding) Policy

5 / 02 / 2026

Quality Assurance Statement	***[Note this isn't included in the four-page limit]***
Reviewing Agency: MBIE	**QA rating:** Meets
Panel Comment: The Ministry of Business, Innovation and Employment's Regulatory Impact Assessment Review Panel has evaluated the Regulatory Impact Statement "New immigration infringement offences" and considers that it **meets** the quality assurance criteria. The panel is satisfied with the problem definition, options identified, and analysis undertaken, and consider the information is sufficient to enable decisions.	

Section 1: Diagnosing the policy problems

What is the context behind the policy problems and how is the status quo expected to develop?

Employers of migrants are required to comply with both immigration and employment law

1. Migrants can only work in New Zealand if their visa permits it. As at June 2025, around 169,000 temporary migrants (7% of all employees) were working in New Zealand.[3] Some people who are in New Zealand unlawfully (overstayers[4]), or who are in New Zealand lawfully but without work rights (such as visitors), work illegally to support themselves.

2. Employers must comply with the Act by only hiring migrants who have a visa that allows them to work. Some visas allow work for any employer in almost any role: working holiday makers, partners of New Zealanders, and the partners of people who hold Accredited Employer Work Visa (AEWV)[5] work visas are granted open work visas. Most international students have student visas with open work rights. AEWV work visa conditions may spell out the holder's role, employer, location, pay, and / or hours, to manage labour market risks (in particular, to ensure New Zealanders are not displaced and their employers are not undercut), and reduce the risk of migrant exploitation.

3. All employers in New Zealand must comply with standard employment law requirements (such as minimum wage, holiday and sick leave entitlements), and must not unlawfully deduct wages or charge employment premiums. Employers of migrants must not withhold passports, limit movement or communication, or prevent their employees from leaving or changing employment. Most employers comply with their immigration and employment obligations.

Some employers' non-compliance with the law causes harm or undermines system integrity

4. Exploitation is hard to measure[6], but indicators show persistent issues among a minority of employers. The number of reports of exploitation to ICI increased from 807 reports in the 2022/23 financial year, to more than 2,700 in 2024/25.[7] Survey data shows continued underpayment and excessive hours for some migrant workers.[8] Those workers' employers can compete unfairly with legitimate employers who meet their obligations.

5. Temporary migrant workers are at greater risk of exploitation than New Zealand workers. Many migrants take on significant debt to come to New Zealand, which increases their

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[3] Migrant Employment Data (based on employment and immigration data). This includes both work and student visa holders, as many student visa holders have work conditions on their visas.

[4] Estimated at around 21,000 in July 2025, of whom around 16,000 were of working age Immigration New Zealand releases 2025 estimate of number of people who have overstayed their visa :: Immigration New Zealand

[5] The AEWV category is the major category under which foreigners are granted temporary visas to fill vacancies where a suitable New Zealander is not available. Employers must show they meet minimum quality standards to be accredited, then show they have a genuine need for a foreign worker or workers. The Recognised Seasonal Employer category and people who hold Work to Residence visas must also work for specified employers in specified roles.

[6] Migrant exploitation | Employment New Zealand lists reasons migrants may be reluctant to report.

[7] It is unclear how much of the increase in reporting rates reflected an actual increase in the rate of exploitation versus an increase in awareness of, and confidence in, reporting mechanisms. For example, an 0800 number for reporting exploitation and a visa option for exploited migrants (Migrant Exploitation Protection Visa) have been established in recent years, which have likely contributed to the increase in reports of exploitation. However, officials consider that much migrant exploitation is never reported.

[8] Employer and worker monitor - 2025

vulnerability. Even migrants with open work rights can face exploitation, such as international students who struggle to secure work and may accept unlawful conditions. Analysis done in the Temporary Migrant Worker Exploitation Review in 2020 indicated that 64 per cent of the Labour Inspectorate's investigations in 2018/19 involved migrant workers, although only 7 per cent of jobs were held by migrant workers.[9]

6. Some employers that break the law do it deliberately, especially if they consider that they are unlikely to be detected or that, if detected, any penalties will be negligible. Addressing non-compliance by employers of migrant workers is a priority for the Government. The National Party and New Zealand First Coalition Agreement makes a commitment to "enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences".

The immigration system depends on accurate and complete information being provided

7. The immigration system (particularly the AEWV) relies on trust and accurate employer declarations. However, some employers may not take sufficient care to ensure that the information they submit is correct, or may deliberately provide incorrect or incomplete information in an application or in response to a request.

8. This undermines the integrity of the system. For example, in the application process an employer may falsely claim to have checked whether a New Zealander is available for the role with the Ministry of Social Development (MSD). This means a local worker who receives income support may have been deprived of an employment opportunity.

9. Employers' provision of complete and correct information is essential for effective labour market protections, oversight of working conditions, and maintaining overall system trust. The system therefore needs incentives that encourage employers to be truthful.

There are a range of offences and penalties for employers who break the law, including other changes proposed in the Bill

10. There are already a range of penalties, across both the immigration and employment law systems, to deter or punish non-compliance by employers. The proposed Bill will, if passed by Parliament, increase the penalties for people found guilty in court of migrant exploitation. Table One below summarises the current and intended future states.

Table One: Hierarchy of offences and penalties

Regime	Offence (illustrative)	Statutory reference	Penalty today	Proposed change (if any)	Collateral consequence
Criminal	Providing false or misleading information (serious cases)	Immigration Act s.342; penalties s.355	Up to 7 years' imprisonment and/or up to $100k fine	**No change** (retained for serious cases)	May be banned Stand-down list[10]

[9] Temporary migrant worker exploitation review – final proposals

[10] The stand-down list only prevents employers from supporting visa applications. It does not prevent them from employing temporary migrants with open work conditions, such as working holiday makers or students. The stand-down lists settings are published in the Immigration Operational Manual – see Appendix 10 - Rules for non-compliant employers (employment standards-related non-compliance) and Appendix 18 – Rules for non-compliant employers (immigration non-compliance).

Regime	Offence (illustrative)	Statutory reference	Penalty today	Proposed change (if any)	Collateral consequence
Infringement (current)	Employing someone not entitled / outside visa conditions / refusing to produce wage records	s.359A(1)(a)–(c)	$1k–$3k fee per employee per offence If fee is not paid, the fine is double the fee	N/A	Stand-down list
Infringement (proposed)	**Providing false/misleading information (lower-level)**	**s.342 (new infringement)**	-	**Add infringement (fine)** *[As per current infringement penalties]*	Stand-down list
Infringement (proposed)	**Failure to provide documents when requested**	**s.359A (new infringement – relating to s.277 offence)**	- (generic s.355(5) fine only available if convicted)	**Add infringement (fine)** *[As per current infringement penalties]*	Stand-down list

11. Lower-level breaches of employment standards (for migrant and New Zealand employees) are enforced through civil penalties issued by the Labour Inspectorate, Employment Relations Authority, and Employment Court. Employers penalised for these breaches are placed on a public stand-down list and cannot support AEWV applications for a set period.

12. Since April 2024, lower-level immigration breaches have been enforced through a new infringement regime set out at s.359A of the Act.[11] The infringement notice regime was introduced to help address the large number of cases where offending is serious but does not meet the threshold for prosecution. It covers:

    - allowing a foreign national who does not have work rights to work
    - employing a migrant contrary to their visa conditions (e.g. not in the specified role or region, or for a lower pay rate)
    - failing to provide requested employment documents to an immigration officer within 10 working days

13. An employer who has committed an infringement offence can be issued an infringement fee of between $1,000 and $3,000[12] per worker per offence. Employers who have been issued with an immigration infringement notice are also placed on the public stand-down list and prevented from supporting visa applications for a set period. Eighty-six notices were issued in the first year of the scheme.

There are penalties for serious offending

14. Serious employer offending is covered by criminal offences in the Act, including the specific offence of migrant exploitation (s.351). Exploitation includes serious breaches of

[11] It was introduced by the *Worker Protection (Migrants and Other Employees) Act 2023*

[12] If the fee is not paid and is referred to the Ministry of Justice, the fine is twice the relevant fee – see s.359A(2)(b)

minimum standards - such as requiring a worker to make payments back to the employer to maintain their employment, or actions such as passport confiscation to prevent a worker from leaving. Penalties include up to five or seven years' imprisonment and fines of up to $100,000.[13] Convicted employers are permanently barred from supporting visa applications.

15. Due to the significant costs involved, only a small number of criminal prosecutions are taken for serious offending –around one to two per year for s.351 offences,[14] with similar numbers for other employer offences (e.g. s.350 – knowingly employing someone who is not entitled to work in the role).

There is no effective penalty for some low-level offending

16. However, significant gaps remain. Providing false, misleading, incorrect or incomplete information in an immigration application generally results only in the application being declined, even when deception is deliberate. These employers are not added to the stand-down list because they have not received a formal penalty. Similarly, failing to provide employment documents currently carries no meaningful consequence unless the threshold for a criminal obstruction charge is met, which is rarely the case.

What is the policy problem or opportunity?

17. As noted above, the current immigration compliance regime was strengthened relatively recently through the addition of the immigration infringement regime in early 2024. However, the operation of the infringement regime has identified gaps.

18. Specifically, the available sanctions relating to false or misleading information do not appear to be deterring some employers from either attempting to mislead immigration officials, or from taking sufficient care to ensure that the information they submit is correct. The lack of sanctions for not producing employment-related information mean uncooperative employers can slow down or prevent investigations into their compliance with immigration law.

Example 1: Compliance investigation

An investigation began in May 2025 following a complaint of migrant exploitation by a migrant holding an AEWV, who had had worked at a franchise restaurant since January 2024.

A Section 275A notice required the production of time and wage records. Clocking data appeared to have been altered, with official records showing zero hours where receipts retained by the worker indicated that shifts had been worked. This suggested an offence under s.342(1)(b) (false or misleading information) and breaches of visa-condition pay requirements (wages of at least $28.20 per hour were required to be paid for each hour worked).

Although the employer's accreditation was suspended, prosecution was not pursued under both the Solicitor-General guidelines (Public Interest Test) and the subjective assessment of whether the offending was deemed "serious" under s.351(1)(a)(ii) – (Exploitation of a

[13] The penalties are set out at s.357 of the Act. An individual employer can be imprisoned AND fined; a company can only be fined. Another proposal for the current Bill will see the maximum length of imprisonment rise to ten years, and will remove the "reckless" versus "knowledge" distinction.

[14] In 2024/25 to the end of March 2025, two people in two cases had been found guilty of s.351 (migrant exploitation) offences, alongside related offences, (variously aiding and abetting a person to remain in New Zealand unlawfully, seeking to corrupt witnesses, and otherwise attempting to obstruct justice). Both were sentenced to home detention and ordered to pay reparations (employment premiums / underpaid wages), totalling $87,062 between them.

temporary worker), as the matter involved only one employee, and arrears of less than $8,000. The decision to not prosecute was not due to lack of evidence.

Example 2: Risk and Verification checks

An employer provided false information in a Job Check application by answering "No" to whether the role involved planting, maintaining, harvesting, or packing crops in the horticulture or viticulture industries. However, post-accreditation checks revealed supervisors were involved in picking duties, while job descriptions and organisational charts had been manipulated to create the impression supervisors were not engaged in horticultural tasks.

In a similar case, another employer answered "No" to the same horticulture-related question, although they were seeking people to fill roles performing these tasks. The checks found that there had been a misleading portrayal of workers as supervisors / managers alongside wider role inflation, that the employer had withheld information about prior connections with prospective employees, and identified concerns with relationships and their visibility (a former employee was the brother-in-law of a director, and the newly appointed Orchard Manager was the sister-in-law of a director, although the employer had also answered "No" to a direct question about previous connections.) The role misrepresentation, combined with the hidden familial ties, raised questions around integrity and transparency.

19. There is an opportunity to introduce two new infringement offences for two existing employer-related breaches under the Act, to strengthen the immigration compliance regime. The specific proposals are to:

    (Policy Proposal 1) introduce an infringement offence for providing inaccurate[15] information – this complements s.342(1) of the Act (provision of false or misleading information, which is currently punishable for serious and knowing breaches, under s.355, by imprisonment for a term not exceeding 7 years, a fine not exceeding $100,000 or both)

    (Policy Proposal 2) introduce an infringement offence for failing to provide employment-related documents – this relates to s.277 of the Act (it is currently an offence, but has no meaningful penalty: there is a more serious, so chargeable, equivalent offence of obstruction at s.244 of the Act). There is an equivalent offence in s.229 of the Employment Relations Act, which is defined as an infringement offence (and therefore subject to an infringement fee) in s.235A of that Act.

20. The proposals aim to address enforcement gaps and improve compliance through enhancing the existing graduated compliance framework with proportionate and efficient tools. In addition to any infringement sanction, as noted above, employers who have been issued with an immigration infringement notice will be placed on a public stand-down list and prevented from supporting visa applications under the AEWV for a set period. These are also important deterrents (although less so for employers who only employ migrants with open work rights).

[15] As noted on page 1, the exact wording is under discussion with PCO. To remove any mens rea element, the infringement may relate to "incorrect and / or incomplete" information.

Affected stakeholders and their views

21. We identified the following affected groups, and the nature of their interest:

    a. Regulated groups:

    - Employers of migrant workers (businesses)
    - Migrant workers (particularly those impacted by migrant exploitation and unlawful employment practices).

    b. Regulators:

    - MBIE, including Immigration Compliance and Investigations (ICI), and the Labour Inspectorate, who collaborate with ICI on migrant exploitation cases.
    - Ministry of Justice (MoJ), which has a regulatory oversight function and advises on infringement regimes/penalties.

22. Migrant exploitation and unlawful employment practices in relation to migrants continue to be a high-profile issue, and advocates continue to be vocal in calling for stronger penalties for non-compliant employers. Law-abiding employers have also frequently expressed frustration to officials that more is not being done to act against non-compliant employers, and to even the playing field. When MBIE consulted on migrant exploitation policies in 2020, the 167 submissions received (including about 60 per cent from migrants or migrant advocates, and about 30 per cent from employers or industry organisations) indicated a high-level of support for action against exploitation.[16]

23. Stakeholders' feedback (and MBIE's response) is set out from paragraph 29 below.

What objectives are sought in relation to the policy problem?

24. The objectives are to enable the constrained ICI resources to be deployed to make it more likely that exploitative or unlawful behaviour will be meaningfully sanctioned, and, in the longer term, deter employers from seeking to gain financially through non-compliance with New Zealand's employment legislation; and to discourage employers from providing false or misleading information, or not providing relevant information, when making applications for accreditation or work visas.

25. These need to be balanced against ensuring that penalties are fair and reasonable, including that they are proportionate to the seriousness of the offending, and that employers have sufficient opportunity to mount a defence.

What consultation has been undertaken?

26. As noted above, the policy development process took into account previous research and surveys, including the Temporary Migrant Worker Exploitation Review in 2020 and the 2025 Employment Monitor, as well as the experience of immigration staff (ICI and R&V) since the current infringement regime came into effect.

27. Key stakeholders (agreed to by the Minister of Immigration) have been consulted on this proposal, through consultation on the proposed Bill, both during the policy development phase and on an exposure draft of the Bill. These included:

[16] See Appendix Two of Cabinet paper: Temporary migrant worker exploitation review – final proposals.

- government agencies (including MBIE's ICI, R&V, and Legal teams, and the MOJ's Courts Systems and Offences and Penalties teams
- independent bodies (the Immigration and Protection Tribunal (IPT), the Office of the Ombudsman, the Chief Victims Advisor, and the Legislative Design Advisory Committee (LDAC)
- representatives of impacted parties (the New Zealand Law Society's Immigration and Refugee Committee and, separately, the INZ Focus Group, which includes employers, migrant groups, licenced immigration advisers and immigration lawyers, and Business NZ and the Employer and Manufacturers Association).

28. No-one objected to the introduction of a penalty for the non-production of documents.

29. Where explicit feedback was provided (i.e. concerning sanctions for false or misleading information), it was generally in favour (at least in principle), with LDAC initially being the only exception.

30. The New Zealand Law Association, and the Chief Victims Advisor supported both proposals. Business NZ specifically advocated for employers being required to produce documents within a specific timeframe. Ministry of Justice initially supported both proposals, but provided further feedback at the drafting stage, regarding whether the term "false or misleading" implied mens rea and was therefore inappropriate for a strict liability offence. (MBIE agreed, and this was taken into account as drafting progressed.)

31. The New Zealand Law Society supported the new infringements proposal in principle, noting the need for proportionality and robust procedural safeguards with regard to establishing a fine for the provision of false or misleading information.

32. Similarly, comment from an Immigration Focus Group representative noted it was hard to give unequivocal support for that proposal in the absence of operationalisation details, particularly around thresholds for triggering fines.

33. LDAC raised concerns around the false or misleading information proposal in four areas: that dishonesty is too serious for an infringement offence; that revoking employer accreditation (permission to employ foreign workers under the AEWV category) may be a more appropriate response; that determining falsity is subjective, and therefore unsuitable for an infringement offence; and that the provision of false or misleading information must always have a mens rea (intent) element. Officials consider that there are appropriate responses to all of these concerns (see further detail in Table Two below).

Table Two: LDAC feedback and MBIE responses

LDAC feedback	**Response**
The offending is too serious to be dealt with by an infringement offence (particularly because it involves dishonesty), and there's no precedent in any other infringement offence regime for including false and misleading information. (It follows that MBIE should take criminal prosecutions instead.)	Providing false or misleading information is relatively less serious than the existing infringement offences at s.359A(1)(a) and (b), which also contain an element of dishonesty, e.g. hiring someone without a work visa, or underpaying people is considerably more serious than providing INZ the wrong information about your business's profit/loss over the last 12 months.

LDAC feedback	Response
	Providing false or misleading information is instead equivalent in seriousness to the s.359A(1)(c) offence, which is about failing to provide employment records when requested. If an employer has committed an offence, and wishes to conceal it, they can either do this by simply refusing to provide the documentation, or by providing falsified documentation. On this basis, providing false or misleading information is the flipside of withholding the information, and the two offences should be treated the same, as withholding information often involves dishonesty. Taking criminal prosecutions for these cases is unrealistic – the volume would be unmanageable (100+ cases per annum), and providing false or misleading information, or not providing relevant information, on an accreditation application would not be considered serious enough to meet the public interest test for a prosecution.
MBIE should consider whether revoking accreditation is a more appropriate tool than an infringement notice, if prosecution is not an option.	MBIE already does this. There are however drawbacks: 1. Not all employers are accredited. If they do not have accreditation, or any plan to get accreditation (e.g. only hiring migrants who hold open work visas), they have no consequences at all 2. Just revoking accreditation is a less severe penalty. If an employer is issued with an infringement notice, their accreditation (if they have it) is revoked AND they are fined, have their offending published, and are stood down for a period of at least six months. 3. MBIE continues to see high rates of false and misleading information being provided even though accreditation is being revoked, which suggests it is not sufficiently effective as a tool on its own.
Whether or not information is false or misleading is too subjective for an infringement offence.	It may not be more subjective than the existing s.359A(1)(a) and (b) offences. e.g. whether or not someone is working in a role outside of their visa conditions can be somewhat subjective. In addition, for the most part, MBIE will be able to clearly and factually demonstrate that the information is false, e.g. employer declares they advertised a role with MSD, and then MSD

LDAC feedback	Response
	confirms that the employer did not even contact them. The wording of the offence is however likely to be adjusted to remove implications of mens rea or subjectivity (to something like "incorrect and / or incomplete").
The only difference between the infringement offence and the criminal offence at s.342 would be that the criminal offence would require us to prove that the employer knew that the information was false or misleading (i.e. mens rea). LDAC considers that mens rea is not sufficient differentiation between criminal and infringement offences. LDAC also states that there is an argument that information being false or misleading always requires some element of mens rea.	MBIE notes that this is technically no different from the existing s.359A(1)(a) offence, which is a direct copy of the s.350 offence, but minus the mens rea element. As noted above, the wording of the offence is planned to be amended from "false or misleading" to something like "incorrect and / or incomplete", which will avoid any implicit mens rea element.

34. While MBIE did not undertake wider or public consultation during the development of the policy and the exposure Bill, MBIE received a broad range of perspectives through the targeted consultation process, which have been factored into the analysis. The Select Committee stage will also provide an opportunity for members of the public to provide submissions on the Bill, including these proposals.

Section 2: Assessing options to address the policy problem

Policy problem:

The available sanctions relating to false or misleading information are not deterring some employers from attempting to mislead immigration officials; and the lack of sanctions for not producing employment-related information means some uncooperative employers can slow down or prevent investigations concerning their compliance with immigration law

What criteria will be used to compare options to the status quo?

35. The options will be assessed using the following criteria, which align with the objectives (*deploy proportionate tools to discourage employers from providing false or misleading information, or not providing relevant information, when making applications for accreditation or work visas, and enable constrained immigration investigation and compliance resources to be deployed to make it more likely that exploitative behaviour will be meaningfully sanctioned*):

    a. **Effectiveness at deterring offending** (likelihood that non-compliance attracts a proportionate sanction and stand-down, thereby improving compliance) - i.e. how likely it is that an employer will be punished for their offending and therefore how motivated they will be to comply

    b. **Fairness and reasonableness of penalties** (strict-liability setting with review / appeal pathways and issuance within time limit) - i.e. whether employers will have an appropriate opportunity to mount a defence and be protected from historic claims

    c. **Administrative cost** to the regulator (funded by immigration system users). This analysis is focused on measuring:

        - the (new) cost to MBIE of issuing infringement notices (noting that this will be subject to broader infringements resource prioritisation)
        - the cost to employers of challenging an infringement notice that they believe has been incorrectly issued (this can be done by applying for an internal review to MBIE, or challenging the notice in the District Court)
        - the cost to MBIE and the courts of responding to those challenges. These are existing costs, and the cost per challenge will not change. The analysis is focused on changes to the aggregate cost as a result of more infringement notices being issued

    With regard to the new s.359A infringement offence (related to s.342 offending referring to the provision of “false or misleading” (or “incorrect and / or incomplete”) information), we have not included any other existing administrative costs of the employer infringement notice scheme in the analysis, as it is not materially impacted by any of the options. This includes:

        - The cost of investigating the offences that lead to the infringements, as none of the proposed options will change the number of investigations MBIE undertakes – only the likely compliance / enforcement outcomes of those investigations

- The cost of completing the paperwork to issue the infringement notice. We do not believe this cost is material, as all the information required for the paperwork is already being written up, for Potentially Prejudicial Information (PPI) letters with regard to applications, or in file notes with regard to compliance investigations, and can be copied over.

It is however likely that more administrative resource will be required with regard to s.277 offending (failure to produce documents when requested). That is because the related power is seldom invoked at present, as there is no penalty for non-compliance. There may therefore be some additional administrative costs. These would relate to:

- investigating the offence(s) that lead to the infringements, noting that this is very likely to be part of a wider investigation, or post-decision monitoring and review activity, so a marginal cost
- the cost of completing the paperwork to issue the infringement notice (which is new, as few cases are currently captured in file notes). Again however this cost is likely to be marginal, as it will be undertaken within the scope of wider compliance investigations, or post-decision monitoring and review activities.

What scope will options be considered within?

36. We have only considered options that can be delivered within existing resourcing and prioritisations, as these proposals are independent of any future decisions around investigations and compliance (or monitoring and review) resourcing. We have also not considered options that would involve changing policy settings, such as temporary work visa settings (reducing the number of people able to enter New Zealand who might then be exploited, or enabling AEWV workers to change employers more easily) as they would be likely to impact on the achievement of other objectives of work policy.

What options are being considered?

Section 342 (provision of false or misleading information)

Option one – Status quo

37. No change. This means that the offence of providing false or misleading information remains chargeable in court. Providing false or misleading, or sufficiently incomplete or incorrect, information to support an application may mean an employer who is seeking accreditation or to support a work visa does not succeed. MBIE may also formally advise the employer that this may be taken into account in future decisions (see paragraph 43 below). The employer will not however suffer any other consequences, and in particular, will not be subject to a stand-down.

Option two – Introduce a (discretionary) infringement penalty for the offence of providing false or misleading information, maintaining the court option where the offence is serious (recommended option)

38. This option would add a new infringement penalty to the current infringement regime, complementing the existing:

    a. employer infringement offences at s.359A (which comprise allowing a person to work who is not entitled to, employing a person outside the conditions of their visa, and refusing to produce employment and wage records), and

b. penalty for knowingly providing false or misleading information, which is imprisonment for a term not exceeding 7 years, a fine not exceeding $100,000, or both.

39. We note that this infringement offence would benefit from the extension to discovery timeframes that is proposed elsewhere in the Bill: that is, it could be discovered up to six years after the false or misleading information had been provided (or relevant information concealed).

Table Three: How the recommended s.342 infringement would work operationally

Decision-maker	ICI (Noting that infringeable activity may be identified by INZ R&V or visa teams, their reports would be referred to ICI)
Trigger	Clear factual falsity or documentary inconsistency (e.g., MSD confirms no engagement where that had been declared)
Evidence test	Reasonable grounds to believe
Safeguards	Approved internal processes and operational guidance Issuance within statutory time frames (with discovery extensions if enacted) Internal review Right of appeal to District Court
Fit	Complements s.359A and preserves the criminal pathway for serious / knowing cases

Section 277 (failure to provide documents when requested)

Option one – Status quo

40. No change. This means that the offence of failing to provide documents when requested has no practical penalty, although it is theoretically covered (if charged in court) by the generic penalty (a fine of up to $5,000) at s.355(5), and MBIE can formally advise the employer that they are believed to have committed an offence and it may be taken into account in future decisions (see paragraph 43 below).

Option two – Introduce a new (discretionary) infringement penalty for the offence of failure to produce documents (recommended option)

41. As above, this option would add a new infringement penalty to the current infringement regime, complementing the existing employer infringement offences at s.359A (which comprise allowing a person to work who is not entitled to, employing a person outside the conditions of their visa, and refusing to produce employment and wage records). This offence would be subject to standard infringement notice timeframes.

Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment (following charging in court)

42. This option would treat the offence of failure to produce documents as potentially equivalent to serious offending , such as that relating to providing false or misleading information.

Table Four: How the recommended s.277 infringement would work operationally

Decision-maker	ICI
Trigger	Failure to produce requested employment records within the lawful timeframe
Evidence test	Reasonable grounds to believe
Safeguards	Approved internal processes and operational guidance Standard infringement time limits Internal review Right of appeal to District Court
Fit	Complements s.359A, and promotes timely cooperation with investigations

Further (non-regulatory) options were considered but excluded

43. As noted above, the non-regulatory option of **formally advising employers** (via a letter) that they have committed the relevant offence, and that this may be taken into account in future decisions regarding (for example) applications for employer accreditation or work visas an option, is part of the existing regulatory graduated response framework. This mechanism is not however generally employed, as it has not been found to produce changes in behaviour.

44. The second non-regulatory option is **increasing upfront / proactive checks on employers** through (in the case of applications) verifying up to 100 per cent of information provided (for example through undertaking third party checks on all statements, and requiring original (paper) documents to be submitted); and (in the case of compliance checking) requiring self-reporting from employers, and undertaking more compliance visits to work sites and employers, to identify offending earlier and thus deter it.

45. However, significantly increasing proactive checks was discounted:

    a. (related to applications) because of the significant resourcing implications associated with moving from the current (mandated by Cabinet) high-trust model, and the subsequent impacts on application timeliness, while (related to compliance checks) the increase would need to be significant and the resourcing implications would be substantive (see further discussion below), and

b. because it would not directly address or deter the specific offences (provision of false or misleading information, or failure to produce documents when requested).

46. In the 2024 calendar year, INZ undertook 3,250 proactive checks on accredited employers. There are around 24,000 accredited employers, and many more employers who hire migrants on other visa types that do not require accreditation, or hire migrants unlawfully without accreditation. Regular checks of employers at risk of committing an infringement offence would require tens of thousands of checks per annum. The cost of this would need to be recovered through immigration fees and levy charged to employers and migrants. As noted above, there are no current plans to increase compliance resourcing. Further, this approach would also not be an efficient use of resource, and would place significant additional burden on employers who would have to provide evidence as part of the checks.

How do the options compare to the status quo/counterfactual?

Section 342 (provision of false or misleading information)

	Option one – Status quo	Option two – Introduce a (discretionary) infringement penalty for the offence of providing false or misleading information
Effectiveness at deterring offending	**0** Two individuals were found guilty in 2024/25 for the serious offence of providing false or misleading information. However, as noted in the examples on page 11 above, even clear offending may not meet a materiality threshold for further action. This means that guilty employers will not suffer consequences such as being placed on the stand-down list.	**+** We estimate around **250 more infringement notices** could be issued per annum (this is a conservative estimate) than the status quo, with at least 8 possible infringement cases remaining outside the 90-day window
Fairness and reasonableness of penalties	**0** The penalties are currently very light where employers have not offended to a level that warrants a court prosecution. An employer who has made an application which includes false or misleading information may have that application declined.	**++** Employers always have a fair chance to mount a defence, and are protected from stale claims, as there are time limits on when the notice can be issued. The evidential threshold MBIE has to meet before issuing an infringement notice is reasonable grounds to believe", which further ensures that employers will not be unreasonably penalised. (There is a meaningful cost to MBIE of successful challenges.)
Administrative cost	**0** There were **24 challenges** in the first year of the employer infringement scheme against notices issued for the relevant offences (28 per cent of all notices issued for those offences). Only three of these were appealed to the District Court (13 per cent of the notices challenged), and the remainder were challenged through MBIE's internal review process.	**-** Based on current rates of challenge, this could result in an **additional 60-80 challenges** per year compared to the status quo. This is based on the conservative volume estimates above, so total numbers could be higher. Based on current rates, we would expect these to almost all be internal reviews, rather than applications to the District Court.

	Option one – Status quo	Option two – Introduce a (discretionary) infringement penalty for the offence of providing false or misleading information
	An internal review takes roughly one hour for MBIE to complete. However, preparing for a District Court hearing is more resource intensive and would take a minimum of 20 hours. Costs and resource to respond to challenges are included in existing baselines and resource prioritisations. In 16 cases (67 per cent of notices challenged), the notice was upheld, and in four cases (17 per cent), it was overturned as a result of the review. The remaining cases are still under review. This suggests the number of incorrectly issued notices is relatively low, and the associated cost for employers to challenge them is low, in the aggregate.	Based on the existing rate of challenge, we estimate reviews would create in the range of **60--400 hours more work per annum** for MBIE. At the lower level this could be absorbed within existing resourcing, at the higher level it would otherwise result in reprioritisation. The rate of notices issued incorrectly is expected to remain low. At current rates, we would expect maximum one more incorrectly issued notice per year, but we expect this rate to decrease as the infringement scheme continues to embed. If notice volumes or challenge rates exceeded historical norms, MBIE would advise on levy-funded resourcing adjustments.
Overall assessment	**0**	**++** Overall much better than status quo – the scale of the benefits is greater than the scale of the costs

Key

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
- -	much worse than the status quo

Section 277 (failure to produce documents)

	Option one – Status quo	Option two – Introduce a (discretionary) infringement penalty for the offence of failing to produce documents	Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment
Effectiveness at deterring offending	**0** As there is no practical penalty, there is no deterrence. The major deterrence may be that most employers do not recognise that there is no effective penalty for refusing to comply.	**++** We estimate at least ***20* more infringement notices** could be issued per annum than the status quo. These would almost certainly mostly be in the context of wider infringements.	**+** It is possible that this could deter offending as would indicate that the government considered failure to produce documents to be a serious offence. However it is highly unlikely that any actions would meet the threshold for prosecution, and this could become known.
Fairness and reasonableness of penalties	**0** There is a generic penalty of a fine of up to $5,000 (under s.355(5)) but this would be dependent on a conviction, which is disproportionate to this level of offence. There is therefore no practical penalty at present.	**++** Employers always have a fair chance to mount a defence, and are protected from stale claims, as there are time limits on when the notice can be issued. The evidential threshold MBIE has to meet before issuing an infringement notice is "reasonable grounds to believe", which further ensures that employers will not be unreasonably penalised. (There is a meaningful cost to MBIE of successful challenges.)	**-** This would be an excessive penalty for an offence which at present has no penalty at all. That is however balanced by the fact that it is unlikely to be invoked.
Administrative cost	**0** As there are no penalties there is no associated administrative cost.	**-** Based on current rates of challenge, this could result in an **additional *3-4* challenges** per year compared to the status	**0** Preparing for a District Court case is time-consuming and resource intensive.

	Option one – Status quo	Option two – Introduce a (discretionary) infringement penalty for the offence of failing to produce documents	Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment
	Costs and resource to respond to challenges are included in existing baselines and resource prioritisations.	quo. This is based on the conservative volume estimates above, so total numbers could be higher. Based on current rates, we would expect these to virtually all be internal reviews, rather than applications to the District Court. (An internal review takes roughly one hour for MBIE to complete. However, preparing for a District Court hearing is more resource intensive and would take a minimum of 20 hours.) Based on the existing rate of challenge, we estimate this would only create in the range of **4-30 hours more work per annum** for MBIE, which could be absorbed within existing resourcing, or would otherwise result in reprioritisation. The rate of notices being issued incorrectly is expected to remain low. At current rates, we would expect maximum one more incorrectly issued notice per year, but we expect this rate to decrease as the infringement scheme continues to embed. As above, if volumes significantly exceeded historical norms, MBIE would advise on levy-funded resourcing adjustments.	However, as noted above, it is likely that this cost would never be invoked.

	Option one – Status quo	Option two – Introduce a (discretionary) infringement penalty for the offence of failing to produce documents	Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment
Overall assessment	**0**	**++** Overall, much better than status quo – while the costs are higher, the benefits are much higher.	**0**

Key

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

47. In both cases we recommend introducing a new infringement offence, as it as it is most likely to deliver the highest net benefits. The key benefit of introducing an infringement is that it is a meaningful penalty for employer behaviour that is already identified in the Act as an offence, where the status quo penalties (prosecution in court, or nothing) are not adequate to deter the behaviour.

48. The fact that a non-compliant employer who is infringed will be placed on the stand-down list for a period may in some cases be a greater deterrent than the infringement fees.

49. There are appropriate safeguards to ensure that employers are not treated unfairly, including the fact that MBIE must meet a standard of "reasonable grounds to believe" to issue an infringement notice, and that employers may challenge the notices.

50. We anticipate that the increase in volume of work for MBIE to respond to employers challenging their infringement notice will be minimal and can be absorbed within current resourcing. However, we also note that the increase in the number of infringement notices is uncertain. If the volumes of behaviour that warrants additional infringement notices are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either deprioritise some core investigations and compliance work or constrain the number of notices issued. At some point a decision could be made to approve additional resource (which would be funded through the immigration levy).

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

51. Yes. The Minister noted in the Cabinet paper under ECO-25-SUB-0093 (*Immigration (Enhanced Risk Management) Amendment Bill - Further Decisions*) that she had directed officials to expand the employer infringement notice regime to include these two new offences, and intended to introduce them via regulations following the passage of the Bill. It has since been clarified that this is not feasible, and they must be created within the Act itself.

What are the marginal costs and benefits of the preferred options in the Cabinet paper?

Note – considered together as the outcomes are essentially the same and there is uncertainty about the numbers deriving from each change.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Employers who are issued an infringement notice where there has previously been no penalty will be liable for the cost of the infringement fee/s.	Low	Medium Infringement fees are deliberately set relatively low, as they relate to strict liability offences.
Regulators	MBIE is required to respond to more challenges against infringement notices.	Low Projected ***64-430*** additional hours of work per annum (expected to be at the lower end) and which could be absorbed within existing resourcing. Otherwise reprioritisation may be required.	Medium There is uncertainty about projected challenge volumes, which could be towards the higher end of the projections. The projections are based on existing rates of challenge. While rates could increase if notices are issued longer after the offending (as per the other proposal in the Bill of extending discovery times), the guidance developed will specifically address this risk.
Total monetised costs		Low	Medium
Non-monetised costs		Low	Medium

Affected groups	Comment	Impact	Evidence Certainty
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Migrant workers[17] benefit from a reduction in exploitative practices by their employers Compliant employers benefit from fewer competitors using exploitative practices to undercut them.	Medium	Low It is difficult to establish a causal link between a particular policy intervention and exploitation indicators, because they can be impacted by a wide range of factors (e.g. economic conditions and other policy interventions). We do not have any way to measure employer disadvantage from immigration non-compliance by their competitors.
Regulators	Changes should drive increased voluntary compliance rates overtime, decreasing need for investigations and compliance activity, and potentially reducing the need for support for exploited migrants (e.g. Migrant Exploitation Protection Visas, which are Crown-funded).	Medium	Low As above, it is difficult to prove a causal link between a particular intervention and exploitation indicators.
Others (eg, wider govt, consumers, etc.)	New Zealand economy benefits (marginally) from being able to continue to promote itself to potential migrant workers as a place where their rights will be upheld, and to potential investors as a first world country that respects and enforces norms.	Medium	Low It is difficult to prove a causal link between penalty settings and New Zealand's attractiveness to migrant workers, as other factors have a greater influence.
Total monetised benefits		None	Low
Non-monetised benefits		Medium	Low

[17] Regulated under the Immigration Act 2009

Section 3: Delivering an option

How will the proposal be implemented?

52. The changes will be implemented through the *Immigration (Enhanced Risk Management) Amendment Bill*, which is scheduled for introduction in early 2026, and changes are expected to come into effect later in 2026.

53. The operationalisation of the changes will require minimal operational changes for MBIE, which is developing an implementation plan for all proposals in the Bill. ICI already infringes employers so has well-established procedures in place.

54. However, while ICI are trained in identifying and processing infringements, R&V and Visa Operations officers will also be able to identify and refer to ICI behaviours that trigger the new offence relating to false or misleading / incorrect or incomplete information. Training will be developed for those staff based on updated operational guidance that will set out threshold examples and evidence tests, and the processes for referral.

55. The operational guidance will also update template wording for decision letters, and triage and quality-assurance steps prior to issue, and will include a short checklist to reduce or eliminate the likelihood of notices being issued incorrectly.

56. MBIE will also update Immigration Instructions and the monitoring and reporting requirements (see below), and develop an external communications plan to ensure migrant communities, advocates, employers and industry representatives, and Licensed Immigration Advisers understand the changes and what they mean for them.

57. Appropriate communications about the changes in themselves are expected to help deliver some of the intended benefits, with regard to improved employer compliance, and potentially to enhancements to New Zealand's reputation.

58. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process, to ensure readiness when the Bill is enacted.

How will the proposal be monitored, evaluated, and reviewed?

59. MBIE's ICI will continue quarterly reporting to the Minister on infringement volumes, challenges, outcomes, and stand-down effects, and will publish an annual external summary to improve transparency and deterrence.

60. MBIE also monitors and reports on migrant exploitation indicators. We will continue to monitor these, noting that it will be difficult to determine to what extent any changes in the exploitation indicators could be attributed to the proposed changes. This is because a wide range of factors could influence these indicators (e.g. economic conditions, operational prioritisation changes, and other policy settings). We therefore do not propose a formal review/evaluation of the changes.

61. MBIE's costs in responding to challenges against infringement notices are third-party funded through the immigration levy. The regular immigration fee and levy review will provide an opportunity to review whether resourcing is sufficient for MBIE to respond to challenges against infringement notices without negatively impacting other priorities.

(This cost in itself is a constraint against MBIE issuing frivolous infringement notices for e.g. minor spelling errors; noting that the Act at s.364B allows for a doubling of the infringement fee if a court finds that the original infringement was justified.)

62. The first opportunity for review after the changes are implemented will likely be in 2027.

63. If the volume of challenges is significantly higher than anticipated and becomes unmanageable within existing resourcing in the interim, further advice will be given on options to address this. These would likely include an out-of-cycle appropriation increase to allow for more staff, reprioritising existing investigations and compliance work, or limiting the number of notices that are issued, even when offending has been identified. Even if the number of notices being issued had to be limited to manage these impacts, this would still be significantly higher than the number of notices being issued currently. The change would therefore still represent a significant benefit over the status quo and does not undermine the case for the proposed option.

64. We have not identified any wider implementation risks that need to be monitored. While existing resourcing levels and triaging processes mean that not all potential offences can be investigated to the point where an infringement notice can be pursued, options to address this are being considered separately, and the situation will not be exacerbated in any way by the changes in this RIS. However, we note that any future increase in resourcing will be able to be used more effectively if these changes are progressed.