



## COVERSHEET

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

### List of documents that have been proactively released

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

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
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

<b>Information redacted</b>	<b><u>YES</u> / NO</b>
<p>Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p> <p>Some information has been redacted for the reasons of: International relations, maintenance of the law, privacy of natural persons, confidential advice to Government, commercial sensitivity, free and frank expression of opinions, and legal professional privilege.</p> <p>Some information has also been withheld on the basis that it is not in scope of the Immigration (Enhanced Risk Management) Amendment Bill.</p>	



## BRIEFING

### Immigration (Enhanced Risk Management) Amendment Bill: Drafting update and exposure draft feedback

<b>Date:</b>	4 December 2025	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	REQ-0019618

Action sought		
	Action sought	Deadline
Hon Erica Stanford <b>Minister of Immigration</b>	<p><b>Agree</b> to one minor change to the Bill's information sharing provisions.</p> <p>Free and frank opinions</p> <p><b>Confirm</b> that the drafting of the residence class visa deportation liability provisions aligns with your policy objectives.</p> <p><b>Agree</b> to establish the new employer infringement offences in the bill, rather than regulations as previously proposed, and to issue drafting instructions to PCO.</p>	10 December 2025

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

The following departments/agencies have been consulted
The Ministry of Justice, Parliamentary Counsel Office, MBIE legal.

**Minister's office to complete:**

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

**Comment**



## BRIEFING

### Immigration (Enhanced Risk Management) Amendment Bill: Drafting update and exposure draft feedback

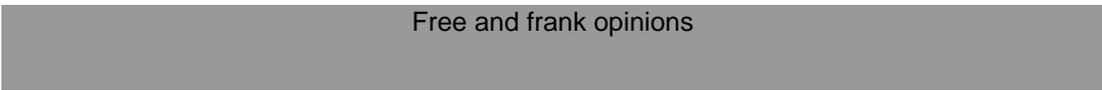
<b>Date:</b>	4 December 2025	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	REQ-0019618

#### Purpose

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To provide a summary of the feedback received from targeted stakeholder consultation on an exposure draft of the Immigration (Enhanced Risk Management) Amendment Bill (the Bill), and officials' proposed actions to address issues raised.

The briefing seeks decisions on:

-  Free and frank opinions
- the retrospectivity (or otherwise) of changes to the deportation liability framework.
- the approach to establishing the new employer infringement offences.

#### Executive summary

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*We undertook targeted consultation on an exposure draft of the Bill in October to November 2025*

Stakeholders expressed appreciation for the opportunity to comment on the legislation at this early stage of the process. Stakeholders (particularly the Law Association of New Zealand, and the New Zealand Law Society) were strongly opposed to three proposals:

- extend deportation liability for resident visa holders who commit criminal offences
- limit humanitarian appeal rights for some temporary visa holders, and
- prevent asylum claimants who withdraw their claims from applying for a further visa.

Some stakeholders provided detailed feedback on the drafting of the Bill. In response, we seek your agreement, under the authorisation delegated to you by Cabinet [ECO-25-MIN-0084 and ECO-25-MIN-0093], to include *tribunals* in the list of entities MBIE may enter into information disclosure agreements with. We will work with the Parliamentary Counsel Office (PCO) to make other minor and technical changes identified by stakeholders, to improve clarity and consistency.

 Free and frank opinions

*We also seek your agreement on two other matters that have arisen during drafting*

The first relates to the retrospective application of the deportation liability changes for residence class visa holders. Consistent with best practice, the proposals (except the change relating to historical offending) have been drafted prospectively, so that the behaviour that gives rise to deportation liability (eg criminal offending or provision of false and misleading information) must occur after the Bill's commencement, in order to be 'captured'.

The current drafting contains two retrospective elements which we consider appropriate and / or necessary to achieve the policy intent, but which may be noted during the New Zealand Bill of Rights Act 1990 (BORA) vet, or challenged during Select Committee. We seek confirmation that the approach we have taken aligns with your expectations.

The second issue relates to the proposal to introduce new employer infringement offences relating to the provision of false and misleading information, and to failing to provide documents when requested. It was originally envisaged that these infringement offences would be made in regulations. [REDACTED] Legal professional privilege [REDACTED]

[REDACTED] We believe that it is achievable to complete the necessary policy steps and drafting by March 2026 (when the Bill is expected to go to Cabinet Legislation Committee). We seek your agreement to this approach and to issuing drafting instructions to PCO.

## **Recommended action**

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

*Feedback from targeted consultation on the Bill*

- a **Note** that MBIE completed targeted consultation between 28 October and 7 November 2025 on an exposure draft of the Bill with the following key stakeholders
- i. Immigration New Zealand's (INZ) Immigration Focus Group (IFG) – feedback received from Rachel Simpson of Business New Zealand, Simon Laurent and Nick Frost as independent lawyers, and Joanna Hall of the Employers and Manufacturers Association
  - ii. the Chief Victims Adviser (CVA)
  - iii. the Immigration and Protection Tribunal (IPT)
  - iv. the Law Association of New Zealand's (TLANZ) Immigration and Refugee Law Committee
  - v. the New Zealand Law Society (NZLS)
  - vi. the Office of the Ombudsman
- Noted*
- b **Note** that the NZLS and TLANZ strongly opposed the policy objectives of the following three proposals:
- i. extending deportation liability for resident visa holders who commit criminal offences
  - ii. limiting humanitarian appeal rights for some temporary visa holders
  - iii. preventing asylum claimants who withdraw their claims from applying for further visas
- Noted / Discuss*
- c **Note** that a summary of all stakeholder feedback, and MBIE's responses to concerns raised, is set out at **Annexes One and Two**

*Noted*

- d **Note** that Cabinet authorised you to make decisions, consistent with the policy proposals in the Cabinet papers under ECO-25-SUB-0084 and ECO-25-SUB-0093, on issues arising during the drafting and consultation process [ECO-25-MIN-0084 and ECO-25-MIN-0093]

*Noted*

- e **Agree**, on the basis of stakeholder feedback, to amend the Bill's proposed information sharing framework, so that MBIE will be able to enter into information disclosure agreements with New Zealand **tribunals**, as well as courts, using your delegated authority

*Agree / Disagree / Discuss*

- f **Note** that officials will instruct PCO to make other minor and technical changes identified by stakeholders to improve the Bill's clarity, consistency and workability

*Noted*

Free and frank opinions

#### *Retrospective application of deportation liability amendments*

- i **Note** that, consistent with good practice, the deportation liability provisions in the Bill, with the exception of the historical offending proposal, have been drafted on the basis that the behaviour that gives rise to deportation liability (eg criminal offending or provision of false and misleading information) should occur after the Bill's commencement to be captured by the changes

*Noted*

- j **Note** that, as currently drafted, the provisions contain two retrospective elements, which we consider appropriate and / or necessary to achieve the policy intent, but which may be noted during the BORA vet or challenged during Select Committee:
  - i. the change to extend deportation liability to historic offences has been drafted to apply regardless of whether the offence was committed before or after the commencement date, and regardless of when a person's residence class visa was granted (although the conviction, guilty plea or guilty finding of the offence would need to occur post-commencement)

- ii. the other changes to residence deportation liability have been drafted to apply regardless of when a person's residence class visa was granted (although the behaviour giving rise to deportation liability would need to occur post-commencement)

*Noted*

- k **Confirm** that the drafting of the relevant deportation liability provisions in rec j: i and ii align with your expectations

*Agree / Disagree / Discuss*

*New employer infringement offences*

- l **Note** that the Tranche 2 Cabinet paper for the Bill [ECO-25-SUB-0093] set out your intention to establish two new employer infringement offences in regulations for:
  - i. providing false or misleading information, or withholding relevant information (for example, in an accreditation or job check application)
  - ii. failing to provide documents when requested under section 277 of the Act (which allows an immigration officer to enter an employer's premises and request wage and time records)

*Noted*

m

Legal professional privilege

*Noted*

- n **Note** that this will require the completion of a regulatory impact statement, consultation with the Ministry of Justice, and PCO drafting, but we think this is achievable by March 2026

*Noted*

- o **Agree** to include the new infringement offences in the version of the Bill for introduction to the House in March 2026, and to note the revised approach to developing infringement offences in the Cabinet LEG paper

*Agree / Disagree / Discuss*

- p **Direct** officials to issue drafting instructions to PCO to give effect to recommendation o.

*Agree / Disagree / Discuss*

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

04 / 12 / 2025

Hon Erica Stanford  
**Minister of Immigration**

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## MBIE has completed consultation on an exposure draft of the Enhanced Risk Management Bill

1. On 4 June and 25 June 2025, Cabinet agreed to policy proposals for the Immigration (Enhanced Risk Management) Amendment Bill (the Bill) [ECO-25-MIN-0084 and ECO-25-MIN-0093]. On 4 June 2025, Cabinet also invited you to undertake targeted consultation on an exposure draft version of the Bill [ECO-25-MIN-0084].
2. Targeted consultation on the exposure draft has enabled MBIE to:
  - a. provide stakeholders with early insight on the policy proposals, and allow them an opportunity to provide feedback on, and improve, the legislative drafting
  - b. advise you of stakeholder views; and
  - c. prepare for the Select Committee process.
3. The government agencies and stakeholders consulted were:

Government agencies	External stakeholders
Ministry of Justice (MOJ)	Business New Zealand (Business NZ) Immigration New Zealand's (INZ) Immigration Focus Group (Simon Laurent and Nick Frost as independent lawyers, and Joanna Hall from the Employers and Manufacturers Association) The Chief Victims Adviser (CVA) The Immigration and Protection Tribunal (IPT) The Law Association of New Zealand (TLANZ) (including the Immigration and Refugee Law Committee) The New Zealand Law Society (NZLS) (excluding the Immigration and Refugee Committee) The Office of the Ombudsman

4. Consultation was formally conducted between 28 October and 7 November 2025. Some organisations advised they did not have sufficient time to provide feedback on all proposals, so focused their feedback on key sections of relevance to them.
5. Many stakeholders expressed appreciation for the opportunity to see and comment on legislation at this stage of the process.

## Stakeholders raised significant concerns and opposition to three proposals

6. Across the 14 proposals in the Bill, stakeholders supported five and opposed three, while the remaining six proposals received mixed feedback. A summary of all proposals, stakeholder feedback, and responses by MBIE, is attached as **Annex One**.
7. Three proposals – extending deportation liability for criminal offending by residence class visa holders, limiting humanitarian appeal rights for some temporary visa holders, and preventing asylum claimants who withdraw their claims from applying for further visas – attracted substantial criticism from some stakeholders.
8. This criticism related to the fundamental policy proposals, rather than how the Bill as drafted would give effect to them. As such, we do not recommend making any changes to the Bill.
9. Cabinet authorised you to make decisions, consistent with the policy proposals in the Cabinet papers under ECO-25-SUB-0084 and ECO-25-SUB-0093, on issues arising during the drafting and consultation process [ECO-25-MIN-0084 and ECO-25-MIN-0093].

10. Using this delegated authority, we seek your agreement to one change to the Bill, following stakeholder feedback. It is to amend the Bill's proposed information sharing framework, so that MBIE will be able to enter into information disclosure agreements with New Zealand **tribunals**, as well as courts.
11. Officials will instruct the Parliamentary Counsel Office (PCO) to make other minor and technical changes identified by stakeholders to improve clarity, consistency and workability. Those changes do not require your formal approval.
12. Stakeholder concerns on the three key proposals are set out in detail in **Annex Two**. The feedback is broadly consistent with risks previously raised [REQ-0001182 and REQ-0013339], but is more fulsome, reflecting that stakeholders could provide both oral and written feedback on the Exposure Draft.
13. A concern that was raised was the potential increase in unmeritorious asylum claims due to the loss of IPT appeal rights. It was noted that this could compound current Refugee Status Unit (RSU) processing backlogs. The RSU has noted that an increase may subside over time, particularly if some of these persons would have claimed anyway but at a later point, and that any shift is speculative at this stage. These concerns are discussed further in **Annex Two**.

Free and frank opinions



## **Application of deportation liability amendments**

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24. The Bill makes several amendments relating to deportation liability, most notably:
- making deportation a more likely consequence at both the higher and lower ends of offending, across a longer period of residence in New Zealand
  - clarifying that the provision of any false and misleading information in immigration matters may make a resident liable for deportation
  - clarifying that time resets for deportation liability after five years of absence from New Zealand, even if they re-enter as a visitor on a different passport, and
  - extending deportation liability to include historic crimes (ie offending that happened offshore, before a person held a New Zealand visa).
25. There are choices as to what these amendments apply to. That is, whether they apply to:
- a. behaviour that occurred before or after the Bill's commencement, or
  - b. residence class visas issued before or after the Bill's commencement.
26. Legislation is presumed not to have retrospective effect (unless it explicitly provides otherwise),<sup>1</sup> reflecting the general principle that legislation should not be retrospective.<sup>2</sup> The right to not be subject to retroactive penalties under BORA<sup>3</sup> may also be relevant, although MBIE's view (not shared by the Ministry of Justice) is that deportation liability is not a penalty, but rather a potential downstream consequence of criminal offending, and that therefore BORA is not engaged.
27. Consistent with this principle, we have instructed PCO to draft the provisions (with the exception of the historical offending change) so that the behaviour that gives rise to deportation liability (eg criminal offending or provision of false and misleading information) must occur after the Bill's commencement, in order to be captured by the changes. This ensures that people are not subject to consequences that did not exist at the time they undertook the behaviour.

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<sup>1</sup> Section 12 Legislation Act 2019.

<sup>2</sup> See for example principle 12.1 of the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines.

<sup>3</sup> Section 26 NZBORA, the right not to be liable for an offence which was not an offence at the time of commission.

28. As currently drafted, the provisions contain two retrospective elements, which we wish to test with you, as they may be noted during the BORA vet or challenged during Select Committee:
- a. the change to extend deportation liability to historic offences has been drafted to apply regardless of whether the offence was committed before or after the commencement date, and regardless of when a person's residence class visa was granted (although the conviction must be entered after commencement)
  - b. the other changes to resident deportation liability have been drafted to apply regardless of when a person's residence class visa was granted (but the behaviour giving rise to deportation liability would need to occur post-commencement).
29. The proposal to make someone liable for deportation on the basis of historical offending is inherently retrospective. We therefore consider that the current retrospective drafting at paragraph 28.a is both justified, and necessary to achieve the policy intent.
30. With regard to the second retrospective element at paragraph 28.b, we consider that the date of issuance of a person's residence class visa is immaterial – the relevant consideration is when the behaviour giving rise to liability occurs. Immigration status is an ongoing privilege subject to the law as it stands, and individuals are expected to comply with updated standards of behaviour. This is consistent with other regulatory frameworks—for example, changes to road safety laws apply to all drivers regardless of when their licence was issued. Also, the commission of acts that are criminalised after residence was granted would still result in deportation liability.
31. The alternative, of limiting the application of this change only to residence class visas granted after commencement, would create arbitrary gaps, and would undermine the policy intent of maintaining the integrity of the immigration system and protecting public safety.
32. A member of the Immigration Focus Group did however comment on the retrospectivity during consultation on the exposure draft. They noted that it was arguably in violation of the spirit of section 26(1) NZBORA as it relates to retroactive penalties, although they acknowledged that this provision of BORA is a specifically criminal provision, while deportation liability is civil.
33. We seek confirmation that the current drafting aligns with your expectations for these proposals.

## **We seek your agreement to a revised approach to the proposed new employer infringement offences**

34. Legal professional privilege
- a. providing false or misleading information, or withholding relevant information (for example, in an accreditation or job check application)
  - b. failing to provide documents when requested under section 277 of the Act (which allows an immigration officer to enter an employer's premises and request wage and time records).
35. The intention was to enable two layers of deterrence for these behaviours, which would be:
- a. a prosecutable offence (in the Act) that carries a criminal conviction for the most egregious behaviour
  - b. an infringement offence (in Regulations) for 'lower level' manifestations of that behaviour (effectively the prosecutable offence, minus the mens rea element).

36. Our understanding was that the regulation making power at section 400(1)(ga) of the Act would enable us to create an infringement offence 'version' of any offence in the Act, whilst retaining the original. [Redacted] Legal professional privilege [Redacted]  
[Redacted]  
[Redacted]
37. [Redacted] Legal professional privilege [Redacted] This would, however, require MBIE to complete the policy work on the new infringement offences (including the development of a Regulatory Impact Statement and consultation with the Ministry of Justice) earlier than intended, and will require time for PCO to draft the new provisions.
38. We have identified three timing options for when these infringement offences could be incorporated in the Bill:
- in the version for introduction (**recommended**)
  - at the Select Committee stage
  - via an Amendment Paper during the Committee stage.
39. [Redacted] Legal professional privilege [Redacted]  
[Redacted]  
[Redacted] We agree, and think it is possible to complete the necessary policy work and still have a version of the Bill ready for introduction in early March, [Redacted]  
Confidential advice to Government [Redacted]
40. Cabinet Office advises that you have the delegation to agree this approach. The LEG paper would note the revised approach. We therefore seek your agreement to including these offences in the version of the Bill for introduction, and to issuing drafting instructions to PCO.

## Next steps

41. *Table Two* below sets out expected dates of upcoming milestones for the Bill, consistent with the recently submitted 2026 legislative programme bid.

*Table Two: Upcoming dates for the Bill*

Date	Milestone
29 January 2026	Draft Cabinet Legislation Committee (LEG) paper and the final draft Bill for Ministerial consultation provided to office
4 February 2026	Draft Cabinet LEG paper and the final draft Bill circulated for Ministerial consultation
18 February 2026	Ministry of Justice completes BORA vetting of the Bill
19 February 2026	Final LEG paper provided to office
26 February 2026	LEG paper lodged with Cabinet Office
5 March 2026	LEG consideration of the Bill for introduction to the House
9 March 2026	Cabinet consideration of the Bill for introduction to the House
12 March 2026	Introduction of the Bill to the House (TBC)
24 March 2026	First reading of the Bill (TBC)

# Annexes

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Annex One: Summary of stakeholder feedback

Annex Two: Stakeholder opposition to three proposals in-depth

**Annex One: Summary of stakeholder feedback**

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## **Annex Two: Stakeholder opposition to three proposals in-depth**

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### **Proposal to adjust resident deportation liability thresholds for criminal offending and set out factors the IPT must consider when determining appeals**

Opposition to this proposal was based on concerns that extending deportation liability to residence class visa holders who have held a residence class visa for up to five years (up from the current two), and who commit offences carrying a three-month maximum prison sentence, is disproportionate and in effect could constitute double jeopardy. Stakeholders considered that this might breach the New Zealand Bill of Rights Act 1990 (BORA).<sup>4</sup>

Stakeholders also opposed the proposal that the Act spell out that the IPT must consider the nature and seriousness of offences and the effects that has had on victims when considering appeals, on the basis that, following well-established legal precedent, the IPT already considers these factors.

#### *MBIE response*

With regard to both concerns, the intent of the change is to send a clear message both that criminal offending by migrants will not be tolerated, and that the impacts on victims are crucial to informing deportation proceedings. While the IPT will still be able to cancel, suspend or order the delay of deportation liability where appropriate, the change to factors they must consider helps ensure that in all cases, the nature of offending and impacts on victims is of foremost importance.

Regarding the BORA concerns, we maintain that deportation liability is not a penalty for criminal offending, but rather a downstream potential immigration consequence. It is therefore our view that this does not amount to double jeopardy.

The Bill will be subject to a BORA vet by the Ministry of Justice (MoJ) in early 2026. We will update you if any concerns are raised by MoJ during this process.

### **Proposal to remove the right to appeal to the Immigration and Protection Tribunal on humanitarian grounds for visitor visa holders and all temporary visa holders who commit criminal offences**

*Stakeholders opposed IPT appeal processing times being a driver for policy change and noted other appeal pathways were insufficient*

Based on the background material provided ahead of consultation, stakeholders interpreted the main driver of the proposal to remove humanitarian appeal rights from some temporary visa holders as being the length of IPT processing times. This is not the primary objective of the change. The policy intent is to set a clear differential between temporary and residence class visa holders in terms of appeal rights, as temporary visa holders currently have the same rights as residents to appeal their deportation liability to the IPT on humanitarian grounds [ECO-25-MIN-0093].

Stakeholders considered that the alternative avenues for consideration of a person's circumstances (specifically, the Ombudsman, Ministerial intervention and the good reasons review) provide insufficient alternatives to the IPT humanitarian appeal pathway. They noted that there will be considerable numbers of migrants who would have successfully appealed to the IPT, but who now are likely to be deported without the right of humanitarian appeal, even if they have genuine humanitarian concerns.

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<sup>4</sup> In particular, section 9 which states "everyone has the right not to be subjected to...disproportionately severe treatment or punishment" and section 26 (2) which states "no one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again".

### *MBIE response*

With regard to scale, in the 2024/25 financial year the IPT allowed 101 appeals of persons that this proposal would have affected (visitors and criminal offending temporary visa holders). A successful IPT appeal is typically based on familial or medical reasons, or limited connection to their home country (generally due to long periods spent in New Zealand, lawfully or unlawfully). While some of this cohort may remain in New Zealand through other appeal avenues, many migrants with “exceptional circumstances of a humanitarian nature that means it would be unjust or unduly harsh for them to be deported from New Zealand” may be deported under the proposed changes.

This, however, reflects the policy intent of setting a clear differential between temporary and residence class visa in terms of appeal rights. Further, these allowed appeals only make up a small portion of the visitors and temporary visa holding criminal offenders who are made liable for deportation each year (approximately 595 visitors and criminal offending temporary visa holders were deported in 2024/25).

However, we note that there is the potential for reputational risks around deporting people who have credible and substantial reasons to remain in New Zealand. The IPT has been the primary safeguard to avoid these situations thus far.

### *Concerns were raised regarding impacts on migrants with genuine humanitarian concerns and the impacts on families*

Stakeholders shared further concerns about the impacts this may have on those on visitor visas related to partnership or family ties (children, parents, grandparents). Stakeholders also shared concerns that children would be deported without due process, or that their family members would be deported without sufficient consideration, and that this would be in breach of the United Nations Convention on the Rights of the Child (UNCROC).

### *MBIE response*

We acknowledge the potential impacts on families, but also note that it is reasonable that visitor visa holders be expected to abide by the conditions of their visa and New Zealand law. Further, it should not be assumed that a temporary family visa (particularly, a visitor visa) guarantees a pathway to residence. MBIE notes there is discretion within the system described on page 0 (noting that deportation liability may then be cancelled under section 177 of the Act in the case of those unlawfully in New Zealand), and broader oversight processes, such as judicial review that could help mitigate concerns.

### *Stakeholders suggested that resourcing pressures and delays would likely to be shifted from the IPT to Ministers and the Ombudsman*

Stakeholders observed that the proposal could have the effect of displacing resourcing pressures to other decision makers, with consequential impacts across government.

### *MBIE response*

MBIE will monitor the resourcing impacts of the change closely. We note that the Ombudsman has discretion as to whether or not they investigate complaints, and that Ministerial intervention workloads can be streamlined through the use of absolute discretion by delegated decision makers.

It is possible that the proposal may lead to an increase in refugee and asylum claims. Stakeholders noted that, for example, some instances regarding risks of domestic violence, gender and sexual identity issues in home countries have not been appropriately considered as a part of the refugee status determination process, and appeals to the IPT have been used as a last resort to have these considerations taken into account. Our view is that the potential for unmeritorious claims can be, at least in part, mitigated by changes underway to strengthen and streamline refugee status determination processes.

**Proposal to not allow an applicant for asylum or protected status to apply for other visa types, while they remain in New Zealand, if they withdraw their asylum claim**

Stakeholders generally understood the purpose of the proposal, but noted concerns about the negative impacts on genuine claimants. Stakeholders noted that there are many legitimate reasons why genuine, good faith claimants may seek to withdraw their claims and pursue other immigration pathways. Seeking legitimate pathways to regularise immigration status is generally encouraged as an alternative to claiming asylum, promoting self-sufficiency and better resettlement outcomes, and this proposal will remove those options. Further, some stakeholders noted this proposal may lead to claimants being less likely to withdraw claims, further compounding the existing backlog.

*MBIE response*

These concerns are in line with our earlier advice [REQ-0013002]. One aim of this proposal is to clarify section 150 to be clear that withdrawing a claim qualifies as the final determination of a claim (and the claimant cannot apply for a further visa). Legal professional privilege

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

## Annex One: Summary of stakeholder feedback

Proposal	Level of support	Summary of feedback	Proposed changes (where applicable) and MBIE response
1. Adjust resident deportation liability thresholds for criminal offending and set out factors the IPT must consider when determining appeals.	Mostly opposed	<p>The New Zealand Law Society (NZLS), The Law Association of New Zealand (TLANZ) and a member of the Immigration New Zealand Focus Group (IFG) opposed this proposal in part or in whole, for varied reasons as set out in <b>Annex Two</b>.</p> <p>The Chief Victims Advisor (CVA) was in favour of the proposal, and advocated that the maximum sentence associated with an offence be the factor considered by the deportation liability framework, rather than the actual sentence by the Judge.</p> <p>Business New Zealand (Business NZ), whose submission was supported by the Employers and Manufacturers Association (EMA), was also in favour of extending the period during which somebody is liable for deportation for serious criminal offending, noting that comparable countries maintain an open deportation liability (with individual cases able to be given consideration on circumstances) for non-citizens.</p> <p>Several stakeholders noted that existing case law dictates factors the IPT must consider and that, as part of this, the IPT routinely looks at the total history of criminality as a part of their assessment of the public interest. It was also noted that this may be perceived as a government critique of the IPT's decision-making.</p>	<p><b>No changes recommended.</b></p> <p>Responses to comments from legal stakeholder comments are set out in <b>Annex Two</b></p> <p>The policy intent of the proposal is to send a clear message that criminal offending by migrants will not be tolerated, and that the impacts on victims are crucial to informing deportation proceedings. The changes to factors the IPT must consider helps ensure that in all cases, the nature of offending and impacts on victims is of foremost importance.</p>
1a. Clarify the range of false and misleading submissions that make a resident class visa holder liable for deportation.	Mixed	<p>Minimal feedback was received on this proposal. Some stakeholders provided alternative drafting suggestions that have been considered and adopted.</p> <p>The NZLS recommended undertaking a more holistic review of the false and misleading information settings, rather than progressing these reforms on a piecemeal basis. They commented that the current strict liability approach can result in harsh and disproportionate outcomes, particularly for individuals who are not personally culpable.</p>	<p><b>Minor change proposed</b> to ensure that the provision of false and misleading information relating to <i>deportation matters</i> is captured. As this is consistent with the original policy decision [ECO-25-MIN-0084], a Ministerial decision is not required.</p>
1b. Extend deportation liability for residents to include historic crimes (where prosecution occurs after residence has been gained).	Mixed	<p>A member of the IFG was concerned that this change could expose someone to deportation liability who (for example) had committed a minor misdemeanour several decades ago. They considered that the amendment could be better achieved by amending section 160.</p> <p>The NZLS advocated for a more holistic review of the wider deportation liability framework.</p>	<p><b>No changes recommended.</b></p> <p>MBIE will prepare communications material about the intent of the change, specifically that it is intended to capture serious historical offences where prosecution occurs after they held a resident visa. This is unlikely to capture misdemeanours.</p>
1c. Clarify when deportation liability resets for residence class visa holders.	Supported	<p>Minimal feedback was received on this proposal.</p>	<p><b>No changes recommended.</b></p>
1d. Clarify the definition of "visa granted in administrative error".	Supported	<p>Minimal feedback was received. Stakeholders recommended introducing a caveat, for circumstances where a visa has been granted by Ministerial discretion under section 169.</p>	<p><b>Minor change proposed</b> for accuracy in response to the drafting suggestion. As this is a technical change consistent with the original policy agreement [ECO-25-MIN-0084], a Ministerial decision is not required.</p>
2. Extend the time MBIE has to detect and respond to an offence, from 90 days from the date of the offending, to 270 days from the date MBIE became aware of the offending.	Mixed	<p>TLANZ supported this proposal, but noted the importance of ensuring that the extended timeframes do not result in undue uncertainty for visa holders.</p> <p>NZLS identified a consequential amendment required elsewhere in the Act as a result of this change, and queried the evidence base for altering the current framework.</p> <p>Business NZ opposed extending the timeframe for infringement notices, noting a perceived risk of creating lethargy in the department. As an alternative, they suggested a requirement on employers to produce relevant documentation within a specified timeframe (eg 10 working days to align to the labour inspectorate settings).</p>	<p><b>Minor change proposed</b> to address the consequential change identified by NZLS. As this is a consequential change that is consistent with the original policy agreement [ECO-25-MIN-0093], a Ministerial decision is not required.</p> <p>We note that stakeholders may have conflated requests for the provision of information with the issuing of infringement notices for breaches of the Act. The existing time periods for response to an infringement notice are being carried over in that, once served with an infringement notice, the person still has:</p> <ul style="list-style-type: none"> <li>• 28 days from service to pay or request a hearing (s.21(2)).</li> <li>• If a reminder notice is served, another 28 days (s.21(6)). (MBIE may allow further time at the officer's discretion).</li> </ul> <p>MBIE will prepare communications material to clarify the above point.</p>

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3. Increase the maximum sentence for migrant exploitation offences from 7 years to 10 years imprisonment.	Mixed	<p>TLANZ supported the change, but advised caution to ensure that increasing the penalty does not lead to fewer people being charged, on the basis that it may be more difficult to secure prosecutions (which they advised has occurred in overseas jurisdictions).</p> <p>NZLS queried the evidence base to show that the current maximum sentence is an ineffective deterrent and noted that while the 7-year maximum sentence may be out of step with similar offences in other pieces of legislation, the changes would put the penalty out of step with other penalties in sections 355 to 358 of the Immigration Act.</p> <p>Business NZ and the EMA opposed the change, arguing that most migrant exploitation offences or infringements are civil, workplace-based events rather than high level criminal offences and do not warrant a 10-year sentence.</p>	<p><b>No changes recommended.</b></p> <p>The increase to a 10-year maximum sentence recognises the severe harms that exploitation can cause to vulnerable migrants and their families and loved ones both in and out of New Zealand. We note that the evidence standard will however not change.</p>
4. Introduce new infringement offences (via regulations) for providing false or misleading information and failing to provide documents when requested.	Supported	<p>Stakeholders supported the proposed new infringement offences in principle, noting that the detail of the offences was still to be worked through.</p> <p>The IFG queried whether there would be any discretion in the application of these offences (noting how easy it is to tick the wrong box on an online form).</p>	<p><b>No changes recommended.</b></p> <p>MBIE will develop communications material to clarify that there will still be a degree of prosecutorial discretion with these offences.</p>
5. Make it easier for an immigration officer to request information when there is good cause to suspect someone <u>may</u> be in breach of their visa conditions or potentially liable for deportation.	Mixed	<p>Stakeholders shared mixed feedback on this proposal.</p> <p>Legal submitters were concerned that without sufficient safeguards (e.g. documentation requirements), this broadening of powers could lead to overreach and potential misuse and accidental targeting of certain groups of migrants.</p> <p>There were also misunderstandings around:</p> <ul style="list-style-type: none"> <li>• <b>arrest and detention consequences</b> – the Bill makes a person liable for arrest and detention if it is suspected that they may be liable for deportation or in breach of their conditions, <u>and</u> they fail to provide evidence of identity when requested. Some submitters missed the second requirement (failure to provide evidence when requested) and therefore misinterpreted this change as a significant lowering of the threshold for arrest and detention</li> <li>• <b>the scope of the new powers</b> – submitters raised BORA concerns regarding the potential seizure of documents. (The Bill does not actually enable seizure / surrender – an officer will only be able to request, inspect or ask where the identity documents are.)</li> </ul>	<p><b>No changes recommended.</b></p> <p>We think there is merit in considering monitoring / reporting options for the use of these powers, so that the expanded powers are accompanied by proportionate monitoring safeguards. We consider that these requirements would be better established at an operational level during the implementation process, rather than legislation, so as to not create legislative inconsistencies with the reporting requirements (or lack thereof) for other compliance powers.</p> <p>Communications material will be developed to clarify the two areas of misunderstanding around arrest and detention and seizure / surrender. We will discuss with PCO whether the wording of the legislation could be adjusted for clarity, but any resulting changes will be stylistic only and would not be at the level to require a Ministerial decision.</p>
6. Remove the right to appeal to the Immigration and Protection Tribunal (IPT) on humanitarian grounds for visitor visa holders and all temporary visa holders who commit criminal offences.	Opposed	<p>This proposal attracted the most criticism, with many stakeholders (particularly NZLS, TLANZ and a member of the IFG) fundamentally opposed, with more detail in <b>Annex Two</b>.</p>	<p><b>Minor change proposed</b> to clarify that the removal of appeal rights for temporary visa holders who have committed criminal offences would need to relate to offences committed while the individual holds the temporary visa. As this is consistent with the original policy agreement, Ministerial decision is not required [ECO-25-MIN-0093 and ECO-25-MIN-0084].</p> <p>Responses to stakeholder comments are provided in <b>Annex Two</b>.</p>
7. Enable holders of deemed entry permission who are found to be inadmissible to enter New Zealand (eg due to smuggling drugs) to be turned around.	Supported	<p>Minimal feedback was received on this proposal.</p> <p>The NZLS recommended that the proposal be accompanied by safeguards to prevent the return of individuals to situations where they may face torture or other serious harm, and should provide an opportunity for individuals to raise refugee and protection claims.</p>	<p><b>No changes recommended.</b></p> <p>Communications material will be developed to clarify that this change would not override our international obligations regarding refugee and protection claims.</p>
8. Change decision-making around RRRAs from being in the	Supported	<p>There was minimal feedback received on this proposal.</p>	<p><b>No change recommended.</b></p>

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“absolute discretion” to the “discretion” of immigration officers (final Casey Review recommendation).		The NZLS commented that this change would represent a significant shift towards greater transparency, accountability, and compliance with human rights obligations. They noted, however, the potential for greater administrative complexity, and recommended that the changes be accompanied by operational guidance (eg around requirements to keep written records of decisions) to ensure the new framework operates effectively and fairly.	
9. Do not allow an applicant for asylum or protected status to apply for other visa types, while they remain in New Zealand, if they withdraw their asylum claim.	Opposed	Stakeholders recognised the challenges the system is currently facing around asylum claims (including increased numbers of unmeritorious claims), but were strongly opposed to this proposal as a solution. Detail on these concerns is set out in <b>Annex Two</b> .  Some stakeholders suggested, as an alternative to the proposal, that applicants be enabled to apply to withdraw their claim on the basis of a change in circumstances, if they can provide reasons for doing so.	<b>No change recommended.</b>  Responses to stakeholder concerns are set out in <b>Annex Two</b> .  Communications materials will be developed to clarify that claimants will still be able to apply for other visas offshore via normal channels.  The suggestion of a pathway to withdraw claims on the basis of a change in circumstances was discounted, as it would create a new processing function and resource burden, weakening the intention of the proposal.
10. Allow residence class visa applicants to benefit when visa settings change after they have submitted an application.	Supported	Stakeholders supported the proposal.  NZLS made minor drafting suggestions, to ensure that the decision to have an application decided in accordance with new instructions rests solely with the applicant.  The EMA noted operational concerns around the practicality of the change, as requests would need to be made very shortly following submission of a resident visa application.	<b>Minor change proposed</b> to address NZLS’ suggestion. As this is consistent with the original policy agreement, a Ministerial decision is not required [ECO-25-MIN-0093 and ECO-25-MIN-0084].  The EMA’s concerns will be addressed operationally during implementation.
11. Enable the electronic service of deportation liability notices (DLNs) where a physical address cannot be located.	Mixed	A member of the IFG opposed this change, on the grounds that a person’s choice of switching email addresses could render them unaware that deportation action had begun.  Other stakeholders supported it as a last resort where a physical address cannot be located.  NZLS and TLANZ encouraged safeguards to ensure that the electronic addresses used for service are correct and actively monitored, and that applicants are aware that these addresses may be used for official communications including DLNs that contain statutory deadlines.  Stakeholders also noted the necessity of clear operational processes for making genuine attempts to find a physical address for an individual. Other concerns included that there needed to be adequate means of ensuring the notice has been received.	<b>No change recommended.</b>  Communications material will be developed making it clear that electronic servicing would only occur if reasonable attempts to locate a physical address for an individual failed.  We will work with INZ to determine whether changes are required to application forms to clarify the potential use of email addresses provided for official communications.
12. Make it easier for immigration information to be shared with other agencies in support of their functions, aligning the Act with other comparable systems, combined with enhanced privacy protections.	Mixed	Stakeholders generally supported the proposal, though some expressed concerns that careful attention be given to potential privacy risks relating to the rights and interests of affected individuals.  The Office of the Privacy Commissioner (OPC) reiterated its preference for Approved Information Sharing Agreements (AISAs) over the broader information sharing framework established by ERM, and for any information sharing agreements made under ERM to be at a Minister-to-Minister rather than CE-to-CE level.  The IPT recommended specifically enabling MBIE to be able to enter into information disclosure agreements with <b>tribunals</b> , as well as New Zealand courts.	<b>Minor change proposed</b> to add tribunals to the list of entities MBIE can enter into information disclosure agreements with. <b>Ministerial agreement is sought for this.</b>  Communications material will be developed, setting out the rationale for a broad legislative framework over AISAs (essentially for efficiency and to avoid a further proliferation of piecemeal agreements). This material will also include lines regarding the rationale for the shift to CE-to-CE agreements (ie that they will be the most efficient and flexible means of ensuring immigration settings are efficient, responsive, and better facilitate the sharing of information between MBIE and other government agencies).
13. Make it clear that the Act enables the use of immigration information for digital credentials.	Supported	This proposal received minimal feedback, and was generally supported, though some stakeholders requested clarity regarding what exactly constitutes a ‘digital credential’.	<b>No changes recommended.</b>  This proposal is intended to future-proof legislation and support digitalisation of the public service in the future. Clear communications material will be developed about what constitutes a digital credential.
14. Enable a victim to submit on deportation liability proceedings, even if they are a victim of a separate crime to the one giving rise to the deportation liability.	Mixed	This proposal attracted mixed feedback.  TLANZ raised concerns that this change may lead to re-traumatisation or lack of closure for victims, noting that the victims have likely submitted throughout the criminal justice processes already. They	<b>No changes recommended.</b>  We think there is merit in the CVA’s proposal for a requirement to notify the victim of the outcome. However, given the unexpectedly mixed feedback on this proposal, we recommend holding off on any

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		<p>also noted the risk that allowing submissions from victims of unrelated crimes could introduce irrelevant considerations and complicate proceedings.</p> <p>NZLS opposed the proposal noting operational concerns such the ability of MBIE to identify and contact victims. Further concerns were that this change would add additional complication to the system and length to proceedings.</p> <p>Most other stakeholders, including the CVA, supported the change. Some stakeholders suggested that the changes should potentially extend further than proposed, with requirements for victims to be <u>notified</u> of outcomes of deportation proceedings they submit on.</p>	<p>further changes until the select committee stage, when more stakeholder views will be available.</p> <p>Communications material will also note that to be afforded the right to make a submission on deportation proceedings, a victim is defined by section 29 of the Victims' Rights Act 2002. This standard is very high and is reserved for victims of serious assault, serious injury, death, offences of a sexual nature or offences that have led to ongoing fears of physical safety or security of the victim or their immediate family. Victim submissions are intended to contextualise harm a migrant has caused and if it would be contrary to the public interest for the migrant to remain in New Zealand.</p>