



## 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

### Should the proposed change to section 150 of the Immigration Act apply retrospectively?

<b>Date:</b>	15 May 2025	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	BRIEFING-REQ-0014081

Action sought		
	Action sought	Deadline
Hon Erica Stanford <b>Minister of Immigration</b>	Indicate your preferred option to the recommendations in this briefing.	19 May 2025
Hon Casey Costello <b>Associate Minister of Immigration</b>	For information.	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Sam Foley	Manager, Immigration (International & Humanitarian) Policy	Privacy of	
Stacey O'Dowd	Manager, Immigration (Border and Funding) Policy	Privacy of	✓
Vanessa Jones	Principal Policy Advisor, Immigration (International & Humanitarian) Policy	Privacy of	

The following departments/agencies have been consulted
Ministry of Foreign Affairs and Trade, Ministry of Justice

**Minister's office to complete:**

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

**Comments**



# BRIEFING

## Should the proposed change to section 150 of the Immigration Act apply retrospectively?

<b>Date:</b>	14 May 2025	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	BRIEFING-REQ-0014081

### Purpose

To seek your direction on whether the proposal to clarify section 150 of the Immigration Act 2009 (the Act) to prevent asylum claimants who withdraw their claims from applying for further visas should take effect retrospectively.

### Recommended action

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

- a **Note** you recently agreed to progress an amendment to section 150 of the Act to limit the ability of an asylum claimant who withdraws a claim to apply for a further visa [BRIEFING-REQ-0013002 refers]

*Noted*

#### EITHER

- b **Agree** that the proposal to clarify section 150 of the Act to prevent asylum claimants who withdraw their claims from applying for further visas should take effect retrospectively i.e. should apply to existing claimants (Option1)

*Agree / Disagree*

#### OR

- c **Agree** that the proposal to clarify section 150 of the Act to prevent asylum claimants who withdraw their claims from applying for further visas should NOT take effect retrospectively i.e. should apply to future claimants only (Option 2)

*Agree / Disagree*

#### OR

- d **Agree** that the proposal to clarify section 150 of the Act to prevent asylum claimants who withdraw their claims from applying for further visas should apply from introduction (i.e. only to those claimants who claim after the proposed Immigration (Enhanced Risk Management) Amendment Bill is introduced) (Option 3)

*Agree / Disagree*

- e **Note** that officials will be available to discuss this briefing with you on 19 May.

*Noted*

Stacey O'Dowd  
**Manager, Immigration (Border and Funding) Policy**  
Labour, Science and Enterprise, MBIE  
15 / 05 / 2025

Hon Erica Stanford  
**Minister of Immigration**

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## Background

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1. You recently directed officials to progress an amendment to section 150 of the Act to limit the ability of an asylum claimant who withdraws a claim to apply for a further visa [BRIEFING-REQ-0013002 refers]. This will treat claimants who withdraw in the same way as claimants who are declined, preventing them from applying for a further visa.
2. The proposal is intended to clarify ambiguity in the law as section 150 is currently silent as to the ability for a claimant who withdraws to apply for other visas. 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.

## Issue and options

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3. To finalise advice to Cabinet on this proposal (as part of the Immigration (Enhanced Risk Management) Amendment Bill and inform drafting instructions, we seek your direction as to when the proposed amendment should take effect, more specifically whether it should apply:
  - a. to existing claimants (in the queue at the time the legislation comes into effect, **Option 1**); or
  - b. to future claimants (claims lodged after the legislation comes into effect, **Option 2**).
  - c. from the date of introduction of the Bill (**Option 3**). This is more moderate than Option 2 and somewhat limits the unintended consequences of Options 1 and 2.
4. There is a general principle that legislation should not have retrospective effect,<sup>1</sup> which informs the right to natural justice<sup>2</sup> and the rule of law. The right to retroactive penalties<sup>3</sup> may also be relevant, as although there is no offence in question, it could be argued that removing an existing right is akin to imposing a penalty.
5. In one sense, it would be fairer for existing claimants not to be impacted by the amendment (specifically, those who wish to take advantage of the existing ability to withdraw and apply for other visas), **Option 1**. In addition, the current rate of withdrawals<sup>4</sup> has reduced processing timeframes for the remaining claims. Retrospectively applying this change would prevent those in the queue from withdrawing their claims and therefore increase processing timeframes, albeit at the margins, given that there are more than 3,600 claims on hand.

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<sup>1</sup> See for example principle 12.1 of the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines.

<sup>2</sup> The right to justice is enshrined in section 27 of the New Zealand Bill of Rights Act 1990 (NZBORA).

<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.

<sup>4</sup> For example, the 387 claims withdrawn between 2023/24 and March 2024/25, 57 of which went on to be granted another visa.

6. However, applying the change to future claimants only, **Option 2**, may have the impact of causing new claimants to make claims before the amendment takes effect in order to take advantage of the existing ability to withdraw and apply for other visas. This could increase backlogs and impact genuine claimants by increasing processing times. If your preference is Option 2, the amendment would need to be explicit as to this fact.<sup>5</sup>
7. The third, more moderate option, is that the amendment could take effect from the date of introduction of the Bill, **Option 3**. This would, to an extent, limit retrospectivity and the unintended consequence of an increase of claims before the law is enacted. It is arguably fairer and more transparent because claimants are aware of the amendment and its consequence at the time they claim i.e. the public is put on notice as to the change, and therefore it is more aligned with rule of law and natural justice principles and be lower risk at risk of legal challenge.
8. In practice, until the Bill is passed, claimants could still withdraw during the period between introduction and enactment. The effect would be that once the Bill was passed, claimants that had applied following introduction could no longer withdraw. The amendment would not apply to any of the existing claimants in the queue before introduction.
9. Application at the point of introduction does occur in other regulatory systems, tax for example. However, we note that this context differs as bills are often passed more quickly (at times under urgency) reducing the gap between introduction and the law being in force.
10. If Option 3 is preferred, the amendment would need to explicitly provide a commencement date and transitional provision.
11. Essentially the trade-off is between:
  - a. upholding the principle that legislation should not have retrospective effect; and
  - b. the risk that if it does not apply retrospectively there may be a rush to make claims before the amendment takes effect from claimants seeking to keep their options open, impacting genuine claimants by increasing processing times.
12. This proposal does not appear to meet any of the established criteria justifying retrospectivity.<sup>6</sup> [REDACTED] Legal professional privilege [REDACTED]  
[REDACTED]  
[REDACTED]

## Next steps

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13. Officials seek your direction on this issue and will be available to discuss it with you on Monday 19 May. Following your direction we will finalise the proposal for Cabinet consideration.

<sup>5</sup> Otherwise will risk being interpreted as not applying retrospectively as per section 7 of the Interpretation Act 2019.

<sup>6</sup> For example, being entirely to the benefit of those affected, decriminalising conduct, and addressing a matter essential to public safety, LDAC Legislation Guidelines.