MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Erica Stanford	**Portfolio**	Immigration
Title of Cabinet paper	Immigration Financial Sustainability and System Integrity Amendment Bill	**Date to be published**	10 April 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
3 April 2025	Immigration (Fiscal Sustainability and System integrity) Amendment Bill: Approval for Introduction LEG-22-MIN-0044 Minute	Cabinet Office
26 March 2025	Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Approval for Introduction	Office of the Minister of Immigration
26 March 2025	REQ-0009920 Immigration Amendment Bill: final Cabinet paper and Bill for lodgement	MBIE
24 February 2025	REQ-0009651 Immigration Amendment Bill - draft Cabinet paper and Bill for ministerial consultation	MBIE
12 February 2025	REQ-0008378 Immigration (Fiscal Sustainability and System Integrity) Amendment Bill - drafting decisions	MBIE
21 January 2025	REQ-0007504 Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Exposure draft feedback	MBIE
18 November 2024	REQ-0005172 Immigration amendment Bill: documents for release for targeted consultation	MBIE
13 November 2024	Immigration Amendment Legislation - Addition to Bill and Planning for Future Reviews ECO-24-MIN-0255 Minute	Cabinet Office
13 November 2024	Immigration Amendment Legislation - Addition to Bill and Planning for Future Reviews	Office of the Minister of Immigration
2 November 2024	REQ-0005823 Cabinet paper for lodgement: Immigration Amendment Legislation - addition to Bill and planning for future reviews	MBIE
24 October 2024	REQ-0005298 Draft Cabinet paper amending the definition of mass arrival	MBIE
8 October 2024	REQ-0004179 Immigration Amendment Bill – Mass Arrivals definition and transitional arrangements proposals	MBIE
20 September 2024	Immigration (Fiscal Sustainability and System Integrity) Amendment Bill: Policy Proposals ECO-24-MIN-0198 Minute	Cabinet Office
12 September 2024	Immigration Financial Sustainability and System Integrity Amendment Bill - policy proposals	Office of the Minister of Immigration
6 September 2024	2425-0891 Immigration Amendment Bill: Cabinet paper for lodgement	MBIE
22 August 2024	2425-0747 Immigration Amendment Bill: draft Cabinet paper for Ministerial consultation	MBIE
13 August 2024	2024-0352 Immigration Amendment Bill: draft Cabinet paper for feedback	MBIE
17 July 2024	2024-0286 Immigration Amendment Bill: update for meeting on 17 July 2024	MBIE

2 July 2024	2324-3802 Fiscal Sustainability Amendment Bill - update and key decisions	MBIE
4 April 2024	2324-2168 Proposed Immigration (Fiscal Sustainability) Amendment Bill: scope and timeframes	MBIE

Information redacted **YES**

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 at this time.

Some information has been withheld for the reasons of: national security or defence, privacy of natural persons, confidential advice to Government, information subject to an obligation of confidence, free and frank expression of opinion and legal professional privilege.

This document includes reference to a 2025 fee and levy review. This review is no longer on the immigration work programme for 2025.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Fiscal Sustainability Amendment Bill – update and key decisions

Date:	2 July 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324-3802

Action sought		
	Action sought	**Deadline**
Hon Erica Stanford **Minister of Immigration**	**Agree** to the proposed approach for expanding the levy payer-base and the purposes the levy can be used for **Agree** to the addition of new amendments to the scope of the Fiscal Sustainability Amendment Bill.	18 July 2024

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
Stacey O'Dowd	Acting Manager, Immigration (Border and Funding) Policy	03 901 0429	Privacy of natural persons	✓
Lesley Parker	Principal Policy Advisor	04 901 11347	-	
Meg Fraser	Senior Policy Advisor	04 896 5347	-	

The following departments/agencies have been consulted
N/A

Minister's office to complete:

☐ Approved ☐ Declined
☐ Noted ☐ Needs change
☐ Seen ☐ Overtaken by Events
☐ See Minister's Notes ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Fiscal Sustainability Amendment Bill – update and key decisions

Date:	2 July 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324-3802

Purpose

The purpose of this briefing is to update you on the development of the Fiscal Sustainability Amendment Bill (the Bill), and seek your direction on key policy questions that have emerged to date.

Executive summary

In May 2024 you provided direction on the scope of the Bill. This included four amendments to the Immigration Act 2009 (the Act) to:

a) expand the range of people or entities that can be charged the immigration levy (the levy)

b) expand the scope of activities the levy can fund (publicly-funded services or infrastructure)

c) Confidential advice to Government

d) require immigration officers to obtain a judicial warrant prior to conducting unannounced out-of-hours compliance activity (a Heron review recommendation).[1]

This briefing seeks your agreement to an overarching purpose and set of objectives for the Bill. It also provides you with an overview of the development of the Bill's components at **Annex One.**

We also seek your agreement to the proposed approach for both levy proposals. We think the best approach is for the Act to set out broad enabling provisions and specify a process and criteria to determine which groups should be charged and what activities the levy could fund. The detail including the levy rates would be worked through as part of the next fee and levy review with subsequent amendments to Schedule 6 of Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (the Visa Regulations).

We have identified three additional areas for amendment. These align with the Bill's proposed objectives and have been assessed as having no impact on overall timeframes. They are also likely to be supported by immigration system stakeholders. The substantive amendments relate to addressing:

a) key findings and/or recommendations from the Casey review into the detention of asylum claimants and issues identified following the New Lynn terror attack

b) migrant exploitation (making it an offence to require premium payments in advance of employment).

Confidential advice to Government

[1] 2023 review conducted by Michael Heron KC MHKC INZ Out of Hours Final Report 29 June 2023 (mbie.govt.nz)

We seek your agreement to undertaking targeted consultation immediately post Cabinet policy decisions. This approach means that, in the unlikely event of any showstoppers being identified, it could be possible to incorporate them into early briefings to Select Committee, and to address them through Cabinet decisions immediately prior, or parallel to, Select Committee deliberations.

We are working with your Office to arrange a meeting for the week of 15 – 19 July to discuss this briefing and your legislative priorities with you. We will provide you with a detailed timing update at this point.

Recommended action

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

a **Agree** that the purpose of the Fiscal Sustainability Amendment Bill (the Bill) be to:

"amend the Immigration Act 2009 to support the immigration system to be more fiscally sustainable and better balance settings that support the integrity of the system (as determined by the Crown) with those that protect the rights of individuals"

Agree / Disagree / Discuss

b **Agree** to the following objectives for the Bill:

i. more fairly share the costs of the immigration system across those that create the risks and/or receive the benefits of migration;

ii. maintain and enhance the integrity and social licence of the immigration system through ensuring offence, safeguards and risk mitigation provisions are balanced, transparent and consistent; and

iii. Confidential advice to Government

Agree / Disagree / Discuss

c **Agree** to the proposed approach to amending the provisions relating to the immigration levy

For the proposal to expand the levy payer base i. amend the Act to have a broad empowering provision for levy liability and require criteria to be satisfied when determining who should be subject to an immigration levy	*Agree / Disagree / Discuss*
For the proposal to expand the scope of the levy ii. amend the Act such that the levy can fund any services or infrastructure costs but there must be a link to the chargeable groups and specified consultation and reporting obligations must be met	*Agree / Disagree / Discuss*

Additional amendments that could be included in the Bill

d **Agree** to include the following proposed amendments in the scope of the Bill:

i.	Warrant of commitment provisions	*Agree / Disagree / Discuss*
ii.	Migrant exploitation offence provisions	*Agree / Disagree / Discuss*
iii.	Confidential advice to Government	*Agree / Disagree / Discuss*

Consultation and next steps

e **Agree** to MBIE undertaking targeted consultation ahead of Select Committee

i.	**Fiscal proposals**: Business New Zealand, the Employers and Manufacturers Association, Council of Trade Unions, the New Zealand Law Society (NZLS), and informing the Law Association (LA)	*Agree / Disagree / Discuss*
ii.	**System integrity proposals:** the Casey Review Focus Group, NZLS and LA	*Agree / Disagree / Discuss*

f Confidential advice to Government [redacted]

g **Agree** to discuss the recommendations in this briefing and your legislative priorities with officials

Agree / Disagree

h **Note** that officials are working with MBIE legal and the Parliamentary Counsel Office on timing for progressing the Bill, and will provide an update in mid-July 2024.

Noted

Stacey O'Dowd
Acting Manager, Immigration (Border and Funding) Policy
Employment, Skills and Immigration Policy

02 / 07 / 2024

Hon Erica Stanford
Minister of Immigration

..... / ..... / .....

Background

1. On 8 May 2024 you provided direction on the scope of the Bill [2324-2168 refers], which is intended to come into force in late 2025.

2. You agreed to progress four legislative amendments to the Act:

   a. expand the range of people or entities that can be charged the levy

   b. expand the purpose of expenditure of the funding collected by the immigration levy to include contributions to publicly-funded services or infrastructure

   c. Confidential advice to Government

   d. introduce a requirement for immigration officers to obtain a judicial warrant prior to conducting unannounced out-of-hours compliance activity (a recommendation of the Heron review).[2]

3. We continue to progress policy work on these amendments. This briefing:

   a. provides you with an overview of the policy proposals and seeks your direction on key policy questions that have emerged to date

   b. seeks your direction on additional amendments that have been identified

   c. provides advice on undertaking consultation with a small number of key stakeholders.

We have been progressing policy development of the Bill

4. We have been developing the policy proposals for each component of the Bill. A summary of each policy proposal, including key objectives and risks to manage is set out in **Annex One**.

Proposed purpose and objectives of the Bill

5. Alongside developing the policy proposals, we have been considering the overarching purpose and objectives for the Bill, that would tie the fiscal sustainability proposals to the focus on system integrity. We seek your agreement to the following proposals.

6. We propose that the purpose of the Bill is:

> *"to amend the Act to support the immigration system to be more fiscally sustainable and better balance settings that support the integrity of the system (as determined by the Crown) with those that protect the rights of individuals".*

7. We have identified three overarching objectives for the Bill:

   a. more fairly share the costs of the immigration system across people or organisations that create the risks and/or receive the benefits of migration;

   b. maintain and enhance the integrity and social licence of the immigration system through ensuring offence, safeguards and risk mitigation provisions are balanced, transparent and consistent; and

   c. Confidential advice to Government

[2] 2023 review conducted by Michael Heron KC MHKC INZ Out of Hours Final Report 29 June 2023 (mbie.govt.nz)

We seek your direction on the approach to the levy proposals

8. The levy proposals intend to enable a broader group to be charged and a broader set of activities to be funded (such as public services and infrastructure). We think the best way to achieve this is for the Act to set out broad enabling provisions with appropriate checks and balances. A process and criteria would be specified to be used when determining which people or groups should be charged and what activities levy revenue could fund (rather than specifying the broad groups or activities themselves in the Act).

9. For both levy proposals, the detail as to what specific people or groups will be charged (i.e. which employers) and the appropriate levy rates for each would be worked through as part of the next fee and levy review and subsequent amendments to the Visa Regulations.

10. The following section sets out our recommended approach for each levy proposal and alternative options considered. We seek direction on your preferred option.

Options considered to expand the levy payer base

11. Three options for expanding the levy payer base have been identified and compared with the status quo as set out in Table 1.

Table 1: Options for expanding the levy payer base

Option	Analysis
Preferred option: Amend the Act to have a broad empowering provision for levy liability and require criteria to be satisfied when determining who should be subject to an immigration levy (in the Visa Regulations). We propose that the criteria be that: • any group liable to pay is easily identifiable and charging must be operationally feasible • there is a direct and justifiable link between the benefit or risk this group derives or introduces to the immigration system • unintended consequences can be managed (e.g. consistency with international agreements), • the Minister must consult on any groups who are proposed to be subject to an immigration levy charge.	This option is recommended because it would: • create a fairer immigration funding model by ensuring that more people who create the risks or receive the benefits of migration / New Zealand's immigration system meet the costs of these activities. • ensure that the levy is cost effective and efficient to implement. • ensure imposing a levy charge to new groups is reasonable with appropriate checks and balances. A risk to manage is that the requirement to comply with proposed criteria could increase administrative burden and slow down the pace of making changes to the Visa Regulations. However, the risk of any potential delays to amending the Visa Regulations are outweighed by the risk of challenge if these safeguards are not in place (see Alternative option 2). These checks and balances will also help to ensure that any changes align with the purpose and objectives of the Bill.
Alternative option 1: Amend the Act to specify broad people or groups (e.g. "employers", "New Zealand Electronic Travel Authority (NZeTA) payers") who would be subject to the levy. Our initial analysis has identified a broad range of people or groups that could be subject to the immigration levy.	This option is not recommended because it does not provide flexibility. The Act would need to be amended each time a new group is added or removed, which is time and resource intensive. There is a risk (exacerbated by the need to amend primary legislation) that this would introduce inequity into the system, raising the risk of legal challenge and inconsistency with cost recovery principles.

Option	Analysis
Alternative option 2: Amend the Act so that it empowers regulations to provide for imposition and collection of an immigration levy from 'anyone'. This means anyone who interacts with the immigration system would be potentially subject to be charged the immigration levy.	This option is not recommended because: • it raises the legal risk of challenge of unfairness and would be inconsistent with the cost recovery principles of equity and fairness (establishing a direct link between risk / benefit and use of the immigration system) as well as transparency (why some groups are included and not others) • it would be administratively difficult and costly to implement.

Options considered to expand the purposes the levy can be used for

12. We have similarly identified three options to expand the purposes the levy can be used for. Note that all of the options assume that the Purpose of the Act (section 3) is amended to enable a levy to be charged to fund, or contribute to the funding of, wider costs outside the immigration system.

Table 2: Options for expanding the purposes the levy can be used for

Option	Analysis
Preferred option: Amend the Act such that the levy can fund any services or infrastructure costs but: • there must be a link to the chargeable groups or people • specified consultation requirements and additional reporting obligations on the use of the levy must be met.	This option is recommended because it the most defensible and establishes a transparent process with safeguards to identify broader costs to be met. There is an ongoing risk of challenge Legal professional privilege [redacted] We will work with the Ministry of Foreign Affairs and Trade and Inland Revenue to manage international tax treaty implications.
Alternative option 1: Amend the Act such that the levy can fund <u>any</u> services or infrastructure costs.	This option is not recommended because: • it would not meet the definition of a levy (which requires a linkage between the "group that pays" and the "group that either benefits or causes the cost"). • if it was found to constitute a tax, this would attract attention on the basis that it would not meet our international obligations established in a range of tax treaties, with regard to non-discrimination on the basis of nationality (New Zealanders and Australians would generally be exempt, except to the extent that charges were made on, for example, employers).
Alternative option 2: Amend the Act such that the levy can fund any services or infrastructure costs but there must be a link to the chargeable groups.	This option scores higher than the status quo (it reduces burden on the taxpayer and will ensure that a link is made between the charge and the benefit or risk specified groups derive or introduce). Confidential advice to Government [redacted]

We have identified additional amendments that could be included

13. As part of the policy development we have identified three additional areas for amendment that fit within the Bill's overarching purpose and objectives (as proposed in paragraphs 6 and 7), and have been assessed as having no impact on overall timeframes because they are not complex to develop, draft or implement. They are also likely to be supported by immigration system stakeholders.

14. The substantive amendments relate to addressing:

    a. key findings and/or recommendations from the Casey review into the detention of asylum claimants[3]

    b. migrant exploitation (making it an offence to require premium payments in advance of employment).

15. The benefits of progressing the amendments as part of this Bill are that they would regularise best practice, ensure consistency across different pieces of immigration legislation and require minimal policy development work. Delaying until a subsequent review of the Act would:

    a. mean that in the meantime, there would be inconsistency between Warrant of Commitment (WOC) requirements for groups and individuals

    b. be out of step with international best practice and international guidance on seeking alternatives to detention and reducing restrictions on affected persons

    c. call into question MBIE's commitment to responding to findings and recommendations of the Casey review

    d. increase risk to the integrity of the immigration system.

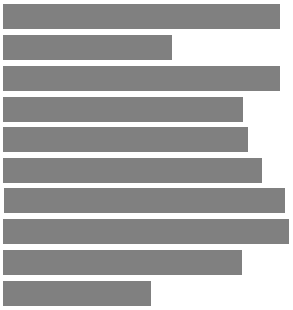
16. Confidential advice to government and Free and Frank [redacted]

17. A fulsome summary of each proposal is provided in **Annex Two**. Table 3 below sets out our analysis of the proposed amendments for your consideration. We seek your direction on whether to progress some or all of these proposals as part of this Bill, Confidential advice to Government [redacted]

[3] 2022 report by Victoria Casey KC on the detention of asylum claimants: Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment – Restriction of movement of asylum claimants (mbie.govt.nz)

Table 3: Potential additions to the scope of the Bill

Proposal description	Analysis
Warrant of commitment (WOC) provisions (these are a package and relate to the Casey Review and concerns raised following the New Lynn terror attack)	
Amend section 316 to align requirements for individual WOCs with group warrants, requiring an outline of considerations made prior to detention, reference to compliance with domestic and international obligations, and expanding judicial discretion re the location of detention.	This amendment is recommended as it would: • bring individual WOC into line with the Group WOC as per the Immigration (Mass Arrivals) Amendment Act 2024 • involve relatively simple legislative drafting as would mirror mass arrivals provisions • enhance the integrity and social licence of the immigration system, by balancing human rights with national interest • be in the spirit of the findings of the Casey review (although not an explicit recommendation itself). A risk with this amendment is that it would increase compliance requirements, however our understanding and expectation is that these factors are already actively considered by immigration officers – it would regularise best practice.
Enable electronic monitoring as a lesser form of restriction of movement than detention in a prison (also known as "community management"). Currently the only two options are available are Residence and Reporting Required Agreement or detention.	This amendment is recommended as it would: • address recommendation 2 from the Casey review • expand the range of detention options available and provide a more graduated response to any potential risk posed by an asylum seeker • require minimal work from a legislative drafting perspective - amendments already drafted as part of the Immigration (Flexible Response) Amendment Bill in 2023. A risk with this amendment is that even though it would aim to reduce restrictions on affected persons, electronic monitoring has negative stigma and therefore the proposal could be controversial. There are also potential New Zealand Bill of Rights Act 1990 (BORA) implications relating to electronic monitoring as a form of restriction on liberty. We have worked with the Ministry of Justice on this previously and will continue to engage with them to manage BORA implications. Another mitigation will be pre-Select Committee stakeholder consultation and clear communications about the benefits of the proposal.
Create a "cancellation of residence class visa status power" to facilitate the future deportation of an individual subject to the Act who poses a threat or risk to security but cannot currently be deported.	This amendment is recommended as it would: • remove a barrier to deportation (if deportation became possible), which would strengthen the integrity of the system • require minimal work from a legislative drafting perspective - amendments already drafted as part of the Immigration (Flexible Response) Amendment Bill in 2023 • address concerns raised following the New Lynn terror attack. A risk with this amendment is that the expansion of Ministerial powers could be viewed as controversial. However, communications would be clear that this power would only be available in the most serious of cases.
Repeal section 317(5)(d) to allow a judge to not order detention for an individual who is subject to detention and has claimed asylum (currently an individual is subject to an automatic deportation liability notice if they claim asylum post-detention).	This amendment is recommended as it would: • address recommendation 1 from the Casey Review • provide greater discretion to judges to respond to individual circumstances (it may be entirely valid to claim asylum at the point of detention or deportation) • require minimal work from a legislative drafting perspective as it is a repeal, rather than an expansion of a provision. Progressing this amendment in a later review of the Act (rather than this Bill) would carry some risk, namely that in the rare instances an asylum claimant is subject to a WOC, a judge would have no choice but to grant a warrant, even if they do not think it is appropriate. The limited opportunity for a judge to genuinely scrutinise such a warrant could bring into question MBIE's commitment to addressing issues raised in the Casey Review.

Proposal description	Analysis
Address migrant exploitation	
Amend s351(1)(a)(iii) to clarify that premiums charged for employment by a New Zealand based employer should be an offence, irrespective of whether an employee/worker has commenced active employment, to address migrant exploitation.	This amendment is recommended as it would: • address a loophole in our ability to address migrant exploitation and hold exploitative employers to account • align with Government's commitment to greater protections against migrant worker exploitation. There is a risk that indicating an intention to amend this provision could highlight a gap in the legislation and increase the instances of this behaviour occurring (in the short term). This is mitigated because Accredited Employer Work Visa application forms now require applicants to declare if a premium has been paid and action can be taken if false declarations are made. We continue to work with Legal to ensure the policy proposal captures payments made offshore.
Confidential advice to Government	
	

We have been working closely with MBIE legal to develop the proposals for the Bill

18. We will continue to work closely with legal and relevant agencies to resolve the issues identified above ahead of providing the draft Cabinet paper to you. We also intend to test the policy proposals with the Legislative Design Advisory Committee (LDAC) in the coming weeks. The benefit of this is that LDAC will be able to alert us to any issues with the proposals from a legislative design perspective, which will make for a more efficient drafting process.

19. We are also working with MBIE legal and Parliamentary Counsel Office (PCO) to get a better understanding of drafting time required and sequencing considerations (so any Visa Regulations can be amended once the Bill is enacted). We will provide you with a detailed timing update in mid-July.

We recommend undertaking targeted consultation with stakeholders

20. The best practice for both policy and legislative change is to undertake consultation at an early enough point that proposals can be tested, to ensure that they are most likely to achieve the intended outcomes and to identify, and to the degree possible any risks and unintended consequences.

21. The recent passage of the Mass Arrivals Amendment Act through its parliamentary processes (in particular with regard to Select Committee submissions) has highlighted how a lack of early messaging to external stakeholders made it difficult to ensure the proposals were fully understood and progress the amendments. In addition, immigration system stakeholders consistently raise the importance of consultation and the historic lack of meaningful engagement on immigration policy proposals.

22. The tight timeframes necessary for the Bill and Visa Regulations to be in place in 2025, mean consultation before Cabinet decisions is not possible. Our view is that some form of consultation is necessary before the Select Committee process.

23. We propose to progress tightly targeted consultation while the Bill is being drafted (bound by confidentiality undertakings). This approach means that, in the unlikely event of any show-stoppers being identified, it could be possible to incorporate them into early briefings to Select Committee, and to address them through Cabinet decisions immediately prior, or parallel to, Select Committee deliberations.

24. We seek your agreement to targeted consultation (in confidence) with the following groups, immediately post Cabinet policy decisions:

    a. **Fiscal proposals:** Business New Zealand, the Employers and Manufacturers Association, the Council of Trade Unions, and the New Zealand Law Society (NZLS) (and informing the Law Association (LA), formerly the Auckland District Law Society)

    b. **Immigration system proposals** (implementing the outcomes of the external Casey and Heron reviews): the Casey Review Focus Group, the NZLS and LA.

25. Finally, we note that external consultation on proposals for significant regulatory change is required for a Regulatory Impact Assessment (RIA or RIS) document to be assessed as "fully meeting" quality requirements. However, a RIA which otherwise meets requirements, but whose proposals have not been externally consulted, will be granted a "partially meets" status, which is adequate for the proposals to proceed.

Next steps and timing

26. Following your discussion of the immigration work programme with officials on 2 July, we are reviewing the scope of the planned future review of the Act to determine which of your other priorities could be brought forward to the Fiscal Sustainability Amendment Bill.

27. We would welcome the opportunity to discuss this briefing and your wider legislative priorities with you. We are working with your Office to arrange a meeting for the week of 15 – 19 July.

Annexes

Annex One: Summaries of confirmed Bill proposals

Annex Two: Summaries of potential additions to the scope of the Bill

Annex One: Summaries of confirmed Bill proposals

Proposal 1: Expanding the levy payer base
The proposal is that the classes of person who can be charged the immigration levy under the Immigration Act 2009 (the Act) be broadened to groups that do not currently contribute to meeting the broader costs of immigration, but who do receive a benefit (or contribute to risks). The proposed amendment seeks to achieve three objectives: • create a fairer immigration funding model by ensuring that more people who create the risks or receive the benefits of migration / New Zealand's immigration system meet the costs of these activities. • ensure that the levy is cost effective and efficient to implement. This means that the collection is feasible and to the extent possible utilise existing mechanisms and touch points of the immigration system, rather than creating new processes or requiring new systems. • ensure levy charges imposed are reasonable with appropriate checks and balances.
Problem definition / opportunity
• Currently, migrants and the Crown cover the costs associated with migration. There are a broad number of groups and individuals who benefit from the immigration system but do not pay an immigration levy (e.g. employers, education providers and NZeTA holders). • There is an opportunity to make the immigration system fairer by bringing new groups into the levy payer base and better align with cost recovery principles of equity and fairness.
Key points about the proposal
Three options for expanding the levy payer base have been identified and compared with the status quo. **The preferred option is to:** Amend the Act to have a broad empowering provision for levy liability, and require criteria to be satisfied when determining who should be subject to an immigration levy (in the Visa Regulations). This option is preferred as it meets all three objectives. We propose the following criteria: • any group liable to pay is easily identifiable and charging must be operationally feasible • there is a direct and justifiable link between the benefit or risk this group derives or introduces to the immigration system • unintended consequences can be managed, and • the Minister must consult on any groups who are proposed to be included. **Other options considered:** • **Status quo:** Visa applicants only continue to pay the immigration levy. • **Option 1:** Amend the Act to specify groups that are required to pay an immigration levy. This would involve explicitly specifying groups (e.g. "employers", "persons requesting NZeTA") who would be subject to the levy in the Act. This is not recommended because it may not meet objective one or two. This would mean that the primary legislation would need to be amended each time a new group is added or removed, which is time and resource intensive. There is a risk (exacerbated by the need to amend primary legislation) that this would introduce inequity into the system, raising the risk of legal challenge and inconsistency with cost recovery principles. • **Option 2:** Amend the Act so that it empowers regulations to provide for imposition and collection of an immigration levy from 'anyone'. This means anyone who interacts with the immigration system would be potentially subject to be charged the immigration levy. This is not recommended as it does not meet any of the outlined objectives. It risks being perceived as unfair, Confidential advice to Government [redacted] It could be more difficult to apply the cost recovery principles of equity and fairness (establishing a direct link between risk / benefit and use of the immigration system) as well as transparency (if some groups are included and not others). It would also be operationally and administratively difficult and costly to implement.

Proposal 1: Expanding the levy payer base	
Risks to manage	
Risk	**Mitigation**
Levy costs could be passed onto the migrant (i.e. workers or students)	Increasing the pool of levy payers should reduce levy rates across the board, which should help to manage these risks.
Could result in the Crown 'levying' itself (e.g. the Ministries of Education and Health are key employers of migrants)	
Negative labour market impacts (too expensive to recruit migrant labour)	
Further work required (as part of the subsequent fee and levy review and amending the Visa Regulations)	
• Identify who exactly is to be charged and by how much. • Identify how new groups and/or people would be charged and what mechanism would be used for collection.	

Proposal 2: Expanding the purposes the levy can be used for
The proposal is that the Act be amended to expand the purpose for which revenue collected through the Immigration levy can be spent. This could include contributions to publicly-funded services or infrastructure. This would align with the government objective around constraining calls on taxpayer funding, and could also respond to the objective of addressing New Zealand's infrastructure deficit. It would acknowledge that beneficiaries of the immigration system (which enables non-New Zealanders to be lawfully in New Zealand, temporarily or permanently) also benefit from well-performing infrastructure / public services, and in some cases impose additional costs or pressures on New Zealand's infrastructure or public services (such as education or health) but have not contributed to the funding of that infrastructure or those services. The proposed amendment seeks to achieve three objectives: • reduce the burden on taxpayers, through ensuring that more people who create the risks or receive the benefits of migration / our immigration system meet the costs of these activities. • be straightforward to administer (both that there is efficient identification of beneficiaries / exacerbators with regard to their contribution to identified costs, and that the expenditure of revenue is efficient). • Confidential advice to Government
Problem definition / opportunity
There is an opportunity to use the expanded revenue sources to fund a greater range of public and social services and infrastructure impacts, outside the direct immigration system. For example, in addition to (currently-funded) English for Speakers of Other Languages (ESOL) in the compulsory school sector (foreign-born children, and children who are the children of migrants, benefit from this), levy payers could contribute to meeting costs where service provision is currently under pressure.
Key points about the proposal
Three options for expanding levy expenditure have been identified, and compared with the status quo. Note that all of the options except the status quo assume that the Purpose of the Act is amended to enable a levy to be charged to fund, or contribute to the funding of, wider costs outside the immigration system. **The preferred option is to:** Amend the Act such that the levy can fund any services or infrastructure costs but there must be a link between those costs and the chargeable groups and specified consultation and reporting obligations must be met. Confidential advice to Government The risk that the wider levy could be seen to breach these agreements cannot be made zero and applies to all options other than the status quo. This option however is the most defensible because it would establish an appropriate process to identify broader costs to be met. **Other options considered:** • **Status quo**: No change (immigration levy funds immigration system costs and 80% of ESOL in schools). This scores relatively high (no implementation costs, and low risk of challenge). It does not however meet the primary aim of reducing the future burden on taxpayers. • **Option 1:** Amend the Act such that the levy can fund any services or infrastructure costs. This is not recommended as it would not meet the established definition of a levy (which requires a linkage between the "group that pays" and the "group that either benefits or causes the cost"). If it was found to constitute a tax, this would attract attention on the basis that it would not meet our international obligations established in a range of tax treaties, with regard to non-discrimination on the basis of nationality Confidential advice to Government • **Option 2:** Amend the Act such that the levy can fund any services or infrastructure costs and there must be a link to the chargeable groups. This option scores higher than the status quo (it reduces burden on the taxpayer and will ensure that a link is made between the charge and the benefit or risk specified groups derive or introduce). Confidential advice to Government

Proposal 2: Expanding the purposes the levy can be used for	
Risks to manage	
Risk	**Mitigation**
Confidential advice to Government [redacted]	Consult with Ministry of Foreign Affairs and Trade and Inland Revenue on how best to manage international tax implications. Specifying the process to be used for consultation. There are two choices; either: • the Chief Executive must undertake consultation with such parties as they consider appropriate (to avoid risk to the Minister), OR • the Minister must be satisfied that specified criteria have been met.
The overall costs associated with travel to or study in New Zealand / employing skilled workers / bringing family members home are so high that they discourage activity that is otherwise considered desirable	Continue to improve financial management of the immigration system and better understanding about costs sensitivity and the impacts of charging decisions on foreign relations, New Zealanders overseas, etc.
Increased administrative burden associated with the consultation and reporting requirements crowd out other high priority policy work.	Work programme planning to manage timing and resourcing implications of future charging reviews.
The first fee and levy review is disallowed by Regulations Review on the basis that adequate consultation was not carried out (if it is urgent)	Either Parliament makes the first set of regulations (not then reviewable) or (reduces risk but does not eliminate it) the legislative change waives the requirement for consultation on the first set of regulations.
Further work required	
There is future policy work required to: • consult with the Ministry of Foreign Affairs and Trade and Inland Revenue to understand the international tax implications, • identify what services or infrastructure could or should be resourced from the expanded levy and which beneficiary / exacerbator groups should contribute (for example, contributions to Vote Education to support teacher aides, perhaps allocated in line with ESOL funding to schools below a certain indicator level, on the basis that ESOL need aligns broadly with migrants; Confidential advice to Government [redacted] • set the appropriate charge to recover the identified amount.	

Proposal 3: Out-of-hours compliance activity

The proposal is to amend section 286 of the Act to limit compliance activity conducted out of reasonable hours (out-of-hours activity) to where judicial warrants have been obtained. Currently, an immigration officer may enter and search at any reasonable time, by day or night, any building or premises which an officer believes to be the location of an individual who is subject to a deportation order. The proposal seeks to:

- maintain and enhance the integrity and social licence of the immigration system through ensuring the risk mitigation provisions are balanced, transparent and consistent.
- ensure that the human rights of those subject to immigration compliance activity are upheld and appropriately balanced against the national interest as determined by the Crown.
- ensure that protections for human rights of the individual do not unduly limit MBIE's ability to maintain good regulatory outcomes.

Problem definition / opportunity

- A review by Michael Heron KC in 2023 found issues with how out-of-hours compliance activity is conducted. To improve MBIE's social licence to undertake compliance activity, the review suggested limiting out-of-hours-activity to where judicial warrants have been obtained.
- The review also highlighted the public interest in the appropriate use of compliance powers to gain good regulatory outcomes and the expectation that the government have a "clearly stated position" on when out-of-hours compliance activity is undertaken, and what limitations should be in place for such activity.
- Continuing to conduct out-of-hours compliance activity under the current legislative settings, poses a risk to the integrity and social licence of the immigration system.

Key points about the proposal

Three options have been identified to address the problem:

1. **Maintain current provisions (not recommended**). This option does not meet the both objectives relating to social licence set out above by failing to address communities' expectation that out-of-hours compliance will cease or be a last resort.
2. **Require judicial warrants for out-of-hours compliance only (recommended**). This option is preferred as it directly addresses the suggestions made in the Heron review, it also strikes a fair balance between objectives 2 and 3, contributing to enhanced social licence for both the immigration system and MBIE to carry out compliance activities.
3. **Require judicial warrants for all compliance activity (not recommended**). This option goes beyond the suggestions in Heron unnecessarily. It may also not meet objectives 2 and 3 above by unduly limiting activities that are needed to protect New Zealand's national security and maintain good social outcomes.

Risks to manage

Risk	Mitigation
Ease of implementation of the proposal	This will depend on both MBIE and the capacity of the judicial system. This can be mitigated by ensuring that the judiciary is made aware of the proposals ahead of time and are prepared for potential implications.
Buy-in from stakeholders and communities affected	Ensuring that both groups are satisfied that legislative options being progressed through consultation ahead of Select Committee.

Further work required

- Regulatory change will be required to create a new form that immigration officers will need to submit to the court to apply for a warrant.
- A communications plan will be developed to ensure that stakeholders are aware of the changes before they come into effect.

Confidential advice to Government

Legal professional privilege

Confidential advice to Government

Legal professional privilege

Annex Two: Summaries of potential additions to the scope of the Bill

Proposed scope addition 1: Additional safeguards and integrity of the immigration system
Make four changes to the Act to provide additional safeguards for people who are liable for arrest and detention[5] and to strengthen the integrity of the system: • Amend section 316 of the Act to align requirements for individual Warrant of Commitments (WOCs) with group warrants, requiring an outline of considerations made prior to detention, reference to compliance with domestic and international obligations, and expanding judicial discretion on the location of detention. • Repeal section 317(5)(d) of the Act to give a judge the power to not order detention of an individual who is liable for arrest and detention and has claimed asylum after being served with a deportation liability notice or deportation order or after being arrested and detained under the Act. • Introduce a provision to enable electronic monitoring as a lesser form of restriction of movement than detention (community management). • Introduce a provision to create a "cancellation of residence class visa status power" to facilitate the future deportation of an individual subject to the Act who poses a threat or risk to security but cannot currently be deported. These amendments seek to: • maintain and enhance the integrity and social licence of the immigration system through ensuring the risk mitigation provisions are balanced, transparent and consistent • ensure that the human rights of those subject to immigration compliance activity are upheld and appropriately balanced against the national interest as determined by the Crown • ensure that protections for human rights of the individual do not unduly limit MBIE's ability to maintain good regulatory outcomes; and • ensure MBIE's social licence to operate is upheld.
Problem definition / opportunity and key points about the proposals
The amendments below aim to mitigate issues identified or fully give effect to recommendations made in a review by Victoria Casey KC, address issues identified following the New Lynn terror attack, and to ensure consistency within the Act, following the passage of the Mass Arrivals Amendment Act 2024. In 2021, Ms Casey KC conducted a review into the restriction of movement of asylum claimants (the Casey Review[6]) into MBIE practices that led to the detention of a number of asylum seekers pursuant to WOCs. **Section 316 requirements for individual WOCs:** There is now an inconsistency between the requirement for applications for group WOCs and individual WOCs, where immigration officers are required to outline their considerations in the former but not the latter. [7]This proposal would give effect to the spirit of the Casey review. We recommend including these amendments to achieve the objectives outlined above. The amendments would do this by enhancing the integrity and social licence of the immigration system and MBIE as a regulator by ensuring; consistency across legislative provisions, the risk mitigation provisions are proportionate, transparent and consistent – while also balancing a human rights with national interest and not limiting MBIEs ability to maintain good regulatory outcomes. **Repeal section 317 (5) (d) power for judge to refuse a warrant of commitment** Currently the Act does not allow a judge to refuse a WOC for an individual who claims asylum following detention or issuing of a deportation liability notice deportation order. This provision is problematic as it is a blanket provision that does not account for individual circumstances, and it may be entirely valid to claim asylum at the point of detention or deportation. Casey noted that judges felt they were "hamstrung" in approving warrants for extended periods of time to keep individuals in remand facilities. This change, to repeal section 317(5)(d) is contained within recommendation 1 of the review.

[5] Immigration Act 2009, section 309.

6 Victoria Casey KC (New Zealand): Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment on the restriction of movement of asylum claimants, 2022.

[7] The Immigration (Mass Arrivals) Amendment Act 2024 placed new requirements on immigration officers to outline, in making an application for a group WOC their consideration of: the governments domestic and human rights obligations, why they proposed location and detention is justifiable and appropriate. The amendment also enabled a judge to order a variation to the location of detention.

This proposal meets the objectives outlined above. While the proposed changes to WOC applications outline human rights considerations, and provide a judge the ability to vary the location of a WOC, they do not allow extra leeway in the case of an individual who has claimed asylum after deportation proceedings have commenced. Not repealing this section risks undermining the integrity of the system, and would be inconsistent with the safeguards that are otherwise being proposed in this Bill – it may mean that these safeguards are not available to asylum seekers If this section is not repealed, judicial discretion would continue to be limited. Additionally not progressing this work now means that in the rare instances an asylum claimant is subject to an application for a warrant of commitment, a judge would have no choice but to grant a warrant, even if they do not think it is appropriate. The limited opportunity for a judge to genuinely scrutinise such a warrant could bring into question MBIE's commitment to addressing issues raised in the Casey Review and would limit the ability to ensure the risk mitigation processes are balanced and proportionate.

Community management framework / electronic monitoring

Currently, Immigration New Zealand (INZ) has few options available to manage, through restrictions on liberty, migrants for the purpose of turnaround or deportation: detention; or a Residence and Reporting Requirement Agreement (an agreement to report to a specified place at specified periods of time, reside at a specific place, restrictions of movement, curfews, and a variety of other measures). These proposals would expand the range of options available to immigration officers and provide a more graduated response to any potential risk posed by an asylum seeker.

Inclusion of this proposal would achieve all of the objectives above by providing more human rights compliant alternative to manage asylum seekers and others currently liable for arrest and detention under the Act. The proposed framework would make a number of court-imposed management measures available, such as residence and reporting requirements, curfews and electronic monitoring. Other detention measures would continue to be available, including for those constituting a risk or threat to security. This would directly give effective to recommendation 2 in the Casey review. The policy work on this proposal is complete, and legislation has been drafted as a part of the Immigration (Flexible Response) Amendment Bill, which was agreed to by (the then) Cabinet in the previous Parliamentary term [CAB-23-MIN-0008].

Create a cancellation of residence class visa

Some individuals subject to the Act pose a threat or risk to the security of New Zealand, but cannot be deported under current settings. Creating a cancellation of residence class visa option would remove a barrier to deportation if deportation became possible. Cancelling a residence class visa would also mean that the individual would not have certain rights, such as the right to vote or purchase a home and ability to sponsor a friend or family member to come to New Zealand.

This would likely meet all of the objectives outlined above and would address concerns raised following the New Lynn terror attack. Creating this power would enhance the integrity and social licence of the immigration system by establishing a risk mitigation mechanism that is balanced and proportionate. Explicitly outlining this in the primary legislation would ensure the provision is transparent and balanced against the national interest – while also making sure that the rights of the individual do not impinge on MBIEs ability to maintain good regulatory outcomes. The policy work, draft legislation and Cabinet decisions for this proposal were also near completion as a part of the Immigration (Flexible Response) Amendment Bill.

How/why is this a good fit with the Bill

MBIE has accepted the findings of the Casey Review and committed to addressing its recommendations. Including these elements would therefore help MBIE meet its stated commitments.

The proposals for amending section 316 of the Act and introducing a flexible response approach (ie electronic monitoring and the cancellation of a residence class visa) were developed together in the Immigration (Flexible Response) Amendment Bill, go hand-in-hand, and fit within the scope of the "System Integrity" workstream in the Fiscal Sustainability Bill. The System Integrity workstream addresses settings for warrants (for immigration detention and out-of-hours compliance activity).

Electronic monitoring and cancellation of residence class visas: align well with the objectives outlined above and therefore would be a good fit with the Bill. We also consider it a "quick win", given the proposals are well progressed - minimal policy development would be required as we already have a Cabinet paper, Regulatory Impact Statement, and Draft Bill.

The proposals align with issues the Minister of Immigration has identified, namely the ability to cancel residence class visas, which addresses issues when considering asylum seeker detention.

Risks to manage	
Risk	**Mitigation**
The proposal to cancel residence class visas may be considered controversial, as it would be a significant expansion of the Minister of Immigrations powers.	One option would be to only include the proposal to allow a flexible response. This provision would only be available in the most serious of cases (i.e. where there is a risk to security).
The policy proposal for a repeal of section 317(5)(d) has not yet been developed in detail yet. Including this in the Bill either risks the proposal being put forward without a full and proper policy process bring followed, or, if a full and proper policy process is followed, missing the Ministers preferred deadline of later 2025 for the Bill to be enacted.	The risk of not amending s 317(5)(d) (that being it is a blanket provision that does not account for individual circumstances, and it may be entirely valid to claim asylum at the point of detention or deportation) outweighs the risk of not running a full and proper policy process. This is mitigated by the fact that the proposal is uncontroversial, tight in scope and unlikely to be time / resource intensive.

Further work required

- Limited further work is needed for amending 316 of the Act, introducing a community management framework and powers to cancel a residence class visa. Most of this work was completed under the Immigration (Flexible Response) Amendment Bill.
- Complete policy analysis for the repeal of section 317(5)(d) of the Act.

Proposed scope addition 2: Strengthen migrant exploitation offence provisions
To amend section 351(1)(a)(iii) of the Act to make it an offence for a New Zealand based employer to charge a premium for employment irrespective of whether an employee/worker has commenced active employment and if the payment is made offshore. This proposal is to ensure MBIE has tools to address serious instances of migrant exploitation.
Problem definition / opportunity
Employers charging premiums before and during employment is an increasing form of migrant exploitation. Since 2022, there has been Confidential advice to Government to of premiums paid across the Immigration and Employment regulators. Under section 351(1)(a)(iii) of the Act, an offence will be committed if: • an employer; while allowing a temporary worker to work in their service; • is responsible for a serious contravention of the Wages Protection Act 1983 (WPA) in respect of the employee or worker. Section 351(1)(a)(iii) does not capture a situation where a premium is required ***before*** employment commences. This gap significantly limits the available methods within the immigration system to address migrant exploitation and holding exploitative employers to account.
Key points about the proposal
This policy proposal aims to address the gap related to methods for addressing migrant exploitation by making it an offence where New Zealand based employers demand a premium (including if paid offshore) before employment actively commences. Such an offence provision would strengthen the integrity of the immigration regulatory system, manage immigration risk and demonstrate that New Zealand is upholding its international obligations, specifically the United Nations Convention against Transnational Organised Crime. This proposal aligns with Government's commitment (as expressed in the National Party and New Zealand First Coalition Agreement) to greater protections against migrant worker exploitation; "enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences."
How / why is this a good fit with the Bill
New measures to better protect temporary migrants from exploitation came into force on 1 July 2021 following a review. A key objective of the review was to enforce immigration and employment law to deter employer non-compliance through a fit-for-purpose offence and penalty regime. A delay in progressing such an amendment would severely MBIE's ability to take serious action against employers and protect migrant workers and be inconsistent with the key objective.
Risks to manage
If section 351(1)(a)(iii) of the Act is not amended, this would leave a significant gap in the available methods for addressing and deterring migrant exploitation, undermine our commitment to our international obligations, and deny victims of this form of exploitation the ability to seek a legal remedy. The amendment would highlight a gap in the legislation and could increase the instances of this behaviour occurring. The likelihood of this risk occurring is reduced because AEWV application forms have been amended requiring applicants to declare if a premium has been paid and action can be taken if false declarations are made. Offending offshore can be harder to prove so enforcement may not always be successful.
Further work required
Continue engagement with MBIE legal on to ensure payments made offshore are captured and engage with Ministry of Justice because the proposal is a broadening of the current offence.

Confidential advice to Government [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted]