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.

[In Confidence]

Office of the Minister of Immigration

Chair, Cabinet Economic Policy Committee

Immigration (Fiscal Sustainability and System Integrity) Amendment Bill – Policy Proposals

Proposal

1. I propose targeted amendments to the Immigration Act 2009 (the Act) to support the immigration system to be more fiscally sustainable and to better support the integrity of the system.

Relationship to Government priorities

2. My proposals support a range of government objectives, including constraining calls on taxpayer funding and expecting value for money and fiscal sustainability for public services, restoring law and order, ensuring regulatory systems work well, and upholding the New Zealand National Party and New Zealand First Coalition Agreement undertaking to *Commit to enforcement and action to ensure those found responsible for the abuse of migrant workers face appropriate consequences*.

Executive summary

3. This government is ambitious to deliver more efficient, effective, and responsive public services, and restore discipline to public spending. My proposals to change levy provisions will enable the immigration system to be more self-funding and sustainable, through:
   - 3.1. expanding the levy payer base, so immigration system costs can be more fairly shared across those that create the risks or receive the benefits of migration, and
   - 3.2. creating a new levy, to expand the purposes of levy funding beyond the immigration system.
4. Both proposals would be subject to safeguards: most significantly that there is a nexus between who is charged and what is funded by the revenue; the charge is proportionate to the likely benefit or cost incurred; and there is appropriate consultation with people who may be affected. The legislation will set out which broad groups could be levied, and what types of services or infrastructure could be funded by the new levy. Specific classes of chargeable people and entities, and levy rates, will be determined as part of future fee and levy reviews and subsequent changes to the Immigration (Visa, Entry, Permission, and Related Matters) Regulations 2010 (the Visa Regulations).
5. My proposals to improve the integrity of the immigration system focus on three areas:
   - 5.1. implement the recommendations of independent reviews,[1] by requiring judicial warrants in some cases, by introducing electronic monitoring (as a lesser form of restriction than detention), by strengthening protections for asylum claimants where the Crown is seeking their detention, and enabling (rarely) residence class visas to be cancelled to manage security threats;
   - 5.2. capture more cases where money is extorted for job offers, and ensure people who commit crimes are appropriately liable for deportation;
   - 5.3. enable the Minister of Immigration (the Minister) to, with appropriate safeguards, exercise flexible powers to more efficiently respond to situations that are unusual or outside the immigration system's control, and that pose operational challenges.

[1] Michael Heron KC (New Zealand): *A review of processes and procedures around out-of-hours immigration compliance activity, and to identify and recommend potential changes to the process where required*, 2023; and 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*.

6. Three of the integrity proposals, relating to cancellation of residence status, electronic monitoring, and out-of-hours compliance visits, have been agreed by the previous Government [CBC-23-MIN-0008 and CAB-23-MIN-0441]. If Cabinet agrees to the proposals, I will issue drafting instructions that will see an exposure draft of the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the Bill) available for targeted consultation towards the end of this year, and the Bill introduced to the House in the first quarter of 2025. I will update immigration fee and levy rates through regulation changes before the end of 2025. A summary of the proposals is attached at **Annex One**, and more detailed overviews are attached at **Annex Two**, from page 14.

I propose to make two broad sets of amendments to the Immigration Act 2009

7. The policy decisions I seek for inclusion in the Bill will firstly enable the immigration system to be more fiscally sustainable, and secondly better balance settings that support its integrity with those that protect the rights of individuals. This includes by enabling decisions to be made to benefit classes of migrants where the system faces operational challenges outside its control. Confidential advice to Government

Two proposals aim to enhance the system's fiscal sustainability

8. I seek agreement to two proposals to support the immigration system to be in a more sustainable funding position and better meet the Government's fiscal sustainability goals, by:
   8.1. expanding the immigration levy payer base, so immigration system costs are more fairly shared across those that create the risks and / or receive the benefits of migration, and
   8.2. creating a new immigration levy-making power, which may be a new levy, with expanded funding purposes to allow more equitable sharing of the costs and benefits of immigration.

Expanding the immigration levy payer base

9. The existing immigration levy can contribute to a range of immigration system costs (including border clearance, compliance, and the ICT systems), and research and settlement initiatives, but some groups and individuals that benefit from, or create risks to, the immigration system do not pay a levy. These include employers of migrants, education providers, visa waiver visitors to New Zealand (largely New Zealand Electronic Travel Authority (NZeTA) holders), and ports.

10. I therefore propose to expand the immigration levy payer base. In ensuring that the levy making power does not become a primary tax, I propose to set broad definitions of chargeable groups: a levy may be charged to a person or entity that either can already be charged in the immigration system, or is a member of a specified group, that is a port, an employer of temporary migrants, or a provider of education to fee paying international students. Who is actually charged would be based on sensible criteria, notably that there is a direct and justifiable connection to the cost, benefit or risk that any chargeable group or sub-group derives from or introduces to the immigration system. Some groups (including Australian citizens) will remain exempt from being levied because of commitments in international agreements.

11. I also propose including safeguards around charging. For future levy reviews, the Minister must consult before making decisions on any groups who are proposed to be newly subject to an immigration levy charge, and in any case must consider the extent to which charges are just and equitable. There will be annual reporting on how levy monies collected are spent. A review of the amount collected, and how charges are calculated, and the funding is disbursed, will be required at least five-yearly.

12. I propose to bring a fee and levy review which will give effect to broadening the levy payer base to Cabinet during 2025, to come into effect shortly after Royal Assent.

Creating a new levy making power to expand the purposes levy revenue can be used for

13. There is an opportunity to fund a greater range of immigration impacts outside the direct immigration system, where there are clear links to migrant usage or impacts. From 2024/25, levy payers are funding

80 percent of the English for Speakers of Other Languages costs in schools, as migrant-background children primarily benefit from this service. Levy payers could also contribute to meeting other costs where services are under pressure and there are clear linkages to migrants.

14. Areas initially identified for consideration (not exhaustive) include the **education system**: levy funding could contribute to investments in property, teacher training, learning support, specialist teachers, or teacher aides; and the wider skills training system; **health system:** while the majority of temporary visitors and students are not eligible for publicly-funded healthcare, people granted residence as parents could be levied noting their higher costs on the health system; **Accident Compensation Corporation (ACC) Scheme**, where there may be a case for visitors to New Zealand or international students contributing to the personal injury account.

15. I seek agreement to establishing this new levy-charging power, so that payers can in the future fund a wider range of costs, with appropriate safeguards. These are that there must be a clear link between those costs and the immigration system, and the chargeable person or entity, and that consultation obligations must be met. The Minister will be required to consider the extent to which charges are just and equitable; there will be a requirement to report annually on the levies' collection and expenditure; and undertake a review at no less than five-year intervals.

16. Confidential advice to Government If Cabinet in the future proposes new charges where the revenue would be spent on infrastructure or services that were not proportionately associated with migrants, it may be appropriate to consider establishing a new tax in primary legislation instead.

17. While the proposal above is enabling only, and charges will be set in the future, concerns were raised by a number of agencies about the potential for unintended consequences as the overall amount of money paid by individuals or entities rises, and in particular that price rises might lead to decisions by individuals that might depress desired economic activity. To ensure time for proper consideration of these risks, I do not anticipate setting charges for such wider purposes before 2026.

Eight proposals aim to enhance the immigration system's integrity

18. My proposals to improve the integrity of the immigration system have a number of drivers, including ensuring appropriate safeguards for detention and compliance, plugging a gap in the offences that exploitative employers can be charged with, and reintroducing useful flexibility into the system.

Five proposals relate to maintaining and enhancing the integrity of the immigration system

19. The five proposals below are designed to ensure appropriate safeguards and flexibility when judges are considering the detention of asylum seekers, or compliance staff are undertaking out-of- hours compliance activity, and in managing security risks or threats to New Zealand.

Requiring a judicial warrant for residential out-of-hours compliance activity

20. An immigration officer may enter and search any building or premises which they believe to be the location of an individual subject to a deportation order at any reasonable time (day or night). Following the 2023 review by Michael Heron KC, the previous Government agreed that immigration officers should be required to obtain a judicial warrant prior to conducting unannounced residential out-of-hours compliance activity [CAB-23-MIN-0441], and I agree with that decision.

Updating requirements for applications for individual warrants of commitment for asylum seekers

21. The second proposal responds to concerns expressed by Victoria Casey KC in her 2022 review of the detention of asylum seekers. Specifically, I propose that the Act be amended so that, when authorising a warrant of commitment (WOC) for a person claiming asylum, the judge must be satisfied that the risk the individual poses is clearly articulated, and detention is the least restrictive measure necessary to

manage the risk. In cases where the identity of the person is unknown or has not been established, there should not be a presumption of detention (unless exceptional circumstances apply).

Providing more discretion for judges so detention is not the only option

22. If a compliance officer applies for a WOC for an individual who has claimed asylum while in detention, or after being made liable for deportation, the judge is currently obliged to approve it (unless there are very exceptional circumstances). Ms Casey noted that judges felt they were "hamstrung" when asked to approve WOCs for extended periods of time, and recommended the requirement be removed.[2] I therefore propose to repeal it. This will mean that applications for WOCs for asylum claimants will be considered in the same way as any other person who is liable for administrative arrest and detention under the Act.

Establishing electronic monitoring

23. The fourth proposal will confirm previous Government decisions to enable electronic monitoring of people subject to restrictions of movement under the Act [CBC-23-MIN-0008]. Electronic monitoring was recommended by Ms Casey in her 2022 review, as a lesser form of restriction of movement than detention. Currently, the only other mechanism available to officials is an agreement between a compliance officer and the migrant about where the individual will reside, and how they will report in (a Residence and Reporting Requirements Agreement, or RRRA).

24. In some cases, a RRRA does not adequately manage risks of (in particular) absconding, but detention (such as in a prison) would be excessive. Electronic monitoring will provide for a more graduated response to any potential risk posed. It does still represent a restriction of liberty that can be stigmatising, so would not be the default option. In addition to the design decisions already made, I propose that management of the system be able to be delegated to another agency or organisation.

Creating the power to cancel a residence class visa held by a person who cannot be deported

25. Some individuals subject to the Act pose a threat or risk to our security, but cannot be deported, generally because there is a credible chance that they would be subject to torture. Applicants for asylum who hold a temporary entry class, or no visa, at the point they are determined to both pose a threat and not be able to be deported, are granted rolling temporary entry class visas.[3] They could be deported if the situation in their home country changed and they were not at risk of torture.

26. However, there is no mechanism to change a resident's visa status, even if they gained their status by fraud. Creating a cancellation of residence class visa option would remove a barrier to deportation if deportation became possible (e.g. the situation in their home country changed). It would also mean that the individual would not have certain rights, such as the right to vote or purchase a home, or the ability to sponsor a friend or family member to come here. The previous Government agreed to amending the Act to implement this change [CBC-23-MIN-0008], and I concur with that decision.

Three proposals address identified legislative gaps and strengthen the system's integrity

Criminalising the charging of employment premiums across the board

27. It is an offence under the Act, and a breach of the Wages Protection Act 1983, for an employer to charge an employee for the privilege of gaining or having a job.[4] However, no offence is technically committed if a premium is demanded before employment actively commences. This proposal aims to address the gap, and migrant exploitation, by making it an offence if an employer, or their agent, or any person involved in the recruitment process or dealing with the intended migrant, charges an employment

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2 While at present there are no alternatives to prison, the development of dedicated immigration detention / supported accommodation facilities is under longer-term consideration.

3 Note that a person in this situation would always claim asylum on or before at the point of deportation. If their asylum claim was declined by INZ, they could appeal to the independent Immigration and Protection Tribunal (IPT); there is also an appeal right to the IPT where a person is declined residence or (following this change) is deprived of residence.

4 If the exploiter holds a residence class visa when convicted (has not gained citizenship), and committed the offence not later than 10 years after they first held a residence class visa, they are automatically liable for deportation under s 161(1)(d).

premium, whether onshore or offshore, and irrespective of whether the individual is eventually employed. This change would strengthen the integrity of the immigration regulatory system, enable better management of immigration risk, and demonstrate that we are upholding our international obligations, specifically those related to combatting people smuggling and trafficking in persons. It is also consistent with the New Zealand National Party and New Zealand First Coalition Agreement undertaking to *Commit to enforcement and action to ensure those found responsible for the abuse of migrant workers face appropriate consequences*.

28. Confidential advice to Government

Clarifying that deportation liability is a consequence of criminal offending

29. The Act sets out a graduated framework for deportation liability for residence class visa holders who receive a criminal conviction. However, the provisions are not triggered if a residence class visa holder is discharged without conviction. A recent Supreme Court judgment[5] means that Judges must take into account the likelihood of a conviction triggering deportation liability when considering whether to discharge an offender without conviction.

30. I propose to clarify that people who have pleaded guilty to, or been found guilty of, a criminal offence, can be liable for deportation if they would otherwise have met existing thresholds set out in the Act. This would be subject to further checks and balances, as the Act, at ss 206 and 207, provides for a subsequent formal appeal against deportation liability on humanitarian grounds. Confidential advice to Government

Creating more flexibility for the immigration system to respond to unusual circumstances

31. The Act requires an individual to submit an application either for a visa, or to vary the conditions of an existing visa, and a decision maker to individually determine the outcome of that application. These settings do not provide adequate ability to efficiently manage large numbers of visa applicants and visa holders when there are operational challenges to the immigration system. This imposes costs, delays and frustrations on migrants, officials, and Ministers that I consider to be unacceptable.

32. Additional flexibility would have been useful in situations where New Zealand citizens wished to bring their families home rapidly, but their families did not hold appropriate visas; the collapse of Air Vanuatu, which stranded hundreds of seasonal workers in New Zealand at the imminent risk of becoming overstayers; and the Hunga Tonga-Hunga Ha'apai volcanic explosion, which meant many visiting Tongan citizens were stuck in New Zealand.

33. I therefore propose to reinstate five powers that Parliament has previously enabled, with safeguards. Specifically, I propose to explicitly enable the Minister, by Special Direction, to make decisions to grant or amend visas in the absence of applications (see page 26 in Annex Two for details). Safeguards would include that the making of each class Special Direction must be in response to circumstances that are unusual, unable to be accommodated within existing frameworks or outside the Department's control; and that pose challenges to the immigration system. Each ministerial (class) Special Direction:

    33.1. will be secondary legislation that is able to be disallowed, has a maximum duration of six months, and is both notified in the Gazette, and published on Immigration New Zealand's (INZ) website;

    33.2. requires the Minister to certify that they consider that existing measures are not adequate to manage the specified situation; and that the exercise of the power or powers will benefit, or at least not disadvantage, the people it applies to; and have undertaken appropriate consultation.

34. The annual report would publish the number of times and reasons that class Special Directions, and for the previous three years (if relevant). Given the broad scope of these powers, I propose a report back to

[5] *Bolea* v R [2024] NZSC 46 – see https://www.courtsofnz.govt.nz/assets/cases/2024/MR-2024-NZSC-46.pdf

Cabinet no more than three years after they come into effect, to identify whether there have been any unintended consequences and, if so, whether further legislative adjustments are merited.

Other matters

35. I have also directed officials to provide urgent advice on the best legislative vehicle to adjust the definition of a mass arrival, to include people arriving on a scheduled service (such as a commercial aircraft or a cruise vessel).

Implementation

36. The Ministry of Business, Innovation and Employment (MBIE) will establish a programme to ensure the smooth implementation of these changes. Most of the provisions will come into effect on Royal Assent. The WOC application provisions will come into effect three months after assent, to ensure that all forms and procedures are aligned. Electronic monitoring, which will involve the negotiation of a contract, will come into effect 12 months after Royal Assent. The process to determine which members of the new groups would be liable for the levy at what rates, and what would be funded by it, will be determined through fee and levy reviews and subsequent changes to the Visa Regulations.

Financial implications

37. The majority of proposals in this paper raise no immediate financial implications (as the levy design changes are enabling only). Confidential advice to Government

38. Confidential advice to Government

Legislative implications and Parliamentary stages

39. The Act will need to be amended to give effect to the proposals outlined in this paper. Officials will work with the Parliamentary Counsel Office (PCO) to determine whether the existing immigration levy should be expanded, or a new levy created, and whether there should be an adjustment to the Act's Purpose.

40. I propose that an exposure draft be published and consulted with targeted stakeholders later this year, and the final Bill be introduced early in 2025 with a four-month examination by Select Committee. The Bill will be passed in the last quarter of 2025 to enable expansion of the levy payer base to be brought into effect, through a fee and levy review (and amendments to the Visa Regulations).

Impact analysis

Regulatory Impact Statements

41. Three sets of regulatory impact statements (RISs) were completed to support the proposals in this paper.[6] MBIE quality assurance panels have reviewed the attached RISs. The panels have determined that each RIS meets the quality expectations for regulatory impact analysis.

42. With regard to the proposal to expand the immigration levy payer base, the panel noted that it will be important that the development of the regulations makes a clear case for levying each additional specified group, and assesses the financial impacts for existing and new levy-payers, and that it would also be useful to that future analysis to assess the net revenue impacts for the Crown. On the proposal to expand the purposes the immigration levy can be used for, the panel similarly noted that will be

[6] The RIS relating to the proposals to create the power to cancel a residence class visa held by a person who cannot be deported, and to establish electronic monitoring, was completed and assessed by an MBIE panel in 2023.

important that the development of those regulations makes a clear and compelling case for using levy funding for specific new uses.

Population Implications

43. New Zealand citizens and existing residents are positively impacted by the fiscal sustainability proposals, to the extent that existing or potential future taxpayer funding is substituted by levy funding. With regard to the system integrity proposals, there are low impacts on most New Zealand citizens and residents. The exception is family members, or employers, of migrants who may benefit from the flexible powers; or recent migrants who have committed offences that mean they may become liable for deportation, or who (rarely) may be subject to a downgrading of their resident status.

44. People who currently pay levies (such as visa-required visitors, including Pacific nationals) will benefit from the levy payer expansion, through costs being more widely shared. However, **if** charged (following consultation) Confidential advice to Government will be disadvantaged, as they would become liable to pay an immigration levy. The proposed flexible powers will benefit classes of migrants. The introduction of electronic monitoring provisions, and the strengthening of protections for WOC applications, may provide benefits for asylum claimants and people liable for deportation; and the introduction of a broader offence for employment premiums will benefit people at risk of exploitation.

Human Rights

45. The Government has the right to regulate immigration by virtue of national sovereignty. While immigration inherently involves different treatment on the basis of personal characteristics, the policy development process emphasises that any potentially discriminatory settings must be justifiable.

46. Specific rights implications arising from proposals are: the right to be secure against unreasonable search and seizure (s.21 of the New Zealand Bill of Rights Act 1990 (NZBORA)), where the requirement to apply for a WOC before visiting a dwelling out of hours will strengthen the rights of overstayers or suspected overstayers, and the right not to be arbitrarily detained (s.22 of the NZBORA), where Casey and Heron both recommended legislative change to strengthen the application of the principle that any restriction of liberty should be the minimum congruent with achieving the objectives of that restriction of liberty. Electronic monitoring provisions will specifically benefit those asylum claimants, and people who are liable for deportation, who might otherwise have been detained in prison. The additional requirements for applications for WOCs seeking to restrict the liberty of asylum seekers may benefit asylum seekers.

Consultation

47. The following agencies have been consulted and their feedback has been incorporated into the proposals' development: the Departments of Corrections, and the Prime Minister and Cabinet; the Ministries of Education, Foreign Affairs and Trade, Health, Housing and Urban Development, Justice (Courts, Offences and Penalties, Human Rights), Primary Industries, and Transport; the Ministries for Ethnic Communities, and Pacific Peoples; Inland Revenue; the New Zealand Customs Service, the New Zealand Police, and the Treasury; and within MBIE: Employment Services, Immigration Compliance and Investigations, INZ; Tourism Policy, and Workplace Relations and Safety Policy.

48. The following stakeholders have been informed of the proposals, have provided some feedback, and will be consulted on the exposure draft of the Bill: Business New Zealand; the Employers and Manufacturers Association; the Council of Trade Unions; the Casey Review Focus Group; the New Zealand Law Society; the Law Association, the Office of the Ombudsman, and INZ's Immigration Focus Group. Early engagement has also been undertaken with the Legislative Design Advisory Committee (LDAC), and PCO.

Communications and proactive release

49. As above, targeted stakeholder consultation has already commenced, with stakeholders advised of the proposals in confidence, while the papers relating to residential out-of-hours visits were proactively released on the MBIE website last year. If approved by Cabinet, the package of changes in this paper will be publicly announced at the point that the Bill is introduced, and relevant papers will be published at that point, with any redactions as appropriate. Information will be made available to support submissions to the Select Committee by interested groups and members of the community.

Recommendations

50. The Minister of Immigration (the Minister) recommends that Cabinet:

1. **note** that legislative change is required to support the immigration system to be more fiscally sustainable, and to better support the integrity of the system;

2. **agree** to achieve the purpose set out above, by amending the Immigration Act 2009 (the Act) to:

   2.1. better meet the Government's fiscal sustainability goals by:

   2.1.1. expanding the immigration levy payer base, so the costs of the immigration system are more fairly shared across those that create the risks and / or receive the benefits of immigration;

   2.1.2. creating a new immigration levy or levy-making power, to expand the funding purposes of levy revenue to other services or infrastructure where there is a clear and quantifiable link to immigration;

   2.2. better meet the Government's immigration regulatory system integrity goals, by:

   2.2.1. implementing the recommendations of independent reviews, requiring judicial warrants in some cases, strengthening protections for asylum claimants where the Crown is seeking their detention, and enabling (rarely) residence class visas to be cancelled to manage security threats;

   2.2.2. capturing more cases where money is extorted for job offers, and ensuring people who commit crimes are appropriately liable for deportation;

   2.2.3. enabling the Minister to, with appropriate safeguards, exercise flexible powers to respond to situations that are unusual or outside the immigration system's control, and that pose operational challenges;

3. **note** that the previous Government agreed to the residential out-of-hours visits, electronic monitoring and cancellation of residence status proposals [CBC-23-MIN-0008, CAB-23-MIN-0441];

Fiscal sustainability

4. **agree** that the proposal at recommendation 2.1.1 above be expressed as an empowering provision to determine who should be liable to pay an immigration levy, subject to the following criteria:

   4.1. a levy can be charged to a person or entity that can already be charged in the immigration system, and to a person or entity that is otherwise a member of a specified group, being either a port; an employer of temporary migrants; or a provider of education to fee-paying international students;

   4.2. the Minister can exempt groups or entities that would otherwise be chargeable;

   4.3. there is a direct and justifiable connection to the cost, benefit or risk that any group or sub-group liable to pay derives from or introduces to the immigration system;

   4.4. the Minister will consider the extent to which charges are just and equitable, and ensure consistency with relevant international commitments; and must have regard to the flow on consequences of any changes to fee and levy levels on payers; and must undertake consultations, before making decisions

on any groups who are proposed to be subject to an immigration levy charge, for Confidential advice to Government

5. **agree** that the proposal at recommendation 2.1.2 above be expressed as a provision enabling an immigration levy to fund any services or infrastructure costs, subject to the following criteria:
   5.1. there must be a clear connection between the proposed service to be funded, the immigration system, and the chargeable groups or people;
   5.2. the Minister must undertake consultation on proposed levy charges and the intended expenditure of the levy before regulation changes are made, taking into account the obligations at 4.3 and 4.4 above;
   5.3. augmenting the existing statutory requirement, that the Minister publish annually the immigration levy amounts collected and how that funding was applied, with a breakdown by classes of payers;
   5.4. the amount of levy revenue, how the rates of charging are calculated, and levy disbursement must be reviewed at no less than five-year intervals;

Regulatory integrity: maintaining and enhancing the integrity of the immigration system

6. **agree** or confirm, in relation to the proposal at recommendation 2.2.1 above, that the Act be amended to:
   6.1. introduce a requirement for immigration officers to obtain a judicial warrant prior to conducting unannounced residential out-of-hours compliance activity; [CAB-23-MIN-0441]
   6.2. ensure that, when authorising a warrant of commitment for a person who has claimed refugee or protected person status, the judge is satisfied that the risk the individual poses is clearly articulated, detention is the least restrictive measure necessary to manage the risk and, in cases where the identity of the person is unknown, or has not been established to the satisfaction of the court, there should not be a presumption of detention (unless exceptional circumstances apply);
   6.3. enable electronic monitoring as an alternative to detention in prison, including provisions to ensure the effective operation of the electronic monitoring system; [CBC-23-MIN-0008] and enable management of the system to be delegated to another agency or organisation;
   6.4. allow a judge to decide not to order detention for an individual who is subject to detention and has claimed asylum;
   6.5. 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;

   [CAB-23-MIN-0441];

Regulatory integrity: clarifying intent

7. **agree**, in relation to the proposal at recommendation 2.2.2 above, that the Act be amended to explicitly:
   7.1. better address migrant exploitation, by making it an offence for a New Zealand-based employer, their agent, or any person involved in the recruitment process or dealing with the intended migrant, to charge an employment premium, whether onshore or offshore, and irrespective of whether the intending migrant concerned has commenced or will commence active employment;
   7.2. clarify that liability for deportation is a consequence of criminal offending, and not only a consequence of a conviction;

8. Confidential advice to Government and, separately, to provide

urgent advice on whether the definition of a mass arrival group should be expanded to include people arriving on a scheduled service, with a view to potentially including a change in this Bill;

Regulatory integrity: introducing flexibility

9. **agree**, in relation to the proposal at recommendation 2.2.3 above, that the Act be amended to explicitly enable decisions to be made to grant or amend visas in the absence of applications, by giving the Minister the ability to, by Special Direction:
   9.1. grant visas to individuals and classes of people in the absence of an application;
   9.2. impose, vary, or cancel conditions for classes of temporary entry class or restricted temporary entry class visa holders;
   9.3. vary or cancel conditions for classes of resident visa holders;
   9.4. waive any regulatory requirements to make an application for certain classes of people;
   9.5. extend the expiry dates of visas for classes of people, by up to nine months;

10. **agree** that each Special Direction that relates to a class of person:
   10.1. must be in response to circumstances that are unusual, unable to be accommodated within existing frameworks or outside the department's control, and that pose challenges to the immigration system;
   10.2. can only be exercised by the Minister; is secondary legislation that is time-limited and in any case has a duration of no more than six months; is notified in the Gazette, and published on the www.immigration.govt.nz website;
   10.3. spells out the statutory power (or powers) exercised and the class of people to whom it applies;
   10.4. must be certified by the Minister, to the effect that the Minister considers that the exercise of the power or powers is reasonably necessary to manage the effects, or deal with the consequences, of the specified situation, as existing measures are not sufficiently responsive; and considers that the exercise of the power or powers will benefit, or at least not disadvantage, the people to whom it applies; and has undertaken any consultation they consider to be appropriate before that certification;

11. **invite** the Minister to publish annually the number of times and reasons that class Special Directions have been used in the year, and for the previous three years (if relevant); and report back to Cabinet no more than three years after the Special Direction powers come into effect, to identify whether there have been any unintended consequences and, if so, whether further legislative adjustments are merited;

Legislative implications

12. **agree** that the provisions in the Bill will come into effect on the day after Royal Assent, with the exception of: the changes to applications for Warrants of Commitment at recommendation 6.2 above, which will come into effect three months after Royal Assent; and the introduction of electronic monitoring at recommendation 6.3 above, which will come into effect one year after Royal Assent;

13. **invite** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in recommendations 2 to 12 above, through their inclusion in the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill, and undertake targeted consultations on an exposure draft of the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill;

14. **authorise** the Minister to make decisions, consistent with the policy proposals in this paper, that may arise during the drafting and consultation process;

15. **note** that, subject to agreement on the Government's legislative programme, the Minister intends to introduce the Bill in early 2025;

Financial implications

16. **note** that, with the exception of the electronic monitoring proposal, the changes in this paper raise no direct financial implications;

17. Confidential advice to Government

18. **invite** the Minister to undertake a review of immigration charges in parallel with Parliament's consideration of the Bill, with a view to Cabinet making decisions on rates in advance of assent, noting that that review will take into account the expected broadening of potential levy payers, but not the future expansion of purposes of expenditure nor the electronic monitoring proposal; and

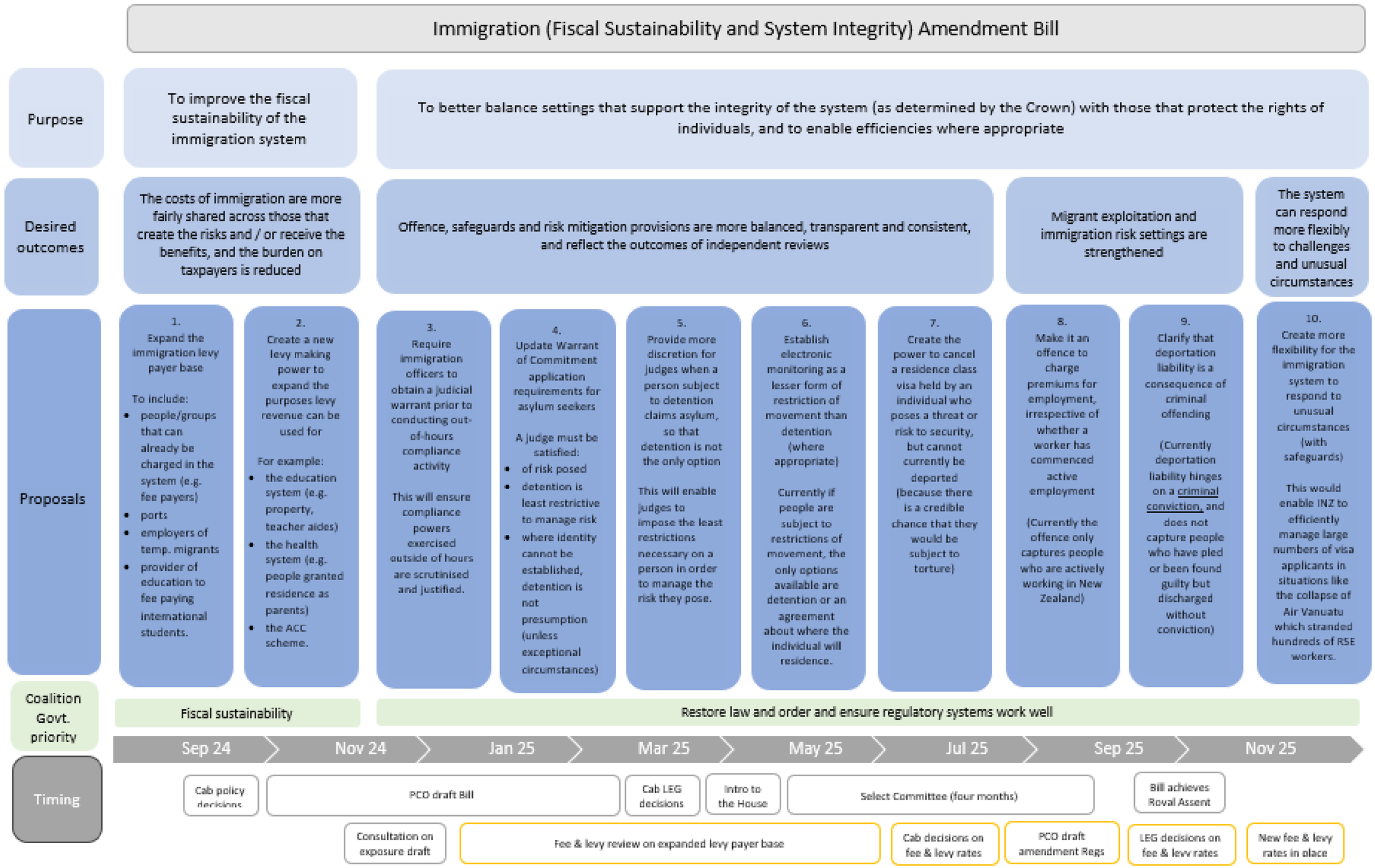
Regulatory implications

19. **invite** the Minister to reflect the outcomes of the review of immigration charges through amendments to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 in due course.

Authorised for lodgement

Hon Erica Stanford
Minister of Immigration

Annex One: A3 Summary of proposals



Annex Two: Summaries of individual proposals

1. Proposal to expand the immigration levy payer base

What is the purpose of this proposal?

The proposal seeks to share the indirect levy costs of the immigration system more fairly by expanding the classes of person(s) who can be charged an immigration levy.

How does the proposal fit with immigration portfolio priorities?

The proposal will support the priority of an immigration system that is more efficient, self-funding and sustainable.

What are the key points of the proposal?

Currently only visa applicants can be charged an immigration levy[7], but there are other groups (such as employers, international education providers, New Zealand Electronic Travel Authority (NZeTA) requestors, and ports, including airports that generate implementation costs if they reopen to international flights) who receive a benefit from the existence of a functioning immigration system or contribute to the risks (such as immigration non-compliance) that need to be managed.

The proposed amendment would share the indirect levy funded costs of the system more fairly, by expanding the levy payer base to a wider group. Primary legislation will set out the broad chargeable groups and require criteria to be satisfied when determining who should be subject to a levy, to ensure that the immigration levies do not stray into the definition of a primary tax. The proposal is that a levy may be charged to a person or entity that either can already be charged in the immigration system (for example fee payers)[8], or is otherwise a member of a specified group, that is a port, an employer of temporary migrants or a provider of education to fee paying international students.

Specific classes of chargeable people and entities, and levy rates, will be determined as part of the 2025 fee and levy review and subsequent changes to the Immigration (Visa, Entry, Permission, and Related Matters) Regulations 2010 (the Visa Regulations). When determining who should be subject to a levy in the Visa Regulations, the criteria would be that:

- any chargeable group is easily identifiable, and charging is operationally feasible
- there is a direct and justifiable connection to the benefit or risk this group derives or introduces to the immigration system.

As an additional safeguard, the Immigration Act 2009 (the Act) will require the Minister of Immigration (the Minister) to undertake consultation before making decisions on any groups who are proposed to be subject to a levy charge, Confidential advice to Government

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, and the legal profession of the proposals. There was significant interest in who would be charged, and at what rates (all elements that will be determined as part of the upcoming fee and levy review). Stakeholders noted that many employers already contribute to the system by paying their employees' visa application charges, and were concerned about increasing pressures on businesses as a result of

[7] This is not the existing International Visitor (Conservation and Tourism) Levy (or IVL), which is the responsibility of the Minister of Tourism.

[8] Immigration fees are charged to individuals and organisations for a range of services. In addition to charges for the assessment and processing of applications for visas, Expressions of Interest in applying for a visa, and applications to vary visa conditions, fees are charged (to intending travellers) for requests for NZeTAs, and (to employers) for applications for accreditation, and for approval to recruit foreign workers, among other services.

the cumulative costs arising from wider government fee and levy increases. Others noted the likelihood that any costs to employers or tertiary providers would be passed onto migrants.

What are the risks and how will these be managed?

Confidential advice to Government

What are the next steps?

If agreed, work on a fee and levy review to determine what additional groups might be liable for the levy, and at what rate, will commence in late 2024, with new charges expected to come into effect shortly after Royal Assent in late 2025.

2. Proposal to create a new levy-making power to expand levy revenue funding purposes

What is the purpose of this proposal?

The proposal aims to reduce the burden of immigration on taxpayers by enabling users of the immigration system to contribute, via a levy, to meeting the wider costs of public or social services or infrastructure impacts, where there are clear and justifiable links to migrant usage or impacts.

How does the proposal fit with immigration portfolio priorities?

The proposal will support the priority of an immigration system that is more efficient, self-funding and sustainable, and the government's objective around constraining calls on taxpayer funding.

What are the key points of the proposal?

The Act enables an immigration levy to fund or contribute to settlement costs, research, and specified immigration system costs, including IT, compliance, marketing, and security. This proposal will amend the Act to broaden the costs a levy paid by immigration system users can contribute to.

The parameters of any potential expenditure will be clearly set out in legislation, by requiring there to be a clear link between the costs to be contributed to and the groups to be charged, and by requiring the Minister to undertake consultation on proposed levy charges, and the intended expenditure of the levy, before regulation changes are made. Other safeguards include that the Minister will consider the extent to which charges are just and equitable, and there will be a requirement to report annually on all funding collected by a levy and its expenditure.

Confidential advice to Government

If Cabinet considers in the future that new charges are warranted that do not meet levy requirements (because the revenue would be disbursed on infrastructure or services that were not proportionately associated with migrants), it would likely be appropriate to consider establishing a new tax in primary legislation.

What specific costs could be contributed to?

Officials have identified a number of areas for further investigation where service provision is currently under pressure and there are clear linkages to migrant usage or impacts. These include:

- The education system – the children of residents and temporary work visa holders contribute to the pressure on our schooling infrastructure and services. Levy funding could contribute to investments in property, teacher training, learning support, or specialist teachers;
- The health system – this is more complex, as the vast majority of temporary visitors and students are not eligible for publicly-funded healthcare (long term workers and their dependants are eligible), and therefore already pay the full costs if they access health services here. This means that there is not a direct correlation with, for example, the United Kingdom's (UK's) National Health Service charge.[9] However, there may be a case for levying people who are granted residence as parents due to higher costs to the health system (comparably with the Australian contributory parent policy, which levies parents approved under it just under $48,000 each);
- The wider skills training system – many countries levy employers of migrant workers, generally with the aim of enhancing the training or employment prospects of citizens. The UK's Immigration Skills charge applies to sponsoring employers, and costs up to $2,100 per annum,[10]

[9] Paid annually by foreign workers and students and currently $2,200; https://commonslibrary.parliament.uk/research-briefings/cbp-7274/; People accessing health services who are not eligible pay 150 percent of the cost.

[10] United Kingdom Visa Sponsorship for Employers, United Kingdom Government; www.gov.uk/uk-visa-sponsorship-employers/immigration-skills-charge

while Australia's Skilling Australians Fund levy costs up to $5,500 (as a one-off charge).[11] Singapore's Foreign Worker Levy rate varies depending on the foreign worker's qualifications and skills: annualised figures range from around $4,300 to $14,500 (with higher rates for higher-skilled workers, to encourage investment in local staff);[12]

- Related infrastructure funding needs (such as school property), noting any contributions towards infrastructure costs would be marginal, to ensure levy charges are reasonable and to manage cumulative cost impacts;
- The Accident Compensation Corporation (ACC) Scheme - unlike the publicly-funded health system, everyone in New Zealand is covered by ACC. ACC is funded by levies, which are charged to workers, and road users via petrol levies, and the taxpayer. There may be a case for visitors to New Zealand or international students contributing to the annual costs of ACC personal injury clients.

This expansion could mean a significant shift from what migrants and other immigration system users are currently charged for. As part of the investigation, officials will consult to ensure that any unintended consequences are identified, along with mitigations. For example, there may be arguments such as that the relatively low benefit of ACC to people resident overseas (treatment only) may raise questions from other countries around reinstating their rights to sue for personal injury. It is therefore not anticipated that new charges for such wider purposes would be set before 2026.

Who was consulted and what was their feedback?

MBIE has consulted government agencies, and has informed stakeholders representing immigration professionals, business and employers, and the legal profession, of the proposals. Early engagement has been undertaken with LDAC and PCO.

Feedback has been incorporated into the proposals' development. Overall there was some concern from agencies Free and frank opinions

While the provisions are enabling only, and charges will be set in the future, concerns were also raised about the potential for unintended consequences as the overall amount of money paid by individuals or entities rises, including price rises leading to decisions that depress desired economic activity. These issues will be managed through future design decisions regarding who is charged and at what levels.

External stakeholders were largely interested in who would be charged, at what rates and for what purposes, and the potential impact of cumulative cost increases (all elements that will be considered as part of the relevant fee and levy review).

What are the risks and how will these be managed?

As above, Confidential advice to Government

What are the next steps?

Work on a fee and levy review to determine what would be funded by the levy, and at what rate, will commence at a future date.

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[11] Skilling Australians Fund Levy, Australian Government, Department of Employment and Workplace Relations; https://www.dewr.gov.au/skilling-australians-fund-levy

[12] Singapore Foreign Worker Quota and Levy https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/foreign-worker-levy

3. Proposal to limit residential out-of-hours immigration compliance activity

What is the purpose of this proposal?

The proposal will ensure immigration risk mitigation provisions are balanced and transparent, and enhance the integrity of the system, by requiring a judicial warrant for out-of-hours compliance activity.

How does the proposal fit with immigration portfolio priorities?

This proposal will support the government priorities of delivering more efficient, effective, and responsive public services, restoring law and order, and ensuring that regulatory systems work well. It also responds to the outcomes of a 2023 review by Michael Heron KC.[13]

What are the key points of the proposal?

Currently, an immigration officer may enter and search, at any reasonable time (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 Heron review found that out-of-hours compliance activities have historically been implemented discriminatorily, unfairly, and disproportionately by Ministry of Business, Innovation and Employment (MBIE) officials and police officers, with little independent scrutiny.

This proposal would require immigration officers to obtain a judicial warrant prior to conducting unannounced residential out-of-hours compliance activity. It will strengthen the system's integrity by ensuring that compliance powers exercised outside of hours are justified. It will also help to improve transparency – a finding of the Heron review was that the Dawn Raids apology of 2021 created an expectation that the out-of-hours activities would either cease, or be used only exceptional circumstances.

Limiting requiring a judicial warrant to residential 'out-of-hours only' (as opposed to all compliance activity) strikes a fair balance between accounting for individual rights and upholding the national interest.

This proposal was agreed by the previous Government [CAB-23-MIN-0441].

Who was consulted and what was their feedback?

MBIE has significant insight into stakeholder views on out-of-hours compliance activity through the consultation undertaken as part of the Heron review. Stakeholders favoured limiting, if not stopping, out-of-hours compliance activity. Most acknowledged the importance of maintaining the integrity of the immigration system.

More recently, MBIE has informed stakeholders representing immigration professionals, business and employers, and the legal profession of this proposal and stakeholders expressed their support for this change.

What are the risks and how will these be managed?

Adding the safeguards of the judicial warrant means that there is a compliance cost for MBIE and risk of increased workload for judges. However, by limiting the judicial warrant requirement to out-of-hours activity, the implementation 'cost' is limited to a small number of cases that will require judicial consideration.

[13] Michael Heron KC (New Zealand): *A review of processes and procedures around out-of-hours immigration compliance activity, and to identify and recommend potential changes to the process where required*, 2023.

4. Proposal to provide more protections for asylum seekers where a Warrant of Commitment is applied for

What is the purpose of this proposal?

This proposal will respond to independent review findings, and community criticisms of immigration warrant of commitment (WOC) and detention provisions for people seeking refugee or protected person status.

How does the proposal fit with immigration portfolio priorities?

This proposal will support a range of government priorities, including delivering more efficient, effective, and responsive public services, restoring law and order, and ensuring that regulatory systems work well. It also responds to concerns identified in Victoria Casey KC's 2022 review of the detention of asylum seekers.[14]

What are the key points of the proposal?

The Act provides for a tiered detention and monitoring regime to ensure the integrity of the system and the safety and security of New Zealand. Under the Act, an immigration officer must first obtain a WOC before a person can be detained. The system has a number of safeguards to ensure that WOCs are justifiable, and the rights of the individual are appropriately considered, however, these are not always explicit in legislation.

The proposal is to strengthen WOC safeguards for refugee and protection claimants by requiring that a judge be satisfied that; the risk the individual poses is clearly articulated, detention is the least restrictive measure necessary to manage the risk, and in cases where the identity of the person is unknown, or the person's identity has not been established to the satisfaction of the court, there should not be a presumption of detention (unless exceptional circumstances apply) in cases where the identity of the person is unknown or unable to be established due to the actions undertaken by the claimant in travelling to and entering New Zealand.

This proposal will ensure that the immigration system's risk mitigation provisions are proportionate, transparent, and consistent, and will give effect to the spirit of recommendations made by Victoria Casey KC in her 2022 review of the detention of asylum seekers.

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, and the legal profession of the proposals. Discussions with some stakeholders suggest that there will likely be calls for the amendments to go further than currently proposed.

The proposal has also been informed by previous stakeholder consultation, as part of the Casey Review and the Select Committee process on the Immigration (Mass Arrivals) Amendment Bill. Feedback from both processes was strongly in support of codifying considerations to support individual rights in legislation.

What are the risks and how will these be managed?

There is a small risk of increased compliance costs to MBIE, in requiring explicit consideration of factors which have previously been implicit when applying for a WOC. However, MBIE judges this risk to be outweighed by the benefits to transparency and regulatory coherence.

[14] 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.

5. Proposal to provide more discretion for judges so detention is not the only option

What is the purpose of this proposal?

The proposal will ensure that immigration risk mitigation provisions are balanced and enhance the integrity of the system, by providing judges with more discretion when a person claims asylum following their detention or the issuing of a deportation liability notice.

How does the proposal fit with immigration portfolio priorities?

This proposal will support the government priorities of delivering more efficient, effective, and responsive public services, restoring law and order, and ensuring that regulatory systems work well. It also responds to the outcomes of the 2022 review by Victoria Casey KC.

What are the key points of the proposal?

Currently, if a person claims asylum while they are detention or after they have been issued with a deportation order, and a Compliance Officer applies for a Warrant of Commitment (WOC) to either continue their detention, or newly detain them, under section (317(5)(d)) of the Act the judge has virtually no discretion to refuse to grant the WOC.

That blanket provision is problematic because it does not account for individuals' circumstances. The Casey review noted that judges felt they were "hamstrung" with regard to the provision, especially with regard to WOC applications which resulted in individuals being kept in remand facilities for extended periods of time. Ms Casey recommended repealing the relevant section.

This proposal means a judge will be able to genuinely scrutinise the individual circumstances of a case before issuing a WOC, in the same way as they scrutinise applications for WOCs for any other person who is liable for administrative arrest and detention under the Act.

It complements the other protections that have been operationalised following the Casey Review. The primary safeguard is the panel of senior Immigration officials who make decisions on any possible restrictions on the freedom of movement of any asylum seeker, in line with our wider international obligations. The Panel seeks to impose the least possible restrictions on a person to manage the risk that person may present in the immigration context. This may range from the grant of a temporary visa (meaning that the person is no longer liable to arrest and detention) to residence and reporting agreements, to, in extremely limited cases, detention (applications for which will be subject to this proposed additional protection).

This change will demonstrate the government's commitment to addressing the issues raised in the Casey Review, and ensure that immigration system risk mitigation processes are balanced and proportionate.

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, and the legal profession of this proposal, and no significant concerns about the proposal to repeal this requirement have been raised.

Some stakeholders considered that repealing this provision alone was insufficient, and that broader changes should be made around the onus and thresholds for individual WOCs for asylum seekers.

What are the risks and how will these be managed?

There are two key risks associated with this repeal. The first, is that it is possible that there may be an increase in unmeritorious claims by people attempting to avoid detention / deportation. The second is that it may increase the workload of judges in considering alternatives to detention. However, both are balanced by the fact that it will impact a very small number of people.

6. Proposal to establish electronic monitoring

What is the purpose of this proposal?

This proposal will fill a gap in the suite of compliance tools available to MBIE by enabling electronic monitoring as a lesser form of restriction of movement than detention.

How does the proposal fit with immigration portfolio priorities?

This proposal will support the government priorities of delivering more efficient, effective, and responsive public services, and ensuring that regulatory systems work well.

What are the key points of the proposal?

Currently if people are subject to restrictions of movement under the Act, the only options available are detention or an agreement between a Compliance Officer and the migrant about where the individual will residence (a Residence and Reporting Requirements Agreement or RRRA). While an RRRA does not always adequately manage risks (in particular of absconding), detention in a prison may sometimes be excessive.

To address this gap in compliance options, electronic monitoring (which falls within a "community management" framework) was recommended by Victoria Casey in her 2022 review on the detention of asylum seekers, as a lesser form of restriction of movement than detention. This proposal was agreed by the previous Government in 2022 [CBC-23-MIN-0008].

The proposal to enable electronic monitoring will provide for a more graduated response to any potential risk posed. For those people who pose a national security risk or risk to public safety and are liable for deportation or turnaround, the existing detention mechanisms in the Act will remain.

While final decisions have not been made regarding the agency that will manage the initiative, to enable efficiencies, the proposal will likely leverage off the managing agency's existing systems and third-party contracts. However, all compliance activity will be the responsibility of MBIE.

Confidential advice to Government

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, unions, and the legal profession of the proposal. Stakeholders did not raise any significant concerns about the proposal, but noted that electronic monitoring still represents a restriction of liberty than can be stigmatising and should not be the default option.

What are the risks and how will these be managed?

The proposal engages a number of rights and freedoms enshrined in the NZBORA, including the rights to freedom of movement and association. Infringement on these rights is likely to be justifiable, due to the proposed safeguards that would ensure that measures imposed are proportionate to the level of risk an individual poses.

What are the next steps?

If agreed, the amendment will come into effect approximately 12 months after the commencement of the Act (in late 2025). MBIE will work closely with the managing agency to ensure smooth implementation of the proposal and refine the estimated costings.

7. Proposal to create a power to cancel a residence class visa held by a person who cannot currently be deported

What is the purpose of this proposal?

This proposal will strengthen the integrity of the immigration system by enabling the cancellation of a residence class visa where an individual poses a threat or risk to security.

How does the proposal fit with immigration portfolio priorities?

This proposal will support the government priorities of delivering more efficient, effective, and responsive public services, restoring law and order, and ensuring that regulatory systems work well.

What are the key points of the proposal?

Some individuals, subject to the Act, pose a threat or risk to the security of New Zealand, but cannot be deported (for example, because there is a credible chance that they would be subject to torture). The perpetrator of the New Lynn supermarket terror attack in 2021 is one such example.

This proposal would provide the ability to cancel the residence class visa status of an individual who poses a security risk or threat but cannot currently be deported, and to empower the Minister of Immigration to decide the immigration status of that individual (for example, by granting a temporary visa). The power would be discretionary and would be triggered by an individual being certified as constituting a risk or threat to security as per the existing section 163 of the Act. The number of people who might pose a terrorism risk and who cannot be deported is expected to be very small (estimated 1-2 people every five years).

It would remove a barrier to deportation, if deportation became possible in the future (i.e. if the situation in the person's home country changed so they were no longer at risk). Another example of where the power could be used is where an individual is unable to be deported due to non-cooperation with MBIE's attempts to secure travel documents, or external factors such as a lack of flights, or transit or border restrictions, or natural disasters in the deportee's country of origin.

Cancellation of residence class visa status would also remove certain rights from the individual, such as the right to vote or purchase a home, and the ability to sponsor a friend or family member to come to New Zealand.

The previous Government agreed to amend the Act to implement this change [CBC-23-MIN-0008].

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, unions, and the legal profession of the proposal. Stakeholders did not raise any significant concerns about the proposal.

What are the risks and how will these be managed?

The proposal could attract some international criticism and potentially be challenged for compatibility with Article 34 of the Refugee Convention (which requires states to, as far as possible, facilitate the assimilation and naturalisation of refugees). However, as the individuals concerned would continue to be protected in New Zealand, MBIE considers that the proposal is compliant with our international human rights obligations.

8. Proposal to strengthen migrant exploitation offence and penalty provisions

What is the purpose of this proposal?

This proposal will strengthen MBIE's ability to address and deter migrant exploitation, by making it an offence to offence for a New Zealand-based employer, their agent, or any person involved in the recruitment process or dealing with the intended migrant, to charge a premium for employment. This would be irrespective of whether an employee/worker has commenced active employment and if the payment is made offshore.

How does the proposal fit with immigration portfolio priorities?

The proposals will support the Government's commitment to greater protections against migrant worker exploitation through "enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences."[15]

The proposal will also manage immigration risk and support New Zealand to uphold its international obligations, specifically the United Nations Convention against Transnational Organised Crime.

What are the key points of the proposal?

Charing charging premiums for employment is an increasing form of migrant exploitation. From the financial year (FY) 2021/22 to August FY 2024/25, there have been 640 allegations of premiums paid, Free and frank opinions

The current wording of the existing offence provision does not capture situations where a premium is required ***before*** employment commences, if the payment is made ***offshore,*** or where the premium is requested by someone other than the employer. There is no available prosecution method and criminal recourse for this specific offending. This amendment will address that gap.

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, and the legal profession of the proposal. Stakeholders were supportive of the intention to address the current legislative gap.

MBIE also consulted with immigration and employment regulators of migrant exploitation and the Ministry of Justice. Regulators were supportive of the proposal, but did Confidential advice to Government .

What are the risks and how will these be managed?

As noted above, Confidential advice to Government Cases of payments made back to employers onshore will be easier to prosecute.

What are the next steps?

The current penalty for charging a premium is imprisonment of a maximum of 7 years, a fine not exceeding $100,000, or both. Given the significance of the premiums, Confidential advice to Government

Confidential advice to Government

[15] Expressed in the New Zealand National Party and New Zealand First Coalition Agreement.

9. Proposal to clarify deportation liability provisions

What is the purpose of this proposal?

This proposal will strengthen the integrity of the immigration system, by clarifying that residence class visa holders who are guilty of criminal offending are liable for deportation, subject to existing legislative thresholds, irrespective of whether they are discharged without conviction or not.

How does the proposal fit with immigration portfolio priorities?

This proposal will support the coalition government's commitment to restoring law and order. It will also support the National and New Zealand First Coalition Agreement commitment to enforcement and action to ensure those found responsible for the abuse of migrant workers face appropriate consequences.

What are the key points of the proposal?

The Act sets out a graduated framework for determining deportation liability of residence class visa holders based on a criminal conviction. Because the wording of the deportation liability provision relies on a conviction, if a person is discharged without conviction, the deportation provisions are not triggered, even if a person has been found or plead guilty.

A recent Supreme Court decision has determined that, if there is evidence that deportation liability would be triggered by a conviction, this outcome must be considered as part of applications for a discharge without conviction.

This means that residence class visa holders can potentially avoid deportation liability through the sentencing decisions of judges in the Criminal Courts, effectively:

- undermining the objective of the provisions in the Act (to support the integrity of New Zealand's immigration system and the security of New Zealand) and the established immigration avenue for appealing deportation liability decisions
- advantaging residence class visa holders over New Zealand citizens, who are not able to apply for a discharge without conviction on the same grounds.

The proposal is to clarify that deportation liability for criminal offending applies where a residence class visa holder is "found guilty or pleaded guilty" of an offence, rather than only hinging on a criminal conviction.

This proposal will support the integrity of the immigration system by ensuring that deportation liability decisions remain the purview of the immigration system and the Immigration and Protection Tribunal (IPT), rather than the Criminal Courts.

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, unions, and the legal profession of the proposal. Stakeholders queried the process for appealing deportation liability decisions (appeal rights are through the IPT) and noted that that people going through criminal courts have access to legal aid, whereas people going through the IPT can access legal aid for refugee status claims, Confidential advice to Government (Officials note that legal aid is available for some appeals against deportation, although generally this is not funded.)

What are the risks and how will these be managed?

There may be a small increase in the number of people liable for deportation, which could impact on MBIE resourcing requirements. However, MBIE judges this risk to be low.

10. Proposal to enable flexible responses to challenges to the immigration system

What is the purpose of this proposal?

This proposal will improve the efficiency of the immigration system by reinstating powers to manage large numbers of visa applicants and visa holders, where this is necessary to respond to circumstances that are unusual, or outside Immigration New Zealand's control, and that pose operational challenges to the immigration system.

How does the proposal fit with immigration portfolio priorities?

This proposal will support the government priorities of delivering more efficient, effective, and responsive public services, and ensuring that regulatory systems work well.

What are the key points of the proposal?

The Act is predicated on individual applications being made for visas (or to vary conditions on visas) and individual decisions being made on those applications. This does not provide adequate powers to efficiently manage large numbers of visa applicants and visa holders where this is necessary to respond to unusual circumstances.

Examples of where the current settings have been inadequate include situations where New Zealanders overseas have wished to suddenly repatriate their families, the collapse of Air Vanuatu (which stranded hundreds of Recognised Seasonal Employer (RSE) workers in New Zealand), and the Hunga Tonga-Hunga Ha'apai volcanic explosion, which closed Tonga's airspace and similarly meant many visiting Tongan citizens were stuck in New Zealand.

The proposal is to reinstate a subset (five) of the facilitative powers that Parliament has previously granted the Minister, with safeguards for both migrants and the immigration system. This will enable the Minister to exercise flexible, appropriate, and human rights-supporting responses to unusual circumstances (or circumstances outside MBIE's control) that pose challenges to the immigration system. The powers would be subject to a number of safeguards, including that they can only be able to be used to benefit, or at least not disadvantage, the individuals concerned. There will be a report back to Cabinet no more than three years after they come into effect, to identify whether there have been any unintended consequences and, if so, whether further legislative adjustments are merited.

Who was consulted and what was their feedback?

MBIE has informed stakeholders representing immigration professionals, business and employers, unions, and the legal profession of the proposals. While stakeholders appreciated the assistance these powers would have provided during the situations described above, some concern was expressed by business stakeholders about the creation of broad executive powers (even with safeguards).

Officials subsequently clarified the scope of the powers and their interaction with other powers that were engaged during the period of border closure (specifically, the border exceptions mechanisms, under which decisions were made about which non-citizens could enter New Zealand).

The proposal has also been informed by previous stakeholder feedback from the initial (2020) Amendment Bill that created the COVID-19 powers, and consultation on their subsequent extension.

What are the risks and how will these be managed?

The major risks identified are that the relative ease of use of these powers to address issues may lead to the lobbying of future Ministers (especially once "moral precedents" are set) and may slightly lower the pressure on officials to quickly address problems in policy settings or IT systems. These will be managed through the certification and consultation processes required of a Minister before a group power is exercised. Another risk is the potential misuse of broad executive powers. The proposed safeguards (including the obligation that the powers only benefit the people affected, and the three-year review) are intended to mitigate against this.