



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
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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.

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BRIEFING

Immigration (Fiscal Sustainability and System Integrity) Amendment Bill - drafting decisions

Date:	12 February 2025	Priority:	Medium
Security classification:	Restricted	Tracking number:	0008378

Action sought		
	Action sought	Deadline
Hon Erica Stanford Minister of Immigration	Approve five drafting changes to the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill	17 February 2025

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Stacey O'Dowd	Manager, Immigration (Border & Funding) Policy	Privacy of natural persons	✓
Christine Hyndman	Principal Policy Advisor, Immigration Policy	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comment



BRIEFING

Immigration (Fiscal Sustainability and System Integrity) Amendment Bill - drafting decisions

Date:	12 February 2025	Priority:	Medium
Security classification:	Restricted	Tracking number:	0008378

Purpose

To:

- seek your formal approval to five drafting changes to the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the Bill)
- provide:
 - a high level summary of the Bill as a whole, for your reference
 - an updated timeline for Cabinet decisions and introduction
 - a copy of the latest draft of the Bill for your information, noting that it is still under active development.

Recommended action

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

- a **Note** that Cabinet has authorised you to make decisions, consistent with the policy proposals in the paper under ECO-24-SUB-0198, that may arise during the drafting and consultation process [ECO-24-MIN-0198]
- Noted*
- b **Note** that officials seek your formal approval for five drafting changes that are consistent with the policy intent of the Bill, but which narrow or refine the wording from the Cabinet decisions:
- i. (*flexible powers proposal*) aligning the required considerations for certification of a Special Direction for a class of persons, with what the Minister of Immigration (Minister) must be satisfied of for a Special Direction for a class of persons
 - ii. (*flexible powers proposal*) clarifying that MBIE's chief executive, rather than the Minister, is responsible for the annual publishing of the number of times and reasons that class Special Directions have been used in the year (and the previous three years, if relevant)
 - iii. (*warrant of commitment*) clarifying how a judge can consider issues around the identity of persons who have claimed refugee or protected person status when considering an application for a warrant of commitment
 - iv. (*extended immigration levy*) specifying the scope of the extended immigration levy, to spell out in primary legislation:
 - a. which groups can be charged, for which purposes (education, health, and labour market training)

b. that there must be a direct or indirect justifiable relationship between the levy payers and the benefit that they will derive from the services or, in the case of employers, the costs that they have avoided by employing migrants who are already skilled

v. (extended immigration levy) establishing that the sponsors of parents may be liable to pay an extended immigration levy

Noted

c **Approve** the narrowing of scope, additional precision of wording, or clarification of intent set out above in recommendation b above, and the consequential amendments to drafting (set out for reference at **Annex One**)

Agree / Disagree / Discuss

d **Note** the updated Cabinet and parliamentary timeframe below:

Draft Cabinet Legislation Committee (LEG) paper provided for consultation	24 February 2025
LEG paper and Bill lodged with Cabinet Office	27 March 2025
LEG considers the paper	3 April 2025
Cabinet	7 April 2025
Bill introduction	7 or 8 April 2025
First reading	10 April 2025

Noted

e **Note** that the paper to the Cabinet Legislation Committee seeking approval for the introduction of the Bill will ask the Committee to

i. **confirm** the removal of “ports” as chargeable entities (you have already approved this [Briefing 0007504] but it is technically outside the scope of “in line with policy decisions”)

ii. **note** the five other changes set out above in recommendation b

Agree / Disagree / Discuss

f **Note** that a copy of the draft Bill (version 7.0, as at 10 February 2025) is attached at **Annex Two** for your information.

Noted

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

.....12. /02. / 2025

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Hon Erica Stanford
Minister of Immigration

Background

1. The Bill is now substantively drafted. We are continuing to work with MBIE Legal and Parliamentary Counsel Office (PCO) to iron out minor details as its wording is finalised. We forwarded the current version to the Ministry of Justice on 10 February 2025, for its vet of the Bill against the provisions of the New Zealand Bill of Rights Act 1990.
2. Turning relatively high-level policy decisions into precisely-worded statutes always involves a process of elaboration and interpretation. Given the truncated timeframes for drafting, Cabinet authorised you to make decisions, consistent with the policy proposals in the paper under ECO-24-SUB-0198, that might arise during the drafting and consultation process [ECO-24-MIN-0198]. This enables you to make more substantive decisions than the usual “minor and technical changes” that Ministers are authorised to approve.
3. You have already agreed to one change which was outside Cabinet’s policy approval (the removal of “ports” from the list of entities that can be charged a levy [0007504]), and Cabinet Legislation Committee will therefore be asked to confirm that change when you seek agreement to the Bill’s introduction.
4. This briefing sets out five changes that we and PCO consider are within the policy intent of the Cabinet Minute, but are significant enough to warrant your formal approval. Cabinet Legislation Committee will be asked to note these changes. The current draft wording is set out at **Annex One**.
5. A copy of the draft Bill (version 7.0, as at 10 February 2025) is attached at **Annex Two** for your information. As noted above, it is still under active development, which means that the details of some wording will change before the final version is provided to you in late March 2025.

The five changes narrow, refine or clarify the agreed policy wording

The first and second changes relate to the flexible powers proposals

6. The first of the proposed changes aligns:
 - a. the required considerations for a certification of a Special Direction for a class of persons, with
 - b. what the Minister must be satisfied of for a Special Direction for a class of persons.
7. The Minute ECO-24-MIN-0198 gave slightly different definitions of these criteria, and this might have caused confusion at the point that the making of a Special Direction for a class of persons was contemplated.
8. The second change clarifies that, while Cabinet invited the Minister to publish annually the number of times and reasons and that class Special Directions have been used in the year (and the previous three years, if relevant), this will be done in the annual report, which is the responsibility of MBIE’s chief executive.

The third change clarifies how a judge can consider issues around an asylum seeker’s identity

9. The third change clarifies that:
 - a. a person who has claimed refugee or protected person status cannot be detained under a warrant of commitment just because they have entered irregularly (eg they entered on a false passport, or they have destroyed their own passport)
 - b. however, if a judge is considering whether to detain a person who has claimed refugee or protected person status because there is a clearly articulated threat or risk, the judge can consider their irregular entry: that is, the judge can consider whether the fact that a

person who has claimed refugee or protected person status cannot be positively identified is a contributing factor to an identified risk to public health, public order, or security.

10. It is common for persons who have claimed refugee or protected person status to enter irregularly, using documents that have been fraudulently obtained, or destroying their own identity documents to attempt to conceal their identity, and therefore doing so is not, on its own, considered unusual.
11. This policy intent was expressed in the Cabinet decision as *the court only ordering detention in the case of an unknown identity where “exceptional circumstances” also applied*, but consultation with key stakeholders has since established that the “exceptional circumstances” wording is confusing.
12. The new wording also replaces the previous terminology of “cases where the identity of the person is unknown, or has not been established” with the wording “irregular entry”, which is then further defined as involving at least one of six meanings. This wording is consistent with the wording in Article 31 of the 1951 Convention on the Status of Refugees.¹

The fourth and fifth changes clarify who can be charged a levy and what the extended immigration levy can be charged for

13. The fourth change formally adds the “sponsor” of a migrant to the list of potential extended immigration levy payers (noting that at this point, only the sponsors of parents are proposed to be charged, in relation to contributing to costs arising in the health system).
14. The fifth change has already been brought to your attention in the briefing which presented feedback on the exposure draft of the Bill [0007504]. That change will narrow the potential scope of the extended levy, by spelling out in primary legislation which groups can be charged for which specific funding purposes.
15. This specification establishes that certain applicants for visas, sponsors of applicants for visas, and employers, can be levied to fund costs: in (respectively) the education sector or health sector, or for labour market training. This change better aligns the design of the levy charging and expenditure powers with Legislative Design and Advisory Committee (LDAC) guidelines. **Legal professional privilege**
16. In order for the extended immigration levy to be imposed you would have to be satisfied that there is a direct or indirect justifiable relationship between the levy payers and the benefits that the levy payers will derive from the infrastructure or services. Similarly, with respect to employers who avoid training because they are able to employ skilled migrants, there would have to be a direct or indirect justifiable relationship between the levy payers and the training costs avoided.

Outline of Bill

17. A copy of the Bill as at 10 February 2025 is attached in **Annex Two**. Table one below sets out the structure of the Bill, to help you navigate it. Note that the order of the changes is different from the order in the September Cabinet policy paper, because the Bill (and therefore the table) follows the structure of the Immigration Act 2009. The clauses where changes are recommended are **highlighted**.

¹ This proposal responds to concerns expressed by Victoria Casey KC in her 2022 review of the detention of asylum seekers.

Table One: Immigration (Fiscal Sustainability and System Integrity) Amendment Bill, by clause

Amendment	Description	Location in Bill	
		Pages	Key clauses
<i>Amendments to strengthen the integrity of the immigration system</i>			
A – Mass arrivals definition	Amend the definition of a ‘mass arrival’ group to ensure it captures all possible ways a mass arrival group may enter the country	Page 6	Clause 5
B – Flexible powers	Create more flexibility for the immigration system to respond to unusual circumstances (with safeguards) – including spelling out annual reporting requirements	Pages 6 - 14, 15 - 18, 34 - 35	Clauses 7 – 11, 15, 51-52.
C – Cancellation of residence class status	Create the power to cancel a residence class visa held by an individual who poses a threat or risk to security, but cannot currently be deported	Pages 14 - 15	Clauses 12 - 14
D - Deportation liability	Clarify that deportation liability for residence class visa holders is a consequence of criminal offending (rather than criminal conviction)	Page 18	Clause 18
E – Out-of-hours compliance activity	Require immigration officers to obtain a judicial warrant prior to conducting out-of-hours compliance activity (Responds to Heron Review)	Pages 19 - 21	Clauses 25 - 26
F – Warrants of Commitment	Update Warrant of Commitment application requirements for refugee and protected person claimants (Responds to Casey Review)	Pages 21 - 23	Clauses 31 - 32
G – Electronic monitoring	Establish electronic monitoring as a lesser form of restriction of movement than detention	Pages 23 – 32, 35 - 36	Clauses 34-36, 40, 42 - 44, 53 - 55
H – Migrant exploitation	Make it an offence to charge premiums for employment, irrespective of whether a person has started work, or is in New Zealand	Pages 33 - 34	Clauses 48 – 49
<i>Amendments to support the immigration system to be more fiscally sustainable</i>			
I – Expanded levy payer-base	Expand the immigration levy payer base to include groups that can already be charged fees in the system, such as employers of temporary migrants and providers of education to fee paying international students.	Pages 36 - 37	Clauses 56 - 57
J – Extended immigration levy	Create a new power to set an extended immigration levy that can be charged to / for (specifically, to meet additional education or health sector costs, or to contribute to New Zealand training costs)	Pages 37-38	Clause 57

Next steps

18. The table below sets out the current Bill-related timeframes. They are subject to confirmation: in particular, officials are considering whether and how to adjust them to allow more time for ministerial consultation (if required).

Action	Due date
Draft LEG Cabinet paper and Bill provided for ministerial consultation	24 February 2025
Feedback provided to officials	14 March 2025
Final LEG paper and Bill provided to Minister	25 March 2025
Meeting with officials: prep session prior to Introduction	27 March 2025
LEG paper and Bill lodged with Cabinet Office	27 March 2025
Cabinet Legislation Committee meeting	3 April 2025
Cabinet meeting	7 April 2025
Bill introduction [TBC]	7 or 8 April 2025
First reading [TBC]	10 April 2025

Annexes

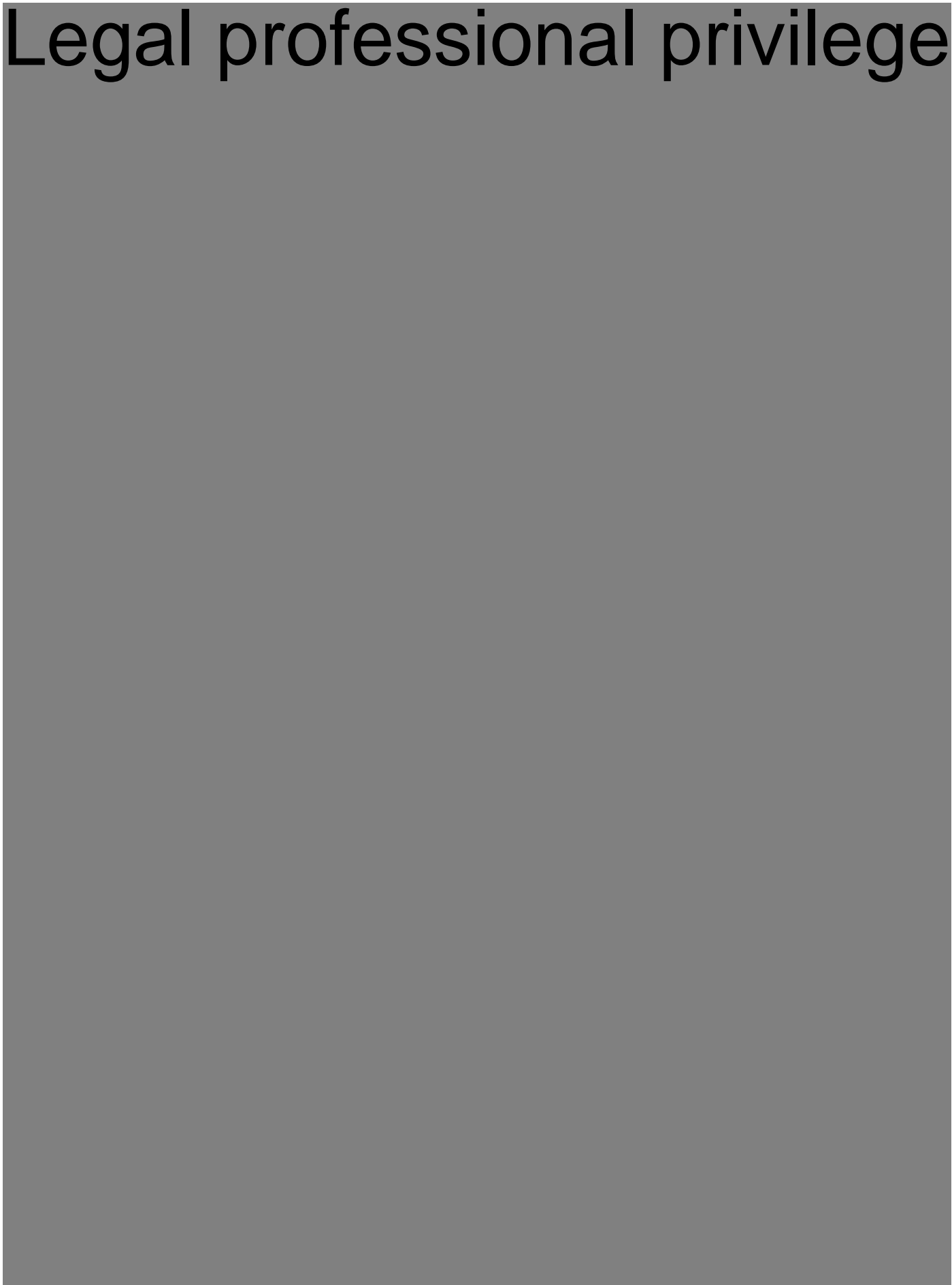
Annex One: Amended / intended drafting for approval

Annex Two: Draft Bill, as at 10 February 2025

Legal professional privilege



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