

# Departmental Disclosure Statement

---

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

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

26 March 2025

**Contents**

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information ..... 5

Part Three: Testing of Legislative Content..... 8

Part Four: Significant Legislative Features ..... 11

Appendix One: Further Information Relating to Part Three ..... 14

## Part One: General Policy Statement

The Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (the **Bill**) makes targeted amendments to the Immigration Act 2009 (the **principal Act**). The amendments are intended to enable the Act to better meet its purpose, which is “*to manage immigration in a way that balances the national interest ... and the rights of individuals*”, by improving both the fiscal sustainability and the integrity of the immigration system.

### Fiscal sustainability amendments

To improve fiscal sustainability, the Bill extends the classes of persons who can be charged an immigration levy beyond applicants for visas, to enable a wider range of users and beneficiaries of the immigration system to share in meeting the costs of running that system.

It also, separately, allows for specified costs outside the immigration system (in the education, health, and training sectors) to be contributed to through extended immigration levies. Extended immigration levies will be chargeable on specified groups, but only where there is a justifiable linkage between the class or classes of levy-payers and the impacts of immigration on the particular infrastructure or service and after consultation with any persons and organisations the Minister of Immigration (the **Minister**) considers appropriate. The collection and expenditure of extended immigration levy moneys will be subject to enhanced annual reporting requirements.

### System integrity amendments

The other amendments to the Bill are intended to improve the integrity of the immigration system across a range of areas. One change modifies the definition of mass arrival group in the principal Act to, by implication, include any craft travelling to New Zealand in the course of a scheduled international service. This amendment reflects shifts in international people-smuggling trends.

Another amendment re-establishes a set of flexible responses that allow special directions to be made to respond to any unusual circumstance, any circumstance that is unable to be dealt with under any other provision of the principal Act, any circumstance that is outside the control of the Ministry of Business, Innovation, and Employment, and any circumstance that poses a challenge to the immigration system. In such situations, the Minister will be able to, for example, grant visas to individuals or classes of people without applications needing to be made, amend conditions on existing visas held by classes of people, and waive application requirements for classes of people. There are extensive safeguards on the exercise of the new powers, including that the Minister must consider that the exercise of a particular power must benefit, or at least not disadvantage, the persons concerned. The special directions must also be published and may be disallowed by the House of Representatives.

Two other key amendments—

- enable the Minister to cancel a person’s residence class visa if that person constitutes a threat or risk to security but cannot be deported (for example, because there are substantial grounds for believing that the person would be in danger of being tortured in their country of origin). This amendment will enable immediate protection for the person and, in the meantime, remove certain rights from the person, 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; and

- clarify that a residence class visa holder will be liable for deportation if they plead that they are guilty, or are found guilty, of a specified offence (as well as the current liability for deportation on conviction). This amendment will ensure that decisions about the deportation liability of an individual who has committed a specified offence will be made within the immigration system, rather than in the criminal courts.

The Bill also makes the following amendments that are intended to improve the immigration system's responsiveness to human rights concerns and civil liberties concerns and to address legislative recommendations from independent reviews of the immigration system:

- In response to a recommendation in Michael Heron KC's 2023 review of out-of-hours immigration compliance activity, the Bill codifies improvements made to operational practices and requires an immigration officer to obtain authorisation by way of a judicial warrant before conducting an out-of-hours entry and search of a dwelling or marae; and
- In response to recommendations from Victoria Casey KC's 2022 review on the restriction of movement of asylum claimants the Bill—
  - improves protections for persons who have claimed refugee or protected person status, and who are the subject of an application for a warrant of commitment, by establishing bespoke settings for the detention of this cohort that take into account their unique circumstances and better align with New Zealand's international obligations; and
  - creates a framework for releasing an individual on conditions, where they are subject to deportation or turnaround, which again takes the particular circumstances of the refugee and protected person claimants into account. As part of this framework, the Bill enables electronic monitoring to be used as an alternative to detention when doing so would be reasonable, feasible, proportionate and the least restrictive measure necessary to manage the threat or risk in respect of a person.

These changes have been developed through close engagement with stakeholders.

Finally, the Bill plugs a gap in New Zealand's protections against migrant exploitation by creating a new offence for an employment-related person to knowingly seek or receive any premium in respect of the employment or potential employment in New Zealand of certain migrants or potential migrants.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>This Bill gives effect to two King's Counsel (KC) reviews:</p> <p>Victoria Casey KC's 2022 "Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment – Restriction of movement of asylum claimants", which informed the changes to applications for warrants of commitment for persons who have claimed refugee or protected person status, and the introduction of electronic monitoring as an alternative to detention: <a href="https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants">https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants</a>.</p> <p>Mike Heron KC's 2023 "Review of processes and procedures around out of hours immigration compliance activity", which is the basis of the introduction for requiring immigration officers to obtain a judicial warrant prior to conducting an out-of-hours entry and search of a dwelling or marae: <a href="https://www.mbie.govt.nz/dmsdocument/26981-mhkc-inz-out-of-hours-final-report-29-june-2023">https://www.mbie.govt.nz/dmsdocument/26981-mhkc-inz-out-of-hours-final-report-29-june-2023</a>.</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<p>No. However, the changes to applications for warrants of commitment for persons who have claimed refugee or protected person status clarify how New Zealand's provisions for the detention of persons who claim refugee or protected person status comply with the <i>United Nations Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention</i> 2012 (<a href="https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776">https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776</a>).</p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Seven individual Regulatory Impact Statements (RISs) were prepared when the policy work was undertaken. They were reviewed by MBIE quality assurance panels and submitted when Cabinet Committee approval of the major policy changes relating to the Bill was sought in 2024 (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).</p> <ul style="list-style-type: none"> <li>• RIS: Facilitative powers to benefit groups or individual migrants, MBIE, 4 September 2024</li> <li>• RIS: Providing a more flexible response to managing individuals under the Immigration Act 2009, MBIE, 20 February 2023</li> <li>• RIS: Clarify deportation liability is a consequence of criminal offending, MBIE, 4 September 2024</li> <li>• RIS: Additional safeguards for people who are liable for arrest and detention in order to strengthen the integrity of the immigration system, MBIE, 4 September 2024</li> <li>• RIS: Strengthening migrant exploitation offences, MBIE, 4 September 2024</li> <li>• RIS: Proposal to expand the immigration levy-payer-base, MBIE, 2 September 2024</li> </ul>	

- RIS: Proposal to expand the purposes the immigration levy can be used for, MBIE, 2 September 2024

The Ministry of Regulation determined that the change made to the definition of a mass arrival group under ECO-24-MIN-0255 was exempt from the requirement to provide a RIS on the grounds that it has no or only minor impacts on businesses, individuals and not-for-profit entities.

The panels determined that each RIS met the quality expectations for regulatory impact analysis. 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 for 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 it will be important that the development of those regulations makes a clear and compelling case for using levy funding for specific new uses.

These RISs are accessible at <https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf> and at <https://www.regulation.govt.nz/our-work/regulatory-impact-statements/>.

<b>2.3.1. If so, did the RIA Team in the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
No, the RISs identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Ministry for Regulation.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
--	-----------

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Analysis on the size of the potential costs and benefits is available in the RISs listed in part 2.3 of this statement above, which are accessible at <a href="https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf">https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf</a> and at <a href="https://www.regulation.govt.nz/our-work/regulatory-impact-statements/">https://www.regulation.govt.nz/our-work/regulatory-impact-statements/</a> .	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The new migrant offence provision is expected to have significant benefits, including:</p> <ul style="list-style-type: none"> <li>• protecting migrant workers/victims and available legal recourse,</li> <li>• strengthening immigration's legal and regulatory frameworks by addressing a gap in the Act,</li> <li>• helping to address instances of financial exploitation, and</li> <li>• enhancing New Zealand's reputation as a safe place to work or seek employment.</li> </ul> <p>The benefits of the new migrant exploitation offence provision will be impacted by both the degree of compliance with the offence and the regulator effort put into securing compliance.</p> <p>The degree to which the objective of protecting workers or potential workers from migrant exploitation is achieved will depend on the extent to which employers, their agents or other actors captured by the offence comply with the requirement to not charge a premium for employment.</p> <p>Similarly, although the new offence and associated penalty is expected to deter bad actors from charging premiums just through its existence, the level of regulator effort put into securing compliance will impact the degree to which migrant exploitation of this nature reduces. The compliance costs are, however, expected to be relatively low for regulators:</p> <ul style="list-style-type: none"> <li>• MBIE regulators (Investigations) noted the financial cost for implementation is relatively low due to already established enforcement measures to monitor compliance, investigate complaints and prosecute offenders of this nature. Minimal additional resource will be required to implement this offence provision, noting only an increase in workload pressures.</li> <li>• The Ministry of Justice (MoJ) noted the minimal cost to the Justice system despite the likelihood of increased service delivery (eg caseloads to prosecute in court, workload pressures for prosecutors, defence, and agencies administering sentences). The impact on expenditure and system changes are relatively low and will be volume dependent.</li> <li>• Corrections noted that the additional housing pressures for imprisonment and financial costs to accommodate is minimal, as the scale of offenders prosecuted is relatively low compared to other offences in the statute.</li> </ul> <p>Analysis of the costs and benefits associated with service delivery, implementation and the degree of compliance expected are set out in Annex One of the RIS: Strengthening migrant exploitation offences, MBIE, 4 September 2024. This is accessible at <a href="https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf">https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf</a> and at <a href="https://www.regulation.govt.nz/our-work/regulatory-impact-statements/">https://www.regulation.govt.nz/our-work/regulatory-impact-statements/</a>.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### **3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

All policy options were assessed against the status quo to determine whether they better balance, protect and respect human rights. This included, where relevant, consideration of New Zealand's international human rights obligations conferred by several legal instruments.

Where proposals have the potential to limit the right to liberty and freedom of movement (namely the amendments relating to deportation liability, cancellation of residence class visa status, out-of-hours compliance activity, warrants of commitment, and release on conditions (including electronic monitoring)), consideration was given to ensure that the design of the proposal and consequent drafting of the provision in the Bill was consistent with core documents such as the Universal Declaration of Human Rights. Additionally, where the proposals have elements of detention, consideration was given to the International Covenant on Civil and Political Rights, Convention against Torture, Inhumane and Degrading Treatment and the Convention on the Rights of the Child.

Where proposals impact people seeking international protection (namely the amendments relating to warrants of commitment and release on conditions (including electronic monitoring)), careful consideration was given to the 1951 Convention Relating to the status of Refugees and Protected Persons (the 1951 Convention) and the 1967 Optional Protocol. The relevant provisions have been designed to ensure that the intention behind the 1951 Convention is reflected in the wording of the Bill, giving effect to the relevant provisions. Consultation was also undertaken with the United Nations High Commissioner for Refugees.

The policy options chosen by Cabinet that relate to the human rights instruments above were determined to support greater consistency with the Conventions and Protocols referred to above than the status quo.

Consultation was undertaken with Inland Revenue, the Treasury and the Legislation Design and Advisory Committee on the design of the extended levy provisions. One focus of this consultation was to ensure that they did not conflict with New Zealand's international tax obligations, especially certain obligations not to discriminate on the basis of nationality.

No inconsistencies with the Crown's international obligations were identified.

### Consistency with the government's Treaty of Waitangi obligations

#### **3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

No inconsistencies with the Crown's obligations under the Treaty of Waitangi were identified.

### Consistency with the New Zealand Bill of Rights Act 1990

#### **3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

**YES**

MoJ is undertaking an assessment of whether the Bill is consistent with the Bill of Rights Act 1990 (BORA) and is providing advice to the Attorney-General.

Advice provided to the Attorney-General by the MoJ is generally expected to be made available on the MoJ website upon introduction of a Bill, at [www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports](http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports).



## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>The Bill addresses a gap in our migrant exploitation settings, by creating an offence provision in the Act for any employment-related person who knowingly seeks or receives any premium in respect of the employment or potential employment in New Zealand of certain migrants or intending migrants. The offence is specified in clause 48 of the Bill (new s 351A inserted (Exploitation of victims by charging premiums for employment)). A corresponding penalty for this offence is specified in clause 49 of the Bill (s 355 amended (Penalties: general)).</p> <p>The Bill does not amend the jurisdiction of a court or tribunal.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>MBIE officials consulted with officials from MoJ during the development of the proposals in the Bill and exposure draft of the Bill. This included the Offence and Penalty Vetting team, National Service Delivery, Regional Service Delivery and Human Rights.</p> <ul style="list-style-type: none"> <li>As a result of consultation with MoJ, MBIE broadened the proposed offence provision (new 351A: Exploitation of victims by charging premium for employment) to capture other potential intermediaries who can be made liable to the offence. This was to capture payments/situations where a premium was sought or received by any “employment-related person” other than an employer.</li> <li>On the basis of feedback from MoJ’s BORA vetting team, the offence was also modified to ensure it contained an element of intentionality, which would be expected for an offence with a potential imprisonment term of this size. As a result, the offence was amended to capture “any employment-related person who <b>knowingly</b> seeks or receives any premium...”.</li> <li>MoJ also queried the impacts on migrants/vulnerable victims potentially being made liable to an offence by being complicit in paying a premium, and whether to include penalty provisions to compensate or repatriate premiums to the affected people. The offence has been carefully drafted to ensure that only the person who is seeking or receiving the premium has committed an offence. Migrants who have been complicit and paid a premium will not be liable for committing an offence and will still be eligible for a Migrant Exploitation Protection Visa. On the second question, MBIE’s view is that questions of repatriation will be a factor in a Judge’s determination (as they are currently) and do not need to be explicitly provided for in this legislation.</li> <li>MoJ advised on the costs and benefits associated with service delivery and implementation of the offence provision which is set out in Annex One of the RIS: Strengthening migrant exploitation offences, MBIE, 4 September 2024. This is accessible at <a href="https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf">https://www.mbie.govt.nz/dmsdocument/30542-regulatory-impact-statements-immigration-fiscal-sustainability-and-system-integrity-pdf</a> and at <a href="https://www.regulation.govt.nz/our-work/regulatory-impact-statements/">https://www.regulation.govt.nz/our-work/regulatory-impact-statements/</a>.</li> <li>MBIE understands that MoJ is satisfied with the Bill’s new s 351A offence and corresponding penalty (s 355(1)) provisions.</li> </ul> <p>MoJ also provided feedback on the amendment to deportation liability settings for residence class visa holders who commit criminal offences as follows:</p> <p><i>Although not a typical "penalty" for criminal offending, the MoJ identifies that the expansion of deportation liability in section 161 of the Act to include defendants who plead guilty or are found guilty could lead to disproportionately severe outcomes for low-level offending. MoJ notes that the section 161 amendment does not align with</i></p>	

*its recommended approach for graduated responses to offending, in which the severity of the State's response to offending behaviour increases in proportion to the seriousness of the conduct and culpability of the offender.*

MBIE's view is that the proposal is justified because being liable for deportation does not mean that a person will necessarily be deported. The Minister of Immigration (and delegated decision-makers) retain absolute discretion not to make and serve a deportation liability notice, or to suspend (with or without conditions) or cancel deportation liability (under s 172). Furthermore, even if a decision is made by the Minister of Immigration (or delegate) to continue with deportation proceedings, there is a right of appeal on humanitarian grounds to the Immigration and Protection Tribunal.

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
---	-----------

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>MBIE undertook targeted consultation on policy proposals and an exposure draft of the Bill in December 2024. Views were sought on each proposal broadly, and each clause specifically (apart from the specific levies provisions details of which were still being finalised).</p> <p>The following external stakeholders were consulted on the exposure draft of the Bill: BusinessNZ, the Casey Review Focus Group (including Amnesty International New Zealand and the Office of the United Nations High Commissioner for Refugees), the New Zealand Council of Trade Unions, the Employers and Manufacturers Association, MBIE's Immigration Focus Group (which includes representatives from e-Migration, the New Zealand Association of Immigration Professionals and Ryman Healthcare), the New Zealand Law Society, and the Office of the Ombudsman.</p> <p>A summary of the nature of feedback received is set out in Appendix 1.</p> <p>Government agencies were also consulted on the proposed amendments to the Act during the development of the policy papers. The consulted agencies were: the Ministries of / for Education, Ethnic Communities, Foreign Affairs and Trade, Health, Justice, Pacific Peoples, Primary Industries (Biosecurity), Regulations and Transport; the Departments of Corrections, Inland Revenue, Internal Affairs and Prime Minister and Cabinet; the New Zealand Customs Service; the New Zealand Police; and the Treasury.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
---	-----------

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
--	-----------

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p><b>Expansion of the immigration levy-payer base</b></p> <p>An immigration levy, which funds a range of overhead and wider immigration system costs, can currently only be charged on applicants for a visa (s 399). That means that other system users who pay fees and who benefit from the existence of the immigration system (such as employers, international education providers, or people who request an Electronic Travel Authority) cannot contribute to the costs of the IT system or immigration compliance activities, or research into the outcomes of immigration (for example).</p> <p>Clause 56 amends s 399 so that a levy, which must be applied to the cost of the immigration system, may be imposed on:</p> <ul style="list-style-type: none"> <li>• Applicants for a visa (as now)</li> <li>• Employers who have, or have applied for, permission to employ migrants</li> <li>• Education providers who are signatory providers (within the meaning of the Education and Training Act 2020),</li> <li>• Any person by whom a fee or charge is payable under the Act.</li> </ul> <p><b>Expansion of the purposes of an immigration levy (extended levy)</b></p> <p>Clause 57 (new s 399AB (Extended immigration levy)) empowers regulations made under s 400 to provide for the imposition of an extended immigration levy on the following groups:</p> <ul style="list-style-type: none"> <li>• Applicants for residence class, student, or work visas, or their sponsors (as provided for in s 48 of the Act);</li> <li>• Employers who have, or have applied for, permission to employ migrants.</li> </ul> <p>There must also be a direct or indirect justifiable relationship between the class of levy-payers and the benefit that that class derives or will derive from the infrastructure or services. In relation to employers, there must be a direct or indirect justifiable relationship between the class of levy-payers and the training costs avoided by those levy-payers.</p> <p>The extended levy may fund, or contribute to, funding the operation and infrastructure of the public health and education systems, including:</p> <ul style="list-style-type: none"> <li>• (applicants for visas or their sponsors) costs arising from immigration which relate to either the infrastructure required for, or the operation of, the public health and education systems (including specific costs relating to education, and referred to in 399AB(2)(a)(i), and specific costs incurred in the public health system, referred to in 399(2)(a)(ii)),</li> <li>• (employers of migrants where the migrant holds, or could hold, a temporary entry class work visa) skills training in New Zealand, to recognise the benefits they receive from recruiting people from outside New Zealand who are already skilled.</li> </ul> <p>The costs in the public health and education system towards which the extended levy may be put must be linked to demand arising from immigration.</p>	

### Safeguards

A series of safeguards around the levy-making powers are included in the Bill. Section 399(3AA) specifies requirements that must be met before the Minister may recommend the making of regulations imposing an immigration levy under s 399.

Before making a recommendation that regulations be made, the Minister must be satisfied that there is a “direct or indirect justifiable relationship” between the benefit, cost or risk that the levied class derives from or introduces to the immigration system (s399(3AA)(b)) or that (extended immigration levy) the costs in the education or health system (s399AB(4)(a)).

Additional requirements introduced by the Bill include:

- Each of the new s 399AA (immigration levy: consultation and review) and s 399AC (extended levy: consultation and review) requires the Minister to consult any persons or organisations they consider appropriate before recommending regulations and further requires the Department/Ministry to review, at intervals of not more than 5 years, the amount and method of calculation of any immigration levy imposed.

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
---	-----------

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
---	-----------

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
Clause 13 (new s 75A inserted) provides the Minister of Immigration with the power to cancel a person's residence class visa if: under s 163(1) of the Act that person constitutes a threat or risk to security but a refugee or protection officer has determined under s 164(5) that s 164(3) or s 164(4) does not allow the person to be deported. The criteria for this power are very narrow to ensure very specific circumstances must be met for it to be invoked. Further, the Minister is required to grant the person a temporary entry class visa should they cancel a visa using this power.	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
---	-----------

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 56 inserts a new s 399(1) which broadens the class of people who can be the subject of the immigration levy (currently applicants for a visa) to also cover employers who have, or have applied for, permission to employ migrants; education providers who are signatory providers (within the meaning of the Education and Training Act 2020, that is, providers of education to international fee-paying students); and any person by whom a fee or charge is payable under the Act. Clause 57 inserts s 399AB, which enables regulation-making powers for the imposition and collection of an extended immigration levy. The detail of this regulation making power is detailed under part 4.2 of this statement.</p>	

#### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
--	-----------

## Appendix One: Further Information Relating to Part Three

### External consultation – question 3.6

There were two phases of targeted external stakeholder consultation undertaken on the Bill.

#### *Initial ‘informing’ consultation*

We held initial discussions with the following stakeholders between 29 July and 9 August 2024 to inform them of the policy proposals:

- BusinessNZ
- the Casey Review Focus Group
- the Employers and Manufacturers Association
- Immigration New Zealand’s (INZ) Immigration Focus Group
- the New Zealand Council of Trade Unions
- the New Zealand Law Society
- the Office of the Ombudsman.

Initial stakeholder feedback was incorporated in the RISs.

#### *Subsequent detailed consultation on Exposure Draft of the Bill*

Targeted consultation on an exposure draft of the Bill was conducted with the same set of stakeholders between 11 and 20 December 2024. Some organisations advised they did not have sufficient time to provide feedback, or that they would need to focus their feedback on key sections of relevance to their organisations. Extensions were provided to facilitate flexibility around the year-end holiday period, and to focus the feedback that could be returned.

Stakeholders representing businesses/employers strongly opposed the proposal to expand the immigration levy-payer base, citing cost pressures on employers of migrants. Stakeholders representing legal and human rights groups opposed proposals that they felt might have potential to limit the rights or freedoms of migrants, such as the proposed power for the Minister for Immigration to cancel a residence class visa held by an individual who poses a threat or risk to security.