

# **Immigration (Fiscal Sustainability and System Integrity) Amendment Bill**

Government Bill

As reported from the Education and Workforce Committee

## **Commentary**

### **Recommendation**

The Education and Workforce Committee has examined the Immigration (Fiscal Sustainability and System Integrity) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

### **Introduction**

The bill seeks to amend the Immigration Act 2009 so it can better fulfil its purpose of managing immigration in a way that balances the national interest and the rights of individuals. In broad terms, the bill aims to:

- share costs more fairly with those who create risks or gain benefits
- strengthen how the system addresses immigration risks and migrant exploitation
- improve operational practices and the treatment of asylum seekers, as recommended in independent reviews
- enable the system to respond more flexibly to challenges.

Specifically, the bill's various amendments to New Zealand's immigration system would:

- broaden who can be charged immigration levies, and the purposes that levy revenue can be used for
- introduce a requirement for a judicial warrant for out-of-hours immigration compliance activities

- seek to improve protections for people who have claimed refugee or protected person status and who are the subject of an application for a warrant of commitment
- establish electronic monitoring as a less restrictive option than detention when people are subject to deportation or turnaround
- update the definition of mass arrival groups to include those who arrive in New Zealand on a scheduled international service, such as a commercial flight or cruise ship
- introduce new Ministerial powers to cancel the residence class visas of people who pose security threats
- clarify that deportation liability for residence class visa holders is a consequence of being convicted of, pleading guilty to, or being found guilty of criminal offences
- introduce a new offence of charging migrants, or prospective migrants, premiums for employment
- introduce a new Ministerial power to grant, waive, and amend visas in unusual circumstances.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

### **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

#### **Definition of “first available craft”**

Clause 4 would define “first available craft”. This term refers to a means of transport a person would be placed on for deportation or turnaround after certain criteria are met. One of the proposed criteria is that the person has no further rights of appeal under the Act.

Submitters expressed concern that the criteria set out in this definition may not be well suited to the immigration context. They suggested it could be improved by making reference to an existing process whereby a person can seek leave to bring judicial review proceedings (as opposed to having a “right” to do so). We agree that it would be appropriate not to limit the clause to situations where a person has a “right” of appeal. We recommend adding an additional criterion into the definition—that the person who is liable for deportation or turnaround has applied for leave to bring judicial review proceedings within 28 days of being notified of a relevant determination by the Tribunal (or within any further time allowed by the High Court) but leave has been refused, or applied for leave to bring judicial review proceedings out of

time, or who did not apply for leave to bring judicial review proceedings. We note that the proposed amendment is consistent with language already used in section 249 of the Act.

### **Definition of “mass arrival group”**

Clause 5 would repeal section 9A(2) of the Act, which currently excludes groups arriving on a scheduled international service from the definition of “mass arrival group”. This would have the effect of enabling the arrival of 31 or more individuals on a scheduled international service (namely a flight or cruise ship) to be classified as a “mass arrival group”. Submitters raised concerns that the bill’s drafting could be interpreted as extending to asylum seekers who arrive in New Zealand on board different aircraft over several days. We note that the policy intention of the mass arrivals framework is to enable New Zealand to safely manage the arrival of a large group of people claiming asylum at the border within a short timeframe. We recommend amending the definition of mass arrival group to clarify that a group of people who board different aircrafts are a mass arrival group if they arrive within the same 24-hour period.

### **Threshold for Ministerial special directions**

The bill would introduce the ability for the Minister to make special directions to benefit classes of persons or grant visas without applications. (The relevant clauses are 7, 8, 9, 10, 11, and 15, amending sections 50, 52, 53, and 57, and inserting new sections 61B and 91A respectively.) These special directions would be secondary legislation and the proposed amendment includes safeguards. Nevertheless, we consider it prudent to add a further safeguard that would apply when the Minister is considering making a special direction. We recommend that the Minister only be able to make a special direction when satisfied that it is “reasonably necessary” to respond to the specified circumstances. We recommend amending clauses 7, 8, 9, 10, 11, and 15 accordingly.

### **Deportation liability as a consequence of criminal offending**

Clause 18, amending section 161, would broaden the grounds on which a residence class visa holder could be liable for deportation as a consequence of criminal offending. They would be liable for deportation in the following circumstances:

- if they are convicted of criminal offending (as in section 161 at present)
- if they plead guilty but are discharged without conviction
- if they are found guilty but are discharged without conviction.

That is, conviction would not be necessary for a person to be liable for deportation. At present under section 161 a residence class visa holder would not be liable for deportation if discharged without conviction.

This proposed change to section 161 means that the title of that section would no longer accurately reflect its content. We recommend inserting clause 18(1AA) to add “or guilty” in the title of section 161.

For consistency with the bill's change to section 161, we consider that amendments should be made in other sections of the Act so that liability for deportation is not dependent on conviction. We propose that deportation liability should apply when "the person is convicted or found guilty of, or pleads guilty to", and not just when "the person is convicted of", an offence. We recommend adding several clauses in subparts 5 and 6 of the bill to amend the following sections of the Act that deal with deportation liability: 156(1)(a), 158(1)(a), 162(2)(a), 173(1), 179(1), 201(2)(b), 208(1), and 431. These sections deal with false identity, fraud, and the cancellation of refugee or protection status, along with associated provisions for rights and appeals.

We understand that new operational processes would be needed to give effect to provisions in subparts 5 and 6 of the bill. This would likely include development of an Approved Information Sharing Agreement (AISA) to identify those who are discharged without conviction. To allow time for the implementation of suitable data-sharing arrangements, we recommend amending the commencement arrangements for clause 18, and any consequentially amended clauses, to be 6 months after Royal assent.

#### **Annual reporting requirements on warrants for out-of-hours compliance visits**

Clauses 25 and 26 would introduce a requirement for search warrants for out-of-hours immigration compliance visits by immigration officers. Although the bill includes some safeguards and protections for those whose dwelling or marae is being searched, we consider that it should go further by including a mechanism to support oversight of this provision. We recommend adding annual reporting obligations for the chief executive of the Ministry of Business, Innovation and Employment. This would be done by amending clause 26 to insert new section 293C. Clauses 25 and 26 would introduce a requirement for search warrants for out-of-hours immigration compliance visits by immigration officers. Although the bill includes some safeguards and protections for those whose dwelling or marae is being searched, we consider that it should go further by including a mechanism to support oversight of this provision. We recommend adding annual reporting obligations for the chief executive of the Ministry of Business, Innovation and Employment. This would be done by amending clause 26 to insert new section 293C.

Our amendment would require the chief executive to report applications for a warrant to enter and search relating to deportation. Within this reporting, the number of warrants applied for must be broken down by:

- the total number of applications made for out-of-hours warrants
- the number of approved and declined applications, including a breakdown of these figures by nationality, gender, age range, and regional location of the subject of the warrant, and the time the warrant was expected to be executed
- the age range of any person who was identified in the application as being likely to be present at the time the entry and search was proposed to be carried out
- the reasons why any out-of-hours applications were approved or declined

- the number of applications where children, elderly persons, or vulnerable persons were likely to be present at the location.

### **Requirements for electronic monitoring for some individuals liable for deportation or turnaround**

Clause 40 would insert new sections 324B to 324I that would enable the introduction of electronic monitoring as an option instead of detention if a person presents a risk. The most likely risk would be the person absconding. We have a number of recommendations in this area.

#### *Allow more than one chief executive to implement and manage electronic monitoring conditions*

Section 322(2)(b) of the Act sets out what happens if a Minister decides not to certify that a person to whom section 322 applies is a threat or risk to security. It also applies if the Minister does not make a certification within 14 days of a person's arrest. Clause 36(4) of the bill would enable a chief executive of a public service agency to be nominated to be responsible for implementing and managing electronic monitoring conditions.

We note that clause 52 would insert new sections 383B which would allow for one or more chief executives of a public service agency to be nominated to implement or manage electronic monitoring. We consider that the wording in section 322(2)(b)(iii) should be consistent with this. We therefore recommend amending clause 36(4) to make the wording more consistent with clause 52.

#### *How the Judge must have regard to the Act when determining releases or commitments*

Proposed new section 324D sets out what a District Court Judge would need to have regard to when determining whether to release a non-claimant on conditions or to issue a warrant of commitment. Section 317(4) of the Act outlines what a District Court Judge must have regard to when determining whether to issue a warrant of commitment or to order a non-claimant's release on conditions. However, the wording of these two similar provisions is slightly different. To avoid confusion and inconsistencies, we recommend amending proposed new section 324D(4) to match that in section 317(4) of the Act.

#### *Seeking leave from conditions in reasonable circumstances*

There may be occasions where individuals subject to electronic monitoring need to seek leave from the condition or conditions. This could be to attend a medical appointment or job interview in an area outside the location conditions set by the District Court Judge. We recommend amending new section 324F(3) to empower a Judge to impose a condition that would enable an immigration officer to agree to a request from the individual subject to electronic monitoring to be temporarily excused from the need to comply with an electronic monitoring condition, or conditions, when it is reasonable in all the circumstances.

We also recommend inserting section 324F(11) to clarify that permission does not need to be sought in an emergency situation.

Further, we recommend clarifying in new section 324F(3) that a condition to remain in a specified place is separate from the condition not to enter a specified place.

*Judges may make multiple extensions of conditions*

Clause 40, which would insert new section 324F, specifies that a condition imposed by a Judge can only be for an initial term of 3 months or less. New section 324F(7) to (9) states that the initial term could be extended by a further term of up to 3 months. We recommend amending new section 324F(7) to clarify that a term may be extended, but by no more than 3 months at a time.

*Electronic monitoring is to monitor compliance, not facilitate it*

Clause 42 would insert a new paragraph to new section 324F(3), inserted by clause 40. Paragraph (da) specifies that electronic monitoring would be to “facilitate compliance” with an electronic monitoring condition. We recommend amending this wording to “monitor compliance” to more accurately reflect the policy intent and the capability of the technology.

*Information obtained through electronic monitoring may only be used for specific purposes*

The Office of the Privacy Commissioner suggested tightening the purposes for which information obtained through electronic monitoring can be used, and when officials can access the monitoring devices. We agree that this would further safeguard people’s privacy. We recommend amending clause 43, proposed new section 324J(2), to clarify that information about a person that is obtained through electronic monitoring may only be used for the purposes set out in that section.

*Electronic monitoring equipment may only be accessed with reasonable notice*

We recommend adding subsection (3A) to proposed new section 324J to require reasonable notice to be provided before an authorised person or an immigration officer accesses a place where electronic monitoring equipment is located.

**The offence of charging a premium for New Zealand employment still applies if conducted overseas**

Clause 47 would insert new section 351A relating to exploitation of a person seeking employment or already working in New Zealand. It would introduce a new offence applying when an employment-related person knowingly seeks or receives a premium in respect of the employment or potential employment in New Zealand of a victim (such as an unlawful worker). Submitters commented on how this might work if businesses or employees were based overseas. We consider it important for this offence to apply even if communications and transactions related to employment in New Zealand happen outside the country. We therefore recommend amending proposed sec-

tion 351A to make clear that the offence applies whether the relevant conduct happens “in or outside New Zealand”.

## Appendix

### Committee process

The Immigration (Fiscal Sustainability and System Integrity) Amendment Bill was referred to this committee on 24 June 2025. The House instructed us to report the bill back no later than 13 November 2025. We invited the Minister of Immigration to provide an oral submission on the bill. She did so on 13 August 2025.

We called for submissions on the bill with a closing date of 28 July 2025. We received and considered submissions from 78 interested groups and individuals. We heard oral evidence from 22 submitters. We wish to acknowledge the efforts of all submitters and thank them for their engagement.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee wrote to us about the powers contained in clauses 55 and 56.

### Committee membership

Katie Nimon (Chairperson)

Carl Bates (Deputy Chairperson)

Shanan Halbert

Francisco Hernandez

Grant McCallum

Dr Parmjeet Parmar

Hon Willow-Jean Prime

Hon Phil Twyford

Dr Vanessa Weenink (Acting Chairperson from 16 July to 8 August 2025)

Mike Butterick participated in our consideration of this bill.

### Related resources

The documents we received as advice and evidence are available on the Parliament website.

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

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Erica Stanford*

# **Immigration (Fiscal Sustainability and System Integrity) Amendment Bill**

Government Bill

## **Contents**

	Page
1 Title	5
2 Commencement	5
3 Principal Act	6
<b>Part 1</b>	
<b>Amendments relating to system integrity</b>	
Subpart 1—Amendments relating to preliminary provisions	
4 Section 4 amended (Interpretation)	6
5 Section 9A amended (Meaning of mass arrival group)	7
Subpart 2—Amendments relating to core provisions and matters in relation to decision making	
6 Section 17 amended (Exceptions to non-eligibility for visa or entry permission)	7
Subpart 3—Amendments relating to visas	
7 Section 50 amended (Conditions on resident visas)	7
8 Section 52 amended (Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions))	9
9 Section 53 amended (Conditions on temporary entry class visas subject to restricted temporary entry instructions)	10
10 Section 57 amended (Applications for visas)	12
11 New sections 61A and 61B inserted	13
61A Grant of visa to individual	13
61B Grant of visas to class of persons by special direction	14

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

12	Section 71 amended (Who may apply for residence class visa)	15
13	New section 75A inserted (Cancellation of residence class visa of person threatening security)	15
	75A Cancellation of residence class visa of person threatening security	15
14	Section 79 amended (Who may apply for temporary visa)	16
15	New sections 91A and 91B and cross-headings inserted	16
	<i>Special directions to extend temporary entry class visas and transit visas</i>	
	91A Extension of temporary entry class visas and transit visas by special direction	16
	<i>Reporting to Minister about grant of visas by special direction</i>	
	91B Departmental annual report to record exercise of power to make special directions (class of persons)	18
	Subpart 4—Amendments relating to arrivals and departures	
16	Section 116 amended (When section 115 ceases to apply to person)	18
17	Section 117 amended (When turnaround ceases to apply to person remanded in custody or imprisoned)	19
	Subpart 5—Amendments relating to deportation	
<u>17A</u>	<u>Section 156 amended (Deportation liability if visa held under false identity)</u>	<u>19</u>
<u>17B</u>	<u>Section 158 amended (Deportation liability of residence class visa holder due to fraud, forgery, etc)</u>	<u>19</u>
18	Section 161 amended (Deportation liability of residence class visa holder convicted of criminal offence)	19
<u>18A</u>	<u>Section 162 amended (Deportation liability if refugee or protection status cancelled under section 146)</u>	<u>19</u>
<u>18B</u>	<u>Section 173 amended (Right of victims to make submissions on suspension or cancellation of liability for deportation)</u>	<u>19</u>
<u>18C</u>	<u>Section 179 amended (Deported person may not enter New Zealand during period of prohibition on entry)</u>	<u>20</u>
	Subpart 6—Amendments relating to appeals, reviews, and other proceedings	
<u>18D</u>	<u>Section 201 amended (Persons who may appeal to Tribunal on facts)</u>	<u>20</u>
<u>18E</u>	<u>Section 208 amended (Right of victims to make submission on appeal)</u>	<u>20</u>
19	Section 211 amended (Effect of successful appeal against liability for deportation)	20
20	Section 213 amended (Effect of suspension)	20

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

21	Section 266 amended (Appointment of special advocate for purposes of Part 9 proceedings)	21
22	Section 268 amended (Protection of special advocates from liability)	21
	Subpart 7—Amendments relating to compliance and information	
23	Section 277A amended (Powers of entry and search for employees on employers’ premises)	21
24	Section 277C amended (Departmental annual report to record exercise of entry and search powers under section 277A)	21
25	Section 286 amended (Powers of entry and search relating to deportation)	21
26	<del>New section 293B sections 293B and 293C inserted (Application for warrant to enter and search relating to deportation)</del>	21
	293B Application for warrant to enter and search relating to deportation	22
	<u>293C Departmental annual report to record exercise of power to issue warrant to enter and search relating to deportation</u>	<u>23</u>
	Subpart 8—Amendments relating to detention and monitoring	
27	Section 310 amended (Purpose for which arrest and detention powers may be exercised)	23
28	Section 311 amended (Implications of liability to arrest and detention)	23
29	Cross-heading above section 316 amended	24
30	Section 316 amended (Application for warrant of commitment)	24
31	Section 317 amended (Decision on application for warrant of commitment)	24
32	New section 317AA inserted (Decision on application for warrant of commitment (claimant))	24
	317AA Decision on application for warrant of commitment (claimant)	24
33	Section 318 amended (Decision on application for warrant if threat or risk to security)	25
34	Section 320 repealed (Court may instead release person on conditions)	25
35	Section 321 replaced (Special conditions where threat or risk to security)	25
	321 Special conditions where threat or risk to security	25
36	Section 322 amended (Persons detained under warrant of commitment or released on conditions pending making of deportation order)	26
37	Section 323 amended (Decisions on warrants of commitment where detention beyond 6 months)	26

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

38	Section 324 amended (Review of warrant of commitment or release on conditions)	26
39	Section 324A amended (Review of mass arrival warrant)	26
40	New sections 324B to 324I inserted	26
	324B Application for release on conditions (non-claimant)	27
	324C Application for release on conditions (claimant)	27
	324D Decision on application for release on conditions (non-claimant)	28
	324E Decision on application for release on conditions (claimant)	29
	324F Release on conditions	30
	324G Variation of conditions imposed under section 324F	32
	324H Circumstances in which person released on conditions may later be detained	32
	324I Lapse of conditions of release	33
41	Section 324F amended (Release on conditions)	33
42	Section 324F amended (Release on conditions)	33
43	New sections 324J and 324K inserted	33
	324J Provision relating to electronic monitoring condition	34
	324K Departmental annual report to include information about use of electronic monitoring	35
44	Section 326 amended (Process for High Court to consider application)	35
45	Section 336 amended (Person being deported must be returned to custody or conditions reimposed if craft not available as planned)	36
46	Section 340 amended (Application of section 320 during epidemic)	36
	Subpart 9—Amendments relating to offences, penalties, and proceedings	
47	New section 351A inserted (Exploitation of victims by charging premium for employment)	36
	351A Exploitation of victims by charging premium for employment	36
48	Section 355 amended (Penalties: general)	37
49	Section 372 amended (Time for filing charging document)	37
	Subpart 10—Amendments relating to miscellaneous provisions	
50	Section 378 amended (Special directions)	37
51	Section 380 amended (Delegation of Minister’s powers)	38
52	New section 383B inserted (Responsibility for implementing and managing electronic monitoring conditions)	38
	383B Responsibility for implementing and managing electronic monitoring conditions	38
53	Section 388 amended (Designation of immigration officers)	38
54	Section 389 amended (Immigration officers’ functions and powers)	39

<b>Part 2</b>		
<b>Amendments relating to fiscal sustainability</b>		
55	Section 399 amended (Immigration levy)	39
56	New sections 399AA to 399AC inserted	39
	399AA Immigration levy: consultation and review	39
	399AB Extended immigration levy	40
	399AC Extended immigration levy: consultation and review	41
<b>Part 2A</b>		
<b><u>Amendment relating to repeals, transitional provisions, saving provisions, and related matters</u></b>		
56A	<u>Section 431 amended (Deportation liability of residence class visa holder convicted of criminal offence)</u>	42
<b>Part 3</b>		
<b>Consequential amendments</b>		
57	Schedule 1AA amended	42
58	Consequential amendment	42
<b>Schedule 1</b>		
<b>New Part 4 inserted into Schedule 1AA</b>		
<b>Schedule 2</b>		
<b>Consequential amendment to Search and Surveillance Act 2012</b>		

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Immigration (Fiscal Sustainability and System Integrity) Amendment Act **2025**.
- 2 Commencement** 5
  - (1) This Act comes into force on the day after Royal assent, with some exceptions.
  - (2) **Sections 4(2), 16, 17, 27(2), 30, 31(1) to (3), 32, 36(3), 38(4), 39(2), 41, and 44(1)** (which make amendments in relation to decisions about applications for a warrant of commitment) come into force 3 months after Royal assent. 10
  - (2A) **Sections 17A, 17B, 18(1AA) to (1A), 18A to 18E, and 56A** (which make amendments in relation to deportation) come into force 6 months after Royal assent.
  - (3) **Sections 36(4), 42, 43, and 52 to 54** (which make amendments to introduce electronic monitoring as a condition of release of a person liable to arrest and detention) come into force on the first anniversary of Royal assent. 15

**3 Principal Act**

This Act amends the Immigration Act 2009.

**Part 1****Amendments relating to system integrity**

Subpart 1—Amendments relating to preliminary provisions 5

**4 Section 4 amended (Interpretation)**

(1) In section 4, insert in their appropriate alphabetical order:

**dwelling** has the meaning given in **section 286(3)**

**first available craft** means the first craft that is available to place a person on after they meet the following criteria: 10

(a) the person is liable for deportation or turnaround; and

(aa) the person has—

(i) applied for leave to bring judicial review proceedings within 28 days after being notified of the Tribunal’s determination in respect of the decision or matter to which the review proceedings relate, or within any further time allowed by the High Court, but leave has been refused; or 15

(ii) applied for leave to bring judicial review proceedings after the prescribed time; or

(iii) not applied for leave to bring judicial review proceedings; and 20

(b) the person has no further rights of appeal under this Act; and

(c) there are no impediments to the deportation or turnaround of the person; and

(d) the deportation or turnaround of the person from New Zealand will not contravene section 164 25

**irregular entry into New Zealand** includes, without limitation, entry into New Zealand by a person if—

(a) the identity of the person is unknown; or

(b) in the circumstances referred to in **section 317AA(3)(a) and 324E(6)(a)**, the person’s identity has not been established to the satisfaction of a District Court Judge; or 30

(c) the person has used false or fraudulently obtained documents, or other deceptive or fraudulent means, to gain entry; or

(d) the person has failed to observe border control or other immigration formalities; or 35

- (e) the person has used a deceptive or clandestine method of entry (for example, as a stowaway or by entering outside of official points of entry, including closed or unauthorised entry points); or
  - (f) the person has been assisted to enter by smugglers
- out of hours** has the meaning given in **section 286(3)** 5
- (2) In section 4, definition of **warrant of commitment**, paragraph (a), after “section 317,”, insert “**317AA**,”.

**5 Section 9A amended (Meaning of mass arrival group)**

- (1) After section 9A(1), insert:
- (1A) A group of people arriving on board a group of aircraft are a mass arrival group under subsection (1)(c) if the aircraft arrive within the same 24-hour time period. 10
- (2) Repeal section 9A(2).

Subpart 2—Amendments relating to core provisions and matters in relation to decision making 15

**6 Section 17 amended (Exceptions to non-eligibility for visa or entry permission)**

- After section 17(3), insert:
- (4) Nothing in section 15 or 16 limits the power of the Minister to grant a temporary entry class visa under **section 75A**. 20

Subpart 3—Amendments relating to visas

**7 Section 50 amended (Conditions on resident visas)**

- After section 50(4), insert:
- (4A) The Minister may, by special direction in relation to a class or classes of persons holding resident visas,— 25
- (a) vary conditions that would otherwise apply to visas of the relevant types, or that were imposed under this section, that relate to travel to New Zealand;
  - (b) vary or cancel conditions that would otherwise apply to visas of the relevant types or that were imposed under this section. 30
- (4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that the special direction is ~~being made in response~~ reasonably necessary to respond to 1 or more of the following circumstances:
- (a) any unusual circumstance;
  - (b) any circumstance that is unable to be dealt with under any other provision of the Act: 35

- (c) any circumstance that is outside the Department's control:
- (d) any circumstance that poses a challenge to the immigration system.
- (4C) A special direction under **subsection (4A)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a variation or cancellation of a visa condition applies by reference to all or any of the following: 5
- (a) their nationality:
- (b) the country or place from which they are travelling or have travelled (whether it is their original or an intermediate point of departure):
- (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued: 10
- (d) the type of visa that they hold:
- (e) any other type of visa that they have applied for.
- (4D) The Minister must certify a special direction made under **subsection (4A)** as follows: 15
- (a) the Minister considers that the exercise of the power to make the special direction in the particular situation is reasonably necessary to respond to 1 or more of the following circumstances:
- (i) any unusual circumstance:
- (ii) any circumstance that is unable to be dealt with under any other provision of the Act: 20
- (iii) any circumstance that is outside the Department's control:
- (iv) any circumstance that poses a challenge to the immigration system; and
- (b) the Minister considers that the exercise of the power to make the special direction in the particular situation will— 25
- (i) benefit the class or classes of persons to whom it applies; or
- (ii) not disadvantage the class or classes of persons to whom it applies; and
- (c) the Minister has undertaken any consultation that they consider to be appropriate in the particular situation. 30
- (4E) A special direction under **subsection (4A)**—
- (a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
- (b) commences in accordance with section 378(3), even if it is not yet published; and 35
- (c) must be published together with an explanation of the effect of the special direction; and

- (d) must specify—
  - (i) its duration, which can be no longer than 6 months; and
  - (ii) any statutory power exercised; and
  - (iii) the class of persons to whom it applies.

**8 Section 52 amended (Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions))** 5

After section 52(4), insert:

- (4A) The Minister may, by special direction in relation to a class or classes of persons holding temporary entry class visas,—
  - (a) impose further conditions on the visas, whether or not the conditions are specified in the temporary entry instructions in relation to visas of the relevant types: 10
  - (b) vary or cancel conditions that would otherwise apply to visas of the relevant types or that were imposed under this section.
- (4B) However, the Minister may not make a special direction under **subsection (4A)** unless satisfied that the special direction is ~~being made in response~~ reasonably necessary to respond to 1 or more of the following circumstances: 15
  - (a) any unusual circumstance:
  - (b) any circumstance that is unable to be dealt with under any other provision of the Act: 20
  - (c) any circumstance that is outside the Department’s control:
  - (d) any circumstance that poses a challenge to the immigration system.
- (4C) A special direction under **subsection (4A)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a further visa condition, or a variation or cancellation of a visa condition, applies by reference to all or any of the following: 25
  - (a) their nationality:
  - (b) the country or place from which they are travelling or have travelled (whether it is their original or an intermediate point of departure):
  - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued: 30
  - (d) the type of visa that they hold:
  - (e) any other type of visa that they have applied for.
- (4D) The Minister must certify a special direction made under **subsection (4A)** as follows: 35
  - (a) the Minister considers that the exercise of the power to make the special direction in the particular situation is reasonably necessary to respond to 1 or more of the following circumstances:

<ul style="list-style-type: none"> <li>(i) any unusual circumstance:</li> <li>(ii) any circumstance that is unable to be dealt with under any other provision of the Act:</li> <li>(iii) any circumstance that is outside the Department's control:</li> <li>(iv) any circumstance that poses a challenge to the immigration system; and</li> </ul>	5
<ul style="list-style-type: none"> <li>(b) the Minister considers that the exercise of the power to make the special direction in the particular situation will— <ul style="list-style-type: none"> <li>(i) benefit the class or classes of persons to whom it applies; or</li> <li>(ii) not disadvantage the class or classes of persons to whom it applies; and</li> </ul> </li> <li>(c) the Minister has undertaken any consultation that they consider to be appropriate in the particular situation.</li> </ul>	10
<p>(4E) A special direction under <b>subsection (4A)</b>—</p> <ul style="list-style-type: none"> <li>(a) is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements); and</li> <li>(b) commences in accordance with section 378(3), even if it is not yet published; and</li> <li>(c) must be published together with an explanation of the effect of the special direction; and</li> <li>(d) must specify— <ul style="list-style-type: none"> <li>(i) its duration, which can be no longer than 6 months; and</li> <li>(ii) any statutory power exercised; and</li> <li>(iii) the class of persons to whom it applies.</li> </ul> </li> </ul>	15 20
<p><b>9 Section 53 amended (Conditions on temporary entry class visas subject to restricted temporary entry instructions)</b></p> <p>After section 53(4), insert:</p>	25
<p>(4A) The Minister may, by special direction in relation to a class or classes of persons holding temporary entry class visas subject to restricted temporary entry instructions,—</p> <ul style="list-style-type: none"> <li>(a) impose further conditions on the visas, whether or not the conditions are specified in the restricted temporary entry instructions in relation to visas of the relevant types:</li> <li>(b) vary or cancel conditions that would otherwise apply to visas of the relevant types or that were imposed under this section.</li> </ul>	30 35
<p>(4B) However, the Minister may not make a special direction under <b>subsection (4A)</b> unless satisfied that the special direction is <u>being made in response reasonably necessary to respond</u> to 1 or more of the following circumstances:</p>	

- (a) any unusual circumstance:
  - (b) any circumstance that is unable to be dealt with under any other provision of the Act:
  - (c) any circumstance that is outside the Department’s control:
  - (d) any circumstance that poses a challenge to the immigration system. 5
- (4C) A special direction under **subsection (4A)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a further visa condition, or a variation or cancellation of a visa condition, applies by reference to all or any of the following:
- (a) their nationality: 10
  - (b) the country or place from which they are travelling or have travelled (whether it is their original or an intermediate point of departure):
  - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued:
  - (d) the type of visa that they hold: 15
  - (e) any other type of visa that they have applied for.
- (4D) The Minister must certify a special direction made under **subsection (4A)** as follows:
- (a) the Minister considers that the exercise of the power to make the special direction in the particular situation is reasonably necessary to respond to 1 or more of the following circumstances: 20
    - (i) any unusual circumstance:
    - (ii) any circumstance that is unable to be dealt with under any other provision of the Act:
    - (iii) any circumstance that is outside the Department’s control: 25
    - (iv) any circumstance that poses a challenge to the immigration system; and
  - (b) the Minister considers that the exercise of the power to make the special direction in the particular situation will— 30
    - (i) benefit the class or classes of persons to whom it applies; or
    - (ii) not disadvantage the class or classes of persons to whom it applies; and
  - (c) the Minister has undertaken any consultation that they consider to be appropriate in the particular situation.
- (4E) A special direction under **subsection (4A)**— 35
- (a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and

- (b) commences in accordance with section 378(3), even if it is not yet published; and
- (c) must be published together with an explanation of the effect of the special direction; and
- (d) must specify—
  - (i) its duration, which can be no longer than 6 months; and
  - (ii) any statutory power exercised; and
  - (iii) the class of persons to whom it applies.

5

### 10 Section 57 amended (Applications for visas)

After section 57(2), insert:

10

- (3) The Minister may, by special direction, waive 1 or more of the prescribed requirements for applying for a visa (whether at an immigration control area or otherwise) in respect of a class or classes of persons.
- (4) However, the Minister may not make a special direction under **subsection (3)** unless satisfied that the special direction is ~~being made in response~~ reasonably necessary to respond to 1 or more of the following circumstances:
  - (a) any unusual circumstance:
  - (b) any circumstance that is unable to be dealt with under any other provision of the Act:
  - (c) any circumstance that is outside the Department's control:
  - (d) any circumstance that poses a challenge to the immigration system.
- (5) A waiver made in accordance with **subsection (3)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom the waiver applies by reference to all or any of the following:
  - (a) their nationality:
  - (b) the country or place from which they are travelling or have travelled (whether it is their original or an intermediate point of departure):
  - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued:
  - (d) the type of visa that they hold:
  - (e) any other type of visa that they have applied for.
- (6) The Minister must certify a special direction made under **subsection (3)** as follows:
  - (a) the Minister considers that the exercise of the power to make the special direction in the particular situation is reasonably necessary to respond to 1 or more of the following circumstances:
    - (i) any unusual circumstance:

15

20

25

30

35

- (ii) any circumstance that is unable to be dealt with under any other provision of the Act:
  - (iii) any circumstance that is outside the Department's control:
  - (iv) any circumstance that poses a challenge to the immigration system; and 5
- (b) the Minister considers that the exercise of the power to make the special direction in the particular situation will—
- (i) benefit the class or classes of persons to whom it applies; or
  - (ii) not disadvantage the class or classes of persons to whom it applies; and 10
- (c) the Minister has undertaken any consultation that they consider to be appropriate in the particular situation.
- (7) A special direction under **subsection (3)**—
- (a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and 15
  - (b) commences in accordance with section 378(3), even if it is not yet published; and
  - (c) must be published together with an explanation of the effect of the special direction; and
  - (d) must specify— 20
    - (i) its duration, which can be no longer than 6 months; and
    - (ii) any statutory power exercised; and
    - (iii) the class of persons to whom it applies.

**11 New sections 61A and 61B inserted**

After section 61, insert: 25

**61A Grant of visa to individual**

- (1) The Minister may at any time, of the Minister's own volition, grant a visa of any type to a person who—
  - (a) is outside New Zealand; or
  - (b) is in New Zealand and holds a temporary entry class visa. 30
- (2) A visa may be granted under **subsection (1)** even if the grant is contrary to immigration instructions.
- (3) A decision to grant a visa under **subsection (1)** is in the Minister's absolute discretion.

**61B Grant of visas to class of persons by special direction**

- (1) The Minister may, at any time of the Minister's own volition, by special direction, grant visas of any type to a class or classes of persons who—
- (a) are outside New Zealand; or
  - (b) are in New Zealand and hold temporary entry class visas. 5
- (2) A visa may be granted under **subsection (1)** even if the grant is contrary to immigration instructions.
- (3) However, the Minister may not make a special direction under **subsection (1)** unless satisfied that the special direction is ~~being made in response~~ reasonably necessary to respond to 1 or more of the following circumstances: 10
- (a) any unusual circumstance:
  - (b) any circumstance that is unable to be dealt with under any other provision of the Act:
  - (c) any circumstance that is outside the Department's control:
  - (d) any circumstance that poses a challenge to the immigration system. 15
- (4) A special direction under **subsection (1)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom a visa is granted by reference to all or any of the following:
- (a) their nationality:
  - (b) the country or place from which they are travelling or have travelled (whether it is their original or an intermediate point of departure): 20
  - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued:
  - (d) any type of visa that they hold or have applied for.
- (5) The Minister must certify a special direction made under **subsection (1)** as follows: 25
- (a) the Minister considers that the exercise of the power to make the special direction in the particular situation is reasonably necessary to respond to 1 or more of the following circumstances: 30
    - (i) any unusual circumstance:
    - (ii) any circumstance that is unable to be dealt with under any other provision of the Act:
    - (iii) any circumstance that is outside the Department's control:
    - (iv) any circumstance that poses a challenge to the immigration system; and 35
  - (b) the Minister considers that the exercise of the power to make the special direction in the particular situation will—
    - (i) benefit the class or classes of persons to whom it applies; or

- (ii) not disadvantage the class or classes of persons to whom it applies; and
- (c) the Minister has undertaken any consultation that they consider to be appropriate in the particular situation.
- (6) A special direction under **subsection (1)**— 5
  - (a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
  - (b) commences in accordance with section 378(3), even if it is not yet published; and
  - (c) must be published together with an explanation of the effect of the special direction; and 10
  - (d) must specify—
    - (i) its duration, which can be no longer than 6 months; and
    - (ii) any statutory power exercised; and
    - (iii) the class of persons to whom it applies. 15

**12 Section 71 amended (Who may apply for residence class visa)**

After section 71(3), insert:

- (3A) No person whose residence class visa has been cancelled under **section 75A** may apply for a residence class visa.

**13 New section 75A inserted (Cancellation of residence class visa of person threatening security) 20**

After section 75, insert:

**75A Cancellation of residence class visa of person threatening security**

- (1) The Minister may cancel a person’s residence class visa if— 25
  - (a) the Minister has certified under section 163(1) that the person constitutes a threat or risk to security; but
  - (b) a refugee and protection officer has determined under section 164(5) that section 164(3) or (4) does not allow the person to be deported.
- (2) If the Minister cancels a visa under **subsection (1)**, the Minister must grant the person a temporary entry class visa of a type that the Minister thinks fit. 30
- (3) The expiry date of a temporary entry class visa granted under **subsection (2)** is a matter for the discretion of the Minister.
- (4) A person granted a temporary entry class visa under **subsection (2)** may apply to the Minister for a further temporary entry class visa if the criteria for cancellation set out in **subsection (1)** still apply to that person. 35

(5)	On receipt of an application under <b>subsection (4)</b> , the Minister, if satisfied that the criteria for cancellation set out in <b>subsection (1)</b> still apply to that person,—	
(a)	must grant a further temporary entry class visa of a type that the Minister thinks fit; and	5
(b)	may—	
(i)	impose on the visa granted any conditions that the Minister thinks fit; or	
(ii)	vary or waive conditions that would otherwise apply to it.	
<b>14</b>	<b>Section 79 amended (Who may apply for temporary visa)</b>	10
	In section 79(1)(c),—	
(a)	delete “either”; and	
(b)	before subparagraph (i), insert:	
	(iaaa) a person to whom <b>section 75A(2)</b> applies; or	
<b>15</b>	<b>New sections 91A and 91B and cross-headings inserted</b>	15
	After section 91, insert:	
	<i>Special directions to extend temporary entry class visas and transit visas</i>	
<b>91A</b>	<b>Extension of temporary entry class visas and transit visas by special direction</b>	
(1)	The Minister may, by special direction in relation to a class or classes of persons holding the following visas, extend the visas by a period of up to 9 months from the date on which they would otherwise expire:	20
(a)	temporary entry class visas (excluding those visas that are subject to restricted temporary entry instructions):	
(b)	temporary entry class visas subject to restricted temporary entry instructions:	25
(c)	transit visas.	
(2)	However, the Minister may not make a special direction under <b>subsection (1)</b> unless satisfied that the special direction is <u>being made in response reasonably necessary to respond</u> to 1 or more of the following circumstances:	30
(a)	any unusual circumstance:	
(b)	any circumstance that is unable to be dealt with under any other provision of the Act:	
(c)	any circumstance that is outside the Department’s control:	
(d)	any circumstance that poses a challenge to the immigration system.	35

- (3) A visa extended under **subsection (1)(a) or (b)** must, for all purposes, be treated as if it continues to be a current visa allowing a person to travel to New Zealand, apply for entry permission, and stay in New Zealand until the earlier of the following events:
- (a) the cancellation of the visa: 5
  - (b) the expiry of the period of the extension.
- (4) A transit visa extended under **subsection (1)(c)** must, for all purposes, be treated as if it continues to be a current visa giving the holder of the visa permission to travel to New Zealand, and to remain, for no longer than the transit period,— 10
- (a) on the craft concerned; or
  - (b) in an immigration control area; or
  - (c) in the custody of the Police.
- (5) **Subsection (1)** does not require— 15
- (a) the endorsement or modification of the visa; or
  - (b) the issue of a document extending the visa; or
  - (c) the grant of a new visa.
- (6) A visa extension under **subsection (1)** may, without limiting the generality of the manner in which persons may be classified, classify persons to whom the extension applies by reference to all or any of the following: 20
- (a) their nationality:
  - (b) the country or place from which they are travelling or have travelled (whether it is their original or an intermediate point of departure):
  - (c) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued: 25
  - (d) the type of visa that they hold.
- (7) The Minister must certify a special direction made under **subsection (1)** as follows:
- (a) the Minister considers that the exercise of the power to make the special direction in the particular situation is reasonably necessary to respond to 1 or more of the following circumstances: 30
    - (i) any unusual circumstance:
    - (ii) any circumstance that is unable to be dealt with under any other provision of the Act:
    - (iii) any circumstance that is outside the Department’s control: 35
    - (iv) any circumstance that poses a challenge to the immigration system; and

- (b) the Minister considers that the exercise of the power to make the special direction in the particular situation will—
- (i) benefit the class or classes of persons to whom it applies; or
  - (ii) not disadvantage the class or classes of persons to whom it applies; and
- (c) the Minister has undertaken any consultation that they consider to be appropriate in the particular situation.
- (8) A special direction under **subsection (1)**—
- (a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
  - (b) commences in accordance with section 378(3), even if it is not yet published; and
  - (c) must be published together with an explanation of the effect of the special direction; and
  - (d) must specify—
    - (i) its duration, which can be no longer than 6 months; and
    - (ii) any statutory power exercised; and
    - (iii) the class of persons to whom it applies.
- Reporting to Minister about grant of visas by special direction*
- 91B Departmental annual report to record exercise of power to make special directions (class of persons)**
- The chief executive must include in every annual report prepared by the chief executive for the purposes of section 43 of the Public Finance Act 1989—
- (a) the number of times that the power to make a special direction under **sections 50(4A), 52(4A), 53(4A), 57(3), 61B(1), and 91A(1)** has been used in the financial year and the previous 3 financial years (if applicable); and
  - (b) the reasons for which any special directions under **sections 50(4A), 52(4A), 53(4A), 57(3), 61B(1), and 91A(1)** were made in the financial year.

#### Subpart 4—Amendments relating to arrivals and departures

##### **16 Section 116 amended (When section 115 ceases to apply to person)**

- (1) In section 116(1)(d), after “section 317”, insert “, **317AA**,”.
- (2) In section 116(1)(e), after “section 317,”, insert “**317AA**,”.

- 17 Section 117 amended (When turnaround ceases to apply to person remanded in custody or imprisoned)**
- (1) In section 117(4)(b), after “section 317”, insert “, **317AA**,”.
- (2) In section 117(4)(c), after “section 317,”, insert “**317AA**,”.
- Subpart 5—Amendments relating to deportation 5
- 17A Section 156 amended (Deportation liability if visa held under false identity)**
- In section 156(1)(a), replace “the person is convicted of” with “the person is convicted or found guilty of, or pleads guilty to,”.
- 17B Section 158 amended (Deportation liability of residence class visa holder due to fraud, forgery, etc)** 10
- In section 158(1)(a), replace “the person is convicted of” with “the person is convicted or found guilty of, or pleads guilty to,”.
- 18 Section 161 amended (Deportation liability of residence class visa holder convicted of criminal offence)** 15
- (1AA) In the heading to section 161, after “convicted”, insert “or guilty”.**
- (1) In section 161(1), replace “A residence class visa holder is liable for deportation if he or she is convicted, in New Zealand or elsewhere,—” with “A residence class visa holder is liable for deportation if they ~~plead that they are guilty, are found guilty, or are convicted~~ are convicted or found guilty of, or plead guilty to, in New Zealand or elsewhere,—” 20
- (1A) In section 161(1), replace “of an offence” with “an offence” in each place.**
- (2) In section 161(1)(d), replace “section 350(1) or 351” with “section 350(1), 351, or **351A**”.
- 18A Section 162 amended (Deportation liability if refugee or protection status cancelled under section 146)** 25
- In section 162(2)(a), replace “if the person has been convicted of” with “if the person has been convicted or found guilty of, or pleaded guilty to,”.
- 18B Section 173 amended (Right of victims to make submissions on suspension or cancellation of liability for deportation)** 30
- Replace section 173(1) with:
- (1) In determining whether to cancel or suspend a person’s liability for deportation, the Minister must have regard to any written submissions made by a victim of an offence or offences if—
- (a) the person who is liable for deportation— 35
- (i) has been convicted of the offence or offences; or

- (ii) has been found guilty of the offence or offences; or  
 (iii) has pleaded guilty to the offence or offences; and  
 (b) the person’s liability for deportation arises from that offence or those offences.

**18C Section 179 amended (Deported person may not enter New Zealand during period of prohibition on entry)** 5

- (1) In section 179(1), table, repeal the item relating to section 161.  
 (2) In section 179(1), table, after the item relating to section 160, insert:  
Section 161 applies (residence class visa holder permanent prohibition  
convicted or guilty of specified offence)

Subpart 6—Amendments relating to appeals, reviews, and other proceedings 10

**18D Section 201 amended (Persons who may appeal to Tribunal on facts)**  
In section 201(2)(b), replace “have been convicted of” with “have been convicted or found guilty of, or pleaded guilty to.”.

**18E Section 208 amended (Right of victims to make submission on appeal)** 15  
Replace section 208(1) with:

- (1) In determining a humanitarian appeal by a person who becomes liable for deportation under section 161, the Tribunal must have regard to—  
 (a) any written submissions made to it by a victim of an offence or offences if—  
 (i) the person who is liable for deportation— 20  
 (A) has been convicted of the offence or offences; or  
 (B) has been found guilty of the offence or offences; or  
 (C) has pleaded guilty to the offence or offences; and  
 (ii) the person’s liability for deportation arises from that offence or those offences; and 25  
 (b) any relevant written submissions made by a victim to the Minister under section 173.

**19 Section 211 amended (Effect of successful appeal against liability for deportation)**  
In section 211(4), replace “section 320” with “**section 324F**”. 30

**20 Section 213 amended (Effect of suspension)**  
In section 213(4), replace “section 320” with “**section 324F**”.

- 21 Section 266 amended (Appointment of special advocate for purposes of Part 9 proceedings)**  
 In section 266(3), replace “section 320” with “**section 324F**”.
- 22 Section 268 amended (Protection of special advocates from liability)**  
 In section 268(1)(a), replace “section 9” with “section 7”. 5
- Subpart 7—Amendments relating to compliance and information
- 23 Section 277A amended (Powers of entry and search for employees on employers’ premises)**  
 In section 277A(1), definition of **specified employee**, replace “section 350 or 351” with “section 350, 351, or **351A**”. 10
- 24 Section 277C amended (Departmental annual report to record exercise of entry and search powers under section 277A)**  
 In section 277C(1)(b), replace “section 350 or 351” with “section 350, 351, or **351A**”.
- 25 Section 286 amended (Powers of entry and search relating to deportation)** 15  
 In section 286, insert as subsections (2) and (3):
- (2) However, if an immigration officer intends to enter ~~and search~~ a dwelling or marae out of hours and search for the person named in the deportation liability notice, deportation order, or removal order and for the purposes set out in subsection (1), they must first obtain a warrant authorising them to do so. 20
- (3) In this section and in **section 293B**,—
- dwelling** means any building or part of a building that is used for residential accommodation of any kind, and includes a garage or shed associated with the building or part of the building
- out of hours** means— 25
- (a) Monday to Friday between 9 pm and 7 am on the following day:
- (b) any time on a Saturday or Sunday:
- (c) any time on a public holiday (as specified in section 44(1) of the Holidays Act 2003).
- 26 ~~New section 293B~~ sections 293B and 293C inserted (~~Application for warrant to enter and search relating to deportation~~)** 30  
 After section 293A, insert:

**293B Application for warrant to enter and search relating to deportation**

- (1) An immigration officer may apply for a warrant to enter ~~and search~~ a dwelling or marae and search for a person named in a deportation liability notice, deportation order, or removal order out of hours.
- (2) The application must be made to a District Court Judge in the manner provided for in section 98 of the Search and Surveillance Act 2012. 5
- (3) The application must, in addition to the particulars set out in section 98(1) of the Search and Surveillance Act 2012,—
- (a) set out how the proposed entry and search is intended to be carried out; and 10
- (b) include an assessment of how the proposed entry and search takes into account the culture of the person named in a deportation liability notice, deportation order, or removal order and anyone else who may be present in the dwelling or marae; and
- (c) consider the potential impact of the proposed entry and search on anyone else who may be present in the dwelling or marae, including— 15
- (i) children; and
- (ii) elderly persons; and
- (iii) other vulnerable persons; and
- (d) demonstrate that reasonable alternatives to the proposed entry and search have been considered; and 20
- (e) include an assessment of whether the proposed entry and search is reasonable, proportionate, and in the public interest.
- (4) A District Court Judge may issue a warrant to an immigration officer if the Judge is satisfied that— 25
- (a) there are reasonable grounds to believe that the person specified in the application is liable for deportation from New Zealand; and
- (b) there are reasonable grounds to believe that the person is likely to be at the dwelling or marae specified in the application out of hours; and
- (c) the application meets the requirements set out in **subsection (3)**; and 30
- (d) on the basis of the application, it is appropriate to issue the warrant.
- (5) Section 98 of the Search and Surveillance Act 2012 applies to an application, but with the following modifications:
- (a) every reference to an issuing officer is to be read as a reference to a District Court Judge; and 35
- (b) every reference to the applicant is to be read as a reference to the immigration officer.

**293C Departmental annual report to record exercise of power to issue warrant to enter and search relating to deportation**

- (1) The chief executive must include in every annual report prepared by the chief executive for the purposes of section 43 of the Public Finance Act 1989 the following information in respect of the financial year that is being reported on: 5
- (a) the total number of applications made for a warrant under **section 293B** to enter and search relating to deportation; and
  - (b) the number of those applications that were approved and the reasons why they were approved; and
  - (c) the number of those applications that were declined and the reasons why they were declined; and 10
  - (d) the number of those applications that identified that children, elderly persons, or other vulnerable persons were likely to be present in the dwelling or marae at the time the entry and search was proposed to be carried out. 15
- (2) The information included in the annual report in relation to **subsection (1)(b) and (c)** must also specify, in relation to each application,—
- (a) the nationality, gender, and age range of the person specified in the application; and
  - (b) the age range of any person who was identified in the application as being likely to be present in the dwelling or marae at the time the entry and search was proposed to be carried out; and 20
  - (c) the region of New Zealand in which the person specified in the application lives; and
  - (d) the time frame during which the entry and search was proposed to be carried out. 25

Subpart 8—Amendments relating to detention and monitoring

**27 Section 310 amended (Purpose for which arrest and detention powers may be exercised)**

- (1) In section 310(e),— 30
- (a) replace “section 320” with “**section 324F**”; and
  - (b) replace “or 320” with “or **324F**”.
- (2) In section 310(e), after “section 317,”, insert “**317AA**,”.

**28 Section 311 amended (Implications of liability to arrest and detention)**

In section 311(e), replace “section 320” with “**section 324F**”. 35

**29 Cross-heading above section 316 amended**

In the cross-heading above section 316, after “*commitment*”, insert “*and release on conditions*”.

**30 Section 316 amended (Application for warrant of commitment)**

In section 316(3), after “section 317,”, insert “**317AA**,”.

5

**31 Section 317 amended (Decision on application for warrant of commitment)**

(1) In the heading to section 317, after “**warrant of commitment**”, insert “**(non-claimant)**”.

(2) Before section 317(1), insert:

(1AA) This section applies to a person who a District Court Judge is satisfied is not a claimant.

10

(3) In section 317(1), after “On an application for a warrant of commitment” insert “in respect of a person to whom this section applies”.

(4) In section 317(1)(b)(ii), replace “section 320” with “**section 324F**”.

(5) In section 317(3), replace “make” with “issue”.

15

(6) Repeal section 317(5)(d).

**32 New section 317AA inserted (Decision on application for warrant of commitment (claimant))**

After section 317, insert:

**317AA Decision on application for warrant of commitment (claimant)**

20

(1) This section—

(a) applies in respect of a person who a District Court Judge is satisfied is a claimant:

(b) does not apply in respect of a person who is subject to a mass arrival warrant under section 317A.

25

(2) On an application for a warrant of commitment in respect of a person to whom this section applies, a District Court Judge—

(a) must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment, order that the person be released from custody immediately:

30

(b) may, in any other case,—

(i) issue a warrant of commitment in the prescribed form authorising the person’s detention, in a place named in the warrant, for a period of up to 28 days, if satisfied that,—

	(A) on the basis of the application and the information contained in it, the person poses a clearly articulated threat or risk; and	
	(B) detention is reasonable in all the circumstances, proportionate, and the least restrictive measure necessary to manage that threat or risk; or	5
	(ii) order the person’s release from custody on conditions under <b>section 324F</b> , if the Judge is not satisfied that detention is warranted.	
(3)	A Judge—	
	(a) may consider a person’s irregular entry into New Zealand when assessing whether the person poses a clearly articulated threat or risk; but	10
	(b) may not be satisfied that the person poses a clearly articulated threat or risk solely on the ground that the person entered New Zealand irregularly.	
(4)	In this section,—	15
	<b>threat or risk</b> includes, without limitation, a threat or risk to—	
	(a) public order:	
	(b) public health:	
	(c) security	
	<b>threat or risk to public order</b> includes, in relation to a person and without limitation, a threat or risk of the person—	20
	(a) absconding for the purpose of avoiding compliance with this Act:	
	(b) failing to comply with this Act.	
<b>33</b>	<b>Section 318 amended (Decision on application for warrant if threat or risk to security)</b>	25
	In section 318(3)(b), replace “section 320” with “ <b>section 324F</b> ”.	
<b>34</b>	<b>Section 320 repealed (Court may instead release person on conditions)</b>	
	Repeal section 320.	
<b>35</b>	<b>Section 321 replaced (Special conditions where threat or risk to security)</b>	30
	Replace section 321 with:	
<b>321</b>	<b>Special conditions where threat or risk to security</b>	
(1)	This section applies if a District Court Judge determines to order the release of a person to whom section 318 applies on conditions in accordance with section 318(3)(b).	
(2)	The conditions on release imposed under <b>section 324F</b> may also include a condition that the person not have access to or use specified communication	35

devices or facilities (such as a telephone, the Internet, or an email service), except for the purposes of seeking and receiving legal or immigration advice (or both).

- 36 Section 322 amended (Persons detained under warrant of commitment or released on conditions pending making of deportation order)** 5
- (1) In section 322(1)(b), replace “section 320” with “**section 324F**”.
- (2) Replace section 322(2)(b) with:
- (b) an immigration officer must give written notice of that fact,—
- (i) in the case of a person being detained under a warrant of commitment, to the manager or other person in charge of the prison or premises identified in the warrant; or 10
- (ii) in the case of a person released on conditions under section 317(1)(b)(ii), 318(3)(b), 323(3), 324A(6)(b), **324D**, **324E**, or **324F**, to the person.
- (3) In section 322(2)(b), after “section 317(1)(b)(ii),”, insert “**317AA**,”. 15
- (4) After section 322(2)(b)(ii), insert:
- (iii) in the case of a person released on an electronic monitoring condition under **section 324F(3)(da)**, to the person and ~~the any~~ chief executive nominated to be responsible for implementing ~~and or~~ managing (or both) all or any part of the electronic monitoring conditions under **section 383B** ~~(if any)~~. 20
- 37 Section 323 amended (Decisions on warrants of commitment where detention beyond 6 months)**
- In section 323(3), replace “section 320” with “**section 324F**”.
- 38 Section 324 amended (Review of warrant of commitment or release on conditions)** 25
- (1) In section 324(1)(b), replace “section 320” with “**section 324F**”.
- (2) In section 324(2), replace “section 320” with “**section 324F**”.
- (3) In section 324(3)(b), replace “section 320” with “**section 324F**”.
- (4) In section 324(6), after “section 317,”, insert “**317AA**,”. 30
- 39 Section 324A amended (Review of mass arrival warrant)**
- (1) In section 324A(6)(b), replace “section 320” with “**section 324F**”.
- (2) In section 324A(8), after “section 317,”, insert “**317AA**,”.
- 40 New sections 324B to 324I inserted**
- After section 324A, insert: 35

**324B Application for release on conditions (non-claimant)**

- (1) This section applies to a person who a District Court Judge is satisfied is not a claimant if,—
- (a) in respect of a person detained in custody under this Part, it becomes apparent that, before the expiry of the period for which detention is authorised,—
    - (i) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or
    - (ii) the person will not, or is unlikely to, supply satisfactory evidence of their identity; or
    - (iii) the Minister has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or
    - (iv) for any other reason, the person is unable to leave New Zealand; or
  - (b) in respect of a person who is liable to arrest and detention (but is not detained in custody) under this Part, it becomes apparent that—
    - (i) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or
    - (ii) the person has not supplied satisfactory evidence of their identity; or
    - (iii) the Minister has not decided whether to certify that the person constitutes a threat or risk to security; or
    - (iv) for any other reason, the person is unable to leave New Zealand.
- (2) An immigration officer may apply to a District Court Judge for an order releasing the person on conditions.
- (3) The application—
- (a) must be made on oath; and
  - (b) must include a statement of the reasons why the person should be released on conditions; and
  - (c) may include any other supporting evidence.
- (4) The Judge must determine the application under **section 324D**.

**324C Application for release on conditions (claimant)**

- (1) This section applies to a person who a District Court Judge is satisfied is a claimant if,—
- (a) in respect of a person detained in custody under this Part, it becomes apparent that, before the expiry of the period for which detention is authorised,—

- (i) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or
- (ii) the Minister has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or 5
- (iii) for any other reason, the person is unable to leave New Zealand; or
- (b) in respect of a person who is liable to arrest and detention (but is not detained in custody) under this Part, it becomes apparent that—
- (i) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or 10
- (ii) the Minister has not decided whether to certify that the person constitutes a threat or risk to security; or
- (iii) for any other reason, the person is unable to leave New Zealand.
- (2) An immigration officer may apply to a District Court Judge for an order releasing the person on conditions. 15
- (3) The application—
- (a) must be made on oath; and
- (b) must include a statement—
- (i) of the reasons why the person should be released on conditions; and 20
- (ii) that explains the threat or risk to security that the person poses; and
- (iii) that explains how releasing the person on conditions is reasonable in all the circumstances, proportionate, and the least restrictive measure necessary to manage the threat or risk to security; and 25
- (c) may include any other supporting evidence.
- (4) The Judge must determine the application under **section 324E**.
- 324D Decision on application for release on conditions (non-claimant)**
- (1) On an application under **section 324B**, a District Court Judge may— 30
- (a) order the person's release on conditions; or
- (b) issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days.
- (2) A Judge may release the person on conditions if satisfied on the balance of probabilities that the person in custody is the person named in the application and that any 1 or more of the following apply: 35

- (a) a craft is likely to be available, within the proposed period of the release on conditions, to take the person from New Zealand:
  - (b) the reasons why a craft was not available to take the person from New Zealand continue to exist and are likely to continue to exist, but not for an unreasonable period: 5
  - (c) the other reasons the person was not able to leave New Zealand continue to exist and are likely to continue to exist, but not for an unreasonable period:
  - (d) the person has not supplied satisfactory evidence of their identity.
  - (3) If **subsection (2)** does not apply, the Judge may still order the person's release on conditions if the Judge is satisfied that, in all the circumstances, it is in the public interest to do so. 10
  - (4) In determining under this section whether to order the person's release on conditions, or whether to issue a warrant of commitment, the Judge must have regard to, among other things, the need to seek an outcome that maximises compliance with ~~the purpose of this Act as set out in section 3(1).~~ 15
- 324E Decision on application for release on conditions (claimant)**
- (1) This section applies to a person who a District Court Judge is satisfied is a claimant.
  - (2) On an application under **section 324C**, a District Court Judge may— 20
    - (a) order the person's release on conditions; or
    - (b) issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days.
  - (3) A Judge may release the person on conditions if satisfied on the balance of probabilities that the person in custody is the person named in the application and that any 1 or more of the following apply: 25
    - (a) a craft is likely to be available, within the proposed period of the release on conditions, to take the person from New Zealand:
    - (b) the reasons why a craft was not available to take the person from New Zealand continue to exist and are likely to continue to exist, but not for an unreasonable period: 30
    - (c) the other reasons the person was not able to leave New Zealand continue to exist and are likely to continue to exist, but not for an unreasonable period. 35
  - (4) If **subsection (3)** does not apply, the Judge may still order the person's release on conditions if the Judge is satisfied that, in all the circumstances, it is in the public interest to do so.

- (5) In determining under this section whether to order the person's release on conditions, or whether to issue a warrant of commitment, the Judge must be satisfied that,—
- (a) on the basis of the application under **section 324C** and the information contained in it, the person poses a clearly articulated threat or risk; and 5
  - (b) the conditions are reasonable in all the circumstances, proportionate, and the least restrictive measure necessary to manage that threat or risk.
- (6) A District Court Judge—
- (a) may consider a person's irregular entry into New Zealand when assessing whether the person poses a clearly articulated threat or risk; but 10
  - (b) may not be satisfied that the person poses a clearly articulated threat or risk solely on the ground that the person entered New Zealand irregularly.
- 324F Release on conditions**
- (1) This section applies if a District Court Judge orders a person's release under section 317(1)(b)(ii), 318(3)(b), 323(3), 324A(6)(b), **324D, or 324E** on conditions. 15
- (2) The Judge must impose the following conditions:
- (a) a condition that the released person report to a specified place for specified periods or at specified times in a specified manner: 20
  - (b) if the person is a claimant, a condition that the released person attend any—
    - (i) interview that a refugee and protection officer may require under section 149(1)(f); or
    - (ii) hearing with the Tribunal. 25
- (3) In addition to the conditions in **subsection (2)**, the Judge may impose any other condition that the Judge thinks fit to impose in the circumstances, including, without limitation, the following conditions:
- (a) a condition that the released person remain in, ~~or not enter,~~ specified places or areas at specified times or at all times: 30
  - (aa) a condition that the released person not enter specified places or areas at specified times or at all times:
  - (ab) a condition that an immigration officer may, if satisfied that the request is reasonable in all the circumstances, agree to a request from the released person that the released person be temporarily excused from compliance with a condition or conditions imposed on the released person under **subsection (3)(a) or (aa)**, for example, including, but not limited to, a request from the released person to attend a medical 35

- appointment or a job interview (if the released person is entitled to work in New Zealand):
- (b) a condition that the released person provide a guarantor who is responsible for—
    - (i) ensuring compliance with any conditions imposed under this section; and
    - (ii) reporting any failure to comply with those conditions:
  - (c) a condition that the released person refrain from associating with any 1 or more named individuals, or individuals associated with 1 or more named organisations: 10
  - (d) a condition that the released person take a specified action for the purpose of facilitating the person’s deportation or departure from New Zealand:
  - (e) any other condition relevant to the management of any threat or risk relating to the individual released person (including any threat or risk that the individual person may harm themselves or another person or may abscond). 15
- (4) The Judge may impose a condition under **subsection (3)** if satisfied that,—
- (a) when considered alongside any other conditions that are being imposed, the condition is the least restrictive measure necessary to manage the threat or risk; and 20
  - (b) when considered individually, the condition is the least restrictive measure necessary to manage the threat or risk.
- (5) The purpose of a condition imposed under **subsection (3)(a) or (aa)** is to limit the released person’s ability to leave or enter the specified places or areas— 25
- (a) because there is a threat or risk that the individual may abscond; and
  - (b) in order to be able to place the person on the first available craft leaving New Zealand.
- (6) If the Judge imposes a condition under **subsection (2) or (3)**, they must specify an initial term, not exceeding 3 months, for which the condition applies (**an initial term**). 30
- (7) An immigration officer may apply to the Judge for an extension of ~~the initial term for a further term, not exceeding 3 months.~~—
- (a) the initial term for a further term not exceeding 3 months (an **extended term**): 35
  - (b) any extended term or terms for, in each case, a further term not exceeding 3 months.
- (8) An application for an extension under **subsection (7)** must be made in the manner provided for in **section 324B or 324C** (as applicable). 40

- (9) The Judge may grant an extension if satisfied that the criteria for release on conditions under **section 324D or 324E** (as applicable) still apply to that person.
- (10) When conditions are imposed on a released person under this section,—
- (a) the conditions must be notified in writing to the person before their release, and apply from the time the person is released; and 5
  - (b) the notice of conditions must include a warning that the conditions apply from the time of the person’s release and that, if the person fails to comply with any condition, the person may be detained under section 312 or arrested and detained under section 313. 10
- (11) The released person does not need to obtain agreement from an immigration officer under **subsection (3)(ab)** to seek urgent medical or dental treatment or to take action to avoid or minimise a serious risk of death or injury to the released person or any other person even if doing that thing will mean that they will, or are likely to, breach a condition or conditions imposed on the released person under **subsection (3)(a) or (aa)**. 15

#### **324G Variation of conditions imposed under section 324F**

- (1) Conditions imposed under **section 324F** may be varied at any time—
- (a) by a District Court Judge on the application of the person released or an immigration officer under **section 324B or 324D** (as applicable); or 20
  - (b) by consent between the released person and an immigration officer if the order imposing the conditions allows the variation.
- (2) A variation of a condition under **subsection (1)**—
- (a) takes effect immediately; but
  - (b) must be in writing, and notified to the released person, as soon as practicable. 25

#### **324H Circumstances in which person released on conditions may later be detained**

A person may be detained under section 312 or arrested and detained under section 313— 30

- (a) if an immigration officer determines that the person, without reasonable excuse, has failed to comply with any conditions imposed under **section 324F** or varied under **section 324G**; or
- (b) if an immigration officer makes an application under section 324(2)(a) for an order that the person be detained under a warrant of commitment; or 35
- (c) in order to execute a deportation order or place the person on the first available craft leaving New Zealand.

**324I Lapse of conditions of release**

Conditions imposed under **section 324F** or varied under **section 324G** lapse, and the person subject to the conditions ceases to be bound by them,—

- (a) if the person—
  - (i) is detained under section 313 or under a warrant of commitment under section 317 or **317AA**; or
  - (ii) leaves New Zealand; or
  - (iii) otherwise ceases to be liable to arrest and detention under this Part:
- (b) on the final expiry of any term for which the condition applies.

**41 Section 324F amended (Release on conditions)**

In section 324F(1), after “317(1)(b)(ii),”, insert “**317AA(2)(b)(ii)**,”.

**42 Section 324F amended (Release on conditions)**

(1) After section 324F(3)(d), insert:

- (da) a condition requiring the person to submit to electronic monitoring in accordance with **section 324J** to ~~facilitate~~ monitor compliance with a condition imposed under **paragraph (a) or (aa)**:

(2) After section 324F(5), insert:

(5A) In determining whether to impose an electronic monitoring condition under **subsection (3)(da)**, the Judge must consider whether imposing the condition is reasonable in all the circumstances, feasible, proportionate, and the least restrictive measure necessary to manage the threat or risk.

(3) In **section 324F(10)**, after “under this section”, insert “(except under **subsection (3)(da)**)”.

(4) After **section 324F(110)**, insert:

(121) When an electronic monitoring condition is imposed on a released person under **subsection (3)(da)**,—

- (a) the condition must be notified in writing to the person before their release, and applies from a specified date; and
- (b) the notice of the condition must include a warning that the condition applies from the specified date and that, if the person fails to comply with the condition, the person may be detained under section 312 or arrested and detained under section 313.

**43 New sections 324J and 324K inserted**

After section 324I, insert:

**324J Provision relating to electronic monitoring condition**

- (1) This section applies to an electronic monitoring condition imposed under **section 324F(3)(da)**.
- (2) Information about a person that is obtained through electronic monitoring may be used only for the following purposes: 5
- (a) to verify compliance with a condition imposed under **section 324F(3)(a) or (aa)**:
  - (b) to detect non-compliance with a condition imposed under **section 324F(3)(a) or (aa)**:
  - (c) to provide evidence of non-compliance with a condition imposed under **section 324F(3)(a) or (aa)**: 10
  - (d) to verify that a person who is subject to a condition imposed under **section 324F(3)(da)** has not tampered or otherwise interfered with the ability of electronic monitoring equipment to operate effectively and accurately or attempted to remove it from their body: 15
  - (e) where reasonably necessary to locate a person who is subject to a condition imposed under **section 324F(3)(a) or (aa)** in order to place them on the first available craft leaving New Zealand.
- (3) A person who is subject to an electronic monitoring condition—
- (a) may be required to have attached to their body electronic monitoring equipment that may only be removed by an authorised person or an immigration officer; and 20
  - (b) must not tamper or otherwise interfere with the ability of the equipment to operate effectively and accurately or attempt to remove it from their body; and 25
  - (c) must present themselves at any place where the equipment is located when required to do so by an authorised person or an immigration officer; and
  - (d) must allow an authorised person or an immigration officer access to any place where the equipment is located for the purposes of— 30
    - (i) inspecting the equipment:
    - (ii) servicing the equipment:
    - (iii) removing the equipment from the person's body:
    - (iv) recovering the equipment.
  - (e) in addition to complying with conditions notified in writing under **section 324F(110)**, must comply with written instructions from an authorised person or an immigration officer— 35

- (i) that are reasonably necessary for the effective administration of the electronic monitoring condition (for example, an instruction to regularly charge the equipment); and
  - (ii) for removal of the equipment from the person’s body; and
  - (iii) for recovering the equipment; and
- (f) fails to comply with an electronic monitoring condition if the person does not comply with those written instructions.
- (3A) An authorised person or an immigration officer must give reasonable notice in writing to the person who is subject to an electronic monitoring condition before accessing any place under **subsection (3)(d)**.
- (4) In this section, **authorised person** means a person who—
- (a) is authorised in writing by an immigration officer, whether individually or by class or position, to implement and deliver electronic monitoring services; and
  - (b) has produced that written authority to a person who is subject to an electronic monitoring condition.
- 324K Departmental annual report to include information about use of electronic monitoring**
- The annual report of the Department must include the following information about the use of electronic monitoring in the year reported on:
- (a) the total number of persons who were subject to an electronic monitoring condition during the year reported on:
  - (b) the total number of persons who were subject to an electronic monitoring condition during each month of the year reported on:
  - (c) the average duration of an electronic monitoring condition:
  - (d) the percentage of persons who, while subject to an electronic monitoring condition, were detained under section 312 for failing to comply with an electronic monitoring condition:
  - (e) the percentage of persons who, while subject to an electronic monitoring condition, were arrested and detained under section 313 for failing to comply with an electronic monitoring condition:
  - (f) a description of the processes and systems that relate to electronic monitoring that were in place during the year reported on.
- 44 Section 326 amended (Process for High Court to consider application)**
- (1) In section 326(2)(a), after “sections 317,”, insert “**317AA**,”.
  - (2) In section 326(2)(a), replace “320” with “**324F**”.

**45 Section 336 amended (Person being deported must be returned to custody or conditions reimposed if craft not available as planned)**

In section 336(2)(b), replace “section 320” with “**section 324F**”.

**46 Section 340 amended (Application of section 320 during epidemic)**

- (1) In the heading to section 340, replace “**section 320**” with “**section 324F**”. 5
- (2) In section 340(1), replace “section 320” with “**section 324F**”.

## Subpart 9—Amendments relating to offences, penalties, and proceedings

**47 New section 351A inserted (Exploitation of victims by charging premium for employment)**

After section 351, insert: 10

**351A Exploitation of victims by charging premium for employment**

- (1) Every employment-related person commits an offence against this Act who, whether in or outside New Zealand, knowingly seeks or receives any premium in respect of the employment or potential employment in New Zealand of a victim. 15
- (2) **Subsection (1)** applies—
- (a) before and after the victim commences work in New Zealand; and
  - (b) whether or not the victim commences work in New Zealand.
- (3) **Subsection (1)** does not apply to conduct that is an offence under section 351(1)(a)(iii). 20
- (4) In this section, a person is a **victim** if they are domiciled in New Zealand or are overseas-based, and are one of the following:
- (a) an unlawful worker:
  - (b) a temporary entry class visa holder:
  - (c) a potential temporary entry class visa holder: 25
  - (d) a potential residence class visa holder.
- (5) In this section,—
- employment-related person** means—
- (a) a New Zealand-based employer or potential employer of a victim:
  - (b) a New Zealand-based agent of an employer or potential employer of a victim: 30
  - (c) a New Zealand-based person involved in the recruitment of a victim for employment or potential employment in New Zealand:
  - (d) a New Zealand-based person who has dealt with a victim in the context of the victim’s employment or potential employment in New Zealand 35

**New Zealand-based** means a person who is—

- (a) a New Zealand citizen; or
- (b) domiciled in New Zealand (whether or not they hold a visa)

**overseas-based** means a person who is not New Zealand-based

**potential residence class visa holder** means a person who—

- (a) seeks to hold a residence class visa; and
- (b) seeks to obtain employment in New Zealand; and
- (c) is required to be employed in New Zealand in order to be granted a residence class visa in accordance with immigration instructions certified under section 22

**potential temporary entry class visa holder** means a person who seeks—

- (a) to hold a temporary entry class visa; and
- (b) to obtain employment in New Zealand

**temporary entry class visa holder** means a person who holds a temporary entry class visa

**unlawful worker** means a person who undertakes, or seeks to undertake, work that the person is not entitled, under this Act, to undertake.

**48 Section 355 amended (Penalties: general)**

In section 355(1), replace “or 348” with “348, or **351A**”.

**49 Section 372 amended (Time for filing charging document)**

In section 372(2), replace “and 351” with “351, and **351A**”.

Subpart 10—Amendments relating to miscellaneous provisions

**50 Section 378 amended (Special directions)**

(1) Before 378(2)(a), insert:

(aaa) varying or cancelling conditions of resident visas in relation to any class of persons, in accordance with **section 50(4A)**:

(aab) imposing, varying, or cancelling conditions of temporary entry class visas in relation to any class of persons, in accordance with **section 52(4A) or 53(4A)**:

(aac) waiving 1 or more prescribed requirements for applying for a visa in relation to any class of persons, in accordance with **section 57(3)**:

(aad) granting, at any time and of the Minister’s own volition, visas of any type to any class of persons, in accordance with **section 61B(1)**:

(2) After section 378(2)(d), insert:

- (e) extending temporary entry class visas and transit visas in relation to any class of persons, in accordance with **section 91A(1)**.

**51 Section 380 amended (Delegation of Minister’s powers)**

After section 380(1)(c), insert:

- (ca) the power to make a special direction under— 5
- (i) **section 50(4A)** (in relation to conditions on resident visas):
  - (ii) section 52 (in relation to conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions)):
  - (iii) **section 53(4A)** (in relation to conditions on temporary entry class visas subject to restricted temporary entry instructions): 10
  - (iv) section 57 (in relation to applications for visas):
  - (v) **section 61B** (in relation to grant of visas):
  - (vi) **section 91A** (in relation to extension of temporary entry class visas and transit visas); and 15

**52 New section 383B inserted (Responsibility for implementing and managing electronic monitoring conditions)**

After section 383A, insert:

- 383B Responsibility for implementing and managing electronic monitoring conditions** 20
- (1) The chief executive may at any time, by notice in writing, nominate 1 or more chief executives of a public service agency to be responsible for implementing and managing electronic monitoring conditions imposed under **section 324F(3)(da)** (electronic monitoring conditions).
- (2) A chief executive nominated under **subsection (1)** may be nominated to— 25
- (a) implement all or any part of the electronic monitoring conditions; or
  - (b) manage all or any part of the electronic monitoring conditions; or
  - (c) implement and manage all or any part of the electronic monitoring conditions.
- (3) The chief executive may, at any time, by notice in writing, revoke a nomination made under **subsection (1)**. 30
- (4) Before nominating, or revoking the nomination of, a chief executive of a public service agency, the chief executive and the chief executive of that agency must agree on the nomination or revocation.

**53 Section 388 amended (Designation of immigration officers)** 35

After section 388(1)(b), insert:

- (c) for the purpose of electronic monitoring implementation and management, such other persons; as the chief executive determines, whether designated individually or by class or position.

**54 Section 389 amended (Immigration officers' functions and powers)**

After section 389(2)(d), insert:

5

- (e) electronic monitoring implementation and management functions and powers, being the functions and powers set out in **section 324J**.

**Part 2**

**Amendments relating to fiscal sustainability**

**55 Section 399 amended (Immigration levy)**

10

(1) Replace section 399(1) with:

(1) Regulations made under section 400 may provide for the imposition and collection of an immigration levy on the following persons:

- (a) applicants for a visa:
- (b) employers who hold, or have applied for, permission to employ migrants who are (or who, on grant of the employer's application, could be) temporary entry class work visa holders: 15
- (c) education providers that are signatory providers (within the meaning of section 10 of the Education and Training Act 2020) that provide education to international fee-paying students: 20
- (d) any persons by whom a fee or charge is payable under regulations made under sections 393 and 400 of this Act.

(2) After section 399(3), insert:

(3AA) The Minister must not recommend that regulations be made for the imposition and collection of a levy referred to in **subsection (1)** unless the Minister— 25

- (a) has had regard to the effect that the obligation to pay the levy is likely to have on levy payers; and
- (b) is satisfied that there is a direct or indirect justifiable relationship between the benefit, cost, or risk that the persons required to pay the levy derive from, or introduce into, the immigration system and the purposes for which the levy is to be used. 30

**56 New sections 399AA to 399AC inserted**

After section 399, insert:

**399AA Immigration levy: consultation and review**

(1) Before recommending the making of regulations for the purposes of **section 399(1)**, the Minister must consult any persons and organisations the Minister 35

- considers appropriate, taking into account the requirements in **section 399(3AA)**.
- (2) At intervals of no more than 5 years following the commencement of this section, the Department must review the amount and method of calculation of any immigration levy. 5
- 399AB Extended immigration levy**
- (1) Regulations made under section 400 may provide for the imposition and collection of an extended immigration levy on the following persons:
- (a) applicants for residence-class, student, or work visas, or their sponsors:
- (b) employers of migrants where the migrant holds, or could hold, a temporary entry class work visa on the basis of their employment. 10
- (2) The purpose of the extended immigration levy is to—
- (a) fund or contribute to the funding of costs arising from immigration that relate to either the infrastructure required for, or the operation of, the public health and education systems, including,— 15
- (i) in the case of applicants for residence-class, student, or work visas, contribution to costs incurred in the education system that can be linked to demand arising from immigration and that relate to funding specialist teachers, school property, teacher training, or learning support; and 20
- (ii) in the case of applicants for parent visas or their sponsors, contribution to costs incurred in the health system that can be linked to demand arising from immigration; and
- (b) require employers of migrants referred to in **subsection (1)(b)** to contribute to the cost of skills training in New Zealand to recognise the training costs avoided and therefore the benefits received by employers through recruiting people from outside New Zealand who are already skilled. 25
- (3) An extended immigration levy is payable by the person on whom it is imposed at the time prescribed for payment whether that time is before, during, or after completion of, the immigration process to which that levy relates. 30
- (4) The Minister must not recommend the making of regulations for the purposes of this section unless the Minister has had regard to the effect that the obligation to pay the levy is likely to have on levy payers and,—
- (a) in the case of the persons referred to in **subsection (1)(a)**, the Minister is satisfied that there is a direct or indirect justifiable relationship between the class or classes of levy payers and the benefits that the class or classes derive or will derive from the infrastructure or services; and 35
- (b) in the case of the employers referred to in **subsection (1)(b)**, the Minister is satisfied that there is a direct or indirect justifiable relationship 40

between the class or classes of levy payers and the training costs avoided by those levy payers.

- (5) Regulations made for the purposes of this section may—
  - (a) specify the classes of persons who are liable to pay the extended immigration levy: 5
  - (b) prescribe the amount or method of calculation of the levy:
  - (c) prescribe different amounts or methods of calculation of the levy in respect of different classes of persons:
  - (d) provide for exemptions from or refunds of the levy, in whole or in part, in any class or case: 10
  - (e) provide for the manner of collection of the levy, including provision for the relevant amount of levy to be deposited with the chief executive.
- (6) The Minister may, by special direction,—
  - (a) exempt any person or class of persons from the obligation to pay all or part of the levy; or 15
  - (b) refund all or part of a levy paid.
- (7) All levy money collected under this section must be paid into a Crown Bank Account.
- (8) Not later than 1 October in each year, the chief executive must provide to the Minister a report setting out, in respect of the financial year ending on the preceding 30 June,— 20
  - (a) the amount collected through the extended immigration levy; and
  - (b) how the amount of the extended immigration levy was applied.
- (9) The Minister must present the report to the House of Representatives not later than 15 sitting days after its receipt. 25

**399AC Extended immigration levy: consultation and review**

- (1) Before recommending the making of regulations for the purposes of **section 399AB**, the Minister must consult any persons and organisations the Minister considers appropriate, taking into account the requirements in **section 399AB(4)**. 30
- (2) At intervals of no more than 5 years following the commencement of this section, the Department must review the amount and method of calculation of any extended immigration levy.

**Part 2A**

**Amendment relating to repeals, transitional provisions, saving provisions, and related matters**

**56A Section 431 amended (Deportation liability of residence class visa holder convicted of criminal offence)**

5

In the heading to section 431, after “convicted”, insert “or guilty”.

**Part 3**

**Consequential amendments**

**57 Schedule 1AA amended**

In Schedule 1AA,—

10

- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

**58 Consequential amendment**

Amend the legislation specified in **Schedule 2** as set out in that schedule.

**Schedule 1**  
**New Part 4 inserted into Schedule 1AA**

**s 57**

<b>Part 4</b>	
<b>Provision relating to Immigration (Fiscal Sustainability and System Integrity) Amendment Act 2025</b>	<b>5</b>
<b>6 Persons released on conditions before commencement date</b>	
(1) This clause applies to any person who before the commencement date had been released under section 317(1)(b)(ii), 318(3)(b), 323(3), or 324A(6)(b) subject to conditions under section 320 (as it was before the commencement date).	10
(2) Subject to <b>subclause (3)</b> , the conditions of release that applied to the person immediately before the commencement date are not affected by the amendments made to this Act by the amendment Act.	
(3) Any variation of the conditions must be made under this Act as amended by the amendment Act.	15
(4) In this clause,— <b>amendment Act</b> means the Immigration (Fiscal Sustainability and System Integrity) Amendment Act <b>2025</b> <b>commencement date</b> means the day after Royal assent.	

## Schedule 2

### Consequential amendment to Search and Surveillance Act 2012

s 58

#### Search and Surveillance Act (2012 No 24)

In the Schedule 2, item relating to the Immigration Act 2009, after the item relating to section 293A of the Immigration Act, insert: 5

<b>293B</b>	Immigration officer may apply for and execute warrant to enter <u>a</u> and search a dwelling or marae <u>and search</u> for a person	Section 98
-------------	---	------------

#### Legislative history

7 April 2025  
24 June 2025

Introduction (Bill 138–1)  
First reading and referral to Education and Workforce  
Committee