

Regulatory Impact Statement: Expanding criminal deportation liability

Decision sought	Analysis produced for the purpose of informing Cabinet decisions
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Immigration
Date finalised	26 May 2025

Section 161 of the Immigration Act 2009 (the Act) sets out a graduated framework for deportation liability for residence class visa (RCV) holders. The framework has three tiers of liability. Each tier considers the length of time a person has held an RCV, balanced against the seriousness of the offence (e.g. a person who has held an RCV for a more than 2 years cannot be deported for fairly minor offending).

This RIS proposes to amend the Act to:

- 1. Extend the current deportation liability framework under the Act.** This means extending the time period a person may have held an RCV for each tier of criminal offending (to maintain a graduated framework in which the tiers are proportionate to each other).
- 2. Add a new serious criminal offending tier, for cases where a person has been convicted and sentenced to an imprisonment term of 10 years or more.** This would mean that for very serious offending, a person who has held an RCV for 10 to 15 years can still be liable for deportation.
- 3. Specify aggravating factors the Immigration and Protection Tribunal (IPT) must consider during humanitarian appeals against deportation liability under s 161,** such as the impact on the victim/s and seriousness of the offence, so that RCV holders who commit very serious offences are more likely to be deported.

Summary: Problem definition and options

What is the policy problem?

Current deportation liability settings do not provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years

There are limitations to the deportation liability framework. For example, once a migrant has held an RCV for ten years, no matter how serious the crime (for example, murder), they are not liable for deportation.

There are two recent examples of this.

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<p>In addition to some serious offenders not being liable for deportation, the longer an RCV holder has been in New Zealand (excluding any time in prison) the more likely appeals against deportation liability to the IPT will be successful on humanitarian grounds under section 207 of the Act.</p>	
<p>What is the policy objective?</p> <p>The primary objective is to:</p> <ul style="list-style-type: none"> provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV holders for more than 10 years <p>The secondary objectives are to:</p> <ul style="list-style-type: none"> maintain proportionality: both in respect to the consequence (deportation liability) and the criminal offence committed and the steps in relation to each other enhance New Zealand’s ability to deport RCV holders that commit the most serious offences and pose a risk to the community if they remain. 	
<p>What policy options have been considered, including any alternatives to regulation?</p> <p>Three options were considered:</p> <ul style="list-style-type: none"> Option One: Status quo – no change to sections 161 or 207 of the Act. Option Two: extend deportation liability for both the amount of time a person is liable for deportation after being granted an RCV, and the seriousness of the offence (proportionately) Option Three: Option Two plus add aggravating factors the IPT must consider when determining an appeal of deportation liability under section 161, such as the seriousness of criminal offending and victim/s impacted (recommended). <p>An option to extend deportation liability only at the more serious end of offending was discounted because this would not maintain a graduated framework that is proportional.</p>	
<p>What consultation has been undertaken?</p> <p>MBIE has consulted as broadly as possible within time constraints (the Minister agreed to introduction of the Amendment Bill by October 2025), by undertaking a short and targeted period of stakeholder engagement with:</p> <ul style="list-style-type: none"> government agencies, independent statutory bodies, representatives of impacted parties (i.e. immigration lawyers and community representatives). <p>Through the targeted consultation process, MBIE received a broad range of perspectives and input from experts that have been factored into the analysis. A summary of the stakeholders consulted and their views is below.</p> <p>The Ministry of Justice (MOJ) emphasised that options needed to be proportionate, both in relation to the consequence (deportation liability) being proportionate to the harm caused by the offence and the steps in the framework being proportionate to each other. This feedback influenced the design of the proposed options.</p>	
International relations	

International relations

The Department of Corrections noted the difficulty in assessing the impact on them in the absence of quality data on the number of additional people expected to be liable for deportation because of these changes, and of these, the proportion expected to be subject to electronic monitoring, and the number ultimately deported. Since this feedback, MBIE has modelled a potential 30% increase in deportations (an increase of 10 people deported per annum based on 32 deportations under s161 in the 12 months to April 2025).

The Immigration and Protection Tribunal (IPT) noted that they currently consider the severity of offending and the impact on victims in deciding appeals and adding it into legislation is not likely to change the way they consider appeals. The Chief Victims Advisor was supportive of the proposal to make the seriousness of the offending, including the impact on the victim, an aggravating factor in determining appeals against deportation, noting that further work may be required with the IPT to understand how they would determine this, and the level of input from the victim.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes

Summary: Minister’s preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Option Three has low-medium net costs on regulated groups, such as RCV holders who commit crimes that trigger deportation liability. It would pose low costs for regulator: MBIE, which would have to manage a likely small increase in people who become liable for deportation and ultimately be issued deportation orders. The IPT may see a small increase in deportation-related appeals but this is balanced by another proposed amendment in the Bill which aims reduces the number of appeals.

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Overall, it is assessed as low-medium for non-monetised costs. There are no monetised costs as this work can be done within baseline resourcing and no additional FTE is needed for MBIE.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Option Three would have low net benefits on regulated groups as they would be more likely to be liable for deportation if they commit criminal offences. On the other hand, it is possible that some RCV holders may be disincentivised from criminal offending. Although the vast majority of RCV holders are law abiding and make a positive contribution to New Zealand, a very small minority will commit criminal offences, sometimes relatively soon after being granted residence. The extension to deportation liability may add to the cumulative impact (when coupled with criminal penalties) of disincentivising criminal offending. MBIE as a regulator would have more options for managing offending by migrants, including those who commit serious crimes and have held an RCV for more than 10 years (this group is not currently liable for deportation). There would be minor impacts on other government agencies.

Overall, the option is assessed as medium for non-monetised benefits. There are no monetised benefits.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister’s preferred option are likely to outweigh the costs?

The analysis suggests the benefits slightly outweigh the costs, which are low-medium overall and mainly fall on RCV holders as the regulated group. The ratio of benefit to costs is likely to remain stable. It may improve over time as New Zealand society will not have to bear the costs of offenders remaining in New Zealand and costs to the community if there is an increase in deportations, particularly at the more serious end of offending.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

Amendments to the Act will be required through the Immigration (Enhancing Risk Management) Amendment Bill (the Bill), which is proposed to be introduced by October 2025. Confidential advice to Government

MBIE is responsible for the operation and enforcement of deportation liability framework. Based on the current assessment, the changes can be operationalised within baselines.

If there is an increase in individuals made automatically liable for deportation, there may be resourcing implications for MBIE and the IPT. In the time available, this has not been modelled.

Limitations and Constraints on Analysis

The Minister of Immigration’s expectation is that the Bill is introduced by end of October 2025. Confidential advice to requiring policy decisions in early June 2025. This proposal was triggered by ‘edge cases’ of serious offending that does not trigger deportation liability under the current settings. The Minister of Immigration directed officials to progress this proposal as part of the Bill and focus the options on capturing the most serious offences. Feedback from the Ministry of Justice that the steps in the framework needed to be graduated and proportionate, influenced the options developed.

Based on data showing the current number of deportations (including nationalities of deportees), MBIE has been able to develop scenarios to understand the impact of the proposed extension in deportation liability but has not been able to test these widely nor verify their accuracy. We do not have an accurate estimate of the additional people that will be made liable for deportation under the proposed settings (due to the limitations of data sharing between Corrections and MBIE).

As noted in the consultation section, the Minister agreed to a short and targeted period of consultation to achieve introduction of the Bill in October 2025. Given this timeframe, external consultation has been limited to discussions with a range of stakeholders through one-on-one meetings and receiving their feedback on the proposals. The consultation section summarises the stakeholders consulted, and feedback taken on board.

These groups will be consulted again on an Exposure Draft of the Bill, in September, ahead of Cabinet Legislative Committee Decisions in October 2025. In addition, the six month Select Committee process will allow for members of the public to provide written and oral submissions.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature: _____



Stacey O'Dowd

Immigration (Border and Funding)
Policy

26 May 2025

Quality Assurance Statement

Reviewing Agency:

QA rating: partially meets

Panel Comment:

The panel has determined that the RIS partially meets the quality assurance standards for regulatory impact analysis.

The panel acknowledges the limitations and constraints on the analysis in the RIS. particularly with respect to the very short turnaround timeframe. This timeframe has prevented the authors from being able to fully and openly consult with persons that are potentially affected by this proposal, including nations that may receive deported persons. The panel anticipates that the select committee process will enable those persons to share their views on the proposal.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Immigration Act 2009 (the Act) aims to balance the rights of individuals and the national interest

The purpose of the Act is “to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals”¹. The Act prescribes a range of means to achieve this purpose, including establishing an immigration system “that includes mechanisms to ensure that those who engage with the immigration system comply with its requirements”.² The Act also prescribes the system for the deportation of people who are not New Zealand citizens and who fail to comply with immigration requirements, commit criminal offences or are considered to pose a threat or risk to security.³

Additionally, the Act provides robust procedural rights to individuals ensuring fairness and reasonable opportunity for individuals to present their case, such as the right to appeal decisions to a specialist tribunal followed by the Courts, access to information, be heard fairly, and judicial review⁴.

A residence class visa confers a number of rights and responsibilities on a migrant

The holder of a resident class visa is entitled to, in accordance with conditions of the visa (if any):

- travel to New Zealand
- Stay in New Zealand indefinitely
- work in New Zealand, and
- study in New Zealand⁵

In some instances, a person holding a resident class visa may also be entitled to social security benefits.

Section 161 of Immigration Act 2009 sets out the deportation liability framework for residence class visa holders

Part Six of the Act is related to deportation and its purpose is to support the integrity of New Zealand’s immigration system and the security of New Zealand by providing for the deportation of certain persons from New Zealand.

The Act sets out a graduated framework for determining the deportation liability of resident and permanent resident class visa (RCV) holders who have been convicted of criminal offending, taking into account the seriousness of the offence and the time the person has held an RCV in New Zealand. This effectively creates a statutory good behaviour bond. An RCV holder is only liable for deportation under s 161 of the Act if convicted of an offence that was committed:

¹ The Immigration Act 2009, Section 3 (1)

² Section 3 (2) (e)

³ The Immigration Act 2009 s(3)(2) (e) (ii)

⁴ The Immigration Act 2009, Part 7.

⁵ The Immigration Act 2009, Section 74.

- when they were in New Zealand unlawfully, as the holder of a temporary entry class visa or not later than 2 years after first holding an RCV, and the Court has the power to impose a maximum imprisonment term of 3 months or more;
- within the first 5 years of holding an RCV, and the Court has the power to impose a maximum imprisonment term of 2 years or more; or
- within the first 10 years of holding an RCV, and the Court imposes imprisonment for a term of 5 years or more, or they were convicted of an offence against sections 350(1) or 351 of the Act.

The current deportation framework has limitations that mean, for example, that a person who has been convicted of an offence with a maximum penalty of up to two years' imprisonment (e.g. common assault) is not liable for deportation if they have been an RCV holder for over two years at the time of the offence. Similarly, a person convicted of an offence carrying a term of between two and five years (e.g. carrying a firearm with criminal intent) is not liable for deportation if they have held an RCV for over five years at the time of the offence. People that commit serious offences and have held an RCV for more than 10 years are not liable for deportation at all, despite the serious nature of their offending.

Annex Two sets out information on offences.

Safeguards against deportation

Section 161 (2) of the Act sets out that after a person is served a deportation liability notice (DLN), they can make an appeal to the Immigration Protection Tribunal (IPT) on humanitarian grounds that it would be unduly harsh for the person to be deported from New Zealand. The IPT weighs these grounds against the public interest in allowing that person to remain.⁶ The IPT must consider the appeal⁷, and upon its determination can order the cancellation or suspension of deportation liability. MBIE cannot serve a deportation order until any appeals are heard, and a final determination⁸ of immigration status is made.

As shown in Table One, approximately a third (31.2%) of the appeals between 2018 and 2024 were allowed by the IPT. This suggests that the IPT is more likely to uphold a deportation liability notice rather than to overturn it.

Table One: Trends of outcome of appeals (deportation resident) at the IPT

Year	Total considered	Appeal allowed / deportation liability overturned	Dismissed / declined deportation liability maintained
2018 -2019	40	11 (27.5%)	29
2019-2020	67	21 (31.3%)	46
2020-2021	27	11 (40%)	16
2021 – 2022	19	5 (26.3%)	14
2022-2023	30	11 (36%)	19
2023-2024	19	4 (21%)	15

⁶ Immigration Act 2009, section 161 (2) and 206 (1) (c).

⁷ Immigration Act 2009, section 207.

⁸ <https://www.justice.govt.nz/tribunals/immigration/immigration-and-protection/annual-reports-statistics/>.

Appellants also have the right to seek leave to appeal a decision on point of law or judicial review. The Minister of Immigration or a Delegated Decision Maker (DDM) within MBIE can also suspend or cancel deportation liability at any time.

The Act does not specify aggravating factors that should be considered as part of appeals

The Immigration Act 1987 set out a non-exhaustive list of factors the IPT needs to take into account when considering deportation liability appeals, such as the:

- persons age
- length of the period during which the person has been in New Zealand lawfully
- persons personal and domestic circumstances
- work record
- nature of the offence(s) which have triggered deportation liability
- nature of any other offence(s) the person has been convicted of
- interests of the persons family
- any other matters the tribunal considers relevant.

Although the current Act enables the IPT to consider an appeal on humanitarian grounds (section 207), it does not currently provide any examples of what these grounds could be, or what factors are considered in making their decision. This was an intentional decision made when undertaking the 2009 review of the Act to avoid constraining decision makers and considering a person's circumstances in their totality, as well as confusion around which factors should or should not be considered. The IPT will generally, however, consider:

- the length of time the appellant has been in New Zealand
- the strength and nature of the person's ties to New Zealand
- the person's immediate family is in New Zealand
- the extent of any impediments that the person may face if removed from New Zealand to their home country.⁹

In not prescribing considerations, the current Act leaves the weighting of particular factors to a values-based judgement, on a case-by-case basis. This can mean that the outcome of the deportation may not be achieved. The length of time someone has spent in New Zealand, tips the determination in favour of cancelling the deportation order. Such serious crimes should be held to a higher standard, meaning that the humanitarian considerations need to be weighed against and proportionate to the criminal offending.

New Zealand has one of the most lenient criminal deportation liability regimes

Australia, the United Kingdom (UK), Canada and Ireland all have deportation settings that enable a resident to be liable for deportation indefinitely, and for relatively minor convictions (see **Annex One**). For example, the UK allows for the deportation of any foreign national if convicted in the UK of an offence and sentenced to a period of imprisonment of

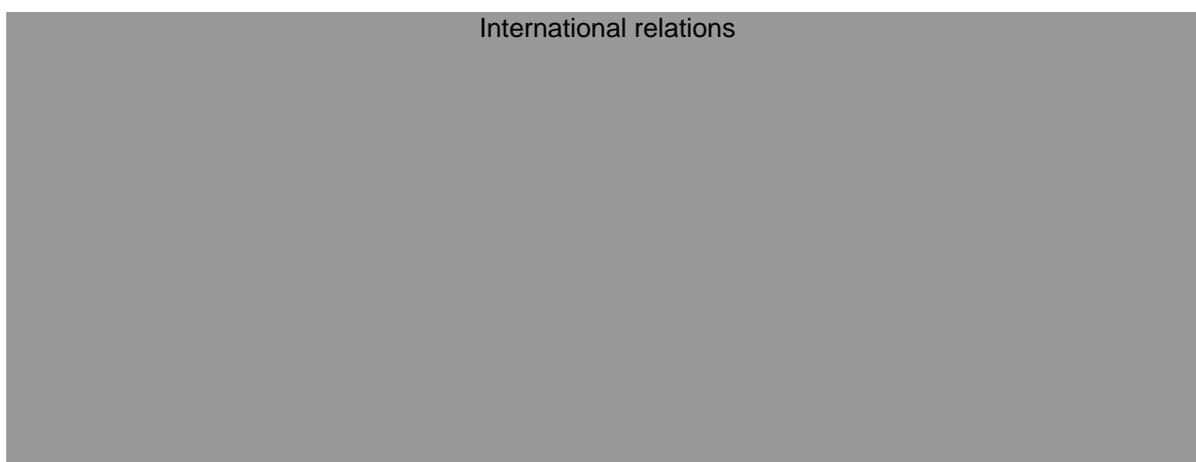
⁹ This may include: the strength, duration and nature of the person's ties to New Zealand, the age at which the person came to New Zealand originally, the person's immediate family is in New Zealand (and if those family members are New Zealand citizens, permanent residents, or people who have a right to remain in New Zealand indefinitely), the extent of any impediments that the person may face if removed from New Zealand to their home country, in establishing themselves and maintaining basic living standards in light of: the person's age and health, any substantial language or cultural barriers, and any social, medical and/or economic support available to them in that country, being ineligible for citizenship in some cases.

at least 12 months (with a few exceptions). This is irrespective of time spent in the UK but deportation can be appealed on the grounds of a person's long residence in the UK and/or private and family life in the UK.

What is the policy problem or opportunity?

Current deportation liability settings do not provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years

New Zealand has granted more than half a million people RCVs over the last decade – over 40,000 people per annum. Although the vast majority of migrants are law-abiding and make a positive contribution, in recent times there have been (infrequent) cases of RCV holders committing serious crimes, whom New Zealand has been unable to deport because they have held an RCV for more than 10 years. Two recent cases are outlined below:



What objectives are sought in relation to the policy problem?

The primary objective is to provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years.

The secondary objectives are to:

- maintain proportionality: both in respect to the consequence (deportation liability) and the criminal offence committed, and the steps in relation to each other
- (this is in response to feedback from Ministry of Justice (MoJ))
- enhance New Zealand's ability to deport RCV holders that commit the most serious offences and pose a risk to the community if they remain.

What consultation has been undertaken?

To achieve introduction of the Amendment Bill by October 2025, the Minister of Immigration agreed to a short period of targeted consultation with key stakeholders. MBIE has consulted as broadly as possible within the time constraints, by undertaking a short and targeted period of stakeholder engagement with:

- government agencies,
- independent statutory bodies,
- representatives of impacted parties (i.e. immigration lawyers and community representatives).

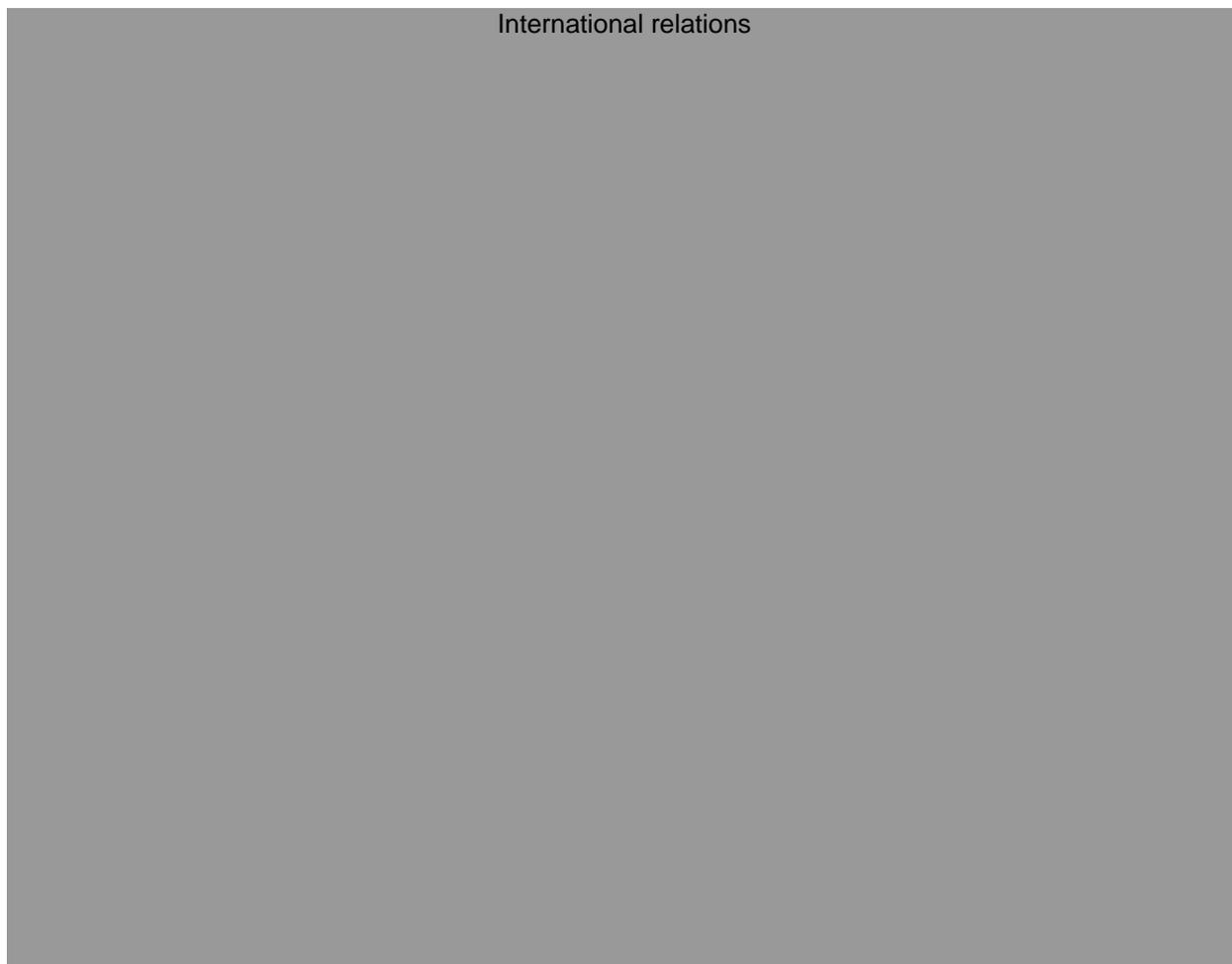
Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives and input from experts. A summary of their views and how they have been factored into the analysis is below.

MOJ emphasised that options needed to be proportionate in two ways:

- a. Ensuring that the consequence (deportation liability) is proportionate to the harm caused by the offence. For example, deportation would not be considered proportionate or justifiable if an RCV holder has been in New Zealand for 10 years and committed a minor offence.
- b. Options need to be proportionate to each other. For this reason, a tiered approach is preferred (mirroring the current graduated framework). This ensures that the options on their own are proportionate to the harm caused versus the connection to New Zealand, and that consequences for lower-level offending are not harsher than more serious offending.

The Department of Corrections noted the difficulty in assessing the impact on Corrections in the absence of good-quality data on the number of additional people expected to be liable for deportation as a result of these changes, and of these, the proportion expected to be subject to electronic monitoring to mitigate a flight risk, and the number ultimately deported. Since then, MBIE has developed estimates of people who may become liable under proposed settings and eventually be deported based on a possible 30% increase in deportation liability and eventual deportation (though actual deportations likely to be lower due to the safeguards in the system). More detail on this estimate is at page 14.

International relations



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From 1 to 6 May 2025, MBIE had discussions with key stakeholders in the INZ focus group, the New Zealand Law Society, the Office of the Ombudsman, and the IPT on the proposals. A summary of the feedback is below.

- The IPT noted that they already consider the severity of offending and the impact on victims in deciding appeals and so adding it into legislation is not likely to change anything and may raise uncertainty about criteria or considerations that are included or not included. It was a deliberate decision in the development of the 2009 Act to not include criteria for determining deportation appeals.
- The Chief Victims Advisor (MOJ) was supportive of the proposal to make the seriousness of the offending, including the impact on the victim, an aggravating factor in determining appeals against deportation, noting that further work may be required with the IPT to understand how they would determine this, and the level of input from the victim.
- The Office of the Ombudsman noted that some countries do not allow dual citizenship, which is a reason for people maintaining their residence status. The Office also sought clarification that the immigration status of family members would not be affected (they would not as the liability attaches to the conviction)¹⁰ and that appeal rights remain (existing appeal rights under the Act would be available to people liable for deportation).
- The INZ focus group had no feedback on this particular proposal and the Law Society asked some clarification questions about the proposals.

There will be two more opportunities for consultation:

- targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
- the six-month Select Committee stage, at which point members of the public are invited to provide written and oral submissions on the Bill.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

MBIE proposes the following criteria be used to assess the options against the status quo:

¹⁰ Note: There may be some instances where the family, without the individual, no longer meets the thresholds to either obtain residence (often they are on a temporary entrance class visa), or residents may not be able to support themselves (although this should be advanced as a ground in any humanitarian appeal).

- a. **Effectiveness** in achieving the policy objective, which is to **provide the immigration system with options to manage serious criminal offending by migrants who have held an RCV for more than 10 years**
- b. **Efficiency:** achieving the policy objective in the most cost-effective way, with minimal costs for MBIE and the IPT
- c. **Fair/Proportionate:** the consequence (deportation) is proportionate to the offence, and the steps of the framework are proportionate to each other
- d. **Ease of implementation:** how much resource or time is required to implement the option.

What scope will options be considered within?

This proposal's scope is limited to RCV holders who have committed an offence and become liable for deportation under section 161 of the Act. Significant changes to section 161 and changes to the offences and penalties under the criminal justice system have been ruled out of scope due to time constraints.

The scope of options was further shaped by consultation with agencies, in particular the MOJ, who advised that the options had to be proportionate (as above in the consultation section).

Following initial advice on the policy levers (time someone has held an RCV and term of imprisonment), the Minister of Immigration's preference was to focus on the period of time a person has held an RCV and add new tiers to the deportation framework for terms of imprisonment (10 years plus). Further advice provided the Minister with options to extend deportation liability at the lower and higher end of offences and time someone has held an RCV as well as two additional tiers. The Minister was most interested in consequences for serious offending. In response we developed the proposed options, which also extend deportation liability at the lower end of offending and time someone has held an RCV to keep it proportional and maintain a graduated framework as emphasised by the MOJ.

There are no non-regulatory options for making RCV holders who commit serious crimes and have held an RCV for more than 10 years automatically liable for deportation as this is something that is set out in the Act (section 161).

What options are being considered?

Figure 4: Comparison of status quo and options considered

Offence seriousness ↓	Time holding an RCV (years) →	0 to <5	≥5 to <10	≥10 to <15	≥15 to <20	Appeals
Convicted of an offence carrying a maximum penalty of imprisonment for 3 months or more						Option 3: Option 2 plus factors the IPT must consider in liability appeals
Convicted of an offence carrying a maximum penalty of imprisonment for 2 years or more						
Convicted of an offence and sentenced to an imprisonment term of five years or more						
<i>New 'tier' to deportation framework:</i> Convicted of an offence and sentenced to an imprisonment term of 10 years or more						

Option 1: Status Quo (Yellow area covering 0 to <5 years RCV for offences with 3 months to 5 years imprisonment)

Option 2 (Green area covering ≥5 to <10 years RCV for offences with 2 years to 15 years imprisonment, and ≥10 to <15 years RCV for offences with 5 years to 20 years imprisonment)

Option One – Status Quo / Counterfactual

Option One is the Status Quo: Section 161 (1) of the Act currently establishes that deportation liability is dependent on two different factors:

- the seriousness of the crime, and
- the length of time a person has held an RCV.

The longer someone has held an RCV when the offence is committed, the more serious the offending (and therefore conviction) will need to be in order for the person to become liable for deportation. The rationale behind this is that as a general legal principle, and fundamental human right, for a punishment to be reasonable (as opposed to unreasonably harsh) it must be proportionate to the offence committed.

Section 207 of the Act also sets out fairly permissive settings in which a person can appeal their deportation liability to the IPT on humanitarian grounds. The chances of a successful appeal also depend on the seriousness of the offending, and the amount of time a person has spent in New Zealand.

The status quo essentially means that the longer a person has held an RCV, the more serious the conviction term will need to be (the more serious the crime) for them to be liable for deportation. It also limits liability for deportation to be only for offences committed within ten years after first holding an RCV¹¹, after which, they cannot be deported no matter how serious the crime (excluding time spent imprisoned).

Option Two – Extend deportation liability framework

Option Two extends deportation liability for both the seriousness of the offending, and the amount of time a person can hold an RCV and still be liable for deportation.

This option is likely to be justifiable under section 5 of the Bill of Rights Act (BORA), and therefore less likely to be challenged as an unduly harsh punishment relative to the offence committed (covered by section 9 of the BORA). MOJ has advised that maintaining a graduated framework is essential for maintaining proportionality (both in relation to the seriousness of the offence, and to each other).

¹¹ Meaning 10 years after the person first held an RCV.

Option Two also adds a new tier to the deportation framework for imprisonment terms of 10 years or more (currently the last tier is for terms of 5 years or more). RCV holders that commit these offences would be liable for deportation if they committed these offences not later than 20 years after they first held an RCV (extended from the current 10 years for crimes that result in more than 5 years' imprisonment) when the crime is committed. It also extends deportation liability where a person has been convicted and:

- the offence carries a maximum **imprisonment term of 3 months** where a person has **held an RCV for up to five years** (currently 2 years)
- the offence carries a maximum **imprisonment term of 2 years** where a person has **held an RCV for up to 10 years** (currently 5 years)
- **sentenced to a term of 5 years** or more where a person has **held an RCV for up to 15 years**.

Option Three - Extend deportation liability AND prescribe factors the IPT must consider when deciding appeals against deportation on humanitarian grounds

Option Three has the same features as Option Two but sets out factors that the IPT must consider when considering appeals against deportation under section 161.

As mentioned above, section 207 is broad in terms of outlining what the IPT must consider when looking at such appeals. The Act only sets out that a person may bring an appeal on humanitarian grounds, and that the IPT must have regard as to whether allowing the appeal would be contrary to the public interest. There is little direction given to the IPT on what 'humanitarian grounds' are, and what factors should be in considering them. This can mean that the outcome of the deportation liability may not be achieved as a result of the broad ambit IPT members have to interpret 'humanitarian grounds'. The length of time someone has spent in New Zealand tips the determination in favour of cancelling the deportation order. Where such serious crimes should be held to a higher standard, the humanitarian considerations need to be weighed against and proportionate to the criminal offending.

The 1987 Act included factors such as the nature of the offending, impact on victims, interests of the persons family, and any other criminal offending history. These factors will form the basis of any changes, which will be finalised as part of drafting and refined during consultation on the exposure draft. Similar to the criminal jurisdiction, these considerations could include both aggravating factors, such as the severity of the crime and who is impacted (e.g. victims' vulnerability and number of victims), and mitigating factors, such as the age of the appellant when they arrived in New Zealand.

The IPT already considers: the strength and nature of the person's ties to New Zealand; whether the person's immediate family is in New Zealand; and the extent of any impediments that the person may face if removed from New Zealand. Although the IPT must consider the public interest in the appellant remaining in New Zealand (against the humanitarian grounds), we note there are no considerations of the severity of the crime and who is impacted set out in the Act.

MBIE considers adding these factors into the Act would help to provide legal certainty and clarity to the weight that should be given the primary factors. Cabinet will agree to the final factors ahead of the Bill being introduced to the House. Australia has a similar approach

which can help inform the legislative design. Australian legislation¹² lists considerations to be taken into account when considering the cancellation of a person's RCV status.

MOJ is comfortable with the proposal to include factors the IPT must consider as long as consideration of the victims does not rely on victim statements (as it can be hard to find victims years later and they can be reluctant to appear in a hearing/give evidence). They consider the IPT currently weighs humanitarian concerns quite strongly and there is potential for MBIE to emphasise other factors in legislation.

Estimating who would be affected by expanded deportation liability

Due to the terms of current data sharing agreements with Corrections, we have not been able to reliably estimate the number of people likely to become liable for deportation if deportation liability settings were expanded. However, based on the number of individuals that became liable for deportation in 2023/24 under current settings, we consider a 30% increase is possible. This would take the number of people liable for deportation per annum (under s161) from 182 to 237 (an increase of 55 people). We would expect to see a similar increase in actual deportations, going from approximately 15 to 20 people per annum¹³ (an increase of 5 people), however this does not account for an extra tier of offending or the fact that deportation liability is often suspended for lower-level offending.

Data shows that Pacific and Asian males are overrepresented in lower-level offending. Recent data on deportations from May 2024 to April 2025 showed that Pacific Island nationalities were 37.5% of those deported per annum (12 of the 32 people deported under s161).

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In

reality, the number is likely to be lower, given that most low-level offending results in suspended deportation liability.

Expanding deportation liability does not necessarily lead to more deportations as there are a range of safeguards in the system (as discussed above). The proportion of the people made liable for deportation that are eventually deported varies according to the seriousness of the offence (4.2% at the lowest end of offending, 14.7% for medium-level offending and 66% for the most serious offences, of those identified as liable, were deported in 2023/24). This indicates that around a third of the most serious offenders are not being deported under current settings.

¹² Australian Migration Act 1958 [sections 501 and 116] – had previously referenced 2014 Bill.

¹³ This number is based on 2023/24 financial year data and not the figure mentioned elsewhere in the paper for deportations in the 12 months to April 2025 (which was 32).

Table Two: Options analysis compared to status quo

	Option One – Status Quo	Option Two – Extend deportation liability both at the lower and higher end	Option Three – Option Two plus add factors for IPT consideration to the Act
Effectiveness	0	+ Strengthens the framework to address gaps and extends the limit from 10 to 20 years for the most serious crimes. However, it may not result in more deportations as liability may be overturned on humanitarian grounds if someone has been in NZ for a long time.	++ Strengthens the framework to address gaps and extends the limit from 10 to 20 years for the most serious crimes. Adding factors for IPT consideration may increase the likelihood that people who commit the most serious crimes will be deported.
Efficiency	0	+ The costs of increased deportation liability notices will be small and will fall mainly on MBIE. There may be a small increase in appeals to the IPT but this is expected to be minor	+ The costs of increased deportation liability notices will be small and will fall mainly on MBIE. There may be a small increase in appeals to the IPT but this is expected to be minor
Fair/Proportionate	0	+ The consequence of offending is proportionate to the crime and the steps in the framework are proportionate to the other steps. It is fair that people that have held an RCV for more than 10 years when they commit serious crimes become liable for deportation.	+ The consequence of offending is proportionate to the crime and the steps in the framework are proportionate to the other steps. Including aggravating factors ensures that greater weight is placed on the harm caused by truly egregious offences, rebalancing the assessment away from focusing on the length of time spent in New Zealand. Including mitigating factors mirrors the criminal justice system for sentencing, while ensuring that there are sufficient checks and balances in taking a case-by-case approach to ensure that where there are genuine humanitarian concerns about deporting the person, these are respected.
Ease of implementation	0	- The Act will need to be amended to enable the change and minor changes will need to be made to ensure that the revised deportation liability framework is operationalised. A small amount of resource may be needed for MBIE to process additional people liable for deportation.	- The Act will need to be amended and minor changes will be needed to operationalise the revised deportation framework. The IPT may need additional internal guidance about how to consider the factors in the Act. A small amount of resource may be needed for MBIE to process additional people liable for deportation
Overall assessment	0	++ (2)	+++ (3)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

MBIE has assessed that **Option Three** is most likely to meet the policy objective of providing the immigration system with options to manage serious criminal offending by migrants who have held an RCV holders for more than 10 years (reflected in Table Two above).

In rebalancing the primary factors the IPT needs to consider, Option Three ensures that the secondary objective of enhancing New Zealand’s ability to deport RCV holders that commit the most serious offences and pose a risk to the community if they remain can be achieved.

Prescribing aggravating factors for consideration ensures that the intention of the policy is met and the humanitarian factors are weighed against the harm caused to the community. Prescribing mitigating factors provides an additional layer of safeguards to ensure that the humanitarian considerations still protect people. This is reflected in the high rating against the effectiveness criteria. It is also considered fair/proportionate as the consequence of deportation liability is relative to the imprisonment sentence and the time spent as an RCV holder. Including aggravating and mitigating factors mirrors the criminal justice system for sentencing, while ensuring that there are sufficient checks and balances in the system in taking a case-by-case approach.

Table Three: Marginal costs and benefits of the preferred option

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	RCV holders	Medium. More RCV holders can be made liable for deportation on conviction. This may adversely affect particular groups, like Pacific and Asian males.	High
Regulators	MBIE	Low. Operationalise the revised deportation framework, including issuing (slightly) more deportation liability notices.	Medium
Others (eg, wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	MOJ IPT Department of Corrections MFAT International relations	Medium. The IPT may face a slightly higher number of appeals for deportation – resident stream. International relations	Medium

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
	Receiving countries	International relations	
Total monetised costs		N/A	N/A
Non-monetised costs		Low-Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	RCV holders	Low. Potential to disincentivise offending.	Medium
Regulators	MBIE	Medium. Strong signal that criminal offending is not tolerated. Ability to make more RCV holders that commit crimes automatically liable for deportation.	High
Others (eg, wider govt, consumers, etc.)	Ministry of Justice IPT Victims of criminal offending	Low. No particular benefit. The preferred option places greater weight (in the form of aggravating factors) on the impact on victims of criminal offending by those who are subsequently made liable for deportation.	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Medium

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

Yes.

Section 3: Delivering an option

How will the proposal be implemented?

Section 161 of the Act will need to be amended to include the extended framework. Either section 161 (2) or section 207 will also need to be amended to include factors the IPT must consider when determining appeals for deportation liability.

The ERM Bill will be the vehicle used to make these legislative changes. The Bill is scheduled for introduction to the House in October 2025. **Confidential advice to Government**

Further communication with external stakeholders will occur in three phases:

- Targeted consultation via an exposure draft of the Amendment Bill, commencing 1 September 2025
- Targeted communications to stakeholders when the Bill reaches milestones in the House, along with general public communications as part of a wider communications plan.

There are minor-medium resource impacts for MBIE to operationalise the revised deportation liability framework (mostly from the Resolutions and Compliance teams) as the framework is already in place and deportation liability is automatic upon conviction (based on the scenario of a 30% increase in individuals made automatically liable for deportation). There are potentially impacts for the IPT as well, which we have been unable to model during this time.

Risks and mitigations identified by MBIE

The scenarios MBIE has developed on what expanded deportation liability settings would mean for numbers of people made liable and eventual deportations have not been tested widely or verified. Therefore, there is a risk that the inferences made in this RIS do not accurately reflect the impact of the preferred option, nor its costs and resource implications. MBIE does not expect high workload impacts, given the proposed change is an expansion, and codification of existing practises and processes.

International relations

How will the proposal be monitored, evaluated, and reviewed?

MBIE will continue to monitor the number of RCV holders that are made liable for deportation under section 161 and the proportion that ultimately get deported. As of April 2025, the Minister of Immigration receives quarterly reporting on compliance and investigations activity. Reporting on deportation outcomes as a result of this proposal will be included in this report.

A review of the changes will be undertaken 12 months after implementation, with findings provided to the Minister of Immigration. The review will consider:

- a. Number of RCV holders made liable for deportation under section 161 in the last financial year, compared with the two years prior (we would expect to see initially higher numbers of people made liable for deportation but this would hopefully reduce over time as people are deterred from offending).
- b. Number of RCV holders who are liable under s161 that are actually deported because the IPT declines their appeal. This information is currently published in the IPT annual reports.

Annex One: Summary of criminal deportation settings in comparator jurisdictions

Australia	<p><u>Liability for deportation:</u> s 201 Migration Act A non-citizen who is a permanent resident in Australia for less than 10 years may be deported if they are convicted in Australia of any offence for which they are sentenced to imprisonment for one year or longer (s 201 Migration Act). Under section 201, a person cannot be deported after being lawfully resident in Australia for more than 10 years, except in very exceptional circumstances.</p> <p>s 501 Migration Act Wider power than s201 – provides that a visa can be cancelled on character grounds, where a person has been convicted of a criminal offence. There is a two-stage process for this:</p> <ul style="list-style-type: none"> - Decision-maker must find that the visa holder doesn't pass a defined character test (defined in 501(6)), and - If found not to pass the character test, the decision-maker must decide whether it is appropriate to cancel the visa. <p><u>Time limit on liability:</u> indefinitely for s 501, 10 years for s 201.</p> <p><u>Appeal rights:</u> Australia considers the following factors when determining deportation for criminal offending:</p> <ul style="list-style-type: none"> - Primary considerations: protection of the Australian community from criminal or other serious conduct, the best interests of minor children in Australia, whether Australia has non-refoulment obligations to the person. - Other considerations that may be relevant: impact of refusal or cancellation on; the person's immediate family in Australia (if those family members are Australian citizens, permanent residents, or people who have a right to remain in Australia indefinitely), Australian business interests, members of the Australian community including victims of the person's criminal behaviour and those victims' families.
Canada	<p><u>Liability for deportation:</u> A foreign national in Canada is "inadmissible" if convicted of:</p> <ul style="list-style-type: none"> - an offence punishable by a maximum term of imprisonment of at least 10 years, or - an offence for which a term of imprisonment of more than six months has been imposed. <p><u>Time limit on liability:</u> indefinite, irrespective of time spent in Canada.</p> <p><u>Appeal rights:</u> permanent resident or protected person can appeal. However, they lose appeal rights if they were sentenced to six months or more.</p>
Ireland	<p><u>Liability for deportation:</u> A foreign national that has committed a crime that carries a prison sentence (no limitations based on term of sentence or type of offending).</p> <p><u>Time limit on liability:</u> indefinite.</p> <p><u>Appeal rights:</u> Once notified of deportation liability, representations can be made (within 15 days) as to why a deportation order should not be made. In considering any such representations, the Minister is required to consider a number of statutory factors, including any 'humanitarian' issues arising.</p>
United Kingdom	<p><u>Liability for deportation:</u> A foreign national in the UK is liable for deportation if convicted in the UK of an offence and sentenced to a period of imprisonment of at least 12 months. UK immigration rules state that, if the offender is sentenced for more than 12 months, their deportation is "conducive to the public good and in the public interest".</p> <p>There are a few exceptions:</p> <ul style="list-style-type: none"> - if removal would breach rights under European Convention on Human Rights or the UK's obligations under the Refugee Convention - where the person was under 18 on date of conviction. <p><u>Time limit on liability:</u> indefinite, irrespective of time spent in UK.</p> <p><u>Appeal rights:</u> Deportation decisions can be challenged on the grounds of a person's long residence in the UK and/ or their private and family life in the UK under Article 8 of the European Convention on Human Rights.</p>

Annex Two: Detailed list of offences and maximum penalties

Offence	Maximum penalty
Abduction of a young person under 16	7 years
Accessing a computer system for dishonest purpose	5 - 7 years
Aggravated assault	3 years
Aggravated burglary	14 years
Aggravated careless use of vehicle causing injury or death	3 years
Aggravated injury	7 years
Aggravated robbery	14 years
Aggravated wounding	14 years
Altering documents with intent to deceive	10 years
Arranges/persuades to meet young person	7 years
Arson	7 years
Assault on person in family relationship	2 years
Assault police	6 months
Assault with a blunt instrument/weapon	5 years
Assault with a firearm	3 years
Assault with intent to commit sexual violation	10 years
Assault with intent to injure	3 years
Assault with intent to rob	7 years
Assaulting a child	2 years
Attempt to have sexual connection with a child under 12	10 years
Attempt to have sexual connection with a young person under 16	10 years
Attempted murder	14 years
Attempted sexual violation	10 years
Behave threateningly	3 months
Blackmail	14 years
Breach of community work	3 months
Breach conditions of community detention	6 months
Breach of conditions of supervision	3 months
Breach of intensive supervision	6 months
Breach of post detention conditions	6 months
Breath alcohol level (person under 20)	3 months
Breath alcohol level over 400mcg (1 st or 2 nd)	3 months
Breath alcohol level over 400mcg (3 rd or subsequent time)	2 years
Burglary	10 years
Careless or inconsiderate driving causing injury or death	3 months
Carrying a firearm etc. with criminal intent	5 years
Causing Grievous Bodily Harm (GBH) with intent to rob	14 years
Causing harm by posting digital communication	2 years
Common assault	1 year or 6 months
Conspiracy to supply cannabis plant	7 years
Conspiracy to supply methamphetamine	7 years
Contravening a protection order	3 years
Conversion of vehicle or other conveyance	7 years
Criminal harassment	2 years
Cruel/ill-treatment of animals	6 months
Cultivate cannabis	7 years
Dangerous driving	3 months

Offence	Maximum penalty
Dangerous driving causing injury	5 years
Defrauding the revenue of Customs (tobacco)	5 years
Demands to steal	7 years
Destroying property	7 years
Dishonestly taking or using a document	7 years
Disorderly assembly	3 months
Disorderly behaviour	3 months
Driving recklessly or dangerously causing death	10 years
Driving while disqualified (1 st or 2 nd)	3 months
Driving while disqualified (3 rd or subsequent time)	2 years
Driving while impaired and with blood that contains evidence of use of qualifying drug (1st or 2nd)	3 months
Driving while impaired and with blood that contains evidence of use of qualifying drug (3rd or subsequent time)	2 years
Drove a vehicle at a dangerous speed	3 months
Drove contrary to limited licence	3 months
Drove contrary to zero alcohol licence	3 months
Drove while licence suspended or revoked (1 st or 2 nd)	3 months
Drove while licence suspended or revoked (3 rd or subsequent time)	2 years
Escape from lawful custody	5 years
Exposure of young person to indecent material	3 years
Failing to assist Police exercising a search power	3 months
Failing to stop to ascertain injury	3 months
Failing to carry out obligations in relation to computer system search	3 months
Failure to answer District Court bail	1 year
Failure to answer police bail	3 months
Failure to give details on demand	Fine
Failure to stop for police	Fine
Forgery of a document for advantage	10 years
Impersonating a Police Officer	1 year
Importing/exporting/manufacture/supply class A drug	Life
Importing/exporting/manufacture/supply class B drug	14 years
Importing/exporting/manufacture/supply other controlled drugs	8 years
Indecent act on a child under 12	10 years
Indecent act on a young person under 16	7 years
Indecent act with intent to insult or offend	2 years
Indecent act in a public place	2 years
Indecent assault	7 years
Injures with intent to cause GBH	10 years
Injures with intent to injure	5 years
Injures with reckless disregard	7 years
Intentional damage	7 years
Kidnapping	14 years
Knowingly distributes objectionable material	14 years
Knowingly using a forged document	10 years
Loss of traction	5 years
Male assaults female	2 years
Manslaughter	Life
Meeting young person under 16 following sexual grooming	7 years

Offence	Maximum penalty
Misleading a social welfare officer	1 year
Murder	Life
Obstruct/pervert course of justice	7 years
Obstruct/hinder police	3 months
Obtaining by deception \$500 - \$1,000	1 year
Obtaining by deception less \$500	3 months
Obtaining by deception over \$1,000	7 years
Obtaining property or causing loss from access to computer system	7 years
Offensive behaviour or language	Fine
Offer to sell cannabis plant	8 years
Offer to supply methamphetamine	Life
Operating a vehicle carelessly	Fine
Operated a vehicle recklessly	3 months
Operating a vehicle causing loss of traction	3 months
Operating a vehicle in race or in unnecessary exhibition of speed or acceleration	3 months
Personating Police	1 year
Possession of a class B drug (Ecstasy)	3 months
Possession of equipment to cultivate cannabis	5 years
Possess for supply methamphetamine	Life
Possess needle/utensil for cannabis	1 year
Possess needle/utensils for methamphetamine	1 year
Possess offensive weapon	3 years
Possess utensil for methamphetamine	1 year
Possession for supply cannabis plant	8 years
Possession of a knife	3 years
Procure/possess cannabis plant	3 months
Procure/possess other drugs (not cannabis)	6 months
Procure/possess methamphetamine	6 months
Purchase, sale, exchange, etc of uncustomed goods or prohibited imports (tobacco)	6 months
Receiving between \$500 and \$1,000	1 year
Receiving less than \$500	3 months
Receiving over \$1,000	7 years
Recklessly causing death	10 years
Recklessly discharging a firearm	5 years
Refused blood sample (1 st or 2 nd)	3 months
Refused blood sample (3 rd or subsequent time)	2 years
Refused to accompany enforcement officer	Fine
Resist police	3 months
Robbery	10 years
Sell cannabis plant	8 years
Sexual connection with a child under 12	14 years
Sexual connection with a young person under 16	10 years
Sexual violation	20 years
Stealing/receiving controlled drugs	7 years
Strangulation/suffocation	7 years
Supply methamphetamine	Life
Supply of class C drug	3 months

Offence	Maximum penalty
Take/obtain/use document for pecuniary advantage	7 years
Theft \$500 - \$1,000 (also known as shoplifting)	1 year
Theft by person in a special relationship	7 years
Theft over \$1,000 (also known as shoplifting)	7 years
Theft under \$500 (also known as shoplifting)	3 months
Threatening language	Fine
Threatening to destroy property	3 years
Threatens to kill/do GBH	7 years
Unauthorised street or drag racing - no injury or death	3 months
Unauthorised street or drag racing causing death	10 years
Unlawful assembly	1 year
Unlawfully carry/possess firearm/restricted weapon/explosives	4 years
unlawfully gets into/upon motor vehicle	2 years
Unlawfully in building	3 months
Unlawfully interfere with motor vehicle	2 or 7 years
Unlawfully takes motor vehicle	7 years
Unlawfully possess pistol/restricted weapon	3 years
Unlicensed driver failing to comply	Fine
Used forged document	10 years
Using altered document to deceive	10 years
Using a document for a pecuniary advantage	7 years
Wilful damage	3 months
Wilful trespass	3 months
Wounds - intent to GBH	14 years
Wounds - intent to injure	7 years