

# Regulatory Impact Statement: New immigration infringement offences

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| <b>Decision sought</b>     | Analysis produced for the purpose of informing final Cabinet policy decisions |
| <b>Agency responsible</b>  | Ministry of Business, Innovation and Employment                               |
| <b>Proposing Ministers</b> | Minister of Immigration   |
| <b>Date finalised</b>      | 5 February 2026   |

This RIS assesses two narrowly targeted adjustments to the *Immigration Act 2009* (the Act) infringement toolkit, by introducing new infringements related to two existing offences:

- (i) providing false or misleading<sup>1</sup> information (currently s.342 – punishable by a court-ordered fine and / or imprisonment), and
- (ii) failing to provide employment-related documents when requested (currently s.277 – technically punishable through a generic penalty of a court-ordered fine, but with, in effect, no penalty).

The changes do not revisit broader visa policy settings or compliance resourcing. They close identifiable enforcement gaps by providing new proportionate and efficient responses below the threshold for criminal prosecution.

## Summary: Problem definition and options

### What is the policy problem?

Employers who victimise migrants not only cause harm to their victims but also gain unfair advantages over employers who comply with their legislative obligations. Employment and immigration legislation establish a range of offences which are intended to deter employers from exploiting migrant workers. However, rates of reported exploitation are unacceptably high, with more than 2,700 reports of exploitation to the Ministry of Business, Innovation and Employment (MBIE) in 2024/25<sup>2</sup>.

The sanctions available to immigration compliance staff for behaviours that enable exploitation, which include lower-level actions such as the withholding of employment-related information from those compliance staff, are not adequate to deter some bad actors.

Separately, all people who submit information to the immigration system are expected to provide full and honest information. The system depends on the provision of complete and correct information to uphold its integrity in all respects (from labour market testing, to

<sup>1</sup> The exact wording is under discussion with PCO – see relevant discussion under Consultation on page 4.

<sup>2</sup> An increase from 807 reports in the 2022/23 financial year.

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working conditions and other requirements on employers). However, some employers seek to mislead Immigration New Zealand (INZ) or do not take care to ensure that the information they provide is accurate and complete. There are few tools to address this.

Officials consider that, among other changes being made to the Act, there are opportunities to adjust the penalties for two existing offences to enable more meaningful enforcement.

- With regard to the existing offence at s.342, related to providing false or misleading information, the current penalties (fine and / or imprisonment) are appropriate for serious dishonesty but are disproportionate for minor breaches. Prosecutions are costly and rare, leaving an enforcement gap.
- The existing offence at s.277, related to failure to provide documents, is technically covered by the offence at s.344 (Obstruction or failing to meet requirements), which is subject to a maximum fine of \$5,000 under the generic penalty at s.355(5). In practice this offending never meets the threshold for formal charges. This means that employers can ignore document requests without consequence, which undermines investigations and compliance monitoring.

The lack of proportionate enforcement tools for these two offences means there is inadequate deterrence for non-compliance, limiting MBIE's ability to efficiently maintain integrity in the immigration system.

### **What is the policy objective?**

The objective is to address gaps in current sanctions against employers through deploying proportionate tools to encourage employers to provide complete and correct information whenever required or requested. This could be in applications for employer accreditation or for visas, or during post-application monitoring and review activities, compliance activity, or formal investigations.

In the longer term, this is intended to preserve the benefits of the current high-trust employer accreditation model, including through deterring employers from seeking to gain financially through the exploitation of migrant workers.

### **What policy options have been considered, including any alternatives to regulation?**

Officials have considered the following options:

For the proposed change relating to s.342 (provision of false or misleading information)

1. Status quo, i.e. no change. This means that providing false or misleading information remains chargeable in court if serious, but lower-level concealment of relevant facts or provision of incorrect or incomplete material has no formal consequences (although the employer's application for accreditation or to support a work visa application may not succeed)
2. Introducing an infringement penalty for the provision of incorrect or incomplete information, that may be issued at the discretion of Immigration Compliance and Investigations (ICI) officers where there are reasonable grounds to believe an offence has occurred, while retaining the court pathway for serious or knowing cases (**recommended option**).

For the proposed change relating to s.277 (failure to provide documents when requested)

1. Status quo, i.e. no change. While the offence of obstruction or failing to meet requirements is chargeable in court, in practice failing to provide employment

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documents when requested would on its own never warrant criminal charges, so in effect it has no penalty

2. Introducing a new (discretionary) infringement penalty issued by ICI, for the offence of failure to produce documents where there are reasonable grounds to believe an offence has occurred, complementing the existing s.359A infringement offences (**recommended option**)
3. Making the failure to produce documents punishable through a specific (higher) fine and / or imprisonment (following charging in court).

We also considered two non-regulatory options.

The first is using the existing option of **formally advising employers** (via a letter) that they are believed to have committed the relevant offence, and that this may be taken into account in future decisions regarding (for example) applications for employer accreditation or work visas. This is part of the regulatory graduated response framework (so is a status quo power), but is not generally employed as it has not been found to produce changes in behaviour.

The second is **increasing proactive checks on employers** through (in the case of applications) verifying up to 100 per cent of information provided (through third-party checks, and a requirement that original (paper) documents be submitted); and (in the case of compliance visits) undertaking more visits to work sites and employers, to identify offending earlier and deter employers from offending.

However, significantly increasing proactive checks was discounted, because Cabinet has explicitly directed a high-trust design for some categories of application, to enhance the speed of decision making. Adding more checks would have significant resourcing implications, and negative impacts on application timeliness. It would also not directly address or deter the specific offences (provision of false or misleading information, or failure to produce documents when requested).

### **What consultation has been undertaken?**

Key stakeholders (agreed to by the Minister of Immigration) have been consulted on this proposal, initially during the policy development phase and then on an exposure draft of the *Immigration (Enhanced Risk Management) Amendment Bill* (the Bill). These stakeholders included:

- government agencies (including MBIE's ICI, Risk and Verification (R&V) and Legal teams, and the Ministry of Justice's (MOJ's) Courts Systems and Offences and Penalties teams
- the Immigration and Protection Tribunal (IPT), the Office of the Ombudsman, the Chief Victims Advisor, and the Legislation Design and Advisory Committee (LDAC)
- representatives of impacted parties (immigration lawyers, advisers, Business NZ, and the Employer and Manufacturers Association).

Where explicit feedback was received, it was generally either in favour, or reserving judgement, with the major exception of LDAC. No-one objected to the introduction of a penalty for the non-production of documents.

The MoJ, the New Zealand Law Association, and the Chief Victims Advisor supported both proposals, although the MoJ subsequently raised concerns around the use of "false or misleading" for an offence with no mens rea element. Business NZ specifically advocated for employers being required to produce documents within a specific timeframe.

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The New Zealand Law Society supported the new infringements proposal in principle, noting the need for proportionality and robust procedural safeguards with regard to establishing a fine for the provision of false or misleading information. An Immigration Focus Group representative noted it was hard to give unequivocal support for that proposal in the absence of operationalisation details, particularly around the thresholds for triggering fines.

LDAC raised concerns around the false or misleading information proposal in four areas: that dishonesty is too serious for an infringement offence; that revoking employer accreditation (permission to employ foreign workers under the Accredited Employer Work Visa category) may be a more appropriate response; that determining falsity is subjective, and therefore unsuitable for an infringement offence; and that the provision of false or misleading information must always have a mens rea (intent) element. Officials consider that there are appropriate responses to mitigate all of these concerns.

In response to the concerns raised in consultation, MBIE will:

- (i) address the mens rea issue by adjusting the terminology from “false or misleading” to wording like [TBC] “incorrect and / or incomplete” for the infringement offence
- (ii) publish operational rules and guidelines clarifying the evidence test for falsity and giving typical threshold examples;
- (iii) standardise the wording on discretion and safeguards in communications to employers, including in decision letters; and
- (iv) report publicly on stand-down outcomes, alongside infringement volumes.

**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

### Policy problem:

**The available sanctions relating to false or misleading information are not deterring some employers from attempting to mislead immigration officials; and the lack of sanctions for not producing employment-related information means some uncooperative employers can slow down or prevent investigations concerning their compliance with immigration law.**

### 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)*

The time and resource to issue an infringement notice once offending has been identified is relatively low, so issuing more notices as a result of the change can be absorbed within current resourcing levels.

However, responding when an employer wishes to challenge a notice can be more resource intensive. Currently an internal review takes about an hour, with appeals to the district court requiring a minimum of 20 hours of work. MBIE anticipates a small increase in challenges; potentially 60-80 per annum for the first new offence and three to four more per annum for the second, which are likely to all or virtually all be internal reviews. This could be absorbed within existing resourcing.

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However, the level of increase in infringement notices is highly uncertain. If the volumes, or rates of challenge to the district court, are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either approve additional resource (which would be funded through the immigration levy), or constrain the number of notices issued.

As MBIE does not expect any measurable increase in the number of cases being appealed to the District Court, it therefore does not expect additional costs for the court system.

### **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)**

The key benefits of the proposal are a reduction in false, misleading, incomplete or incorrect information being provided to MBIE to support applications, and (in interactions with compliance staff) enhanced cooperation in terms of information accuracy, and the provision of information to support investigations. This is expected to over time help to reduce exploitative behaviours.

This first benefit will improve timeliness and resource allocation across the immigration system (which is third-party funded and, with regard to accredited employers, a high-trust model). The second benefit will similarly improve the efficiency of compliance staff's work. Longer term benefit will be felt by the migrant workers, and by compliant employers (whose businesses can be undercut by employers using exploitative practices), New Zealand workers (whose terms and conditions are not undermined by the anti-competitive behaviours of exploitive employers), and the wider New Zealand economy, including because New Zealand is a more attractive destination both to workers, if they can be confident their rights will be upheld, and to investment, if New Zealand continues to clearly uphold international human rights norms.

However, as these proposals aim to slightly strengthen a complex regulatory system, it is unlikely that their benefits / contribution to those outcomes will be able to be formally measured.

### **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?**

MBIE considers that the benefits outweigh the costs, which are marginal and have sufficient mitigations.

The main risk is that the additional infringement notices issued lead to employers challenging the notices, and that MBIE is not resourced to respond appropriately. This will be addressed in the first instance by ensuring that the infringement notices issued are highly defensible. Further decisions about resourcing and prioritisation could be taken if the number of employers challenging notices became unmanageable.

## Implementation

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

The changes will be implemented following the passage of the Bill, which is anticipated to be some time in 2026. The changes will require minimal operational changes for MBIE. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process to ensure readiness when the Bill is enacted.

Implementation will include updating internal guidance and procedures, delivering training, developing new monitoring procedures and adjusting reporting, and creating and delivering an external communications plan. The development of guidelines to staff to support their decision making, will include establishing the threshold (including evidence tests) for issuing an infringement notice. Appropriate communications about the changes are likely to help to contribute to the benefits of, and stemming from, improved employer compliance.

## Limitations and Constraints on Analysis

We do not have a robust evidence base for how many potential infringement offences are not currently penalised, as ICI does not capture instances when infringement notices cannot be issued (including the cases where documents were requested but not provided).

We do have some indicative figures relating to employer applications that appear to have included deliberate false or misleading information. We have based estimates on the cases we were able to identify, but expect that this is a significant underestimate. We are also unable to estimate the impact of these changes on the proportion of infringement notices that are challenged.

It is not possible to determine a causal link between these policy settings and migrant exploitation indicators, as these are influenced by a wide range of factors (economic conditions and other policy settings). It is not therefore possible to provide concrete estimates of the amount of harm reduction we expect as a result of the proposals. We have noted that we expect the proposal to reduce the amount of exploitation and associated harm.

**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 signature:**  
**Stacey O'Dowd**  
**Manager, Immigration (Border and**  
**Funding) Policy**



**5 / 02 / 2026**

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**Quality Assurance Statement** *[Note this isn't included in the four-page limit]*

**Reviewing Agency:** MBIE

**QA rating:** Meets

**Panel Comment:**

The Ministry of Business, Innovation and Employment's Regulatory Impact Assessment Review Panel has evaluated the Regulatory Impact Statement "New immigration infringement offences" and considers that it **meets** the quality assurance criteria.

The panel is satisfied with the problem definition, options identified, and analysis undertaken, and consider the information is sufficient to enable decisions.

## Section 1: Diagnosing the policy problems

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

Employers of migrants are required to comply with both immigration and employment law

1. Migrants can only work in New Zealand if their visa permits it. As at June 2025, around 169,000 temporary migrants (7% of all employees) were working in New Zealand.<sup>3</sup> Some people who are in New Zealand unlawfully (overstayers<sup>4</sup>), or who are in New Zealand lawfully but without work rights (such as visitors), work illegally to support themselves.
2. Employers must comply with the Act by only hiring migrants who have a visa that allows them to work. Some visas allow work for any employer in almost any role: working holiday makers, partners of New Zealanders, and the partners of people who hold Accredited Employer Work Visa (AEWV)<sup>5</sup> work visas are granted open work visas. Most international students have student visas with open work rights. AEWV work visa conditions may spell out the holder's role, employer, location, pay, and / or hours, to manage labour market risks (in particular, to ensure New Zealanders are not displaced and their employers are not undercut), and reduce the risk of migrant exploitation.
3. All employers in New Zealand must comply with standard employment law requirements (such as minimum wage, holiday and sick leave entitlements), and must not unlawfully deduct wages or charge employment premiums. Employers of migrants must not withhold passports, limit movement or communication, or prevent their employees from leaving or changing employment. Most employers comply with their immigration and employment obligations.

Some employers' non-compliance with the law causes harm or undermines system integrity

4. Exploitation is hard to measure<sup>6</sup>, but indicators show persistent issues among a minority of employers. The number of reports of exploitation to ICI increased from 807 reports in the 2022/23 financial year, to more than 2,700 in 2024/25.<sup>7</sup> Survey data shows continued underpayment and excessive hours for some migrant workers.<sup>8</sup> Those workers' employers can compete unfairly with legitimate employers who meet their obligations.
5. Temporary migrant workers are at greater risk of exploitation than New Zealand workers. Many migrants take on significant debt to come to New Zealand, which increases their

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<sup>3</sup> Migrant Employment Data (based on employment and immigration data). This includes both work and student visa holders, as many student visa holders have work conditions on their visas.

<sup>4</sup> Estimated at around 21,000 in July 2025, of whom around 16,000 were of working age [Immigration New Zealand releases 2025 estimate of number of people who have overstayed their visa :: Immigration New Zealand](#)

<sup>5</sup> The AEWV category is the major category under which foreigners are granted temporary visas to fill vacancies where a suitable New Zealander is not available. Employers must show they meet minimum quality standards to be accredited, then show they have a genuine need for a foreign worker or workers. The Recognised Seasonal Employer category and people who hold Work to Residence visas must also work for specified employers in specified roles.

<sup>6</sup> [Migrant exploitation | Employment New Zealand](#) lists reasons migrants may be reluctant to report.

<sup>7</sup> It is unclear how much of the increase in reporting rates reflected an actual increase in the rate of exploitation versus an increase in awareness of, and confidence in, reporting mechanisms. For example, an 0800 number for reporting exploitation and a visa option for exploited migrants (Migrant Exploitation Protection Visa) have been established in recent years, which have likely contributed to the increase in reports of exploitation. However, officials consider that much migrant exploitation is never reported.

<sup>8</sup> [Employer and worker monitor - 2025](#)

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vulnerability. Even migrants with open work rights can face exploitation, such as international students who struggle to secure work and may accept unlawful conditions. Analysis done in the Temporary Migrant Worker Exploitation Review in 2020 indicated that 64 per cent of the Labour Inspectorate’s investigations in 2018/19 involved migrant workers, although only 7 per cent of jobs were held by migrant workers.<sup>9</sup>

6. Some employers that break the law do it deliberately, especially if they consider that they are unlikely to be detected or that, if detected, any penalties will be negligible. Addressing non-compliance by employers of migrant workers is a priority for the Government. The National Party and New Zealand First Coalition Agreement makes a commitment to “enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences”.

### The immigration system depends on accurate and complete information being provided

7. The immigration system (particularly the AEWV) relies on trust and accurate employer declarations. However, some employers may not take sufficient care to ensure that the information they submit is correct, or may deliberately provide incorrect or incomplete information in an application or in response to a request.
8. This undermines the integrity of the system. For example, in the application process an employer may falsely claim to have checked whether a New Zealander is available for the role with the Ministry of Social Development (MSD). This means a local worker who receives income support may have been deprived of an employment opportunity.
9. Employers’ provision of complete and correct information is essential for effective labour market protections, oversight of working conditions, and maintaining overall system trust. The system therefore needs incentives that encourage employers to be truthful.

### There are a range of offences and penalties for employers who break the law, including other changes proposed in the Bill

10. There are already a range of penalties, across both the immigration and employment law systems, to deter or punish non-compliance by employers. The proposed Bill will, if passed by Parliament, increase the penalties for people found guilty in court of migrant exploitation. Table One below summarises the current and intended future states.

Table One: Hierarchy of offences and penalties

| Regime   | Offence (illustrative)                                    | Statutory reference                    | Penalty today  | Proposed change (if any)                      | Collateral consequence                      |
|----------|---|--|--|---|---|
| Criminal | Providing false or misleading information (serious cases) | Immigration Act s.342; penalties s.355 | Up to 7 years’ imprisonment and/or up to \$100k fine | <b>No change</b> (retained for serious cases) | May be banned Stand-down list <sup>10</sup> |

<sup>9</sup> [Temporary migrant worker exploitation review – final proposals](#)

<sup>10</sup> The stand-down list only prevents employers from supporting visa applications. It does not prevent them from employing temporary migrants with open work conditions, such as working holiday makers or students. The stand-down lists settings are published in the Immigration Operational Manual – see [Appendix 10 - Rules for non-compliant employers \(employment standards-related non-compliance\)](#) and [Appendix 18 – Rules for non-compliant employers \(immigration non-compliance\)](#).

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| Regime                         | Offence (illustrative)  | Statutory reference  | Penalty today  | Proposed change (if any)  | Collateral consequence |
|--------------------------------|---|--|--|---|------------------------|
| Infringement (current)         | Employing someone not entitled / outside visa conditions / refusing to produce wage records | s.359A(1)(a)–(c)   | \$1k–\$3k fee per employee per offence<br>If fee is not paid, the fine is double the fee | N/A   | Stand-down list        |
| <b>Infringement (proposed)</b> | <b>Providing false/misleading information (lower-level)</b>                                 | <b>s.342 (new infringement)</b>                              | -  | <b>Add infringement (fine)</b><br>[As per current infringement penalties] | Stand-down list        |
| <b>Infringement (proposed)</b> | <b>Failure to provide documents when requested</b>  | <b>s.359A (new infringement – relating to s.277 offence)</b> | -<br>(generic s.355(5) fine only available if convicted)                                 | <b>Add infringement (fine)</b><br>[As per current infringement penalties] | Stand-down list        |

11. Lower-level breaches of employment standards (for migrant and New Zealand employees) are enforced through civil penalties issued by the Labour Inspectorate, Employment Relations Authority, and Employment Court. Employers penalised for these breaches are placed on a public stand-down list and cannot support AEWV applications for a set period.

12. Since April 2024, lower-level immigration breaches have been enforced through a new infringement regime set out at s.359A of the Act.<sup>11</sup> The infringement notice regime was introduced to help address the large number of cases where offending is serious but does not meet the threshold for prosecution. It covers:

- allowing a foreign national who does not have work rights to work
- employing a migrant contrary to their visa conditions (e.g. not in the specified role or region, or for a lower pay rate)
- failing to provide requested employment documents to an immigration officer within 10 working days

13. An employer who has committed an infringement offence can be issued an infringement fee of between \$1,000 and \$3,000<sup>12</sup> per worker per offence. Employers who have been issued with an immigration infringement notice are also placed on the public stand-down list and prevented from supporting visa applications for a set period. Eighty-six notices were issued in the first year of the scheme.

### There are penalties for serious offending

14. Serious employer offending is covered by criminal offences in the Act, including the specific offence of migrant exploitation (s.351). Exploitation includes serious breaches of

<sup>11</sup> It was introduced by the *Worker Protection (Migrants and Other Employees) Act 2023*

<sup>12</sup> If the fee is not paid and is referred to the Ministry of Justice, the fine is twice the relevant fee – see [s.359A\(2\)\(b\)](#)

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minimum standards - such as requiring a worker to make payments back to the employer to maintain their employment, or actions such as passport confiscation to prevent a worker from leaving. Penalties include up to five or seven years' imprisonment and fines of up to \$100,000.<sup>13</sup> Convicted employers are permanently barred from supporting visa applications.

15. Due to the significant costs involved, only a small number of criminal prosecutions are taken for serious offending –around one to two per year for s.351 offences,<sup>14</sup> with similar numbers for other employer offences (e.g. s.350 – knowingly employing someone who is not entitled to work in the role).

### There is no effective penalty for some low-level offending

16. However, significant gaps remain. Providing false, misleading, incorrect or incomplete information in an immigration application generally results only in the application being declined, even when deception is deliberate. These employers are not added to the stand-down list because they have not received a formal penalty. Similarly, failing to provide employment documents currently carries no meaningful consequence unless the threshold for a criminal obstruction charge is met, which is rarely the case.

### What is the policy problem or opportunity?

17. As noted above, the current immigration compliance regime was strengthened relatively recently through the addition of the immigration infringement regime in early 2024. However, the operation of the infringement regime has identified gaps.
18. Specifically, the available sanctions relating to false or misleading information do not appear to be deterring some employers from either attempting to mislead immigration officials, or from taking sufficient care to ensure that the information they submit is correct. The lack of sanctions for not producing employment-related information mean uncooperative employers can slow down or prevent investigations into their compliance with immigration law.

#### Example 1: Compliance investigation

*An investigation began in May 2025 following a complaint of migrant exploitation by a migrant holding an AEWV, who had had worked at a franchise restaurant since January 2024.*

*A Section 275A notice required the production of time and wage records. Clocking data appeared to have been altered, with official records showing zero hours where receipts retained by the worker indicated that shifts had been worked. This suggested an offence under s.342(1)(b) (false or misleading information) and breaches of visa-condition pay requirements (wages of at least \$28.20 per hour were required to be paid for each hour worked).*

*Although the employer's accreditation was suspended, prosecution was not pursued under both the Solicitor-General guidelines (Public Interest Test) and the subjective assessment of whether the offending was deemed "serious" under s.351(1)(a)(ii) – (Exploitation of a*

<sup>13</sup> The penalties are set out at s.357 of the Act. An individual employer can be imprisoned AND fined; a company can only be fined. Another proposal for the current Bill will see the maximum length of imprisonment rise to ten years, and will remove the "reckless" versus "knowledge" distinction.

<sup>14</sup> In 2024/25 to the end of March 2025, two people in two cases had been found guilty of s.351 (migrant exploitation) offences, alongside related offences, (variously aiding and abetting a person to remain in New Zealand unlawfully, seeking to corrupt witnesses, and otherwise attempting to obstruct justice). Both were sentenced to home detention and ordered to pay reparations (employment premiums / underpaid wages), totalling \$87,062 between them.

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*temporary worker), as the matter involved only one employee, and arrears of less than \$8,000. The decision to not prosecute was not due to lack of evidence.*

### **Example 2: Risk and Verification checks**

*An employer provided false information in a Job Check application by answering “No” to whether the role involved planting, maintaining, harvesting, or packing crops in the horticulture or viticulture industries. However, post-accreditation checks revealed supervisors were involved in picking duties, while job descriptions and organisational charts had been manipulated to create the impression supervisors were not engaged in horticultural tasks.*

*In a similar case, another employer answered “No” to the same horticulture-related question, although they were seeking people to fill roles performing these tasks. The checks found that there had been a misleading portrayal of workers as supervisors / managers alongside wider role inflation, that the employer had withheld information about prior connections with prospective employees, and identified concerns with relationships and their visibility (a former employee was the brother-in-law of a director, and the newly appointed Orchard Manager was the sister-in-law of a director, although the employer had also answered “No” to a direct question about previous connections.) The role misrepresentation, combined with the hidden familial ties, raised questions around integrity and transparency.*

19. There is an opportunity to introduce two new infringement offences for two existing employer-related breaches under the Act, to strengthen the immigration compliance regime. The specific proposals are to:

**(Policy Proposal 1) introduce an infringement offence for providing inaccurate<sup>15</sup> information** – this complements s.342(1) of the Act (provision of false or misleading information, which is currently punishable for serious and knowing breaches, under s.355, by imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000 or both)

**(Policy Proposal 2) introduce an infringement offence for failing to provide employment-related documents** – this relates to s.277 of the Act (it is currently an offence, but has no meaningful penalty: there is a more serious, so chargeable, equivalent offence of obstruction at s.244 of the Act). There is an equivalent offence in s.229 of the Employment Relations Act, which is defined as an infringement offence (and therefore subject to an infringement fee) in s.235A of that Act.

20. The proposals aim to address enforcement gaps and improve compliance through enhancing the existing graduated compliance framework with proportionate and efficient tools. In addition to any infringement sanction, as noted above, employers who have been issued with an immigration infringement notice will be placed on a public stand-down list and prevented from supporting visa applications under the AEWV for a set period. These are also important deterrents (although less so for employers who only employ migrants with open work rights).

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<sup>15</sup> As noted on page 1, the exact wording is under discussion with PCO. To remove any mens rea element, the infringement may relate to “incorrect and / or incomplete” information.

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### Affected stakeholders and their views

21. We identified the following affected groups, and the nature of their interest:

a. Regulated groups:

- Employers of migrant workers (businesses)
- Migrant workers (particularly those impacted by migrant exploitation and unlawful employment practices).

b. Regulators:

- MBIE, including Immigration Compliance and Investigations (ICI), and the Labour Inspectorate, who collaborate with ICI on migrant exploitation cases.
- Ministry of Justice (MoJ), which has a regulatory oversight function and advises on infringement regimes/penalties.

22. Migrant exploitation and unlawful employment practices in relation to migrants continue to be a high-profile issue, and advocates continue to be vocal in calling for stronger penalties for non-compliant employers. Law-abiding employers have also frequently expressed frustration to officials that more is not being done to act against non-compliant employers, and to even the playing field. When MBIE consulted on migrant exploitation policies in 2020, the 167 submissions received (including about 60 per cent from migrants or migrant advocates, and about 30 per cent from employers or industry organisations) indicated a high-level of support for action against exploitation.<sup>16</sup>

23. Stakeholders' feedback (and MBIE's response) is set out from paragraph 29 below.

### What objectives are sought in relation to the policy problem?

24. The objectives are to enable the constrained ICI resources to be deployed to make it more likely that exploitative or unlawful behaviour will be meaningfully sanctioned, and, in the longer term, deter employers from seeking to gain financially through non-compliance with New Zealand's employment legislation; and to discourage employers from providing false or misleading information, or not providing relevant information, when making applications for accreditation or work visas.

25. These need to be balanced against ensuring that penalties are fair and reasonable, including that they are proportionate to the seriousness of the offending, and that employers have sufficient opportunity to mount a defence.

### What consultation has been undertaken?

26. As noted above, the policy development process took into account previous research and surveys, including the Temporary Migrant Worker Exploitation Review in 2020 and the 2025 Employment Monitor, as well as the experience of immigration staff (ICI and R&V) since the current infringement regime came into effect.

27. Key stakeholders (agreed to by the Minister of Immigration) have been consulted on this proposal, through consultation on the proposed Bill, both during the policy development phase and on an exposure draft of the Bill. These included:

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<sup>16</sup> See Appendix Two of Cabinet paper: [Temporary migrant worker exploitation review – final proposals](#).

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- government agencies (including MBIE’s ICI, R&V, and Legal teams, and the MOJ’s Courts Systems and Offences and Penalties teams)
- independent bodies (the Immigration and Protection Tribunal (IPT), the Office of the Ombudsman, the Chief Victims Advisor, and the Legislative Design Advisory Committee (LDAC))
- representatives of impacted parties (the New Zealand Law Society’s Immigration and Refugee Committee and, separately, the INZ Focus Group, which includes employers, migrant groups, licenced immigration advisers and immigration lawyers, and Business NZ and the Employer and Manufacturers Association).

28. No-one objected to the introduction of a penalty for the non-production of documents.
29. Where explicit feedback was provided (i.e. concerning sanctions for false or misleading information), it was generally in favour (at least in principle), with LDAC initially being the only exception.
30. The New Zealand Law Association, and the Chief Victims Advisor supported both proposals. Business NZ specifically advocated for employers being required to produce documents within a specific timeframe. Ministry of Justice initially supported both proposals, but provided further feedback at the drafting stage, regarding whether the term “false or misleading” implied mens rea and was therefore inappropriate for a strict liability offence. (MBIE agreed, and this was taken into account as drafting progressed.)
31. The New Zealand Law Society supported the new infringements proposal in principle, noting the need for proportionality and robust procedural safeguards with regard to establishing a fine for the provision of false or misleading information.
32. Similarly, comment from an Immigration Focus Group representative noted it was hard to give unequivocal support for that proposal in the absence of operationalisation details, particularly around thresholds for triggering fines.
33. LDAC raised concerns around the false or misleading information proposal in four areas: that dishonesty is too serious for an infringement offence; that revoking employer accreditation (permission to employ foreign workers under the AEWV category) may be a more appropriate response; that determining falsity is subjective, and therefore unsuitable for an infringement offence; and that the provision of false or misleading information must always have a mens rea (intent) element. Officials consider that there are appropriate responses to all of these concerns (see further detail in Table Two below).

**Table Two: LDAC feedback and MBIE responses**

| <b>LDAC feedback</b>  | <b>Response</b>  |
|---|--|
| The offending is too serious to be dealt with by an infringement offence (particularly because it involves dishonesty), and there’s no precedent in any other infringement offence regime for including false and misleading information. (It follows that MBIE should take criminal prosecutions instead.) | Providing false or misleading information is relatively less serious than the existing infringement offences at s.359A(1)(a) and (b), which also contain an element of dishonesty, e.g. hiring someone without a work visa, or underpaying people is considerably more serious than providing INZ the wrong information about your business’s profit/loss over the last 12 months. |

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| <b>LDAC feedback</b>  | <b>Response</b>   |
|---|---|
|   | <p>Providing false or misleading information is instead equivalent in seriousness to the s.359A(1)(c) offence, which is about failing to provide employment records when requested. If an employer has committed an offence, and wishes to conceal it, they can either do this by simply refusing to provide the documentation, or by providing falsified documentation. On this basis, providing false or misleading information is the flipside of withholding the information, and the two offences should be treated the same, as withholding information often involves dishonesty.</p> <p>Taking criminal prosecutions for these cases is unrealistic – the volume would be unmanageable (100+ cases per annum), and providing false or misleading information, or not providing relevant information, on an accreditation application would not be considered serious enough to meet the public interest test for a prosecution.</p> |
| <p>MBIE should consider whether revoking accreditation is a more appropriate tool than an infringement notice, if prosecution is not an option.</p> | <p>MBIE already does this. There are however drawbacks:</p> <ol style="list-style-type: none"> <li>1. Not all employers are accredited. If they do not have accreditation, or any plan to get accreditation (e.g. only hiring migrants who hold open work visas), they have no consequences at all</li> <li>2. Just revoking accreditation is a less severe penalty. If an employer is issued with an infringement notice, their accreditation (if they have it) is revoked AND they are fined, have their offending published, and are stood down for a period of at least six months.</li> <li>3. MBIE continues to see high rates of false and misleading information being provided even though accreditation is being revoked, which suggests it is not sufficiently effective as a tool on its own.</li> </ol>  |
| <p>Whether or not information is false or misleading is too subjective for an infringement offence.</p>   | <p>It may not be more subjective than the existing s.359A(1)(a) and (b) offences. e.g. whether or not someone is working in a role outside of their visa conditions can be somewhat subjective. In addition, for the most part, MBIE will be able to clearly and factually demonstrate that the information is false, e.g. employer declares they advertised a role with MSD, and then MSD</p>  |

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| <b>LDAC feedback</b>   | <b>Response</b>   |
|--|---|
|  | <p>confirms that the employer did not even contact them.</p> <p>The wording of the offence is however likely to be adjusted to remove implications of mens rea or subjectivity (to something like “incorrect and / or incomplete”).</p>   |
| <p>The only difference between the infringement offence and the criminal offence at s.342 would be that the criminal offence would require us to prove that the employer knew that the information was false or misleading (i.e. mens rea). LDAC considers that mens rea is not sufficient differentiation between criminal and infringement offences. LDAC also states that there is an argument that information being false or misleading always requires some element of mens rea.</p> | <p>MBIE notes that this is technically no different from the existing s.359A(1)(a) offence, which is a direct copy of the s.350 offence, but minus the mens rea element.</p> <p>As noted above, the wording of the offence is planned to be amended from “false or misleading” to something like “incorrect and / or incomplete”, which will avoid any implicit mens rea element.</p> |

34. While MBIE did not undertake wider or public consultation during the development of the policy and the exposure Bill, MBIE received a broad range of perspectives through the targeted consultation process, which have been factored into the analysis. The Select Committee stage will also provide an opportunity for members of the public to provide submissions on the Bill, including these proposals.

## Section 2: Assessing options to address the policy problem

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### Policy problem:

**The available sanctions relating to false or misleading information are not deterring some employers from attempting to mislead immigration officials; and the lack of sanctions for not producing employment-related information means some uncooperative employers can slow down or prevent investigations concerning their compliance with immigration law**

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

35. The options will be assessed using the following criteria, which align with the objectives (*deploy proportionate tools to discourage employers from providing false or misleading information, or not providing relevant information, when making applications for accreditation or work visas, and enable constrained immigration investigation and compliance resources to be deployed to make it more likely that exploitative behaviour will be meaningfully sanctioned*):

- a. **Effectiveness at deterring offending** (likelihood that non-compliance attracts a proportionate sanction and stand-down, thereby improving compliance) - i.e. how likely it is that an employer will be punished for their offending and therefore how motivated they will be to comply
- b. **Fairness and reasonableness of penalties** (strict-liability setting with review / appeal pathways and issuance within time limit) - i.e. whether employers will have an appropriate opportunity to mount a defence and be protected from historic claims
- c. **Administrative cost** to the regulator (funded by immigration system users). This analysis is focused on measuring:
  - the (new) cost to MBIE of issuing infringement notices (noting that this will be subject to broader infringements resource prioritisation)
  - the cost to employers of challenging an infringement notice that they believe has been incorrectly issued (this can be done by applying for an internal review to MBIE, or challenging the notice in the District Court)
  - the cost to MBIE and the courts of responding to those challenges. These are existing costs, and the cost per challenge will not change. The analysis is focused on changes to the aggregate cost as a result of more infringement notices being issued

With regard to the new s.359A infringement offence (related to s.342 offending referring to the provision of “false or misleading” (or “incorrect and / or incomplete”) information), we have not included any other existing administrative costs of the employer infringement notice scheme in the analysis, as it is not materially impacted by any of the options. This includes:

- The cost of investigating the offences that lead to the infringements, as none of the proposed options will change the number of investigations MBIE undertakes – only the likely compliance / enforcement outcomes of those investigations

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- The cost of completing the paperwork to issue the infringement notice. We do not believe this cost is material, as all the information required for the paperwork is already being written up, for Potentially Prejudicial Information (PPI) letters with regard to applications, or in file notes with regard to compliance investigations, and can be copied over.

It is however likely that more administrative resource will be required with regard to s.277 offending (failure to produce documents when requested). That is because the related power is seldom invoked at present, as there is no penalty for non-compliance. There may therefore be some additional administrative costs. These would relate to:

- investigating the offence(s) that lead to the infringements, noting that this is very likely to be part of a wider investigation, or post-decision monitoring and review activity, so a marginal cost
- the cost of completing the paperwork to issue the infringement notice (which is new, as few cases are currently captured in file notes). Again however this cost is likely to be marginal, as it will be undertaken within the scope of wider compliance investigations, or post-decision monitoring and review activities.

### **What scope will options be considered within?**

36. We have only considered options that can be delivered within existing resourcing and prioritisations, as these proposals are independent of any future decisions around investigations and compliance (or monitoring and review) resourcing. We have also not considered options that would involve changing policy settings, such as temporary work visa settings (reducing the number of people able to enter New Zealand who might then be exploited, or enabling AEWV workers to change employers more easily) as they would be likely to impact on the achievement of other objectives of work policy.

### **What options are being considered?**

#### **Section 342 (provision of false or misleading information)**

##### **Option one – Status quo**

37. No change. This means that the offence of providing false or misleading information remains chargeable in court. Providing false or misleading, or sufficiently incomplete or incorrect, information to support an application may mean an employer who is seeking accreditation or to support a work visa does not succeed. MBIE may also formally advise the employer that this may be taken into account in future decisions (see paragraph 43 below). The employer will not however suffer any other consequences, and in particular, will not be subject to a stand-down.

##### **Option two – Introduce a (discretionary) infringement penalty for the offence of providing false or misleading information, maintaining the court option where the offence is serious (recommended option)**

38. This option would add a new infringement penalty to the current infringement regime, complementing the existing:

- a. employer infringement offences at s.359A (which comprise allowing a person to work who is not entitled to, employing a person outside the conditions of their visa, and refusing to produce employment and wage records), and

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- b. penalty for knowingly providing false or misleading information, which is imprisonment for a term not exceeding 7 years, a fine not exceeding \$100,000, or both.

39. We note that this infringement offence would benefit from the extension to discovery timeframes that is proposed elsewhere in the Bill: that is, it could be discovered up to six years after the false or misleading information had been provided (or relevant information concealed).

**Table Three: How the recommended s.342 infringement would work operationally**

|                |  |
|----------------|--|
|                |  |
| Decision-maker | ICI<br>(Noting that infringeable activity may be identified by INZ R&V or visa teams, their reports would be referred to ICI)  |
| Trigger        | Clear factual falsity or documentary inconsistency (e.g., MSD confirms no engagement where that had been declared)   |
| Evidence test  | Reasonable grounds to believe  |
| Safeguards     | Approved internal processes and operational guidance<br>Issuance within statutory time frames (with discovery extensions if enacted)<br>Internal review<br>Right of appeal to District Court |
| Fit            | Complements s.359A and preserves the criminal pathway for serious / knowing cases  |

**Section 277 (failure to provide documents when requested)**

**Option one – Status quo**

40. No change. This means that the offence of failing to provide documents when requested has no practical penalty, although it is theoretically covered (if charged in court) by the generic penalty (a fine of up to \$5,000) at s.355(5), and MBIE can formally advise the employer that they are believed to have committed an offence and it may be taken into account in future decisions (see paragraph 43 below).

**Option two – Introduce a new (discretionary) infringement penalty for the offence of failure to produce documents (recommended option)**

41. As above, this option would add a new infringement penalty to the current infringement regime, complementing the existing employer infringement offences at s.359A (which comprise allowing a person to work who is not entitled to, employing a person outside the conditions of their visa, and refusing to produce employment and wage records). This offence would be subject to standard infringement notice timeframes.

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Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment (following charging in court)

42. This option would treat the offence of failure to produce documents as potentially equivalent to serious offending, such as that relating to providing false or misleading information.

**Table Four: How the recommended s.277 infringement would work operationally**

|                |   |
|----------------|---|
| Decision-maker | ICI   |
| Trigger        | Failure to produce requested employment records within the lawful timeframe   |
| Evidence test  | Reasonable grounds to believe   |
| Safeguards     | Approved internal processes and operational guidance<br>Standard infringement time limits<br>Internal review<br>Right of appeal to District Court |
| Fit            | Complements s.359A, and promotes timely cooperation with investigations   |

**Further (non-regulatory) options were considered but excluded**

43. As noted above, the non-regulatory option of **formally advising employers** (via a letter) that they have committed the relevant offence, and that this may be taken into account in future decisions regarding (for example) applications for employer accreditation or work visas as an option, is part of the existing regulatory graduated response framework. This mechanism is not however generally employed, as it has not been found to produce changes in behaviour.

44. The second non-regulatory option is **increasing upfront / proactive checks on employers** through (in the case of applications) verifying up to 100 per cent of information provided (for example through undertaking third party checks on all statements, and requiring original (paper) documents to be submitted); and (in the case of compliance checking) requiring self-reporting from employers, and undertaking more compliance visits to work sites and employers, to identify offending earlier and thus deter it.

45. However, significantly increasing proactive checks was discounted:

- a. (related to applications) because of the significant resourcing implications associated with moving from the current (mandated by Cabinet) high-trust model, and the subsequent impacts on application timeliness, while (related to compliance checks) the increase would need to be significant and the resourcing implications would be substantive (see further discussion below), and

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- b. because it would not directly address or deter the specific offences (provision of false or misleading information, or failure to produce documents when requested).

46. In the 2024 calendar year, INZ undertook 3,250 proactive checks on accredited employers. There are around 24,000 accredited employers, and many more employers who hire migrants on other visa types that do not require accreditation, or hire migrants unlawfully without accreditation. Regular checks of employers at risk of committing an infringement offence would require tens of thousands of checks per annum. The cost of this would need to be recovered through immigration fees and levy charged to employers and migrants. As noted above, there are no current plans to increase compliance resourcing. Further, this approach would also not be an efficient use of resource, and would place significant additional burden on employers who would have to provide evidence as part of the checks.

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**How do the options compare to the status quo/counterfactual?**

Section 342 (provision of false or misleading information)

|   | <b>Option one – Status quo</b>  | <b>Option two – Introduce a (discretionary) infringement penalty for the offence of providing false or misleading information</b>   |
|---|---|---|
| <b>Effectiveness at deterring offending</b>     | <b>0</b><br>Two individuals were found guilty in 2024/25 for the serious offence of providing false or misleading information. However, as noted in the examples on page 11 above, even clear offending may not meet a materiality threshold for further action. This means that guilty employers will not suffer consequences such as being placed on the stand-down list.           | <b>+</b><br>We estimate around <b>250 more infringement notices</b> could be issued per annum (this is a conservative estimate) than the status quo, with at least 8 possible infringement cases remaining outside the 90-day window  |
| <b>Fairness and reasonableness of penalties</b> | <b>0</b><br>The penalties are currently very light where employers have not offended to a level that warrants a court prosecution.<br>An employer who has made an application which includes false or misleading information may have that application declined.  | <b>++</b><br>Employers always have a fair chance to mount a defence, and are protected from stale claims, as there are time limits on when the notice can be issued.<br><br>The evidential threshold MBIE has to meet before issuing an infringement notice is “reasonable grounds to believe”, which further ensures that employers will not be unreasonably penalised. (There is a meaningful cost to MBIE of successful challenges.) |
| <b>Administrative cost</b>                      | <b>0</b><br>There were <b>24 challenges</b> in the first year of the employer infringement scheme against notices issued for the relevant offences (28 per cent of all notices issued for those offences). Only three of these were appealed to the District Court (13 per cent of the notices challenged), and the remainder were challenged through MBIE’s internal review process. | <b>-</b><br>Based on current rates of challenge, this could result in an <b>additional 60-80 challenges</b> per year compared to the status quo. This is based on the conservative volume estimates above, so total numbers could be higher.<br><br>Based on current rates, we would expect these to almost all be internal reviews, rather than applications to the District Court.  |

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|                           | <b>Option one – Status quo</b>   | <b>Option two – Introduce a (discretionary) infringement penalty for the offence of providing false or misleading information</b>   |
|---------------------------|--|---|
|                           | <p>An internal review takes roughly one hour for MBIE to complete. However, preparing for a District Court hearing is more resource intensive and would take a minimum of 20 hours.</p> <p>Costs and resource to respond to challenges are included in existing baselines and resource prioritisations.</p> <p>In 16 cases (67 per cent of notices challenged), the notice was upheld, and in four cases (17 per cent), it was overturned as a result of the review. The remaining cases are still under review. This suggests the number of incorrectly issued notices is relatively low, and the associated cost for employers to challenge them is low, in the aggregate.</p> | <p>Based on the existing rate of challenge, we estimate reviews would create in the range of <b>60--400 hours more work per annum</b> for MBIE. At the lower level this could be absorbed within existing resourcing, at the higher level it would otherwise result in reprioritisation.</p> <p>The rate of notices issued incorrectly is expected to remain low. At current rates, we would expect maximum one more incorrectly issued notice per year, but we expect this rate to decrease as the infringement scheme continues to embed.</p> <p>If notice volumes or challenge rates exceeded historical norms, MBIE would advise on levy-funded resourcing adjustments.</p> |
| <b>Overall assessment</b> | <b>0</b>   | <b>++</b><br>Overall much better than status quo – the scale of the benefits is greater than the scale of the costs   |

**Key**

- ++** much better than the status quo
- +** better than the status quo
- 0** about the same as the status quo
- worse than the status quo
- much worse than the status quo

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Section 277 (failure to produce documents)

|   | <b>Option one – Status quo</b>   | <b>Option two – Introduce a (discretionary) infringement penalty for the offence of failing to produce documents</b>  | <b>Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment</b>  |
|---|--|---|--|
| <b>Effectiveness at deterring offending</b>     | <b>0</b><br>As there is no practical penalty, there is no deterrence. The major deterrence may be that most employers do not recognise that there is no effective penalty for refusing to comply.  | <b>++</b><br>We estimate at least <b>20 more infringement notices</b> could be issued per annum than the status quo. These would almost certainly mostly be in the context of wider infringements.  | <b>+</b><br>It is possible that this could deter offending as would indicate that the government considered failure to produce documents to be a serious offence.<br>However it is highly unlikely that any actions would meet the threshold for prosecution, and this could become known. |
| <b>Fairness and reasonableness of penalties</b> | <b>0</b><br>There is a generic penalty of a fine of up to \$5,000 (under s.355(5)) but this would be dependent on a conviction, which is disproportionate to this level of offence.<br>There is therefore no practical penalty at present. | <b>++</b><br>Employers always have a fair chance to mount a defence, and are protected from stale claims, as there are time limits on when the notice can be issued.<br>The evidential threshold MBIE has to meet before issuing an infringement notice is “reasonable grounds to believe”, which further ensures that employers will not be unreasonably penalised. (There is a meaningful cost to MBIE of successful challenges.) | <b>-</b><br>This would be an excessive penalty for an offence which at present has no penalty at all. That is however balanced by the fact that it is unlikely to be invoked.  |
| <b>Administrative cost</b>                      | <b>0</b><br>As there are no penalties there is no associated administrative cost.  | <b>-</b><br>Based on current rates of challenge, this could result in an <b>additional 3-4 challenges</b> per year compared to the status   | <b>0</b><br>Preparing for a District Court case is time-consuming and resource intensive.  |

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|  | <p align="center"><b>Option one – Status quo</b></p>  | <p align="center"><b>Option two – Introduce a (discretionary) infringement penalty for the offence of failing to produce documents</b></p>   | <p align="center"><b>Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment</b></p> |
|--|---|--|---|
|  | <p>Costs and resource to respond to challenges are included in existing baselines and resource prioritisations.</p> | <p>quo. This is based on the conservative volume estimates above, so total numbers could be higher.</p> <p>Based on current rates, we would expect these to virtually all be internal reviews, rather than applications to the District Court. (An internal review takes roughly one hour for MBIE to complete. However, preparing for a District Court hearing is more resource intensive and would take a minimum of 20 hours.)</p> <p>Based on the existing rate of challenge, we estimate this would only create in the range of <b>4-30 hours more work per annum</b> for MBIE, which could be absorbed within existing resourcing, or would otherwise result in reprioritisation.</p> <p>The rate of notices being issued incorrectly is expected to remain low. At current rates, we would expect maximum one more incorrectly issued notice per year, but we expect this rate to decrease as the infringement scheme continues to embed.</p> <p>As above, if volumes significantly exceeded historical norms, MBIE would advise on levy-funded resourcing adjustments.</p> | <p>However, as noted above, it is likely that this cost would never be invoked.</p>   |

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|                           | <b>Option one – Status quo</b> | <b>Option two – Introduce a (discretionary) infringement penalty for the offence of failing to produce documents</b> | <b>Option three – Make the failure to produce documents punishable through a specific (higher) fine and / or imprisonment</b> |
|---------------------------|--------------------------------|--|---|
| <b>Overall assessment</b> | <b>0</b>                       | <b>++</b><br><br>Overall, much better than status quo – while the costs are higher, the benefits are much higher.    | <b>0</b>  |

**Key**

- ++** much better than the status quo
- +** better than the status quo
- 0** about the same as the status quo
- worse than the status quo

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

47. In both cases we recommend introducing a new infringement offence, as it is most likely to deliver the highest net benefits. The key benefit of introducing an infringement is that it is a meaningful penalty for employer behaviour that is already identified in the Act as an offence, where the status quo penalties (prosecution in court, or nothing) are not adequate to deter the behaviour.
48. The fact that a non-compliant employer who is infringed will be placed on the stand-down list for a period may in some cases be a greater deterrent than the infringement fees.
49. There are appropriate safeguards to ensure that employers are not treated unfairly, including the fact that MBIE must meet a standard of “reasonable grounds to believe” to issue an infringement notice, and that employers may challenge the notices.
50. We anticipate that the increase in volume of work for MBIE to respond to employers challenging their infringement notice will be minimal and can be absorbed within current resourcing. However, we also note that the increase in the number of infringement notices is uncertain. If the volumes of behaviour that warrants additional infringement notices are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either deprioritise some core investigations and compliance work or constrain the number of notices issued. At some point a decision could be made to approve additional resource (which would be funded through the immigration levy).

### **Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?**

51. Yes. The Minister noted in the Cabinet paper under ECO-25-SUB-0093 (*Immigration (Enhanced Risk Management) Amendment Bill - Further Decisions*) that she had directed officials to expand the employer infringement notice regime to include these two new offences, and intended to introduce them via regulations following the passage of the Bill. It has since been clarified that this is not feasible, and they must be created within the Act itself.

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**What are the marginal costs and benefits of the preferred options in the Cabinet paper?**

Note – considered together as the outcomes are essentially the same and there is uncertainty about the numbers deriving from each change.

| Affected groups   | Comment   | Impact   | Evidence Certainty  |
|---|---|--|---|
| Additional costs of the preferred option compared to taking no action |   |  |   |
| Regulated groups  | Employers who are issued an infringement notice where there has previously been no penalty will be liable for the cost of the infringement fee/s. | Low  | Medium<br>Infringement fees are deliberately set relatively low, as they relate to strict liability offences.   |
| Regulators  | MBIE is required to respond to more challenges against infringement notices.  | Low<br>Projected <b>64-430</b> additional hours of work per annum (expected to be at the lower end) and which could be absorbed within existing resourcing.<br>Otherwise reprioritisation may be required. | Medium<br>There is uncertainty about projected challenge volumes, which could be towards the higher end of the projections. The projections are based on existing rates of challenge. While rates could increase if notices are issued longer after the offending (as per the other proposal in the Bill of extending discovery times), the guidance developed will specifically address this risk. |
| Total monetised costs   |   | Low  | Medium  |
| Non-monetised costs   |   | Low  | Medium  |

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| Affected groups  | Comment  | Impact | Evidence Certainty  |
|--|--|--------|---|
| Additional benefits of the preferred option compared to taking no action |  |        |   |
| Regulated groups   | Migrant workers <sup>17</sup> benefit from a reduction in exploitative practices by their employers<br>Compliant employers benefit from fewer competitors using exploitative practices to undercut them.   | Medium | Low<br>It is difficult to establish a causal link between a particular policy intervention and exploitation indicators, because they can be impacted by a wide range of factors (e.g. economic conditions and other policy interventions).<br>We do not have any way to measure employer disadvantage from immigration non-compliance by their competitors. |
| Regulators   | Changes should drive increased voluntary compliance rates overtime, decreasing need for investigations and compliance activity, and potentially reducing the need for support for exploited migrants (e.g. Migrant Exploitation Protection Visas, which are Crown-funded). | Medium | Low<br>As above, it is difficult to prove a causal link between a particular intervention and exploitation indicators.  |
| Others (eg, wider govt, consumers, etc.)                                 | New Zealand economy benefits (marginally) from being able to continue to promote itself to potential migrant workers as a place where their rights will be upheld, and to potential investors as a first world country that respects and enforces norms.                   | Medium | Low<br>It is difficult to prove a causal link between penalty settings and New Zealand's attractiveness to migrant workers, as other factors have a greater influence.  |
| <b>Total monetised benefits</b>  |  | None   | Low   |
| <b>Non-monetised benefits</b>  |  | Medium | Low   |

<sup>17</sup> Regulated under the Immigration Act 2009

## Section 3: Delivering an option

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### How will the proposal be implemented?

52. The changes will be implemented through the *Immigration (Enhanced Risk Management) Amendment Bill*, which is scheduled for introduction in early 2026, and changes are expected to come into effect later in 2026.
53. The operationalisation of the changes will require minimal operational changes for MBIE, which is developing an implementation plan for all proposals in the Bill. ICI already infringes employers so has well-established procedures in place.
54. However, while ICI are trained in identifying and processing infringements, R&V and Visa Operations officers will also be able to identify and refer to ICI behaviours that trigger the new offence relating to false or misleading / incorrect or incomplete information. Training will be developed for those staff based on updated operational guidance that will set out threshold examples and evidence tests, and the processes for referral.
55. The operational guidance will also update template wording for decision letters, and triage and quality-assurance steps prior to issue, and will include a short checklist to reduce or eliminate the likelihood of notices being issued incorrectly.
56. MBIE will also update Immigration Instructions and the monitoring and reporting requirements (see below), and develop an external communications plan to ensure migrant communities, advocates, employers and industry representatives, and Licensed Immigration Advisers understand the changes and what they mean for them.
57. Appropriate communications about the changes in themselves are expected to help deliver some of the intended benefits, with regard to improved employer compliance, and potentially to enhancements to New Zealand's reputation.
58. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process, to ensure readiness when the Bill is enacted.

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

59. MBIE's ICI will continue quarterly reporting to the Minister on infringement volumes, challenges, outcomes, and stand-down effects, and will publish an annual external summary to improve transparency and deterrence.
60. MBIE also monitors and reports on migrant exploitation indicators. We will continue to monitor these, noting that it will be difficult to determine to what extent any changes in the exploitation indicators could be attributed to the proposed changes. This is because a wide range of factors could influence these indicators (e.g. economic conditions, operational prioritisation changes, and other policy settings). We therefore do not propose a formal review/evaluation of the changes.
61. MBIE's costs in responding to challenges against infringement notices are third-party funded through the immigration levy. The regular immigration fee and levy review will provide an opportunity to review whether resourcing is sufficient for MBIE to respond to challenges against infringement notices without negatively impacting other priorities.

(This cost in itself is a constraint against MBIE issuing frivolous infringement notices for e.g. minor spelling errors; noting that the Act at s.364B allows for a doubling of the infringement fee if a court finds that the original infringement was justified.)

62. The first opportunity for review after the changes are implemented will likely be in 2027.
63. If the volume of challenges is significantly higher than anticipated and becomes unmanageable within existing resourcing in the interim, further advice will be given on options to address this. These would likely include an out-of-cycle appropriation increase to allow for more staff, reprioritising existing investigations and compliance work, or limiting the number of notices that are issued, even when offending has been identified. Even if the number of notices being issued had to be limited to manage these impacts, this would still be significantly higher than the number of notices being issued currently. The change would therefore still represent a significant benefit over the status quo and does not undermine the case for the proposed option.
64. We have not identified any wider implementation risks that need to be monitored. While existing resourcing levels and triaging processes mean that not all potential offences can be investigated to the point where an infringement notice can be pursued, options to address this are being considered separately, and the situation will not be exacerbated in any way by the changes in this RIS. However, we note that any future increase in resourcing will be able to be used more effectively if these changes are progressed.