

Regulatory Impact Statement: Proposal to expand the immigration levy-payer-base

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing Cabinet policy decisions
Proposal	Amend the Immigration Act 2009 to expand the range of people or entities that can be charged the immigration levy
Advising agencies:	The Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers:	Minister of Immigration
Date finalised:	2 September 2024
Problem Definition	
<p>Currently there are people and groups who do not contribute to the broader costs of the immigration system (because they do not pay an immigration levy; only visa applicants can be charged a levy under the Immigration Act 2009 (the Act)), but who do receive its benefits or create risks that require mitigation. There is an opportunity to ensure that immigration levy charging settings more fully reflect the system’s user base (that is, recipients of levy-funded activities such as migrant attraction initiatives and MBIE’s border, risk, identity verification, and compliance functions) by expanding the classes of person who can be charged the immigration levy under the Act.</p>	
Executive Summary	
<p><i>There are currently people and groups who benefit from, but do not contribute to the broader costs of the immigration system</i></p> <p>Currently, under the Act, only visa applicants can be charged a levy (section 399). However, there are other user groups (such as employers, education providers who enrol international students, and New Zealand Electronic Travel Authority (NZeTA) requestors), who do receive a benefit from the existence of a functioning immigration system (i.e. access to migrant labour or international students) or contribute to risks that need to be managed (i.e. migrant exploitation and other forms of immigration non-compliance).</p> <p><i>There is an opportunity to ensure that the levy-payer-base more fully reflects the users of the immigration system</i></p> <p>This could be achieved by expanding the immigration levy’s payer-base to people and groups other than visa applicants. For example, there are approximately 35,838 accredited employers¹, 113 education providers that enrol international students², and 1.5 million visa-waiver nationals who may pay fees for immigration services (under section 393) but no levy.</p>	

¹ Between May 2022–28 July 2024 a total of 35,838 employers have been granted accreditation.

² As at 2019. These providers were identified as entities that paid the Export Education Levy. Note that each provider will enrol a different number of students (there will be for example a difference between a school with a few students, and a university).

The proposal is that the classes of person who can be charged the immigration levy be broadened to groups that do not currently contribute to meeting the broader costs of immigration, but who do receive a benefit (or create risks to be managed)

This would more accurately reflect the immigration system user base and be consistent with the principle that those who benefit from the service, or create the risk or need for the service, should bear the cost.

The proposal also has the potential to reduce costs to existing payers because levy costs would be spread across a wider cohort.

Four options have been considered, within the parameters set out in the purpose section of the Act, the cost-recovery principles, and the objective of a 'user-pays' system:

- a. **Option 1:** Status quo – Visa applicants only continue to pay the immigration levy as per section 399 (not recommended).
- b. **Option 2:** Amend the Act to specify groups that are required to pay an immigration levy. This would involve explicitly specifying groups (e.g. "employers", "persons requesting NZeTA") who would be subject to the levy in the Act.
- c. **Option 3:** Amend the Act so that it empowers regulations to provide for imposition and collection of an immigration levy from 'anyone'. This means anyone who interacts with the immigration system would be potentially subject to be charged the immigration levy. This would be akin to a tax.
- d. **Option 4:** Amend the Act to have a broad empowering provision for levy liability and require criteria (included in the primary legislation) to be satisfied when determining who should be subject to an immigration levy (in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (the Visa Regulations)) **(preferred)**.

The options have been compared against the criteria of:

- People and groups can be efficiently identified.
- Members of the identified groups can be charged efficiently.
- Unintended consequences can be minimised.

Option 4 is preferred because it would:

- Better ensure that users who create the risks or receive the benefits of migration/ New Zealand's immigration system meet the costs of these activities.
- Ensure that the expansion of the levy to new payers is cost effective and efficient to implement.
- Ensure imposing a levy charge to new groups is reasonable with appropriate checks and balances.

A key risk with the proposal is that new levy-payers **Confidential advice to Government** may pass levy costs on to existing levy-payers (migrants). We expect that this risk will be mitigated through the future detailed design and subsequent consultation of the levy charges, including identifying individuals or groups who will be liable to pay the levy, and at what rate (ensuring transparency of costs that underpin the charges). We will also test this risk (and how it could be minimised) with key stakeholders (particularly those who are **Confidential advice to Government**) during targeted consultation on the exposure draft of the Bill later in 2024.

Limitations and Constraints on Analysis

The Minister of Immigration's expectation is that the Bill and subsequent amendments to the Visa Regulations will be in place before the end of 2025. These timeframes mean that external stakeholder consultation before Cabinet decisions are made has been limited to informing key stakeholders through one-on-one meetings and receiving their initial feedback on the proposals. We have not undertaken significant engagement (such as through discussion documents seeking detailed comments). Engagement on an Exposure Draft of the Bill will occur later in 2024 ahead of Cabinet Legislative Committee decisions.

We informed the following stakeholders of the proposals between 29 July and 9 August 2024:

- i. BusinessNZ
- ii. the Employers and Manufacturers Association
- iii. the New Zealand Council of Trade Unions
- iv. the New Zealand Law Society
- v. Immigration New Zealand's (INZ) Immigration Focus Group.

The risks of not undertaking a more fulsome consultation ahead of Cabinet decisions are mitigated, however, by the fact that the proposal is enabling only. The design of who will be charged, and by how much, will be determined as part of an upcoming fee and levy review. This does limit MBIE's ability to fully analyse the costs and benefits, as the actual financial decisions are yet to be made. Another factor mitigating the risk of limited pre-Cabinet consultation is that the proposals have taken into account feedback provided in the 2024 Immigration Fee and Levy Review, which indicated some support for broadening the levy-payer-base to include employers.

Responsible Manager(s) (completed by relevant manager)

Stacey O'Dowd

Manager, Immigration (Border and Funding) Policy, Labour, Science and Enterprise, MBIE



2 September 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	<p>An independent panel has assessed this RIS and determined that it meets the quality expectations for regulatory impact analysis.</p> <p>The proposal is to establish a regulatory power to levy a wider group of participants in the immigration system. It will be important that the development of those regulations makes a clear case for levying each additional specified group, and assesses the financial impacts for existing and new levy-payers. It would also be useful to that future analysis to assess the net revenue impacts for the Crown.</p>

Section 1: Diagnosing the policy problem

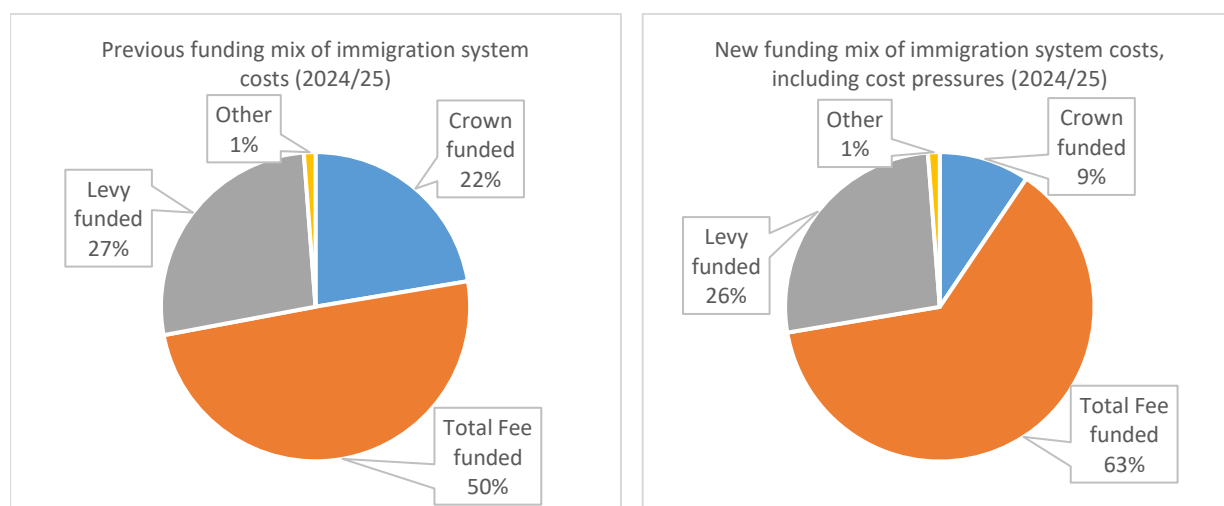
What is the context behind the policy problem and how is the status quo expected to develop?

How New Zealand's immigration system is funded

1. The immigration system is comprised of:
 - core immigration services, including:
 - i. visa assessment and processing services
 - ii. settlement services for migrants and refugees
 - iii. services to attract and inform migrants
 - iv. maintaining the integrity and security of the immigration system.
 - wider immigration services, including:
 - i. policy advice and research
 - ii. regulation of immigration advisers
 - iii. additional services to attract and support investor migrants (provided by New Zealand Trade and Enterprise (NZTE)).
2. These services are paid for, in large part, by fees and levies recovered from visa applicants. These charges recognise the benefits they receive, in the first instance from decisions that enable them to travel to and be here (mostly visa processing) but also from compliance, border functions, and settlement support.
3. Historically, third-party revenue has funded more than two-thirds of these costs, with fees contributing the largest share.
4. The recently completed Immigration Fee and Levy Review³ has significantly reduced the amount of Crown funding for the immigration system. The Crown now funds nine per cent, with levies (paid only by applicants for visas) funding 26 per cent and fees 63 per cent, as set out in Figure 1 below. The combination ensures users of the immigration system more fully meet the cost of the services they receive, while ensuring Crown funding remains for services that have a public benefit – such as ministerial and refugee services.

³ Hon Erica Stanford, 9 August 2024. Press release: *Creating a sustainable immigration system*. www.beehive.govt.nz/release/creating-sustainable-immigration-system.

Figure 1: Recent changes in funding composition for the immigration system



Legislative settings

5. The Act establishes at section [400\(f\)](#) that regulations may be made for the purpose of “prescribing fees and charges in respect of any matters under this Act, and providing for exemptions from or refunds of any fees and charges”. Fees and charges have been prescribed, and exemptions provided for, in the Visa Regulations. In particular, the amounts payable for particular matters are set in Schedules 4 and 6 of the Visa Regulations.
6. Sections [393](#) and [394](#) of the Act outline who may be made liable to pay immigration fees and what fees can be charged for.⁴ In line with Treasury’s Guidelines⁵ and the Public Finance Act 1989, fees can only recover costs that are attributable to the payers, and should recover, but not over-recover, the cost of the service provided.
7. Levies generally may be set in relation to recovering the costs of a given government activity or service from specific individuals or groups that benefit from it, where it is possible both to identify those individuals or groups, and to efficiently charge them. Section [399](#) of the Act establishes:
 - a. that the immigration levy can be charged, but only to applicants for visas (which means at present it cannot be charged, for example, Confidential advice to Government and
 - b. the wider immigration system purposes that the immigration levy can be spent on (which include, among other things, settlement services, research, marketing, identity management, compliance activities, and the activities of the Immigration Advisers Authority).

⁴ Note: this does not limit the broad power of s 400, however anything outside of these parameters could (by implication) be more questionable and subject to change.

⁵ The Treasury (New Zealand). (2017). *Guidelines for Setting Charges in the Public Sector: April 2017*. www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector.

8. For completeness, section [399A](#) establishes the international visitor conservation and tourism levy (the IVL), which is charged to certain applicants for temporary visas and people requesting an NZeTA, to provide funding for conservation and tourism infrastructure and initiatives. It is not the subject of further discussion in this RIS.

How fees and levies are set

9. Immigration fee and levy rates are set to more fully recover costs, consistent with the best practice cost-recovery principles outlined in guidelines for the setting of fees and charges in the public sector provided by the Treasury.⁶ **Annex One** sets out the cost-recovery principles and shows how they apply to immigration charges.
10. MBIE monitors the balance of fee and levy revenue and offsetting expenditure in memorandum accounts for the immigration system.⁷ These are a cost-recovery tool to support managing surpluses and deficits in revenue over time, so that over the medium-term fees and levies are neither over-recovering or under-recovering costs. Regular fee and levy reviews ensure that fee or levy rates can be adjusted up or down as required to trend revenue balances back to zero. The most recent review was completed in mid-2024 with adjusted rates scheduled to take effect from October 2024.
11. The 2024 Immigration Fee and Levy Review resulted in significant changes to how the immigration system is funded (within current legislative parameters), based on the principle that those that receive the benefit or create the risk should bear the cost. These changes are expected to reduce Crown funding (largely limited to refugee-related activities), and mean users of the immigration system are more fully meeting its costs, through increased fee and levy rates. From 1 October 2024, the direct and indirect costs of the system will be met primarily by applicants for visas, consistent with the Act.

Status quo

12. The costs of the immigration system are now met primarily by visa applicants who pay both a fee and levy. There are, however, other users of the system who are not able to be charged a levy under current legislative settings, which is inconsistent with cost-recovery principles (equity, justifiability) as these parties also benefit from immigration activities and/or create risk for the system. This provides the justification for legislative change.
13. Keeping the status quo also creates a fiscal risk for the Crown as while overheads and system costs are relatively fixed, visa volumes are volatile and dependent on many external factors. This has been partially addressed by the most recent fee and levy review. Changing the policy to include a wider and 'more permanent payer-base' could help to manage this, although the impacts would likely be relatively marginal (ie factors that impact on numbers of applications for visas are likely to impact across the wider system of users as well)..

⁶ Ibid.

⁷ The levy memorandum account is more technically referred to as a hypothecation account, since the revenue is not held separately by MBIE. Instead, it is held by the government centrally alongside taxation revenues, but tracked by MBIE to be hypothecated for spending under the scope authorised by the Act.

What is the policy problem or opportunity?

14. The Government has committed to getting the government's books back in order and restoring discipline to public spending⁸, including by keeping tight control of government spending.
15. The Minister of Immigration's major financial objective is an immigration funding model that is efficient, self-funding and sustainable, and that is supported through more fully recovering the costs of services received from third-party users of the immigration system, based on the principle that those that receive the benefit or create the risk should bear the cost.

Currently only visa applicants are liable to pay the immigration levy

16. The Act limits the charging of an immigration levy to visa applicants only. This means, for example, that visa-waiver visitors who hold NZeTAs (which are not visas) or employers of migrants cannot be charged a levy.
17. The immigration levy can fund a wide range of 'internal' immigration system costs, including those relating to research, the attraction of migrants, and the infrastructure required for the immigration systems (this includes ICT, border functions, and compliance). It can also fund "the provision of programmes intended to assist the successful settlement of migrants or categories of migrants"⁹ (settlement-related costs), which may be delivered by entities other than MBIE (as may research and attraction).

There are several other groups and individuals who currently benefit from the immigration system but do not pay an immigration levy

18. There are a broad number of groups and individuals who benefit from the immigration system but do not pay an immigration levy (e.g. employers, education providers, and NZeTA holders). **Annex Two** provides a breakdown of these parties, by:
 - a. Groups who benefit from migration and are liable for immigration fees but not levies (e.g. accredited employers).
 - b. Groups who benefit from migration and interact with the immigration system, but who are not charged fees or levies (e.g. immigration lawyers).
 - c. Groups who benefit from migration and interact with the system, but are not charged fees or levies (e.g. international education providers).
 - d. Groups who benefit from migration but do not face any government charges (e.g. employers of migrants with open work rights).
19. The nature of the benefits received and/or risks created varies. For example:
 - a. **Employers** derive significant financial benefits from access to migrant labour through the immigration system. They also benefit from migrant attraction activities, settlement supports for migrants, and the operational infrastructure of the system relating to risk and verification. However, poor employers also create risks for the system that create the need for MBIE's compliance

⁸ The Treasury (2024) Budget Policy Statement 2024 www.treasury.govt.nz/publications/budget-policy-statement/budget-policy-statement-2024.

⁹ Immigration Act 2009, Section 399.

activities, including migrant exploitation responses and the compliance work undertaken by the Labour Inspectorate.

- b. **Education providers that enrol international students** also derive significant financial benefits from access to foreign students and benefit from the ICT, border, and settlement activities funded from the levy.
 - c. **Visa waiver travellers who must hold a valid NZeTA** benefit from a well-functioning immigration system and introduce (moderate) risks that create a need for some identity verification and the management of the risk to the integrity of the immigration system/safety and security of New Zealand.
 - d. **Ports** (maritime and air) derive large financial benefits from direct access to foreign passengers. As the gateway to New Zealand, ports introduce risk and generate a need for the use of levy-funded risk, verification, and compliance activities.
20. There is an opportunity to ensure that immigration levy settings more fully reflect the user base that benefits from and creates risks for the immigration system, by bringing new groups into the levy-payer-base. This proposal will ensure levy settings better align with cost-recovery principles of equity and fairness. It also has the potential to reduce costs to existing payers by sharing existing levy costs across a wider cohort.
21. **Annex Three** provides a more detailed assessment of key people and groups who could be subject to an immigration levy on the basis that they receive benefits from the activities and services the immigration levy has been legislated to fund. It informs both the policy problem and opportunity by showing there is a case for change. It has been used to inform the development of options that feature later in this advice.
22. A separate proposal is being developed to extend the scope of activities that levy revenue could be collected for and spent on. Implementation of this proposal will be separate to the expansion of the levy-payer-base and will happen at a later date.

It is important to note that there are a range of other ways that migrants contribute to revenue collected by the Crown – outside the immigration system

23. Migrants are subject to other costs, as a means of ensuring cost-recovery for the Crown for other broader services. Broadening the levy-payer-base is specific to immigration system costs.
24. Border related fees and levies include but are not limited to; Customs and Border Processing Levy, Ministry for Primary Industries Biosecurity Services Levy, Civil Aviation Authority International Passenger Security and Levy, Civil Aviation Authority International Passenger Safety Levy, the IVL and the Export Education Levy.
25. Migrants also contribute to a wider range of taxes such as the Goods and Services Tax, Excise Tax and PAYE (if the migrant is working).

What objectives are sought in relation to the policy problem?

26. The primary objective is for the immigration levy-payer-base to more fully reflect the immigration system user base that benefits from and/or creates the need for levy-funded activities.

Policy rationale: Why a user charge? And what type is most appropriate?

Immigration's cost-recovery model

27. The immigration system operates a cost-recovery model for fee-funded and levy-funded activities. This model is informed by the cost-recovery principles as outlined in **Annex One**, and the principle that those that receive the benefit or create the risk should bear the cost. The Act and Schedule 6 of the Visa Regulations provide the legal parameters for a user-charge model.
28. Overall, the immigration system is funded by a combination of Crown (9 per cent), levy (26 per cent), fees (63 per cent) and other revenue (1 per cent) and is consistent with cost-recovery principles. This reflects adjustments made in the 2024 Immigration Fee and Levy Review to increase the share of costs covered by third parties (through immigration fees and levies), especially levy-payers.
29. Expanding the existing immigration levy charge to beneficiaries of the immigration system beyond visa applicants is the appropriate method to address the identified policy problem.
30. Using a fee has been discounted, as a fee must be directly linked to matters or services provided to the payer under the Act. As outlined in s 399(2) of the Act, a levy can already be collected for a broader range of activities, as long as they relate to the broader immigration system or to activities to support the settlement of migrants. It is proposed to establish expanded levy purposes, which will however also clearly link any expenditure to the chargeable groups. Ensuring that the charges are reasonable and justifiable can be achieved by demonstrating the benefits that groups of users receive from levy-funded activities.
31. Final, detailed decisions on who will be liable to the new levy, and at what rate, will be implemented through regulation changes in 2025. A Stage 2 Cost-Recovery Impact Assessment (CRIS) will be completed at that point.

Precedent for charging/international comparisons immigration system costs beyond migrants

32. The United Kingdom (Immigration Skills Charge) and Australia (Skilling Australians Fund) both provide a blueprint for similar jurisdictions that levy employers of migrants.
 - a. The United Kingdom's Immigration Skills Charge is attached to an employer when they assign a certificate of sponsorship for someone applying for a Skilled Worker Visa or a Senior or Specialist Worker Visa (some occupations are exempt, presumably due to a skills shortage in the country). The price is set based on the size of the organisation. Small or charitable sponsors pay 364 pounds for the first 12 months, and 182 pounds for each additional month. Medium or large sponsors pay 1000 pounds and 500 pounds respectively. The longest a person can be sponsored for is five years, meaning that the charge per migrant worker is capped.¹⁰

¹⁰ United Kingdom Visa Sponsorship for Employers, United Kingdom Government www.gov.uk/uk-visa-sponsorship-employers/immigration-skills-charge.

- b. The Skilling Australians Fund (SAF) works in a similar way. Employers must pay the levy when sponsoring a migrant worker under a Temporary Skills Shortage Visa, an Employer Nomination Scheme/ Regional Sponsored Migration Scheme, or a Skilled Employer Sponsored Regional Visa. The Department of Home Affairs calculates the required SAF levy amount, which is payable in full at the time of lodging an application and is based on the size of the sponsoring organisation, the type of visa(s), and the proposed duration of stay in Australia.¹¹

Section 2: Deciding upon an option to address the policy problem

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

- 33. The primary objective of having a levy-payer-base that more fully reflects the recipients of levy activities underpins the criteria for determining which groups of people should be subject to the current immigration levy¹² (see options table below). The criteria chosen for analysis score potential groups against whether:
 - a. People and groups can be efficiently identified.
 - b. Members of the identified groups can be charged efficiently.
 - c. Unintended consequences can be minimised.
- 34. The criteria that people and groups can be both identified, and charged efficiently, means that the option is feasible and cost-effective.
- 35. The criterion about minimising unintended consequences helps to assess whether the primary objective has been achieved. Ensuing that there is a strong justification for charging the group checks that the option will actually result in a fairer immigration system and that there are sufficient balances in place.
- 36. As the proposal is for a high-level enabling power, cost/benefit, efficiency, effectiveness and equity considerations do not play out at this point, but will at the point that decisions are made about revenue expenditure.

What scope will options be considered within?

- 37. Options have been considered within the parameters set out in the purpose section of the Immigration Act, the cost-recovery principles, and the objective of a 'user-pays' system.
 - a. **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.

¹¹ Skilling Australians Fund Levy, Australian Government, Department of Employment and Workplace Relations www.dewr.gov.au/skilling-australians-fund-levy.

¹² Note: a future fee and levy review will determine who, and at what rate the levy will apply.

- b. **The cost-recovery principles** are that users and the public should be assured that government agencies are managing their costs efficiently and effectively, and when recovering costs, taking appropriate consideration of principles such as transparency, equity, and accountability (a more detailed breakdown is outlined in **Annex One**). For the immigration levy, these decisions are currently limited to the list of levy-funded activities outlined in section 399 of the Act.
 - c. **The user-pays model** aims to more fully recovering the costs of services received from third-party users of the immigration system, and is based on the principle that those that receive the benefit or create the risk should bear the cost.
38. There are no non-legislative options for amending who can be liable to pay the immigration levy.

What options are being considered?

39. Four options have been identified:
- a. **Option 1: Status quo** – Visa applicants only continue to pay the immigration levy as per section 399 (not recommended).
 - b. **Option 2:** Amend the Act to specify groups that are required to pay an immigration levy. This would involve explicitly specifying groups (e.g. “employers”, “persons requesting NZeTA”) who would be subject to the levy in the Act.
 - c. **Option 3:** Amend the Act so that it empowers regulations to provide for imposition and collection of an immigration levy from ‘anyone’. This means anyone who interacts with the immigration system would be potentially subject to be charged the immigration levy. This would be akin to a tax.
 - d. **Option 4 (preferred):** Amend the Act to have a broad empowering provision for levy liability and require criteria (included in the primary legislation) to be satisfied when determining who should be subject to an immigration levy (in the Visa Regulations). We propose the following criteria:
 - any group liable to pay is easily identifiable and charging must be operationally feasible. For the primary legislation, they are proposed to be: a person or entity that is already able to be charged in the immigration system (e.g. fee-payers), a port (that receives or plans to receive international travellers), an employer of temporary migrants, or a provider of education to fee-paying international students;
 - there is a direct and justifiable link between the benefit or risk this group derives or introduces to the immigration system;
 - unintended consequences can be managed; and
 - the Minister must consult on any groups who are proposed to be included.
40. The development of these options has been informed by the analysis set out in **Annex Three**. These options are mutually exclusive.

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

41. The four options have been compared to the status quo using the criteria specified above. A multicriteria assessment is provided at **Annex Four**.

Option 1: Status quo: Visa applicants only continue to pay the immigration levy as per section 399 (not recommended)

42. This option meets criteria one and two. Visa applicants are easily identifiable through INZ records and have a preexisting touch-point at the time their applications are submitted. However, this option does not meet criteria three; the ultimate unintended consequence of maintaining the status quo is that it has resulted in a system where the levy-payer-base does not fully reflect the user base that creates the risks or receives the benefits of levy-funded activities. Additionally, the status quo leaves the Act inflexible: if the levy-payer-base were to be expanded in the future, another amendment act (and all of the policy/legislative work that sits behind it) would be required.

Option 2: Amend the Act to specify groups that are required to pay an immigration levy

43. This option has the potential to meet criteria one and two (assuming that the groups specified in the Act would be easily identifiable and able to be charged), but not criteria three. This option is likely to result in a number of unintended consequences, such as limiting the flexibility of the legislation. Furthermore, specifying the groups to be charged in primary legislation

Confidential advice to Government

Option 3: Amend the Act so that it empowers regulations to provide for imposition and collection of an immigration levy from ‘anyone’

44. This option does not meet any of the criteria. Such a broad provision in the primary legislation means that determining the interaction with the immigration system would be operationally difficult, as would building a strong enough justification for charging against section 399 activities. It is also likely not all groups/people added to the list would have pre-existing touch points.

Confidential advice to Government

Legal professional privilege

45. Confidential advice to Government

Option 4 (preferred): Amend the Act to have a broad empowering provision, but limited by a number of factors/criteria that must be taken into account when determining who should be included in the regulations

46. This option meets all three criteria. Stipulating factors in primary legislation that must be taken into account when setting charges in regulations ensures that groups selected are easily identifiable and collecting the levy is operationally feasible. We have initially identified the following proposed categories for the primary legislation:
- a person or entity that is already able to be charged in the immigration system (e.g. fee-payers),
 - a port (that receives or plans to receive international travellers),
 - an employer of temporary migrants, or
 - a provider of education to fee-paying international students.
47. The factors outlined in the option also work to ensure that any unintended consequences are mitigated by requiring them to be considered and minimised before the group is included. Legal professional privilege Confidential advice to Government, Legal professional privilege, or Legal professional privilege or New Zealand's domestic labour market. Including the requirement for the Minister to consult with relevant groups Confidential advice to Government as it would likely help to identify pricing and options that are fair, justifiable, and proportionate.
48. Additionally, this option would address early feedback provided in the 2024 Immigration Fee and Levy review, ensuring that the costs are more fairly shared between beneficiaries of the immigration system as well as codifying requirements to consider differing risk profiles.
49. This option also addresses concerns raised by Confidential advice to Government
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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

50. As set out directly above, Option 4 best meets the criteria and is the most likely to achieve the objective of the proposal, while maintaining flexibility and Confidential advice to Government. It would:
- Ensure that the levy charging more fully reflects the user base ensuring that creates the risks or receives the benefits of migration/New Zealand's immigration system.
 - Ensure that the levy is cost-effective and efficient to implement.
 - Ensure imposing a levy charge to new groups is reasonable, with appropriate checks and balances.
 - Reduce applicants' costs by sharing the levy across a broader payer-base.

What are the marginal costs and benefits of the option?

51. The marginal costs and benefits of the option are set out in **Annex Five**.

What is the level of stakeholder support for this option? Who supports, and who is opposed? Has this option been affected by consultation?

There are a number of stakeholders who have the potential to be impacted by the proposal

52. Given that the proposal will only enable more individuals and groups to be charged the levy, with the detail around which groups are charged and at what rates due to be worked through as part of a fee and levy review and subsequent changes to regulations, the enabling proposal has no direct implications for stakeholders.

53. However, stakeholders will have significant interest in the next stage of work to determine who is liable for the levy and what the charges are. Directly impacted stakeholders will be those proposed to be liable for the levy (i.e. potentially accredited employers, education providers who enrol international students, and NZeTA holders), and those currently liable for the levy who will have an interest in how it is apportioned. There will be other groups/entities that are impacted less directly, but will be involved in the policy development, implementation, and monitoring.

54. Information about key stakeholders and potential distributional impacts for the next stage of work is set out in **Annex Five**.

The magnitude of stakeholder support for this proposal is not yet fully understood...

55. The Minister of Immigration agreed to MBIE informing key external stakeholders of this proposal (via emails, succeeded by one-on-one meetings) in advance of Cabinet decision-making. The external stakeholders advised were: BusinessNZ, the Employers and Manufacturers Association, the New Zealand Council of Trade Unions, and INZ's Focus Group.

56. There was significant stakeholder interest in who would be charged, at what rates, and what for what purposes (noting that these elements will be determined as part of future fee and levy reviews, rather than at the point of the enabling legislation). Stakeholders were concerned about increasing pressures on businesses (including tourism businesses) as a result of cumulative costs arising from wider government fee and levy increases faced by migrants (see paragraphs 23–25). The cumulative impact of border charges will be taken into account as part of the levy-setting process.

57. Wider consultation with the public will be included in the normal select committee process.

58. The risks of not undertaking a more fulsome consultation ahead of Cabinet decisions are somewhat mitigated, however, by the fact that the proposal is enabling only. The design of the specific individuals or groups who will be liable to pay the levy, and at what rate, will be determined as part of an upcoming fee and levy review, and further consultation with stakeholders will be undertaken at that point.

...but we can make some inferences from the 2024 Immigration Fee and Levy Review consultation

59. Although we are yet to consult on this specific proposal, targeted consultation was completed in the 2024 Immigration Fee and Levy Review, which provides some insight as to how this proposal may be received. Key feedback provided is set out below.

Cumulative costs on migrants and users should be considered

60. This is especially relevant for migrants who engage with the system multiple times. Submitters representing international students also noted that overall cost is always a factor for students in determining if they can afford to study overseas, and choosing between countries when other factors are broadly similar. This proposal seeks to reduce costs for migrants.

Proposed changes are inconsistent with Government priorities to revive international education and double export revenue

61. The price increases (in the 2024 Immigration Fee and Levy Review) were substantial and there was a risk that this sent a poor signal to businesses, visitors, students and migrant workers. These concerns are mitigated in this proposal as it looks to reduce costs for migrants.

There are divergent views in relation to charges on employers

62. Some stakeholders expressed concern that a levy is not charged to employers even though they benefit significantly from levy-funded services and/or create risk in the immigration system to be managed. There was explicit feedback seeking changes to enable employers to be charged directly, or for the broader benefits of the system, to reduce the costs on migrants alone.
63. However, stakeholders representing businesses were concerned that a one-size fits all approach would not take account of employers' different risk profiles. They also commented (in the context of an economic downturn) that additional costs would place pressure on businesses, particularly for those who also bear the cost of visa applications. This feedback has informed the initial options analysis in this proposal. ■

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Greater transparency and improved communications about immigration charges is required:

64. Stakeholders commented on the need for improved communication. MBIE's communication approach will include key information on activities funded by fees and the immigration levy and signal changes in advance.

Risks to manage

Risk	Mitigation
Other systems users who become subject to the levy may find ways to pass on new levy impositions to the migrant. This could, at its most extreme, mean that existing levy-payers end up	We expect that this risk will be mitigated through the future detailed design of the levy charge as to what individuals or groups will be liable to pay the levy, and at what rate (taking account of levy-funded costs that underpin the charges). As part of the fee and levy review to determine these charges, we will look to get data on who currently pays for visa applications. (Our initial engagement on the

Risk	Mitigation
<p>paying their levy along with some/all of the new payers' costs.</p>	<p>Bill's proposals with business stakeholders indicated that many businesses currently pay the visa costs of their workers, so we could also face the opposite problem of businesses being doubly-levied).</p> <p>We will also test this risk (and seek ideas for mitigations) with key stakeholders, Confidential advice to Government , during targeted consultation on the exposure draft of the Bill later this year.</p> <p>Once the new charges are in place, a further mitigation will be clear communication to migrants about what charges Confidential advice to Government are expected to pay vs. charges for applicants. We will also explore what ongoing monitoring might be possible in terms of the proportion of charges paid by migrants vs. other system actors, and any behavioural changes resulting from the new charges.</p>
<p>Increased administrative burden associated with the proposed consultation and reporting requirements crowd out other high-priority policy work.</p>	<p>Work programme planning to manage timing and resourcing implications of future charging reviews.</p>
<p>The tight timeframes prescribed may make it difficult to meet the requirements prescribed in the Act and the Confidential advice to Government</p>	<p>Officials will undertake early planning and communication with relevant stakeholders and decision makers to ensure the proposed process is followed. This includes working with the Parliamentary Counsel Office on timeframes and sequencing. Officials will actively monitor timeframes and keep the Minister of Immigration informed.</p>

Section 3: Delivering an option

How will the new arrangements be implemented?

65. The enabling proposal will be implemented (come into existence) through an amendment to the Act, in an amendment Bill planned for introduction in 2025. Policy work will soon commence on how what new groups should be liable to pay the levy, and at what rates.
66. This will involve the following steps:
 - a. A fee and levy review undertaken by MBIE to determine exactly who, and at what rate the levy will apply. This would involve a period of policy development and rate modelling, working closely with relevant agencies, and Cabinet agreement to targeted consultation. If the Bill passes and subject to the commencement of amendments, Cabinet's agreement to the proposed regulations and charges consequent on the amended scope of the Act would require regulations to be enacted to bring those changes into force.
 - b. Amendments to the levy schedule (Schedule 6) in the Visa Regulations.

- c. INZ ICT system changes required to update the amounts charged for different [groups/accreditation/visa applications etc.] and rigorous system testing to ensure the correct levy rates will be applied.
- d. Developing and delivering a communications strategy to inform applicants and stakeholders as soon as regulatory changes are confirmed, prior to the changes taking effect.
- e. Notification of the regulation amendments in the New Zealand Gazette in line with the 28-day rule.

How will the new arrangements be monitored, evaluated, and reviewed?

67. The intention is for the levy to be integrated into the current immigration system. The proposed approach to monitoring and evaluation is set out below.

Quarterly reporting on visa volumes, revenue and expenditure

68. MBIE reports quarterly to the Ministers of Finance and Immigration on visa volumes, revenue, and expenditure, which provides a mechanism to monitor the impact of increased visa product charges. Changes to the levy and the payer-base could also be monitored within this mechanism. Overall revenue collected by the Crown through the levy and its ability to then offset fees for migrants will be the primary measure of ensuring that the policy proposal is working. This will be measured through INZ data and could be included in this reporting.

A fiscal management plan

69. In addition to quarterly reporting, Cabinet has directed MBIE to develop a fiscal management plan for the immigration system from mid-2024, aiming to improve the scrutiny of proposals with financial implications or changes to baselines to manage any fiscal risk to the Crown. It will also ensure the effective and efficient use of resources and increase stakeholders' confidence that immigration charges are reasonable.

Future fee and levy reviews

70. Immigration fees and levies are regularly reviewed (generally on a three-year basis) to ensure they are appropriately recovering costs. Any changes/corrections to the prices will be made through regular fee and levy reviews. Fee and levy reviews are subject to standard Cost-Recovery Impact Assessment obligations.

Annex One: Cost-recovery principles and application to the immigration system

Cost-recovery principles	Application to the immigration system
Equity	Costs associated with the direct provision of immigration services (private goods) or the maintenance of the immigration system, migrant settlement support and management of risks associated with migration (club goods) are fully recovered from fee and levy-payers. Costs that relate to public goods are met by the Crown (refugee services and Ministerial servicing). Cost-recovery is managed through memorandum (or hypothecation) accounts. Inter-temporal equity is achieved by aiming to reduce sustained deficits or surpluses and for immigration accounts to balance to zero overtime.
Transparency and consultation	Fees and levies for applications are fixed in the Visa Regulations and charged at the point of application (pending who is charged and at what point). MBIE consults on significant changes to immigration charges and provides information how visa fee and levy rates are set.
Efficiency	Fees and levies should reflect the underlying costs of efficiently delivered services. This relies on having good understanding of and information about the costs of the activities that are being charged for and the relationship to cost drivers.
Simplicity	Levy rates are set at broader visa categories (as per Schedule 6 of the Visa Regulations) to reflect that costs are not directly attributable to visa applicants.
Accountability	Immigration fees and revenues are scrutinised as a part of its public sector financial accountability arrangements. MBIE monitors and reports quarterly to the Minister of Finance and the Minister of Immigration on visa volumes, revenue, and expenditure, which provides a regular accounting mechanism.
Effectiveness	Fees and levies should reflect the underlying costs of providing an effective immigration service. This relies on having a good understanding of, and information about, the costs of activities, cost drivers, and operational performance. Fees and levies are not set at a rate that creates a barrier to migration or undermines policy objectives, including to attract skilled migrants and support family migration.

Annex Two: Groups and individuals who benefit from the immigration system but do not pay an immigration levy

1. Who receives the benefits of migration and is already charged by a fee but is not levied?

- Visa waiver travellers who must hold an NZeTA
- Visa waiver crew who must hold an NZeTA
- Accredited employers (including employers of fishing crew, entertainment industry)
- RSE employers
- New Zealanders seeking endorsement of citizenship in foreign passport
- Residents seeking confirmation of immigration status
- People granted a visa after requesting consideration under s 61
- People requesting special directions
- Visa holders seeking to transfer label

2. Who receives the benefits of migration and interacts with the immigration system but is not charged or levied?

- New Zealanders sponsoring parents
- New Zealanders supporting partners or dependent children
- Carriers (employers of crew)
- Immigration lawyers

3. Who receives the benefits of migration and is not charged by an immigration fee but is charged by another agency?

- International education providers
- Immigration Advisers
- Ports

4. Who receives the benefits of migration and is not charged by government?

- Employers of people with open work rights (that, is people who may be students; partners of New Zealanders or workers/students; working holiday makers, asylum seekers; arguably Australians)
- Australians (both visitors and people who live here)
- Tourism operators
- Employers of overstayers/people without work rights
- Wider New Zealand economy/population

Annex Three: Assessment of key people and groups who could be subject to an immigration levy on the basis they currently receive benefits from section 399 of the Act¹³

Potential group	Justification for charging (i.e. interaction with immigration system activities/costs as per s 399 (2) of the Immigration Act 2009)	Confidential advice to Government	Summary (factors in feasibility and cost-recovery principles)
Accredited employers (including employers of fishing crew, entertainment industry)	High demand for s 399(2) activities. + High financial benefit of accessing the immigration system. + The accreditation process (employer accreditation application, job checks and migrant application for an Accredited Employer Work Visa (AEWV)) means that, at some point, all of the s 399 activities (settlement programmes, research on issues and impacts of migration, the operational infrastructure of the system including risk/verification/compliance activities) are engaged. Accredited employers also enjoy the benefits of migrant attraction activities and access to licensed immigration advisors to help with not only their employer accreditation, but also the migrant AEWVs. Accredited employers directly financially benefit from the immigration system by being granted rights to employ migrant workers to fill skills or labour shortages.	Confidential advice to Government	Confidential advice to Government
Education providers that enrol international students	High demand for s 399(2) activities. + High financial benefit of accessing the immigration system. + The student visa application process means that, at some point, all of the s 399 activities (settlement programmes, research on issues and impacts of migration, the operational infrastructure of the system including risk/verification/compliance activities) are engaged. Education providers that enrol international students also enjoy the benefits of migrant attraction activities and access to licensed immigration advisors to help with 'recruiting' foreign students. Education providers that enrol international students directly financially benefit from the immigration system by tapping into a wider pool of students who are generally charged high fees than domestic students for their education.	Confidential advice to Government	Confidential advice to Government

¹³ The groups are ordered based on the strength of relationship between the benefit they derive from the immigration system's existence and the high demand they generate of the s399 (2) activities, and therefore the degree to which they how well they can be efficiently charged, and whether there were identified unintended consequences.

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Potential group	Justification for charging (i.e. interaction with immigration system activities/costs as per s 399 (2) of the Immigration Act 2009)	Confidential advice to Government	Summary (factors in feasibility and cost-recovery principles)
Visa waiver travellers who must hold a valid NZeTA	Medium demand for s399(2) activities. ● Medium financial benefits of accessing the immigration system. ● This cohort introduces risks that create a need for some identity verification and the management of the risk to the integrity of the immigration system/safety and security of New Zealand. While these risks are present, they are minimal given checks are generally undertaken pre-travel and are verified at the border, and the short duration of stay a NZeTA acts as a mitigation of these risks. The group also benefits from activities aimed at attracting migrants to New Zealand and a well-functioning immigration system.	Confidential advice to Government	Confidential advice to Government
Ports	High demand for s399 (2) activities. + High financial benefit from accessing the immigration system. + As the gateways to New Zealand, ports (including maritime and international airports) introduce risk and help to generate the need for use of s 399 (2) activities. Aside from the transport of cargo, ports derive financial profit from the transport of international travellers, which the immigration system facilitates.	Confidential advice to Government	Confidential advice to Government

Use of/reliance on s399 activities	Financial benefits received by the group from access to the immigration system
+ High use of the s399 activities	+ High financial benefit from accessing the immigration system
● Medium use of the s399 activities	● Medium financial benefit from accessing the immigration system
■ Low use of the s399 activities	■ Low financial benefit of using the immigration system

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Annex Four: Options analysis for expanding the levy-payer-base

	People and groups can be efficiently identified	Members of the identified groups can be charged efficiently	Unintended consequences can be minimised	Overall assessment
Option 1 – Status quo Maintain current provisions (<u>visa applicants only</u> liable to levy)	3 Visa applicants are identifiable by INZ records and details provided upon application.	3 Touch point exists at time application submitted.	-1 The unintended consequence is that the status quo has resulted in a system where migrants carry most of the costs of migration. A further amendment would be required to change this in the future.	5
Option 2 Act <u>specifies groups</u> that are required to pay an immigration levy	3 Establishing groups in primary legislation will create a prescriptive, clear, and definitive list of who is subject to the levy.	-1 It is unclear at this point whether these groups will have preexisting touch points with the immigration system.	-1 Having a prescriptive list of groups liable to the levy in primary legislation limits how flexible it can be to changes in the future. Confidential advice to Government There is a higher risk that groups added to the list could be Free and frank opinions	2
Option 3 Act enables collection from ‘ <u>anyone</u> ’	-1 Determining ‘interaction with the immigration system’ is very broad and it would be operationally difficult to identify who this would apply to.	-1 It is unclear at this point whether these groups will have preexisting touch points with the immigration system.	-1 Confidential advice to Government Legal professional privilege	-3
Option 4 Act enables <u>broad empowering provision</u> for levy liability and requires <u>criteria</u> to be satisfied <ul style="list-style-type: none"> Easily identifiable and operationally feasible Direct and justifiable link Unintended consequence can be minimised Minister must consult 	3 Although the primary legislative provision would be broad, those who are subject to the levy would be made explicit in the regulations.	2 The criteria that any group that may be included in the levy payer base be considered in light of “easily identifiable and operationally feasible” means that in practise, any group should be able to be charged efficiently, making use of existing touch points.	3 Legal professional privilege The criteria establish a regime requiring a strong justification for including a group. The criteria explicitly require an assessment of whether including the group is likely to have any unintended consequences, such as impacts on our domestic labour market, Legal professional privilege Including a requirement to consult would also Confidential advice to Government and help to identify a fair, proportionate pricing in any additional fee and levy reviews.	7 Preferred option

-1	Negatively impacts criteria
0	Not at all or not applicable
1	Marginal positive impact
2	Partially meets or addresses
3	Meets or addresses well

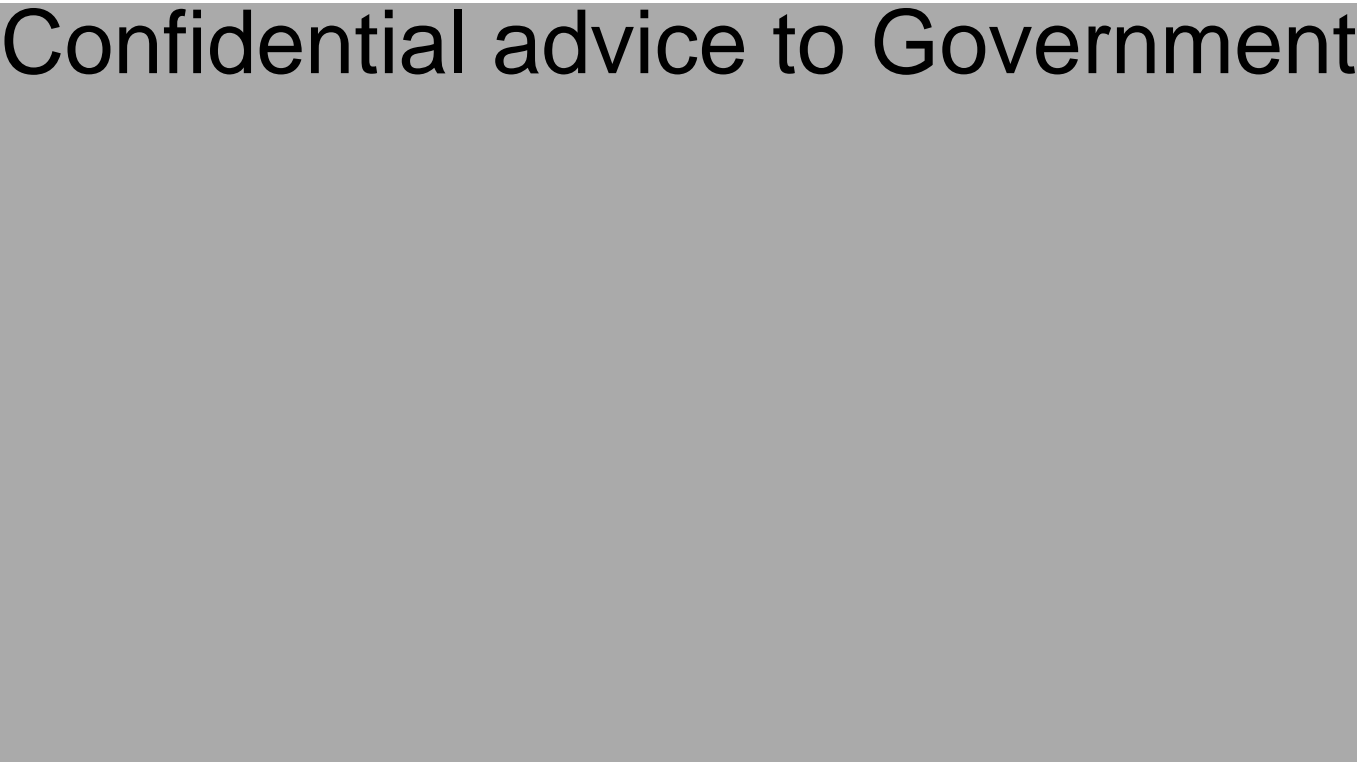
Annex Five: Marginal costs and benefits of proposal compared to status quo

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Accredited Employers, Education Providers that enrol international students, NZeTA requestors, ports	Nature of cost: financial (new groups to be included in levy-payer-base) Type: ongoing Comment: All will be liable to pay the levy. The price will be set during the next fee and levy review in late 2025.	Medium [depending on price set]	Low. The scale of the financial cost will become more apparent during the next fee and levy review.
	Nature of cost: administration/compliance Type: ongoing Comment: all will need to ensure that they have paid the correct levy amount, at the correct time. This may add a compliance/administration cost.	Low	Medium. One of the objectives and an element that has been considered throughout the design of the proposal is that existing infrastructure and touchpoints be utilised.
Regulators: Border and INZ officials that need to implement the option	Low additional financial costs as the existing fee and levy infrastructure is expected to accommodate the proposed additional levy. A small amount of FTE resource (approximately two-three FTE) from the point of policy decisions is needed for INZ to implement. It is expected that the systems changes (coding, testing etc.) and communications will be the most resource-intensive. Depending on what else is on the work programme at the time of implementation, this would normally be able to be completed from baselines.	Low	Medium. The complexity and therefore cost of implementing the collection infrastructure will depend on policy options that will be considered in the next fee and levy review. <div>Confidential advice to Government</div>
	Nature of cost: ease of travel Type: ongoing Comment: Confidential advice to Government, there is a risk that collection of the levy at the border may introduce some additional processing time which may slow down queues at the border.		
Others: Government agencies, immigration professionals/business/investors/migrants	Low additional costs as the existing fee and levy infrastructure is expected to minimise costs to other wider groups such as government agencies, immigration professionals, and businesses. Including the broader levy-payer-base is intended to reduce costs for migrants.	Low	High.
Total monetised costs	Medium. The scale of the financial cost will become more apparent during the next fee and levy review.		
Non-monetised costs	Low		
Additional benefits of the preferred option compared to taking no action			
Migrants	Nature of benefit: financial Type: ongoing Comment: Including the broader levy-payer-base is intended to reduce fee and levy costs for migrants.	Medium [depending on price set]	High.
Regulators: MBIE officials that need to implement the option	Nature of benefit: risk management Type: ongoing Comment: Requiring Confidential advice to Government <div>Confidential advice to Government</div> <div>Confidential advice to Government</div> This could, in turn, reduce the need for risk management activities.	Low	Low. This is based on an assumption and we won't know the impact/difference until the changes are implemented. It is also unclear if this will have a significant impact on Confidential advice to Government <div>Confidential advice to Government</div>
	Others: Government agencies, immigration professionals/business/investors/wider economy		Medium
Total monetised benefits	Medium		
Non-monetised benefits	Medium		

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We anticipate that there will be distributional impacts

Spreading the levy across a broader payer-base has the potential to reduce levy costs for existing levy-payers. The level of reduction will depend on the number of new levy-payers and the rate the levy is set at for each new group, and will vary depending on visa product.

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Māori

At the implementation phase, to ensure that there are no distributional impacts that will be exacerbated by this proposal on Māori, we will identify the number of accredited employer Māori employers and businesses by matching with the Māori Business Identifier, which is attached to a New Zealand Business Number.

We note that there will be limitations to this, as the Māori Business Number is self-identifying.