

Regulatory Impact Statement: Proposal to expand the purposes the immigration levy can be used for

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 purpose of expenditure of the funding collected by an immigration levy to include contributions to publicly-funded services or infrastructure
Advising agencies:	The Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers:	Minister of Immigration
Date finalised:	2 September 2024
Problem Definition	
<p>The problem addressed by this proposal is that constraints on what the current immigration levy can fund mean that users of the immigration system cannot contribute via the levy to meeting the costs they impose on certain wider public services or infrastructure. This is a barrier to achieving the government’s wider objective of reducing the burden of the immigration system on taxpayers.</p> <p>A separate proposal will see more users of the immigration system able to be charged an immigration levy, which could enable costs to be more fairly shared, and also could generate more revenue. The opportunity explored in this document is to amend the Act to create a new levy-making power that will enable revenue collected from levy payers to be spent on costs which have a clear link to those payers, but which are outside the direct immigration system.</p>	
Executive Summary	
<p>The Immigration Act 2009 (the Act) at section 399 (Immigration levy) establishes a levy which 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” (“settlement-related” costs), which may be delivered outside MBIE (as may research and attraction).</p> <p>This levy cannot however contribute to activities outside the direct immigration system that do not relate to directly to migrant settlement, even where costs may be generated by migrants, or migrants may benefit from services.</p> <p>A levy can only be charged currently to applicants for visas, which means, for example, that visa-waiver visitors who hold a New Zealand Electronic Travel Authority (NZeTA), which is not a visa, or employers of migrants, cannot be charged a levy. The Minister of Immigration is separately proposing to make a change which will mean that third-party users of the immigration system can be charged a levy, which will mean that they can contribute to a</p>	

wider range of costs, which means that such costs can be more fairly shared across those users.

This proposal looks to capitalise on the fact that more users will be able to be charged, by enabling those expanded revenue sources to fund a greater range of public and social services and infrastructure impacts, where there is a clear connection to migrant use, but which do not fall within the current legislative scope (that is, they are outside the direct immigration system and do not relate directly to migrant settlement). In order to meet the legal definition of a levy, there will need to be a clear connection between who is charged and what is funded by the resulting revenue, and the eventual charge will need to be approximately proportionate to the likely benefit or cost incurred.

This proposal would acknowledge that beneficiaries of the immigration system (which enables non-New Zealanders to be lawfully in New Zealand, temporarily or permanently) also benefit from well-performing infrastructure/public services, and can impose additional costs or pressures on New Zealand's infrastructure or public services although they have not contributed to the funding of these.

Five 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.

1. **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.
2. **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 the activities funded by the levy outlined in section 399 of the Act.
3. **The user-pays model** aims to more fully recover the costs of services received from third-party users of the immigration system (called "groups charged" or "chargeable groups" below), and is based on the principle that those that receive the benefit or create the risk should bear the cost.

The options generated are:

- a. **Option 1:** Status quo/counterfactual – immigration levy revenue funds immigration system costs only.
- b. **Option 2:** Amend the Act such that levies can fund any services or infrastructure costs. (Note that, as described, this would legally need to be a tax.)
- c. **Option 3:** Amend the Act such that levies can fund any services or infrastructure costs, but there must be a link between those costs and the groups charged that levy (that is, the chargeable groups must either cause a demonstrable cost or receive a demonstrable benefit).
- d. **Option 4:** Amend the Act such that levies can fund any services or infrastructure costs, but (as above) there must be a clear link between those costs and the chargeable groups, and specified consultation and reporting obligations must be met (**recommended**).
- e. **Option 5:** Amend the Act such that levies can fund specified services or infrastructure costs and specified consultation and reporting obligations must be met.

They have been compared against the criteria of:

- Allow a wider range of costs to be met by immigration levy-payers.
- Not unduly constrain future Cabinets (this relates to the level of specificity of what can be funded).

- Confidential advice to Government

Overall, there is a trade-off between adding more specificity in legislation Confidential advice to Government and would also likely raise fewer concerns during the parliamentary process), and the ability of the government to change priorities for the expenditure of levy revenue in the future.

On this basis, Option 4 is recommended. It would amend the Act such that the levy can fund any services or infrastructure costs, but there must be a clear link between those costs and the chargeable groups, and specified consultation and reporting obligations must be met.

Legal professional privilege

or through assertions of improper purpose or inadequate processes) were the levy funding a wider set of costs.

Limitations and Constraints on Analysis

The Minister of Immigration's expectation is that the Bill and initial subsequent amendments to the Immigration (Visa, Entry, Permission, and Related Matters) Regulations 2010 (the Visa Regulations) will be in place before the end of 2025.

These timeframes mean that the time available for policy development has been relatively brief. It also means that while external stakeholder consultation has been undertaken before Cabinet decisions are made, this has been limited to informing key stakeholders through one-on-one meetings and receiving their initial feedback on the proposals. We informed the following stakeholders of the proposals between 29 July and 9 August 2024:

1. BusinessNZ
2. the Employers and Manufacturers Association
3. the New Zealand Council of Trade Unions
4. the New Zealand Law Society
5. Immigration New Zealand's (INZ) Immigration Focus Group.

We have not undertaken significant engagement, such as would be enabled through discussion documents seeking detailed comments.

The risks of not undertaking a more fulsome consultation ahead of Cabinet policy decisions are somewhat mitigated by the fact that the proposal is enabling only, and that consultation will be mandated both before it is initially brought into effect, and for subsequent reviews.

This includes in the first instance engagement with key stakeholders on an Exposure Draft of the Bill later in 2024, ahead of Cabinet Legislative Committee decisions, followed by consideration by Select Committee during 2025.

The expansion of funding purposes will not be implemented in the 2025 Immigration Fee and Levy Review and consequential Visa Regulations changes. Instead, the initial design of what public or social services or infrastructure would be funded by the levy, and at what rate/s, will be determined as part of a subsequent fee and levy review (which may take place in 2026).

However, the fact that the power is enabling only, and that decisions remain to be made about what is funded, who is then charged and by how much, also limits our ability to fully analyse the costs and benefits of the proposal.

This means that the materiality of potential charges cannot be assessed at this point, even with the design of the levy incorporating legislative safeguards that will:

- include applicable constraints to ensure that any charges established are lawful Confide
through demonstration that all charges are justifiable, as well as being proportionate in terms of what they are funding and of who is charged);
- establish comprehensive consultation obligations for subsequent reviews that set those charges;
- require the amount of levy revenue, how the rates of charging are calculated, and levy disbursement to be reviewed at no less than five-yearly intervals.

Future fee and levy reviews will also be required to meet Cost-Recovery Impact Assessment obligations.

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 authorise the use of levy funding to meet a wider range of costs arising from migration to New Zealand. It will be important that the development of those regulations makes a clear and compelling case for using levy funding for specific new uses.</p>

Section 1: Diagnosing the policy problem

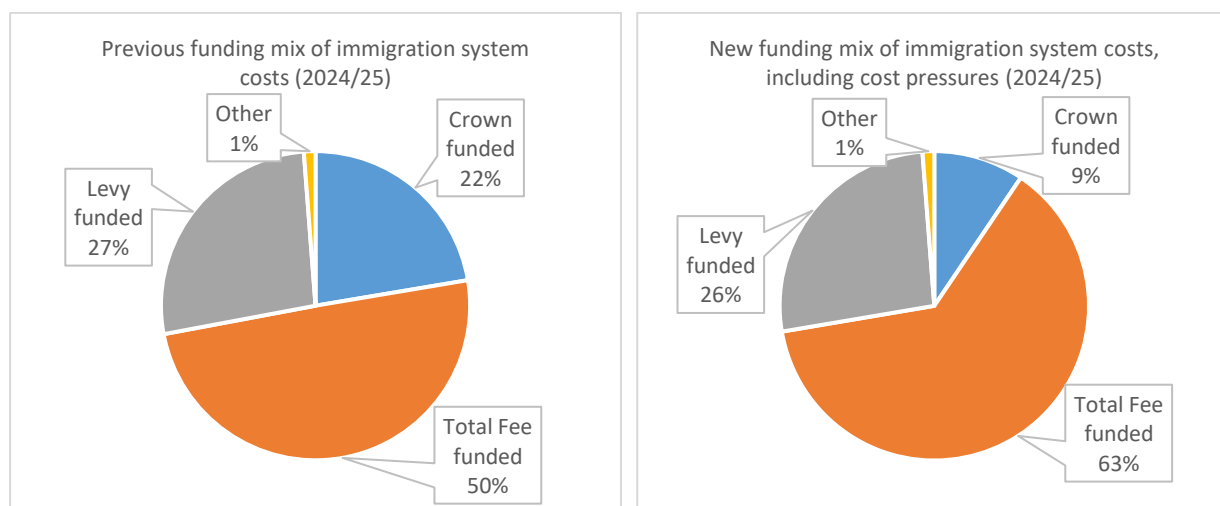
What is the context behind the policy problem and how is the status quo expected to develop?

How New Zealand's immigration system is funded

1. The immigration system is largely self-funded, through fees and levies charged to people who use immigration services. The immigration system comprises:
 - core immigration services, including:
 - i. application 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. the 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 largely paid for by fees and levies, recovered mainly from long term and short-term migrants to New Zealand. 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 Review¹ has significantly reduced the amount of Crown funding for the immigration system. The Crown now funds nine percent of costs, 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 that users of the immigration system more fully meet the cost of the services they receive, while ensuring that Crown funding remains for services that have a public benefit – such as ministerial servicing and refugee services.

¹ 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.² In line with Treasury’s Guidelines³ 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, to visa waiver visitors requesting NZeTAs or employers seeking accreditation); 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, the ICT systems that underpin delivery, and the activities of the Immigration Advisers Authority).

² Note: this does not limit the broad power of s 400, however anything outside these parameters could (by implication) be more questionable and subject to change.

³ 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. As the levy can fund “the provision of programmes intended to assist the successful settlement of migrants or categories of migrants”, (that is, “settlement-related” costs), which may be delivered outside MBIE, the levy and its predecessors have contributed to the cost of English for Speakers of Other Languages (ESOL) in the compulsory school sector since the mid-1990s. That is because foreign-born children, and children who are the children of migrants, benefit from this service. However the immigration levy cannot currently contribute to activities outside the direct immigration system that do not relate to directly to migrant settlement.

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.⁴ **Annex One** sets out the standard 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.⁵ 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 neither over-recover nor under-recover costs. Regular fee and levy reviews ensure that 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 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 benefit from immigration activities and/or create risk for the system. This provides the justification for government intervention to change the legislation to expand the levy payer base.
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 address 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).

⁴ Ibid

⁵ 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 spending⁶, 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.

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

16. There is an opportunity to use expanded revenue sources to fund a greater range of public or social services, or infrastructure, where migrants impose costs (or gain benefits). This would be possible as long as those costs have a clear linkage to the chargeable groups and where the costs cannot currently be funded by those groups (as the costs are outside the direct immigration system and do not relate to migrant settlement).
17. New Zealand's absorptive capacity depends on many things, including the extent to which our housing and urban systems are already under pressure and the government and construction sector's capability and willingness to invest in building additional capacity to support higher levels of demand. New Zealand currently has a large infrastructure deficit.⁷ While addressing this is not the direct responsibility of the immigration system, in some under-pressure areas high levels of net migration have resulted in uneven or additional demands on the system. Where migrants can be directly linked to disproportionate costs or costs or benefits, it may be equitable for them to contribute to addressing those costs.
18. An example of more equitable linking of costs and benefits is the accident compensation system, which covers everyone in New Zealand (including migrants such as visitors and students), but which is funded through either general taxation or levies on specific people / areas.⁸ Other examples are parent visa holders (who could be levied to contribute to health sector costs, as older people on average consume more publicly-funded health care than the average), levying employers as a contribution to the costs of training New Zealand workers, or levying migrants who bring children to contribute to the costs of specialist teachers in the school system.
19. Expanded revenue sources for the immigration system would acknowledge that beneficiaries of the immigration system not only also benefit from well-performing infrastructure/public services, but in some cases impose additional costs or pressures on New Zealand's infrastructure or public services although they have not contributed to the funding of that infrastructure or those services.

⁶ The Treasury (2024) Budget Policy Statement 2024 www.treasury.govt.nz/publications/budget-policy-statement/budget-policy-statement-2024.

⁷ See for example www.rnz.co.nz/news/business/513474/1-trillion-to-bring-nz-infrastructure-up-to-standard-asb and www.rnz.co.nz/news/national/525366/whangarei-hospital-ed-hits-code-black.

⁸ These levies relate to who has been injured: for example, levies from workers cover the costs of accidental injuries sustained by people earning at the time of injury, while levies on petrol and motor vehicle license fees address the costs of injuries involving a motor vehicle.

20. Following the recent fee and levy review, it is forecast that approximately 850,000 applicants for visas will contribute \$267.9 million in levy revenue in 2025/26. A separate proposal for amendment legislation is looking to expand the range of people or entities that can be charged an immigration levy. The expansion of the range of people and entities that could be levied could add a further 1.7 million payers, albeit likely mostly at lower rates. Some of this funding could spread existing system costs across a wider payer group, but some could be used to contribute to wider pressures.

What objectives are sought in relation to the policy problem?

21. The proposed amendment seeks to achieve one major objective, namely to reduce the burden on taxpayers of the immigration system, through enabling people and entities who receive the benefits of migration or the immigration system to contribute to meeting a wider range of relevant or associated costs in New Zealand which are the result of migration.
22. This aligns with the government's objective to constrain calls on taxpayer funding. It could also respond to the objective of addressing New Zealand's infrastructure deficit, noting that this would be subject to legal constraints governing levy charging, and therefore would need to be carefully designed.

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

Immigration's cost-recovery model

23. The immigration system operates a cost-recovery model for fee funded and levy funded activities. This model is informed by the cost-recovery principles outlined in **Annex One**, and the principle that those that receive the benefit or create the risk should bear the cost. The Act and Schedules 4 and 6 of the Visa Regulations provide the legal parameters for a user-charge model.
24. The use of 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.
25. A general tax is not proposed, as it is intended that the new levy purposes be established in the Act. It is unusual for taxes to be established outside dedicated legislation.⁹ In addition, primary tax rates are generally set by parliament within the relevant dedicated legislation, while it is intended that these chargeable groups, and the rates charged, would be established in regulations.
26. Final, detailed decisions on exactly what public services and infrastructure should be funded by levy-payers, and at what rate, will be implemented through regulation changes at a later date (from 2026). A Stage 2 Cost-Recovery Impact Assessment (CRIS) will be completed at that point.

⁹ Noting it is not completely unheard of: the Auckland Regional Fuel Tax was established by a 2018 amendment to the Land Transport Management Act 2003.

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

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

27. The criteria chosen to assess the options for expanding levy expenditure are that the option:
- a. Addresses the primary objective (“expands the purposes for which revenue collected through the immigration levy can be spent”).
 - b. Would not unduly constrain future Cabinets (recognising that it is not possible to foresee future opportunities).
 - c. Confidential advice to Government
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
28. As the proposal is for a high-level enabling power, broad cost/benefit, efficiency, and effectiveness considerations do not play out at this point, but will at the point that decisions are made about revenue expenditure. However, it is proposed that the legislative design require equity considerations to be taken into account (as the nexus between payer and cost or benefit is fundamental to lawful levy charging).

What scope will options be considered within?

29. The Minister has commissioned work to expand the range of purposes that immigration levies can address (which is based on interest in expanding how migrants can contribute further, aligning with the government objective to constrain calls on taxpayer funding). As the International Visitor Conservation and Tourism Levy (IVL) already exists, it is not anticipated that tourism or conservation purposes would be addressed through this expansion to immigration levy purposes.

Some possibilities for reducing demand were not considered for option generation

30. Specific considerations that are not within the scope of options being considered include:
- a. using immigration policies to:
 - i. reduce demand on services or infrastructure (such as through reducing net migration nationwide, requiring migrants to live in locations where infrastructure is not under population pressure or – in the context of this work – reducing the capacity of migrants to bring family, such as school-age children, with them), or
 - ii. ensure that any services consumed can always be paid for, such as requiring all temporary migrants to hold insurance as a condition of their visas; or

- b. amending eligibility for non-immigration services (such as publicly-funded health services, or access to national parks) to, for example, require non-resident citizens or recent migrants to pay, or to pay more, for access¹⁰; or
- c. funding either tourism or conservation infrastructure (as noted above, temporary entrants are already levied to do so, via the IVL).¹¹

Cost/benefit considerations of options

- 31. Any options would need to be carefully analysed to ensure that the costs of, or practical challenges to, implementing change, or the effects on New Zealand's relative attractiveness, did not outweigh their potential benefits.
- 32. For example, sharply reducing the numbers of visas granted might negatively impact on New Zealand's economic activity and productivity, and therefore could cost more than it would save. (In addition, net migration is the result of both in- and outflows, only some of which are controllable through visa policies: the movement of New Zealand citizens (especially trans-Tasman movements, which are largely correlated with economic cycles) and existing residence class visa holders is not controllable.)
- 33. Previous examination into requiring insurance as a condition of temporary visitor visas has identified considerable practical issues, including who would check or endorse that insurance documentation is valid and sufficient, whether to insist that pre-existing conditions are covered, and feasible responses where an onshore traveller is identified as not holding insurance, for example. Together, these may explain why no country requires tourists to hold insurance, although all generally strongly recommend it.
- 34. Similarly, there may be wider costs to removing publicly-funded health cover for new residents: it may make New Zealand less attractive to some skilled migrants, may disadvantage, for example, refugees or Pacific nationals (or require complex rules to exclude them from the removal), or conversely it may mean that some costs are still incurred by some acutely unwell people, but turn into unrecovered debts at the hospital level.
- 35. The options around as eligibility for publicly-funded services, or decisions about charging for non-public services, are not within MBIE's portfolio scope, as they sit with the relevant agencies and Ministers, or with local councils or controlling entities.

The options generated are constrained to lawful or potentially lawful charging under the Immigration Act 2009

- 36. The options generated 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.

¹⁰ See for example: www.nationalgeographic.com/travel/article/what-is-tourist-tax; www.rnz.co.nz/news/top/525307/te-papa-to-charge-35-entry-fee-for-international-visitors-from-september; www.gov.uk/guidance/nhs-entitlements-migrant-health-guide; www.gov.uk/guidance/using-the-nhs-when-you-return-to-live-in-the-uk.

¹¹ [Immigration Act 2009 - section 399A International visitor conservation and tourism levy](#).

- 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 (called “groups charged” or “chargeable groups” below), and is based on the principle that those that receive the benefit or create the risk should bear the cost.
37. Other jurisdictions charge a variety of fees and levies in relation to immigration, particularly in relation to workers and visitors. For example, Singapore charges employers levies in respect of their foreign workers, as part of a wider set of policies intended to regulate the number of foreigners (higher-skilled workers also attract a lower monthly levy).¹² Australia similarly charges employers the Skilling Australia Levy.¹³
38. The UK also charges employers an (annual) levy for most foreign workers¹⁴, and charges migrants a separate annual surcharge which contributes to the cost of the NHS¹⁵ – unlike New Zealand, temporary migrants have access to publicly-funded healthcare in the UK. A range of countries charge visitors levies (Indonesia charges a tourism tax to visitors to Bali¹⁶ and the US charges a “travel promotion fee” to applicants for ESTAs¹⁷).
39. There are no non-legislative options for amending the scope of what the immigration levy can be spent on.

What options are being considered?

40. Five options have been identified:
- a. **Option 1:** Status quo/counterfactual – the immigration levy funds immigration system costs only.
 - b. **Option 2:** Amend the Act such that levies can fund any services or infrastructure costs. (Note that, as described, this would legally need to be a tax.)
 - c. **Option 3:** Amend the Act such that levies can fund any services or infrastructure costs but there must be a link between those costs and the groups charged that levy (that is, the chargeable groups must either cause a demonstrable cost or receive a demonstrable benefit).

¹² Foreign worker quota and levy. www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/foreign-worker-levy.

¹³ Cost of sponsoring. immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/learn-about-sponsoring/cost-of-sponsoring.

¹⁴ UK visa sponsorship for employers: Immigration skills charge. www.gov.uk/uk-visa-sponsorship-employers/immigration-skills-charge.

¹⁵ The immigration health surcharge. commonslibrary.parliament.uk/research-briefings/cbp-7274/.

¹⁶ About Us - Love Bali. lovebali.baliprov.go.id/about_us.

¹⁷ Federal Register: Electronic System for Travel Authorization (ESTA) Fee Increase. www.federalregister.gov/documents/2022/05/20/2022-10869/electronic-system-for-travel-authorization-esta-fee-increase.

- d. **Option 4:** Amend the Act such that levies can fund any services or infrastructure costs but (as above) there must be a clear link between those costs and the chargeable groups, and specified consultation and reporting obligations must be met (**recommended**).
 - e. **Option 5:** Amend the Act such that levies can fund specified services or infrastructure costs and specified consultation and reporting obligations must be met.
41. Note that all of the options except the status quo assume that the Purpose of the Act is also amended to enable a levy to be charged to fund, or contribute to the funding of, wider costs outside the immigration system. This is because a 2019 amendment explicitly amended the Purpose to include the collection and expenditure of the IVL.

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

42. The five options have been compared to the status quo using the criteria specified above.
43. In general, there is a trade-off between adding more specificity in legislation Confidential advice and would likely raise fewer concerns regarding possible future uses of the funding during the parliamentary process) and the ability of the government to change priorities for the expenditure of levy revenue in the future.
44. Some concerns can be addressed through consultation and reporting obligations, noting that these also to a degree place constraints on decision making (at a minimum through requiring more time for processes to be undertaken). All options except for the status quo would benefit New Zealanders to the extent that they would substitute for taxpayer funding (although more funding being provided for settlement-related activities which are currently funded by the Crown would have the same positive impact).
45. The scoring schema runs from 0 (significantly worse than the status quo in terms of addressing the criterion) through 3 (neutral or the same as the status quo in terms of addressing the criterion) to 5 (significantly better than the status quo in terms of addressing the criterion).

46. The table below summarises the analysis at a high level. Further detail is provided in **Annex Two**.

Option	Assessment against criteria 0 = worse than status quo 3 = neutral / similar to status quo 5 = better than status quo			Total score
	A wider range of costs can be met by levy payers	Would not unduly constrain future Cabinet decisions	Confidential advice to Government	
1 – Status quo/counterfactual	3	3		9
2 – Levy can fund any services or infrastructure costs	5	5		11
3 – Levy can fund any services or infrastructure costs but there <u>must be a link</u> to the chargeable groups	5	4		11
4 – Levy can fund any services or infrastructure costs but there <u>must be a link</u> to the chargeable groups, <u>and</u> specified consultation and reporting obligations must be met (recommended)	5	4		12
5 – Levy can fund specified services or infrastructure costs <u>and</u> specified consultation and reporting obligations must be met	5	2		11

Option 1: Status quo/counterfactual

47. Under this option, the levy funds immigration system costs (status quo) including, following the change to new rates from October 2024, funding 80 per cent of the forecast cost of ESOL programmes in schools. It has been assessed as “3” or “neutral” on all criteria (as it is the basis against which the other options are measured) but from a zero base it scores relatively high, as it has no implementation costs and a Confidential advice to Government
48. However, this option is not recommended as it does not meet the primary objective of the proposal, which is to reduce the future burden on taxpayers by enabling people and entities who receive the benefits of migration or the immigration system to contribute to meeting a wider range of relevant or associated costs related to New Zealand’s services and infrastructure (it does not offer future Cabinets the ability to meet a “wider range” of costs).

Option 2: Amend the Act such that levies can fund any services or infrastructure costs

49. This option would offer the maximum choice to future Cabinets. Confidential advice to Government. As it would not meet the established definition of a levy (which requires a linkage between the “group that pays” and the “group that either benefits or causes the cost”), in order for this option to work it would need to be established as a tax, and officials do not propose to formally establishing a tax in the Act.

50. The reasons that the establishment of a formal tax is not recommended are:
- Firstly, that it would be unusual to do so in an Act such as the Immigration Act 2009 (and could likely not be done within the timeframes available for this amendment legislation).
 - Secondly, that the establishment of a tax would imply that the rate or rates should also be established in primary legislation (that is, levies are set by Order in Council, but taxes are set by Parliament), and this would not meet the government's aims around flexibility.
51. Establishing a tied tax would constrain future decision-making around making changes to charges, considering the timeframes and resources necessary to amend legislation compared with making changes to regulations. (On the other hand, Confidential advice to Government [REDACTED])
52. Implementing this option but still calling it a levy runs the risk that it might be subsequently found to either nonetheless constitute a tax (Confidential advice to Government [REDACTED]), or Legal professional privilege [REDACTED]
53. New Zealand has signed up to a number of obligations established in a range of tax treaties, with regard to non-discrimination on the basis of nationality¹⁸. (Noting that New Zealanders would generally be exempt from paying any related charge, except where they were employers of migrants, as New Zealand citizens are not subject to the Immigration Act 2009.) This means that, were a tax to be envisaged in the future, at a minimum it would need to be carefully designed to ensure that citizens, or tax residents of jurisdictions where we had non-discrimination obligations, were carved out.

Option 3: Amend the Act such that levies can fund any services or infrastructure costs but there must be a clear link between those costs and the chargeable groups

54. This scores higher than the status quo (it can reduce future burdens on the taxpayer through meeting a wider range of relevant or associated costs related to New Zealand's services and infrastructure that migrants benefit from) and higher than Option 2 (through ensuring that a clear link is made between the charge and the benefit or risk specified groups derive or introduce, Confidential advice to Government [REDACTED]). It offers more choice to future Cabinets than the status quo.
55. Confidential advice to Government [REDACTED]

¹⁸ See for example [Backpacker tax discriminatory under UK Convention | CA ANZ \(charteredaccountantsanz.com\)](https://www.charteredaccountantsanz.com), which reports on an Australian tax levied on working holiday-makers, which the Australian High Court found cannot be charged where the individual is both an Australian resident for tax purposes and is from Chile, Finland, Germany, Japan, Norway, Turkey, the United Kingdom, Germany or Israel.

Option 4: Amend the Act such that levies can fund any services or infrastructure costs but there must be a clear link between those costs and the chargeable groups, and specified consultation and reporting obligations must be met [recommended option]

56. This option scores higher overall than the previous options, as it would establish an appropriate process to identify the broader costs to be met, Confidential advice to Government. While any specific decision made under this option Confidential advice to Government (for example on the basis that the results of consultation had not been taken into account or that decisions about the levy were seen to be subsumed within broader budgetary considerations and so not taken independently and for a proper purpose), the requirements for consultation and reporting would provide some safeguard Confidential advice to Government.

57. Legal professional privilege

Option 5: Amend the Act such that levies can fund specified services or infrastructure costs and specified consultation and reporting obligations must be met

58. Confidential advice to Government, and the inclusion of consultation and reporting obligations would also offer protections. However, it would constrain the government's future ability to amend its priorities for the expenditure of levy revenue, and is scored down on this basis.

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

59. Option 4 best addresses the problem, while maintaining flexibility and Legal professional privilege once the levy is funding a wider set of costs.

What are the marginal costs and benefits of the option?

60. As noted above, this is examining the creation of a high-level power and therefore the full marginal costs and benefits are not derivable at this point. An initial analysis has been undertaken and is set out at **Annex Three**. MBIE notes that all of the options except Option 1 potentially benefit New Zealand taxpayers.

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

61. The Minister of Immigration agreed to MBIE informing key external stakeholders of the 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, the New Zealand Law Association, and INZ'S Immigration Focus Group.

62. 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 the cumulative costs arising from wider government fee and levy increases. The cumulative impact of charges will be taken into account as part of the levy-setting process.
63. Wider consultation with the public will be included in the normal select committee process. The process to determine what public and social services and infrastructure would be funded by the levy and at what rate will be determined as part of future fee and levy reviews (the first one likely in 2026), and further consultation with stakeholders will be undertaken then (noting that the proposal includes adding an ongoing legislated obligation to consult before decisions about rates are made).
64. Engagement on an Exposure Draft of the Bill will occur later in 2024 ahead of Cabinet Legislative Committee decisions.

Risks to manage

Risk	Mitigation
<p>Legal professional privilege</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>We consulted with Inland Revenue and the Ministry of Foreign Affairs and Trade on how best otherwise to manage international risks.</p> <p>Legal professional privilege</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>A further mitigation is specifying the process to be used for consultation. There are two choices, along the lines of either:</p> <ul style="list-style-type: none"> the Chief Executive must undertake consultation with such parties as they consider appropriate (to avoid risk to the Minister), OR the Minister must be satisfied that specified criteria have been met. The proposed design requires the Minister to undertake consultation.
<p>The overall costs associated with travel to or study in New Zealand/ employing skilled workers/bringing family members home are so high that they discourage activity that is otherwise considered desirable.</p>	<p>Continuing to improve financial management of the immigration system and better understanding about cost sensitivity and the impacts of charging decisions on foreign relations, New Zealanders overseas, etc.</p> <p>(Note that this is not directly a result of an amendment to the purposes that the levy can be spent on but, as above, relates to the materiality of charges, combined with other costs.)</p>
<p>Increased administrative burden associated with the 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>Confidential advice to Government</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>The timing proposed is that this change is not implemented until at least 2026, to allow sufficient time for policy work and adequate consultation. The proposed legislative safeguards are intended to ensure that funding collected and disbursed meets the lawful definitions that pertain to levies.</p>

Section 3: Delivering an option

How will the new arrangements be implemented?

65. The specific option chosen will be implemented (come into existence) through an amendment to the Act, in an amendment Bill planned for introduction in 2025.
66. Policy work to identify costs that could be funded by the levy would be required to set charges. This would take place following the passing of the Amendment Act, but unlike the expected change to chargeable groups, would not be implemented in the initial review.

67. The review to implement the expansion of what could be funded will involve the following steps:
- a. A review undertaken by MBIE to determine what public or social services or infrastructure should be funded by the levy and at what rate. This would involve a period of policy development and rate modelling, working closely with relevant agencies, and Cabinet agreement to consultation. If Cabinet agrees to the proposed charges, regulations will need to be enacted to bring those changes into force.
 - b. Amendments to the levy schedule (Schedules 6) in the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010.
 - 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 have been 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?

68. Monitoring and reporting on the levy revenue and expenditure would be integrated into current immigration system monitoring and reporting. The proposed approach to this, and to evaluation, is set out below.

New reporting obligations introduced with the proposal

69. The recommended option includes legislated reporting obligations. They will seek to expand on the existing Annual Report provisions established in the Immigration Act 2009 at s 399(5) and 399(6), as follows:
- (5) Not later than 1 October in each year, the chief executive must provide to the Minister a report setting out, in respect of the financial year ending on the preceding 30 June,—*
- (a) the amount collected through the immigration levy; and*
- (b) how the amount of the immigration levy was applied.*
- (6) The Minister must present the report to the House of Representatives not later than 15 sitting days after its receipt.*
70. The proposed augmentation is an obligation to publish annually a breakdown of the groups levied and the amounts collected.
71. In addition, the recommended option would legislate consultation obligations on the Minister as part of future fee and levy reviews, and would also require no less than five-yearly reviews of the amount of levy revenue, how the rates of charging are calculated, and levy disbursement. It would be expected that information on the proposed application of levy expenditure would be included in the consultation documents.

72. Confidential advice to Government

Quarterly reporting on visa volumes, revenue and expenditure

73. 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 then 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

74. In addition to quarterly reporting, Cabinet has agreed that MBIE will 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

75. Immigration fees and levies are regularly reviewed (generally on a three-year basis) to ensure they are appropriately recovering costs. Any changes or corrections to 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: Options analysis for expanding the purpose the levy can be used for

	A wider range of costs can be met by immigration levy payers	Would not unduly constrain future Cabinets		Overall assessment
Option 1 Status quo/counterfactual	3 No change – neutral.	3 No change. In itself, constrains Cabinets as does not extend range of expenditure.	Confidential advice to Government	9
Option 2 Amend the Act such that the levy can fund any services or infrastructure costs.	5 Could reduce future burdens on the taxpayer through meeting a wider range of relevant or associated costs related to New Zealand’s services and infrastructure.	5 Offers maximum choice to future Cabinets.		11
Option 3 Amend the Act such that the levy can fund any services or infrastructure costs but there must be a clear link between those costs and the chargeable groups.	5 Could reduce future burdens on the taxpayer through meeting a wider range of relevant or associated costs related to New Zealand’s services and infrastructure.	4 Offers more choice to future Cabinets than the status quo.		11
Option 4 Amend the Act such that the levy can fund any services or infrastructure costs but there must be a clear link between those costs and the chargeable groups, and specified consultation and reporting obligations must be met.	5 Could reduce future burdens on the taxpayer through meeting a wider range of relevant or associated costs related to New Zealand’s services and infrastructure.	4 Offers more choice to future Cabinets than the status quo.		12 Recommended option
Option 5 Amend the Act such that the levy can fund specified services or infrastructure costs and specified consultation and reporting obligations must be met.	5 Could reduce future burdens on the taxpayer through meeting a wider range of relevant or associated costs related to New Zealand’s services and infrastructure.	2 Would constrain the government’s future ability to amend its priorities for the expenditure of levy revenue.		11

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

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

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the recommended option compared to taking no action			
Levy payers	Nature of cost: financial (broadened purposes that the levy revenue can be collected and used for) Type: ongoing Comment: Levy payers will be liable to meet a wider range of costs related to New Zealand’s services and infrastructure which are the result of migrant. The costs, and the appropriate level of levy-payer contribution will be set during the next fee and levy review in 2024/2025.	Medium [depending on price set]	Low. The scale of the financial cost for levy payers will become more apparent during the next Fee and Levy review.
	Nature of cost: administration/compliance Type: ongoing Comment: Impacted levy payers will need to ensure that they have paid the correct levy amount, at the correct time. This may add a compliance/administration cost.	Low [depending on whether a new levy is established]	Medium. One of the elements that has been considered throughout the design of the proposal is that existing levy paying infrastructure 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 expansion to the purpose of the levy. A small amount of FTE resource would be needed for INZ to implement.	Low	Medium.
	Nature of cost: ease of travel Type: ongoing Comment: n/a		
Others: <i>Government agencies, immigration professionals/business/ investors/migrants</i>	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. Broadening the purposes the levy can be used for is intended to reduce costs for other government agencies.	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 recommended option compared to taking no action			
Taxpayers	Nature of benefit: financial Type: ongoing Comment: Broadening the levy purpose to enable people and entities who receive the benefits of migration or the immigration system to contribute to meeting a wider range of relevant or associated costs related to New Zealand’s services and infrastructure which are the result of migration is intended to reduce the burden on taxpayers.	Low to medium [depending on price set]	Low. The scale of the additional revenue generated (and therefore the cost reduction for taxpayers) will become more apparent during the next fee and levy review.
Others: Government agencies, immigration professionals/business/ investors/wider economy	Nature of benefit: financial Type: ongoing Comment: This option will support an immigration funding model that is efficient, self-funding and sustainable by recovering costs from third-party users. This should contribute to a reduction in Crown funding.	Medium	Medium. Broadening the purposes the levy can be used for is intended to reduce costs for other government agencies (and ultimately the New Zealand taxpayer).
Total monetised benefits	Medium		
Non-monetised benefits	Medium		