

Regulatory Impact Statement: Strengthening immigration penalties for non-compliant and exploitative employers

| | |
|----------------------------|---|
| Decision sought | Analysis produced for the purpose of informing final Cabinet policy decisions |
| Agency responsible | Ministry of Business, Innovation and Employment |
| Proposing Ministers | Minister of Immigration |
| Date finalised | 12 June 2025 |

The proposal is to strengthen immigration penalties for non-compliant employers by:

- extending the timeframe for the Ministry of Business, Innovation and Employment (MBIE) to issue an infringement notice to a non-compliant employer
- increasing the maximum penalty for an employer convicted of migrant exploitation.

Summary: Problem definition and options

What is the policy problem?

Exploitative employers who victimise vulnerable migrants cause significant and lasting harm to their victims and gain unfair advantages over employers who comply with their legislative obligations. Employment and immigration legislation establish a range of offences which are intended to deter employers from exploiting migrant workers.

However, rates of reported exploitation are rising,¹ which indicates an unacceptably high level of harm. Officials consider that there are opportunities to strengthen the deterrence effect of the penalties in the Immigration Act 2009 (the Act), namely:

- the employer infringement offence regime for low to mid-level offending is not as effective as it could be. In order to meet statutory timeframes, there is a de facto time limit of 90 days from the date of the offending to issue an infringement notice. Offending is often not reported to MBIE until after this period, and, in some cases, it takes longer than 90 to investigate and confirm the offending. While there is the option to file criminal charges outside the 90-day timeframe, the offending is not usually serious enough to meet this threshold.
- the maximum custodial sentence for serious exploitation (7 years) is too short to be an adequate deterrent.

¹ The number of reports of exploitation to MBIE have increased, from 807 in the 2022/23 financial year to at least 2,424 reports in the 2024/25 year (to the end of March 2025).

What is the policy objective?

The objective is to enable the constrained immigration investigation and compliance resources to be deployed to make it more likely that exploitative behaviour will be meaningfully sanctioned (through increasing the numbers of infringement notices and through enabling higher penalties to be imposed on convicted exploitative employers), and, in the longer term, deter employers from enriching themselves through the exploitation of migrant workers.

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

To address insufficient timeframes for issuing employer infringement notices, officials have considered the following options:

1. Status quo, ie 90 days from date of offending to issue a notice
2. Amending the procedural requirements so that timeframes are based on the date MBIE became aware of the offending, rather than status quo. This would allow MBIE 90 days to issue a notice from the date MBIE became aware of the offending
3. As for option two but extending the timeframe for the procedural requirements so that notices can be issued within 270 days (9 months) of the date MBIE became aware of the offending (**preferred option in Cabinet paper**).

We also considered the non-regulatory option of increasing proactive checks on employers to identify offending earlier. However, this was discounted, as the additional resourcing that would be required to achieve this was not realistic or cost effective.

To address the inadequate maximum sentence for migrant exploitation offending, we have considered the following options:

1. Status quo
2. Removing the distinction between “reckless” and “knowing” (the latter being based on having been formally advised), and increasing the maximum duration of imprisonment to ten years (**preferred option in Cabinet paper**)
3. As for option two above but increasing the maximum duration of imprisonment to 14 years.

What consultation has been undertaken?

A short period of targeted consultation was undertaken with key stakeholders as agreed with the Minister of Immigration, including:

- government agencies (including MBIE’s Immigration Compliance and Investigations (ICI) and Litigation teams, the Ministry of Justice (MOJ), the Department of Corrections, and the Legislation Design and Advisory Committee (LDAC)),
- independent statutory bodies (eg the Immigration and Protection Tribunal),
- representatives of impacted parties (ie immigration lawyers and community representatives).

The key feedback received is summarised below.

Proposal 1: Extending the timeframe for issuing employer infringement notices:

- MOJ noted the potential disadvantage to employers but felt that this was reasonable and proportionate to the likelihood of cases being completed at a faster rate. They did not have any concerns about the impacts on the court system.

IN CONFIDENCE

- LDAC provided feedback that if the offending cannot reliably be identified at the time it occurs, this suggests the conduct in question is not suitable for an infringement offence.

Proposal 2: Increasing the maximum penalties for migration exploitation offences:

- MOJ commented on the removal of the mens rea distinction (the maximum sentence will now be the same, regardless of whether an employer was “reckless” about their employee’s immigration status or can be proved to have “known” that they were not legally allowed to work for them). MOJ noted that, while it is generally best practice to set different penalties where there are two thresholds of this type, to reflect escalating levels of moral culpability, in this case specifically MBIE’s rationale seemed reasonable and might justify a deviation from the standard.
- The Department of Corrections noted that increasing the likelihood and the duration of incarceration increased the associated costs to the community.

Wider or public consultation was not feasible in the time available. However, there will be further opportunities for consultation, including targeted consultation on an exposure draft of the Bill and through the six-month Select Committee stage.

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

Yes, for both proposals.

Summary: Minister’s preferred option in the Cabinet paper

Policy problem 1: Extending the timeframe for issuing infringement notices

Costs (Core information)

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

The time and resource to issue an infringement notice once offending has been identified is relatively low, so issuing more notices as a result of the change can be absorbed within current resourcing levels. However, responding when an employer wishes to challenge a notice can be more resource intensive. Currently an internal review takes about an hour, with appeals to the district court requiring a minimum of 20 hours of work. We anticipate a minor increase in challenges – about three to four more per annum, which are likely to all be internal reviews. This could be absorbed within existing resourcing.

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

We do not expect any measurable increase in the number of cases being appealed to the District Court, and therefore do not expect additional costs for the court system. However, changes may be needed to MOJ’s centralised IT system for recording unpaid infringement fines. Officials are investigating implementation options that could avoid this, but, if

IN CONFIDENCE

necessary, **Commercially sensitive** and further advice would be given to relevant Ministers on options for funding this.

Employers may also find it harder to gather evidence to mount a defence when longer has passed since the offending. However, we consider this risk to be minimal, as infringement notices will only be issued within the time period where employers are legally required to keep employment records (six years).

Benefits (Core information)

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

The key benefit of the proposal is a reduction in exploitative behaviour by non-compliant employers. These benefits are felt by the migrant workers, as well as compliant employers (whose businesses can be undercut by employers using exploitative practices), New Zealand workers (whose terms and conditions are not undermined by the anti-competitive behaviours of exploitive employers), and the wider New Zealand economy, including because New Zealand is a more attractive destination both to workers, if they can be confident their rights will be upheld, and to investment, if New Zealand clearly upholds international human rights norms.

Balance of benefits and costs (Core information)

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

We consider that the benefits outweigh the costs, which are marginal and have sufficient mitigations (as there will still be a reasonable limit on the length of time in which MBIE can issue an infringement notice).

The main risk is that the number of additional infringement notices issued is significantly larger than projected, and MBIE is not resourced to respond appropriately to employers challenging the notices. This will be monitored, and further decisions about resourcing and prioritisation can be taken if the number of employers challenging notices becomes unmanageable.

Implementation

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

The changes will be implemented following the passage of the Immigration (Enhanced Risk Management) Amendment Bill, **Confidential advice to Government**. The changes will require minimal operational changes for MBIE. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process to ensure readiness when the Bill is enacted. Implementation will include updating internal guidance and procedures, delivering training, and developing monitoring and reporting requirements, and an external communications plan.

Limitations and Constraints on Analysis

We do not have a robust evidence base for how many infringement offences are going unpenalized as a result of the current restrictions on when infringement notices can be issued, as this data is not recorded in a structured way. We have based estimates on the cases we were able to identify but expect that this is a significant underestimation. We are also unable to estimate the impact of these changes on the proportion of infringement notices that are challenged.

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

Policy problem 2: Increasing penalties for migrant exploitation

Costs (Core information)

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

The main monetised costs associated with raising the maximum prison sentence for migrant exploitation are costs to the Corrections system (averaging around \$120,000 per prisoner per annum). The number of people actually prosecuted and imprisoned is likely to be marginal compared with the numbers generated within the wider justice system. As at the end of March 2025, two people had been convicted of migrant exploitation offences during 2024/25 (both had been sentenced to home detention and required to pay reparations).

Costs will fall also on the offenders themselves (excluded from the economy, and the community, for the length of their sentence), and on their families and businesses.

It is not possible to accurately estimate either set of costs, which are dependent upon the numbers of successful future prosecutions, and the sentences imposed.

Benefits (Core information)

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

The benefits accrue to:

- migrant workers (not exploited: ie paid correctly, including their holiday entitlements; and not restricted from knowing their rights or communication with others),
- New Zealand employers in the same sectors / areas (who will not be unfairly undercut by the lower costs of exploitative employers), and
- Other workers (whose terms and conditions will similarly not be threatened by unfair competition).

The wider New Zealand community will also benefit from the small but positive boost to New Zealand's international reputation, related to the maintenance of international standards.

Balance of benefits and costs (Core information)

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

As above, the overall benefits of the proposal are assessed as outweighing the costs.

Implementation

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

The changes will be implemented following the passage of the Immigration (Enhanced Risk Management) Amendment Bill, Confidential advice to Government. The changes will require minimal operational changes for MBIE. The implementation planning will be

IN CONFIDENCE

completed once the Bill is introduced, with delivery progressing in parallel to the Parliamentary process to ensure readiness at the point the Bill is enacted. Implementation will include updating internal guidance and procedures, delivering training, and developing monitoring and reporting requirements, and an external communications plan.

Limitations and Constraints on Analysis

The actual level of exploitation of migrants in the labour market is difficult to measure (in common with much illegal activity) and it will be difficult to identify how these changes impact on employer behaviours, which are influenced by a wide range of factors (including other changes being made to seek to address migrant exploitation). It is therefore not possible to provide concrete estimates of the amount of harm reduction we expect as a result of the proposals. We have noted that we expect the proposal to reduce the amount of exploitation and associated harm.

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

Responsible Manager signature:



Stacey O'Dowd

Manager, Immigration (Border and Funding) Policy

12 June 2025

Quality Assurance Statement

[Note this isn't included in the four-page limit]

Reviewing Agency: MBIE

QA rating: partially meets

Panel Comment:

A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled Strengthening immigration penalties for non-compliant and exploitative employers on 22 May 2025.

The Panel consider that the information and impact analysis summarised in the RIS **partially meets** the Quality Assurance criteria.

The Panel notes that this RIS has been very well written with high standards of clarity and conciseness. However, although there has been high level targeted consultation with some stakeholders, this RIS has the limitation of not having undergone public consultation. Should future consultation through the select committee process change the analysis or assumptions, then a future Supplementary Analysis Report may be necessary.

Section 1: Diagnosing the policy problem

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

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

1. People who are not New Zealand citizens or residents may only work in New Zealand if their visas allow them to do so. As at October 2024, there were approximately 157,000 temporary migrants working in New Zealand, representing about 7% of employees in New Zealand.² The population of temporary migrant workers has been growing since the borders reopened post-COVID. People who are in New Zealand unlawfully (overstayers), and some people who are in New Zealand lawfully but who do not hold work rights, may also work illegally to support themselves.
2. When hiring a migrant worker, an employer must ensure that that employment is compliant with the Immigration Act. This includes only hiring people who have a visa that allows them to work, and ensuring employment complies with the conditions on the worker's visa (visa conditions may specify things like the role, location, employer, minimum pay rate, and minimum/maximum working hours). These requirements help to manage labour market risks (in particular, ensuring New Zealanders are not displaced and their employers are not undercut), and reduce the risk of migrants being exploited or otherwise exposed to poor working conditions.
3. Employers of migrants must also meet minimum employment standards that apply to all employees in New Zealand, such as minimum wage, holiday and sick leave entitlements, and must not unlawfully deduct wages or charge employment premiums. An employer must also uphold a migrant worker's rights to seek alternative employment and to leave employment and may not withhold their passport or prevent them from communicating with other people (including contacting Immigration New Zealand (INZ) to take steps to ensure their compliance with their visa conditions).

Employer non-compliance with the law is an ongoing issue that causes serious harm

4. The vast majority of employers of temporary migrants are compliant with immigration and employment law. A significant group of employers however break the law, either intentionally (especially if they consider that they are unlikely to be detected or that, if detected, any penalties will be negligible), or through ignorance of the law.
5. Temporary migrant workers are at greater risk of exploitation than New Zealand workers. Analysis done as part of the Temporary Migrant Worker Exploitation Review in 2020 indicated that 64% of the Labour Inspectorate's investigations in 2018/19 involved a migrant worker, although only 7% of jobs were held by a migrant worker.³ Factors that increase vulnerability to exploitation include migrants originating from countries that are poorer than New Zealand, having limited understanding of their legal entitlements and New Zealand workplace norms, having limited English, and / or having limited connection to people in the community outside their workplace (which can make it difficult for

² Migrant Employment Data. This figure includes both work and student visa holders. Many student visa holders have work conditions on their visas (generally, allowing them to work for any employer part time during term time and full time over holidays).

³ [Temporary migrant worker exploitation review – final proposals](#)

IN CONFIDENCE

individuals to both recognise they are being treated unlawfully and to know how to seek help). Migrants who face poor employment prospects and economic conditions in their home country may have taken on debt to fund their move to New Zealand, which can make them highly motivated to remain in New Zealand, despite being treated unlawfully. Some employers are actually responsible for, or are linked to, that debt (for example, have received, or know others offshore have received, unlawful payments for New Zealand job offers, commonly called premiums; or have organised travel at high prices and require associated costs to be paid off).

6. It is difficult to accurately measure the extent of migrant exploitation, as it often goes unreported.⁴ However, the available indicators suggest that exploitative practices are persistent among a minority of employers. The number of reports of exploitation to MBIE are increasing significantly – from 807 reports in the 2022/23 financial year, to at least 2,424 reports in 2024/25.⁵ The 2024 Employment Monitor reported that 14% of migrant workers surveyed said that their employer sometimes does things against New Zealand employment law. Of those on student or work visas, 12% reported being paid less than the minimum wage.⁶ These rates were similar to those reported in the previous year’s report.
7. Employer non-compliance when hiring migrant workers causes a range of harms, including:
 - a. Economic, social, psychological and physical harm to migrant workers. Migrants may be underpaid or required to pay illegal premiums to their employers. At the extreme end, an employer may exert total control over the employee, including confiscating their passport and making threats to prevent the employee leaving their service. The impact on victims can be extreme and leave them with ongoing physical and mental health problems.
 - b. Harm to businesses that comply with the law, who are undercut by businesses using illegal and anti-competitive practices to get ahead.
 - c. Harm to New Zealand workers, including vulnerable workers, by undermining their working conditions (through their employers being forced to compete with non-compliant companies) and displacing them from employment opportunities (through their having to compete with people who are prepared to work for less, especially if that is below the minimum code).
8. Addressing non-compliance by employers of migrant workers is a priority for the Government. The National Party and New Zealand First Coalition Agreement makes a commitment to “enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences.”

⁴ [Migrant exploitation | Employment New Zealand](#) lists reasons migrants may be reluctant to report.

⁵ This figure is as at the end of March 2025. It is unclear how much of the increase in reporting rates reflects an actual increase in the rate of exploitation versus an increase in awareness of, and confidence in, reporting mechanisms. For example, a new 0800 number for reporting exploitation, and a new visa option for exploited migrants (Migrant Exploitation Protection Visa) have been established in recent years, which have likely contributed to the increase in reports of exploitation. However, as above, officials consider that much migrant exploitation is never reported.

⁶ [Employment Monitor report 2024](#)

IN CONFIDENCE

There are a range of offences and penalties for employers who break the law

9. There are already a range of penalties, across both the immigration and employment law systems, to deter and punish non-compliance by employers.
10. Lower to mid-level breaches of employment standards (whether they relate to a migrant or New Zealand employee) are generally enforced by the Labour Inspectorate, Employment Relations Authority, and Employment Court through a civil penalties regime and other orders/declarations. An employer who has received a penalty for breaches of minimum employment standards will also be placed on a public stand-down list that prevents them from supporting visa applications for a set period of time.⁷
11. Lower to mid-level breaches of immigration law are enforced through a relatively new employer infringement offence regime (operating since April 2024). The regime is set out at section 359A of the Act, which outlines the following offences:
 - a. allowing a person to work who is not entitled under the Act to work in the employer's service (eg employing someone who is in New Zealand unlawfully, or employing someone who has a visa that doesn't allow them to work, such as a visitor visa)
 - b. employing a person in a manner inconsistent with a work-related condition of their visa (eg employing someone who has a visa that only allows them to work for another employer or in another role or region, or paying someone less than the required rate on their visa)
 - c. failing to comply with a request by an immigration officer for employment-related documents within 10 working days.
12. An employer who has committed an infringement offence can be issued an infringement fine of between \$1,000 and \$3,000 per offence. As with employment standards breaches, employers who have been issued with an immigration infringement notice will be placed on a public stand-down list and prevented from supporting visa applications for a set period.
13. For more serious offending, the Act provides for a range of criminal offences, with penalties ranging from fines to imprisonment. The Act includes an offence for the exploitation of temporary or unlawful migrant workers, at section 351. Exploitation includes where an employer has committed a serious breach of minimum employment standard, eg requiring a worker to make payments back to the employer to maintain their employment, and/or has taken action to prevent the worker from leaving their employment or enforcing their legal rights, eg by confiscating a worker's passport or preventing them from accessing a telephone.
14. The penalty for employers convicted of exploitation under section 351 is a maximum of 5 or 7 years' imprisonment - depending on whether the employer was reckless in determining the migrant's right to work legally, or had knowledge (which for practical purposes, means "had been officially advised") that the person was not able to be

⁷ The stand-down list only prevents employers from supporting visa applications. It does not prevent them from employing temporary migrants with open work conditions, such as working holiday makers or students.

IN CONFIDENCE

employed by them, and/or a fine of up to \$100,000.⁸ Employers convicted under section 351 are permanently barred from supporting visa applications. Due to the significant costs involved, only a small number of criminal prosecutions are taken for more serious offending – around 1-2 per year for section 351 offences⁹, and numbers are similar for other employer offences (eg section 350 – knowingly employing someone who is not entitled to work in the role).

15. The employer infringement notice regime was introduced to help address the large number of cases where offending is serious but does not meet the threshold for prosecution. In the first year of the scheme, a total of 86 infringement notices have been issued.

What is the policy problem or opportunity?

16. The current penalties, while strengthened relatively recently through the addition of the immigration infringement regime, do not appear to be effectively deterring employers from carrying out these offences. We have identified two key issues with the current immigration employer offence framework that are likely contributing to this.

The period of time during which infringement notices can be issued after an offence has been committed is too short, so many employers are avoiding penalties

17. The employer infringement regime in the Act is subject to standard timing provisions under the Summary Proceedings Act 1957. These create a de facto time limit of 90 days from the date of the offending for MBIE to issue an infringement notice.¹⁰
18. For two of the employer infringement offences – employing a person who is not entitled to work for the employer (section 359A(1)(a)) and employing a person in a manner inconsistent with their visa conditions (section 359A(1)(b)) – the de facto 90-day limit from the date of the offending has frequently proven to be too short to issue an infringement notice.¹¹ This is because these offences are most often identified after they have happened – often many months afterwards – because MBIE generally becomes aware of this kind of offending in one of the following ways:

- a. **Through external allegations.** Migrants are often motivated to not make a complaint about their employer until after the employment relationship has

⁸ The penalties are set out at section 357 of the Act. An individual employer can be imprisoned AND fined; a company can only be fined.

⁹ In 2024/25 to the end of March 2025, two people in two cases had been found guilty of section 351 (migrant exploitation) offences, alongside related offences, (variously aiding and abetting a person to remain in New Zealand unlawfully, seeking to corrupt witnesses, and otherwise attempting to obstruct justice). Both were sentenced to home detention and ordered to pay reparations (employment premiums / underpaid wages), totalling \$87,062 between them.

¹⁰ Under the Summary Proceedings Act, regulators have six months from the date of the offence within which to perform all procedural requirements, which impacts whether an infringement fee can be deemed a debt owed if the offender does not respond. Likewise, if the offender disputes the infringement, then the regulator has six months from the date of the offence to apply to the courts to dispute their liability. In practice, this means MBIE has only 90 days from the date of the offence to issue an infringement notice, so there is sufficient time (a further 90 days) for the notice period and any reminder notice periods to be provided or for the offender to either pay the notice or dispute it, and MBIE has time to review the file and apply to the court, which takes additional time and requires litigation review.

¹¹ These considerations do not apply to the third immigration employer infringement offence at s359A(1)(c), which relates to an employer failing to provide employment documents when requested. In this case, the offending is always identified at the time it occurs, so the existing 90-day timeframe is sufficient to act

IN CONFIDENCE

completely broken down. In these cases, by the time they make an allegation to MBIE, the offending has already stopped (as it took place in the context of the employment) and the 90-day time limit for issuing an infringement notice is often well out of time.

- b. **Through post-decision accreditation checks.** As part of the Accredited Employer Work Visa (AEWV) scheme, a small proportion of accredited employers are proactively checked (rather than in response to a complaint or concern) during their accreditation period. If an employer is selected for one of these checks, it could be years before they are selected again. Consequently, the checks can uncover offending that occurred in the past and is no longer happening, eg records may show that a migrant had started working for the employer before they had a visa that allowed them to do so.
- c. **Through evidence provided with a visa application or other interaction with INZ.** This can also uncover offending that occurred in the past and is not ongoing, eg a migrant applying for residence may provide payslips from a previous job that show they were paid below the pay rate on their visa conditions.

- 19. Even when MBIE becomes aware of the alleged offending while it is still happening, or shortly afterwards, the complexity of cases and the time needed to fully investigate them means that the 90-day timeframe has often elapsed before enough evidence is gathered to issue an infringement notice. In 2024, 36% of investigations that did not result in a prosecution (and therefore are good candidates for infringement notices) took longer than 90 days to close.
- 20. A total of 86 infringement notices were issued in the first year of the scheme for section 359A(1)(a) and (b) offences. We have identified at least another 22 cases in the same time period where offending was established but no infringement notice was issued, due to the 90-day timeframe having elapsed. However, the total number of cases is likely significantly higher. Cases where infringement offending was established, but no notice issued, are not recorded, so we relied primarily on individual staff identifying manually identifying relevant cases they had worked on, which is likely to significantly underrepresent the true prevalence.
- 21. While there is the option to file criminal charges outside the 90-day timeframe, the offending is not usually serious enough to meet this threshold. This means that, where it is not possible to issue an infringement notice due to the 90-day threshold, there are very limited options, or no options, to penalise a non-compliant employer.
- 22. If an employer applies to support a visa in the future, they may have their application declined on the grounds that they do not have a history of compliance with immigration law, and employers accredited under the AEWV scheme will generally have their accreditation revoked. However, the consequences are less severe than if an infringement notice had been issued – there is no fine or set stand-down period, and no publication of their offending. Furthermore, if an employer does not try to support a visa application in future, they will not face any consequences at all.
- 23. We think there is an opportunity to strengthen the deterrence effect of the employer infringement offence scheme by extending the timeframe available to issue infringement notices. While we are not aware of any other infringement offence regimes that depart

IN CONFIDENCE

from the standard procedures under the Summary Proceedings Act, we note that other regimes generally involve offending that can be readily identified while it is occurring, eg the Labour Inspectorate issues notices for record keeping breaches. We also note that there is some precedent in other legislation for the timeframe for taking a civil claim being based on the date a person becomes aware of an action/event, rather than the date the action/event occurred (refer section 14 of the Limitation Act 2010).

The maximum penalties for migrant exploitation are lower than those for other similar offences although exploitation causes harm and is premeditated

24. We have reviewed penalty levels across a range of offences and consider that the maximum penalties for migrant exploitation offences under section 351 of the Act are out of step with other offences that cause similar harm to victims (see the table in Appendix One.) We also note that exploitation generally involves premeditation, and always involves the perpetrator choosing to continue to do it (which may not be the case for offences such as theft, violence, or even blackmail, for example).
25. We further do not consider that the differentiation in the maximum penalties for migrant exploitation, which vary on the basis of whether the employer had been formally advised that the migrant was not lawfully able to work for them, are justified. This is because the employer's exploitative behaviours are at the heart of offending, rather than whether that employer has received advice, or has not checked, whether they are allowed to employ the worker.
26. Judges use the maximum sentence in the legislation as the starting point for sentencing decisions, taking into account all the facts of the case to determine the final sentence. In the three years to the end of 2024, MBIE has prosecuted five individuals on a total of 19 migrant exploitation charges, with sentences ranging from six to twelve months home detention, plus reparations. These cases involved charging migrants significant premiums (minimums of several thousand dollars) to secure a job, underpayment of wage and leave entitlements, and coercing staff to work without a valid visa or beyond the hours allowed in their visa conditions. Given the lower sentences for migrant exploitation offences compared to other comparable offences, the public may consider that these sentencing outcomes do not sufficiently reflect the seriousness of the offending.
27. There is an opportunity to increase the penalty provisions under section 357 in the Act to ensure that they are commensurate with the potential harm caused and comparable with offences in other parts of the Statute that cause a similar level of harm, and to send a clearer signal that migrant exploitation is not acceptable.
28. We also consider that the different maximum prison sentence (5 years versus 7 years) for section 351 offending, depending on whether the employer was reckless or knowing in relation to determining the migrant's right to work, is unnecessary, as this is a factor that can already be taken into account by the Judge during sentencing. It is also out of step with other offences in the Act that include both reckless and knowing conduct and have a single maximum penalty, eg aiding and abetting offences – refer sections 343(1)(b) (offence) and 355(2) (penalties).

Affected stakeholders and their views

29. We have identified the following affected groups and the nature of their interest:

IN CONFIDENCE

a. **Regulated group:**

- Migrant workers impacted by migrant exploitation and unlawful employment practices.
- Employers of migrant workers

b. **Regulators:**

- MBIE, including Immigration Compliance and Investigations (ICI), and the Labour Inspectorate, who collaborate with ICI on migrant exploitation cases.
- Ministry of Justice, which has a regulatory oversight function and advises on infringement regimes/penalties. The majority of criminal cases go through the District Court, with very serious crimes to the High Court.
- The correctional system, which is designed to keep society at large safe, by separating the community from individuals who have committed crimes, and to punish people who have offended against the community.

30. Migrant exploitation and unlawful employment practices in relation to migrants are a high-profile issue, and migrant advocates have been vocal in calling for stronger penalties for non-compliant employers. Ordinary law-abiding employers have also frequently expressed frustration to officials that more is not being done to act against non-compliant employers, and to even the playing field. When MBIE consulted on migrant exploitation policies in 2020, the 167 submissions received (including about 60% from migrants or migrant advocates, and about 30% from employers or industry organisations) indicated a high-level of support for action against exploitation.¹²

31. Relevant government stakeholders have been consulted on the proposals and their feedback (and MBIE's response) is summarised from paragraph 38 below.

What objectives are sought in relation to the policy problem?

32. The primary objective is to effectively deter employers from exploiting migrant workers and undermining the integrity of the immigration system. It is intended to achieve this by enabling the constrained immigration investigation and compliance resources to be deployed to make it more likely that exploitative behaviour will be meaningfully sanctioned (through increasing the numbers of infringement notices and through enabling higher penalties to be imposed on convicted exploitative employers).

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

What consultation has been undertaken?

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

¹² See Appendix Two of Cabinet paper: [Temporary migrant worker exploitation review – final proposals](#).

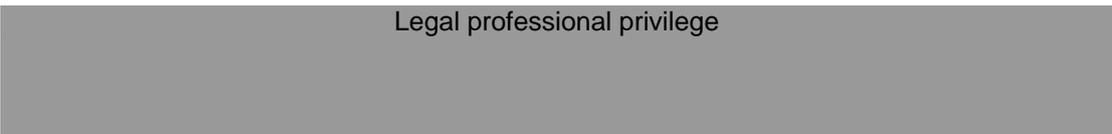
IN CONFIDENCE

- government agencies (including, for the proposals in this RIS: MBIE’s ICI and Litigation teams, the Ministry of Justice (MOJ), the Department of Corrections, and the Legislation Design and Advisory Committee (LDAC))
 - independent statutory bodies (eg the Immigration and Protection Tribunal)
 - representatives of impacted parties (the New Zealand Law Society’s Immigration and Refugee Committee, and the INZ Focus Group, which includes employers, migrant groups, licenced immigration advisors and immigration lawyers).
35. Wider or public consultation was not feasible in the time available. Through the targeted consultation process, MBIE received a broad range of perspectives which have been factored into the analysis.
36. There will be two more opportunities for consultation:
- targeted consultation with the above stakeholders on an exposure draft of the Bill, in September 2025,
 - through the six-month Select Committee stage, during which members of the public are invited to provide written and oral submissions on the Bill.
37. Feedback received is summarised below.

Proposal 1: Extending the timeframe for issuing employer infringement notices

38. MOJ noted the potential disadvantage to employers as a result of departing from the standard procedures in the Summary Proceedings Act 1957 but noted that the justification of the potential impact appears reasonable and proportionate to the likelihood of cases being completed at a faster rate. They recommended analysis continues to consider the balance between the improved deterrence of the proposed regimes, and the application of appropriate and proportionate penalties. They had no concerns about the impact of the proposal on the courts.
39. LDAC provided feedback that, if the offending at sections 359A(1)(a) and (b) cannot reliably be identified at the time it occurs, that suggests that the conduct in question is not suitable for an infringement offence. We have noted this feedback but consider that this was taken into account by Parliament when they approved the establishment of the employer infringement offence regime through the Worker Protection (Migrant and Other Employees) Act 2023.
40. MBIE ICI were supportive of the proposal, noting that it would give them a wider range of tools to address non-compliance in more cases.

Proposal 2: Increasing the maximum penalties for migrant exploitation offences

41.  Legal professional privilege
42. MOJ noted the significant harms that migrant exploitation could cause, particularly to the exploited individuals. It also noted that any potential risks of over-penalisation were balanced by Judges’ ability to exercise discretion in sentencing, balancing proportionality with the severity of the offence. MOJ considered that the discussion of the mens rea thresholds addressed the issues around recklessness (a person is aware of the

IN CONFIDENCE

associated risk, and unreasonably decides to act) versus knowledge (a person acts knowing that there is a high probability that their conduct will cause a specified result). MOJ noted that in the exploitation offence however, the crime is committing exploitation, although the mens rea aspect relates to knowing whether a worker is not lawfully able to work for the employer (and is therefore “exploitable” – can be effectively blackmailed).

43. MBIE notes that employers have a lawful obligation to positively check that migrants can work for them (section 350) and that INZ facilitates that checking.¹³ “Knowing” for the purpose of the Act is “MBIE has advised you that the worker in question is not able to lawfully work for you, and you have nonetheless continued to exploit them”, which applies to a very small fraction of exploitative employers. The fact that employers both underpay their workers and restrict their liberty or communications (the two determinants of exploitation) could be considered to indicate that they generally are aware that they have power over those individuals that they would not have over New Zealanders.
44. MOJ also noted that the offence could be restricted by removing the reckless element, such that the offence only applied to those knowingly exploiting workers. It considered that, if someone unknowingly hires a person who is not allowed to work but still exploits them, this issue seems to be addressed by the equivalent offences for exploiting workers in general. MBIE did not agree with this proposal, as set out in the paragraph above, and because it does not recognise the inherent vulnerability of people who are outside the country of their citizenship. Following further clarification by MBIE, MOJ responded that the additional rationale regarding the two behaviours seemed reasonable and may justify a deviation from the standard in this case.

Section 2: Assessing options to address the policy problem

Policy problem 1: Extending the timeframe for issuing infringement notices

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

45. The options will be assessed using the following criteria, in line with objectives:
 - a. **Effectiveness at deterring offending**, ie how likely it is that an employer will be punished for their offending and therefore how motivated they will be to comply
 - b. **Fairness and reasonableness of penalties**, ie whether employers will have an appropriate opportunity to mount a defence and be protected from historic claims
 - c. **Administrative cost**. The analysis is focused on measuring:
 - the cost to employers of challenging an infringement notice that they believe has been incorrectly issued (this can be done by applying for an internal review to MBIE, or challenging the notice in the District Court)
 - the cost to MBIE and the courts of responding to those challenges. These are existing costs, and the cost per challenge will not change. The analysis is

¹³ With the [VisaView | Immigration New Zealand](#) checker (for employers and education providers).

IN CONFIDENCE

focused on changes to the aggregate cost as a result of more infringement notices being issued

- potential costs to MOJ to update the IT system that records unpaid infringement fines to reflect non-standard timeframes. Officials are investigating whether there are implementation options that could avoid a system change, but it is possible that one may be required.

We have not included the other existing administrative costs of the employer infringement notice scheme in the analysis, as they are not materially impacted by any of the options. This includes:

- The cost of investigating infringement offences. None of the options will change the number of investigations MBIE undertakes – only the likely compliance/enforcement outcomes of those investigations.
- The cost of completing the paperwork to issue the infringement notice. We do not believe this cost is material, as all the information required for the paperwork is already being recorded in file notes and can simply be copied over.

What scope will options be considered within?

46. We have only considered options that can be delivered within existing resourcing and prioritisations, as Confidential advice to Government

47. The options below only apply to the infringement offences at sections 359A(1)(a) and (b) (which relate to employing someone who did not have a work visa, or in breach of their work visa conditions). They do not apply to the infringement offence at section 359A(1)(c), which relates to not providing employment records when requested. This is because section 359A(1)(c) offences can always be identified at the time they are occurring, so the 90-day period to issue infringement notices does not create a barrier.

What options are being considered?

Option one – Status quo

48. Any application to enforce payment or challenge an infringement notice must be made within six months of the date of the offending, as per the Summary Proceedings Act. MBIE must issue employer infringement notices within 90 days of the date of the offending so that all procedural requirements under the Summary Proceedings Act can be met.

Option two – extend time limit to 90 days from MBIE becoming aware of the offending

49. This option would create bespoke timing provisions for the immigration employer infringement scheme, separate from those in the Summary Proceedings Act. They would retain the six-month timeframe for applications to the Court but change the start date for the six-month period from the date of the offending to the date MBIE became aware of the offending (eg the date an allegation was made).

50. Historic/stale claims (where so much time has passed that the employer cannot mount a defence) would be prevented by requiring MBIE to issue and enforce the notice within six

IN CONFIDENCE

years of the date of offending. This timeframe aligns with the timeframe for which an employer is required to retain wage and time records.

51. This would mean that MBIE could issue an infringement notice up until 90 days after they became aware of the offending, OR 90 days less than six years after the date of the offending – whichever is earlier.

Option three – extend time limit to 9 months from MBIE becoming aware of the offending

52. This option is the same as option two, except that the timeframe for making applications to the Court would be extended from six months to twelve months (and other procedural requirements would change to align with this increase).

53. This would mean that MBIE could issue an infringement notice up until 270 days (nine months) after they became aware of the offending, OR 90 days less than six years after the date of the offending – whichever is earlier.

54. Increasing the timeframe from 90 days (as under option two) to 270 would be intended to capture more complex cases where an investigation cannot be completed within 90 days of MBIE becoming aware of the offending. We also considered an interim option where the de facto timeframe would be set at 180 days, but discounted this, as the benefits over option two in terms of the volume of cases that could be captured would be more marginal.

Further (non-regulatory) options were considered but excluded

55. We have considered potential non-regulatory options to address the problem. The main option we identified was increasing the number of proactive checks that MBIE undertakes on employers to enable offending to be identified earlier. We discounted this option for the following reasons:

- a. In order to achieve meaningful improvements, the increase in the number of checks would need to be significant. In the 2024 calendar year, INZ undertook 3,250 proactive checks on accredited employers. There are around 24,000 accredited employers, and many more employers who hire migrants on other visa types that do not require accreditation or hire migrants unlawfully without accreditation. Regular checks of employers at risk of committing an infringement offence would require tens of thousands of checks per annum. The cost of this would need to be recovered through immigration fees and levy charged to employers and migrants. Confidential advice to Government

- b. Proactive checks do not always result in finding evidence of offending, even if it is occurring. Migrants are often motivated to conceal the fact they are being exploited to maintain employment or may have been threatened and coerced to lie by their employer. It is often only after the employment relationship has ended that a migrant is willing to provide evidence of their employer's offending.

IN CONFIDENCE

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

| | Option one – Status quo, ie 90 days from date of offending | Option two – 90 days from date MBIE became aware of offending | Option three – 9 months from the date MBIE became aware of the offending |
|---|--|---|--|
| Effectiveness at deterring offending | 0 86 infringement notices were issued in the last year for the relevant offences. ¹⁴ We estimate at least 22 more cases had infringement offending identified, but no notice was issued due to the 90-day timeframe elapsing | + We estimate at least 14 more infringement notices could be issued per annum (this is a conservative estimate) than the status quo, with at least 8 possible infringement cases remaining outside the 90-day window | ++ We estimate at least 19 more infringement notices could be issued per annum (this is a conservative estimate) than the status quo, with at least 3 possible infringement cases remaining outside the 9-month window |
| Fairness and reasonableness of penalties | 0 Employers always have a fair chance to mount a defence, and are protected from stale claims, as the notice can only be issued for 90 days from the date of the offending. | - The longer it has been since the offending, the harder it may be for an employer to mount a defence. We have not been able to compile data on the average length of time between offending occurring and MBIE becoming aware of it. However, anecdotal evidence suggests the vast majority of cases are discovered within six months. We therefore think the potential disadvantage to employers will be marginal in most cases. In cases where a longer time has elapsed, the inclusion of a maximum timeframe of six years (less 90 days) from the date of the offending to issue a notice will ensure that cases are only taken in a | - As for option two, but this option would extend the timeframe to issue a notice for a further six months. An extra six months would marginally increase how difficult it could be for an employer to mount a defence. However, the extra time would only be used in cases where an investigation was more complex and could not be completed more quickly – we estimate this would only be about five cases per annum (or 5% of all projected infringement cases). |

¹⁴ April 2024 – March 2025

IN CONFIDENCE

| | Option one – Status quo, ie 90 days from date of offending | Option two – 90 days from date MBIE became aware of offending | Option three – 9 months from the date MBIE became aware of the offending |
|----------------------------|---|--|--|
| | | <p>timeframe where an employer is legally required to retain wage and time records, and therefore should be able to mount a defence.</p> <p>The evidential threshold MBIE has to meet before issuing an infringement notice will remain at “beyond reasonable doubt”, which will further ensure that employers will not be unreasonably penalised.</p> | |
| Administrative cost | <p align="center">0</p> <p>There were 24 challenges in the first year of the infringement scheme against notices issued for the relevant offences (28% of all notices issued for those offences). Only three of these have been appealed to the District Court (13% of the notices challenged), and the remainder were challenged through MBIE’s internal review process.</p> <p>An internal review takes roughly one hour for MBIE to complete. However, preparing for a District Court hearing is more resource intensive and would take a minimum of 20 hours.</p> <p>Costs and resource to respond to challenges are included in existing baselines and resource prioritisations.</p> | <p align="center">-</p> <p>Based on current rates of challenge, this could result in an additional 3-4 challenges per year compared to the status quo. This is based on the conservative volume estimates above, so total numbers could be higher. The rate of challenge could also increase if notices are issued longer after the offending took place.</p> <p>Based on current rate, we would expect these to almost all be internal reviews, rather than applications to the District Court.</p> <p>Based on the existing rate of challenge, we estimate this would only create in the range of 4-30 hours more work per annum for MBIE which could be absorbed within existing resourcing.</p> | <p align="center">-</p> <p>Based on the existing rate of challenge, we estimate this could result in an additional 5-6 challenges per year compared to the status quo. As with option two, this estimate is conservative and total numbers could be higher.</p> <p>We would expect these to almost all be internal reviews, rather than applications to the District Court.</p> <p>Based on the existing rate of challenge, we estimate this would only create in the range of 6-30 hours more work per annum for MBIE which could be absorbed within existing resourcing.</p> <p>MOJ has indicated that any impacts on the District Court would not be material.</p> |

IN CONFIDENCE

| | Option one – Status quo, ie 90 days from date of offending | Option two – 90 days from date MBIE became aware of offending | Option three – 9 months from the date MBIE became aware of the offending |
|---------------------------|---|---|--|
| | <p>In 16 cases (67% of notices challenged), the notice was upheld, and in four cases (17%), it was overturned as a result of the review. The remaining cases are still under review.</p> <p>This suggests the number of incorrectly issued notices is relatively low, and the associated cost for employers to challenge them is low, in the aggregate.</p> <p>No changes needed to MOJ’s IT system for recording unpaid infringement fines.</p> | <p>MOJ has indicated that any impacts on the District Court would not be material.</p> <p>The rate of notices being issued incorrectly is expected to remain low. At current rates, we would expect maximum one more incorrectly issued notice per year, but we expect this rate to decrease as the infringement scheme continues to embed.</p> <p>Changes may be needed to MOJ’s IT system (TBC).</p> | <p>As for option two, the rate of notices being issued incorrectly is expected to remain low – maximum one more incorrectly issued notice per year based on current rates, with the expectation that this decreases over time.</p> <p>Changes may be needed to MOJ’s IT system (TBC).</p> |
| Overall assessment | 0 | + | ++ |
| | | Overall better than status quo – the scale of the benefits is greater than the scale of the costs | Overall, much better than status quo – both the benefits and costs are greater than option two, but the scale of the benefits remains greater than the scale of the costs |

Key

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

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

56. We recommend option three, as it is most likely to deliver the highest net benefits.
57. Option three will ensure that infringement notices can be issued for the majority of the offending that is currently being investigated but falls outside the 90-day timeframe. We estimate the current rate of 86 notices issued per annum will increase to at least 105 per annum. However, we expect at least three cases per annum would remain outside the infringement window, due to more complex investigations that take more than 12 months. We expect that increasing the likelihood and severity of the sanctions that employer will face for mistreating migrant workers will drive higher rates of compliance over time. It is important to note that the change will not result in any more infringement offences being identified or investigated – it will only increase the likelihood of an employer being sanctioned for the offences that are already being identified.
58. There are costs associated with the proposed change, however we consider these are reasonable and outweighed by the benefits. While employers may find it more difficult to gather evidence to mount a defence for older offending, infringement notices will only be issued within the timeframe that employers are legally required to keep employment records (six years). We therefore do not consider that there is a breach of the principles of natural justice.
59. The key benefit of option three over option two is that it will ensure infringement notices are an option to sanction employers in more complex investigations that cannot be concluded within 90 days. Option three would also lay the best foundation for a new infringement offence currently under consideration for providing false and misleading information, as investigations into this kind of offending tend to be more complex and take longer to resolve. Most costs are marginally higher for option three than option two, but the differences are small, and we consider them reasonable, in light of the benefits of ensuring that infringement notices are an option in more complex investigations that do not meet the threshold for a criminal prosecution.
60. We anticipate that the increase in volume of work for MBIE to respond to employers challenging their infringement notice will be minimal and can be absorbed within current resourcing. However, we note that the increase in the number of infringement notices is highly uncertain. If the volumes are significantly higher than estimated, MBIE may not be able to absorb additional work to review challenged notices. In this case, a decision would need to be made to either approve additional resource (which would be funded through the immigration levy), deprioritise some core investigations and compliance work, or constrain the number of notices issued.
61. There may be one-off implementation costs if changes are needed to MOJ's IT system (Electronic Filing for Infringements), which records unpaid infringement fines. Officials are currently investigating whether there are implementation options that would avoid this. However, if changes are required, Commercially sensitive, and we will provide further advice to relevant Ministers on options for meeting this cost.

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

62. Yes.

IN CONFIDENCE

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

| Affected groups | Comment | Impact | Evidence Certainty. |
|--|--|---|--|
| Additional costs of the preferred option compared to taking no action | | | |
| Regulated groups | Employers who are issued an infringement notice after a longer period than is currently allowed may find it harder to gather evidence to mount a defence. | Low | Medium While our analysis is primarily based on theory, we are confident that any disadvantage to employers will be minimal, as notices will only be issued within the time period, they are already legally required to keep employment records. |
| Regulators | MBIE is required to respond to more challenges against infringement notices. | Low Projected 4-30 additional hours of work per annum, which could be absorbed within existing resourcing. | Medium There is uncertainty about projected challenge volumes, which could be significantly higher. Our projections are based on existing rates of challenge (which could increase if notices are issued longer after the offending), and available data on cases where an infringement was not issued due to the current timing constraints. This data is unreliable as we think there is currently underreporting of these instances. |
| | MOJ may be required to update their IT system for recording unpaid infringement fines to account for the non-standard timing provisions. This would be a one-off cost. | Low If changes are necessary, Commercially sensitive | Medium Officials are still confirming whether an IT change is needed, or whether there are other implementation options that could avoid this. Further consultation would be required with the vendor to determine the full cost of the change. |

IN CONFIDENCE

| Affected groups | Comment | Impact | Evidence Certainty. |
|---|---|---------------|---|
| Total monetised costs | | Low | Medium |
| Non-monetised costs | | Low | Medium |
| Additional benefits of the preferred option compared to taking no action | | | |
| Regulated groups | Migrant workers benefit from reduction in exploitative practices by their employers. Compliant employers benefit from fewer competitors using exploitative practices to undercut them | Medium | Low It is difficult to establish a causal link between a particular policy intervention and exploitation indicators, because they can be impacted by a wide range of factors (eg economic conditions and other policy interventions). We do not have any way to measure employer disadvantage from immigration non-compliance by their competitors. |
| Regulators | Changes should drive increased voluntary compliance rates overtime, decreasing need for investigations and compliance activity, and potentially reducing the need for support for exploited migrants (eg Migrant Exploitation Protection Visas, which are Crown-funded) | Medium | Low As above, it is difficult to prove a causal link between a particular intervention and exploitation indicators. |
| Others (eg, wider govt, consumers, etc.) | New Zealand economy benefits from being able to promote itself to potential migrant workers as a place where their rights will be upheld. | Medium | Low It is difficult to prove a causal link between penalty settings and New Zealand's attractiveness to migrant workers, as other factors have a greater influence. |

IN CONFIDENCE

| Affected groups | Comment | Impact | Evidence Certainty. |
|---------------------------------|----------------|---------------|----------------------------|
| Total monetised benefits | | None | Low |
| Non-monetised benefits | | Medium | Low |

Policy problem 2: Increasing penalties for migrant exploitation

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

63. The options will be assessed using the following criteria:

- a. **Effectiveness at deterring offending** ie to what extent will the option hold people to account, promote a sense of responsibility and create greater awareness that committing an offence under section 351 of the Act is serious criminal behaviour with strong penalties.
- b. **Fairness and reasonableness of penalties** ie are the penalties a proportionate response to the offending and consistent with penalties for similar offences in the Immigration Act and other legislation.
- c. **Administrative cost.** The analysis is focused on measuring the cost to Corrections related to enforcing custodial sentences (imprisonment or home detention) for people who are convicted of migrant exploitation offences. This is an existing cost, and the cost per individual will not change. The analysis is focused on changes to the aggregate cost as a result of more individuals being prosecuted.

We have not included the other existing administrative costs of the offence / penalty system in the analysis, as they are not impacted by any of the options. This includes the cost to MBIE of investigating cases and taking prosecutions, the cost to the courts of hearing a case, and the cost to employers of defending the charges. As none of the options under consideration will change the number of cases that MBIE investigates or prosecutes (only the sentencing outcomes), there will be no impact on these costs.

What scope will options be considered within?

64. These options focus on legislative change. The analysis excludes options such as changing policy settings (reducing the number of people able to enter New Zealand who might then be exploited, and therefore making it more difficult for New Zealand employers to hire migrants). Such options would not be aligned with other objectives around increasing economic growth; or increasing resourcing for investigations and compliance resourcing (as noted at paragraph 46, there are no proposals to do this at this stage, which means that options such as increasing the number and frequency of proactive checks on accredited employers, so that offending can be identified more quickly, have been excluded).

What options are being considered?

Option one – Status Quo

65. This means that employers would continue to be penalised under current penalty provisions, with no change to sections 357(3) and 357(4) of the Act.

Option two – Increase maximum penalty to 10 years imprisonment

66. Amend the Act to combine the penalty provisions under section 357 into one (akin to penalties reflected in sections 355(1)-(2)) and increase the combined maximum liability from 7 years to 10 years imprisonment.

IN CONFIDENCE

Option three – Increase maximum penalty to 14 years imprisonment

67. Amend the Act to combine the penalty provisions under section 357 into one (akin to penalties reflected in s355(1)-(2)) and increase the combined maximum liability from 7 years to 14 years imprisonment.

IN CONFIDENCE

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

| | Option one – Status quo | Option two – Remove recklessness distinction and raise maximum sentence to 10 years | Option three - Remove recklessness distinction and raise maximum sentence to 14 years |
|---|--|---|--|
| Effectiveness at deterring offending | 0 The status quo may deter some people from offending, but the low level of prosecutions, coupled with relatively low sentences once found guilty, ¹⁵ compared with the high level of reported exploitation, indicates that it is not as effective as would be desirable. | ++ Option two is expected to serve as a much stronger deterrent against committing migrant exploitation, as it is expected to lead to custodial sentences. Even if the likelihood of being detected does not rise, the higher penalties should help to make more employers consider their choices more carefully. | ++ The analysis for options two and three are the same. |
| Fairness and reasonableness of penalties | 0 The current penalties do not appear to be commensurate with the harm caused (both financial, through charging illegal penalties and underpaying victims, and psychological, including the impact of being mistreated in a country where the individual is not a citizen, and whose vulnerability has been used against them). The maximum penalty of 7 years is the same as the following offences in the Crimes Act 1961: obtaining by deception (section 241), receiving stolen goods | ++ Option two better reflects both the harms caused and the seriousness of the exploitation offences. The offences committed under section 351(1) capture extreme forms of conduct undertaken to facilitate exploitation. For comparison, the maximum penalty for robbery is 10 years (section 34(2) Crimes Act 1961). An equivalent maximum sentence would be more proportional to the harm caused. | + There is an argument that some more extreme exploitation behaviours are equivalent to the kidnapping, blackmail, and demanding with intent offences at sections 209, 238 and 239 of the Crimes Act 1, which all have a maximum penalty of 14 years. However, there is a very high penalty (maximum of 20 years imprisonment) for the very serious offence of migrant trafficking (section 98D of the Crimes Act), where a person arranges or procures the |

¹⁵ For example, a franchise owner was sentenced to 10 months home detention for six migrant exploitation charges, including the requiring of premiums. Found here: [Domino's pizza franchise owner gets home detention on migrant exploitation charges | RNZ News](#)

IN CONFIDENCE

| | Option one – Status quo | Option two – Remove recklessness distinction and raise maximum sentence to 10 years | Option three - Remove recklessness distinction and raise maximum sentence to 14 years |
|----------------------------|--|---|---|
| | (section 247), or accessing a computer system for a dishonest purpose (section 249). | | entry of a person into New Zealand, or the harbouring of a person in New Zealand, for the purpose of exploitation. |
| Administrative cost | 0 There are no differences associated with the status quo. | - On the basis that some people would be imprisoned, at an average cost of around \$120,000 per annum, there would be a cost to the taxpayer. | -- The same argument stands as for option two, but as sentences could be longer, the accumulated costs would be higher. |
| Overall assessment | 0 | ++ | + |

Key

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

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

68. MBIE recommends option two as it best meets the criteria. Increasing penalties also supports the Minister's agreed scope for the Bill, and broader efforts to strengthen the integrity of the immigration system and enhance the effectiveness of immigration laws and enforcement regimes.

69. Option two would:

- a. Support statutory coherence, by ensuring consistency with penalty provisions for similar offences in other legislation.
- b. Strengthen the immigration system's integrity, by ensuring that penalties adequately reflect the seriousness of the offence.
- c. Deter individuals from committing migrant exploitation offences, thus potentially reducing the number of offences.
- d. Protect the national interest and meet public expectations by addressing serious forms of migrant exploitation, and that penalties are commensurate with the harm caused.

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

70. Yes.

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

| Affected groups | Comment | Impact | Evidence Certainty |
|--|---|--------|---|
| Additional costs of the preferred option compared to taking no action | | | |
| Regulated groups | <p>Nature of cost: Impact on offenders’ families Type: ongoing Comment: A longer sentence can have significant social costs, including prolonged separation from families, which can affect the well-being of children and other dependents.</p> | Low | <p>High. MBIE understands the social and financial impact this may have on the offenders’ families. However, this impact is not inappropriate, as illicit actors against the immigration system should be penalised appropriately for the harm caused, and the change is intended to dissuade others from causing harm.</p> <p>It is also best considered by judges when they are determining appropriate sentences.</p> |
| | <p>Nature of cost: Potential for over-penalisation Type: one-off and ongoing once penalised Comment: There may be a risk of disproportionately severe punishments for offences that may not warrant a decade-long sentence, which could lead to criticisms of the justice system.</p> <p>However, Judges have the ability to take mitigating factors into account when deciding sentences, which are in any case subject to appeal.</p> | Medium | <p>High. MBIE understands that penalties should be assessed depending on the moral culpability of offenders (ie the higher the blameworthiness, the higher the penalty).</p> <p>However, the 10-year proposal is commensurate with the harm caused, especially under section 351(1)(b), as hindering someone from using a phone or leaving the premises (which can be part of migrant exploitation) is serious and similar to forms of kidnapping (which is also liable to 10 years imprisonment).</p> <p>MBIE’s ICI will investigate allegations that are made. The level of penalty will depend on the evidence provided to courts.</p> |

| Affected groups | Comment | Impact | Evidence Certainty |
|--|---|--------|---|
| | <p>Nature of cost: Increased prison and home detention costs</p> <p>Type: ongoing</p> <p>Comment: Longer sentences could lead to higher costs for the prison system. This can exacerbate existing issues within the correctional system.</p> | Medium | High. Corrections will incur financial costs if offenders are sentenced to prison. While MBIE is unable to predict the magnitude of these costs (which depend on the number of people sentenced to prison and the length of their sentences), previous experience of compliance activities leading to prosecutions indicates that the overall numbers incarcerated are not likely to represent more than a minimal increase to the total prison population. |
| Regulators | <p>Nature of cost: Judicial and legal expenses</p> <p>Type: ongoing</p> <p>Comment: There could be increased costs associated with longer trials and more appeals, as higher penalties might encourage defendants to contest charges more vigorously.</p> | Low | Medium. MBIE is aware of this potential risk, but the overall costs are likely to be marginal within the wider courts system. |
| <p>Others (eg, wider govt, consumers, etc.)</p> <p><i>For fiscal costs, both increased costs and loss of revenue could be relevant</i></p> | <p>No additional cost: these groups will benefit from the proposed amendments, which enhance the existing legal frameworks and penalty provisions for prosecuting migrant exploitation.</p> | Low | High. MBIE knows that the public will not face costs in relation to the preferred option. |
| Total monetised costs | | Low | |
| Non-monetised costs | | Low | |

| Affected groups | Comment | Impact | Evidence Certainty |
|---|---|--------|---|
| Additional benefits of the preferred option compared to taking no action | | | |
| Regulated groups | <p>Nature of benefit: Victim justice</p> <p>Type: ongoing</p> <p>Comment: Higher penalties can be seen as a mechanism to achieve justice for victims of migrant exploitation, by imposing stricter consequences on perpetrators.</p> | High | High. MBIE knows that higher sentencing can encourage both deterrence from future harms (meaning lower risk for vulnerable workers), and justice for victims. |
| | <p>Nature of benefit: Enhanced deterrence</p> <p>Type: ongoing</p> <p>Comment: A higher maximum penalty can serve as a stronger deterrent against migrant exploitation offences, potentially reducing the incidence of this crime.</p> | Medium | High. MBIE knows that higher sentencing can send a strong message that breaching the law and exploiting migrant workers is not tolerated and those committing this offence will be prosecuted appropriately. If it increases public awareness this may also mean a lower likelihood of employers exploiting workers (as migrants are more likely to report exploitation). |
| Regulators | <p>Nature of benefit: Consistency and alignment with other offences and penalties</p> <p>Type: ongoing</p> <p>Comment: Aligning the penalties with those of similar serious offences can create a more consistent and fairer legal framework.</p> | Medium | High. MBIE considers that the option chosen aligns well with relevant penalties elsewhere (provisions for theft and robbery in the Crimes Act 1961). |
| | <p>Nature of benefit: Reflecting offence severity</p> <p>Type: ongoing</p> <p>Comment: Increasing the maximum penalty can better reflect the seriousness of the offences, ensuring that the punishment is proportional to the harm caused.</p> | Low | Medium. MBIE is aware that increasing the maximum penalty can better reflect the seriousness of the offences committed. |

| Affected groups | Comment | Impact | Evidence Certainty |
|---|--|--------|--|
| | <p>Nature of benefit: Upholding international standards and reputation</p> <p>Type: ongoing</p> <p>Comment: Demonstrating a strong stance on migrant exploitation offences can enhance New Zealand's reputation internationally, particularly in terms of commitment to upholding immigration law and human rights. This also supports government's commitment to greater protections against migrant worker exploitation.</p> | Medium | High. MBIE understands that option two will uphold New Zealand's international obligations, including International Labour Organization conventions and the United Nations Convention against Transnational Organized Crime. |
| Others (eg wider govt, consumers, etc.) | | N/A | |
| Total monetised benefits | | Medium | |
| Non-monetised benefits | | | |

71. This section focuses on the costs and benefits of the preferred option (option two).

72. Given that most of the costs and benefits associated with option two relate to intangible factors such as improved worker wellbeing and enhanced enforcement measures, MBIE has not attempted to accurately describe the non-monetised costs and benefits of this option.

Section 3: Delivering an option

How will the proposal be implemented?

73. The changes will be implemented through the Immigration (Enhanced Risk Management) Amendment Bill, which is scheduled for introduction in October 2025, Confidential advice to Government.
74. The implementation of the changes will require minimal operational changes for MBIE. MBIE is developing an implementation plan for all proposals in the Bill. For the proposals in this RIS: the following implementation steps have been identified:
- Update Immigration Instructions, Standard Operating Procedures, Practice Notes and template letters for MBIE's Operational Teams
 - Deliver training to Immigration Officers
 - Update monitoring and reporting requirements on prosecutions and infringements
 - Develop an external communications plan to ensure migrant communities, advocates, employers and industry representatives, and Licensed Immigration Advisers understand the changes and what they mean for them.
75. The implementation planning will be completed once the Bill is introduced, and delivery will progress in parallel to the Parliamentary process, to ensure readiness when the Bill is enacted.
76. The impacts on Corrections are business as usual, and include managing people sentenced to community service, home detention, or custodial sentences.
77. Officials are still confirming whether changes will be needed to MOJ's IT system for recording unpaid infringement fines (Electronic Filing of Infringements). If changes are needed, the implementation plan will ensure an appropriate lead-in time to allow IT work to be completed ahead of the changes coming into force. Further advice will also be given to relevant Ministers on funding options if necessary.

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

78. MBIE's ICI function currently reports internally and to the Minister quarterly on the number of prosecutions and infringement notices issued, and sentencing outcomes. This process will continue once the proposals have been implemented.
79. MBIE also monitors and reports on migrant exploitation indicators. We will continue to monitor these, noting that from a practical perspective it will be difficult to determine to what extent any changes in the exploitation indicators could be attributed to the proposed changes. This is because a wide range of factors could influence these indicators (eg economic conditions, operational prioritisation changes, and other policy settings). We therefore do not propose a formal review/evaluation of the changes.
80. MBIE's costs in responding to challenges against infringement notices are third-party funded through the immigration levy. The regular immigration fee and levy review will provide an opportunity to review whether resourcing is sufficient for MBIE to respond to challenges against infringement notices without negatively impacting other priorities. The first opportunity for review after the changes are implemented will likely be in 2027.

81. If the volume of challenges is significantly higher than anticipated and becomes unmanageable within existing resourcing in the interim, further advice will be given on options to address this. These would likely include an out-of-cycle appropriation increase to allow for more staff, reprioritising existing investigations and compliance work, or limiting the number of notices that are issued, even when offending has been identified. Even if the number of notices being issued had to be limited to manage these impacts, this would still be significantly higher than the number of notices being issued currently. The change would therefore still represent a significant benefit over the status quo and does not undermine the case for the proposed option.
82. We have not identified any wider implementation risks that need to be monitored. It is important to note that neither of the changes are expected to result in any material increase in the number of reports of exploitation, nor would they result in any increase in the number of offences that MBIE is expected to investigate (existing triaging processes and resourcing will remain unchanged). Rather, they will result in stronger penalties for offences that will already be investigated. While existing resourcing levels and triaging processes mean that not all potential offences can be investigated to the point where an infringement notice or prosecution can be pursued, options to address this are being considered separately, and the situation will not be exacerbated in any way by the changes in this RIS. However, we note that any future increase in resourcing will be able to be used more effectively if these changes are progressed.

Appendix One: Comparisons of offences and penalties

| Offence | Maximum penalty | Similarities to migrant exploitation |
|--|--|---|
| Migrant exploitation section 351 of the Immigration Act 2009 | 5 (reckless as to lawful ability to work) - 7 (knew not able to lawfully work) years imprisonment, and / or \$100,000 fine | Note that migrant exploitation involves, at a minimum, at least one aspect of serious underpayment and exercising unlawful control over the worker. |
| Blackmail section 238 of the Crimes Act 1961 | 14 years imprisonment | The taking / retaining possession, or control of a person's belongings, or threatening a migrant worker / employee (eg threats to report them to INZ) to ensure they keep working is essentially blackmail. |
| Demanding with intent to steal section 239 of the Crimes Act 1961 | 14 years imprisonment | Similarly to blackmail, the use of threats to steal the compensation that a worker is entitled is similar to demanding with intent to steal. |
| Kidnapping section 209(b) of the Crimes Act 1961 | 14 years imprisonment | Preventing someone from being able to leave a premises or having access to a telephone could be considered as being detained without consent, similar to kidnapping. |
| Participation in organised criminal group section 98A of the Crimes Act 1961 | 10 years imprisonment | Migrant exploitation is often highly organised, including overseas linkages to recruiters, and careful management of the journeys to New Zealand and all interactions within New Zealand (such as with the accommodation providers, and people who transport the migrants) (See also section 310 of the Crimes Act, conspiring to commit offence). |
| Robbery section 234(2) of the Crimes Act 1961 | 10 years imprisonment | Robbery is an aggravated form of theft, accompanied by violence or threats of violence, used to extort the stolen property, or to prevent or overcome resistance to its being stolen. This could be considered similar to wage theft, including charging premiums, accompanied by threats or other attempts to prevent the employee leaving employment or enforcing their rights. |

| Offence | Maximum penalty | Similarities to migrant exploitation |
|---|---|--|
| Failure to protect child or vulnerable adult section 195A of the Crimes Act 1961 | 10 years imprisonment | Migrants who are exploited are generally vulnerable compared with people who are lawfully able to work (and in particular compared with New Zealand citizens and residents). Employment relationships could be expected to have enhanced pastoral care responsibilities for people who may have limited English and are unfamiliar with New Zealand. |
| Theft Section 233(b) of the Crimes Act 1961 | 7 years imprisonment, where the value of the property stolen is more than \$1,000 | As for robbery above (that is, Theft is similar to robbery, without aggravating factors such as violence). |
| Criminal breach of trust section 229 of the Crimes Act 1961 | 7 years imprisonment | Exploitation by its nature involves a breach of trust between the employer and the employee. |
| Punishment of obtaining by deception or causing loss by deception section 241 of the Crimes Act 1961 | 7 years imprisonment | As above. |