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Immigration (Enhanced Risk Management) Amendment Bill

Submissions on behalf of The Law Association of New Zealand by the Immigration & Refugee Law Committee

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INTRODUCTION

The Law Association of New Zealand (The Law Association) is an independent membership organisation for the New Zealand legal profession with more than 10,000 members. Through its specialist committees, including the Immigration & Refugee Law Committee, The Law Association contributes to legal policy development, law reform, and the administration of justice.

The Immigration and Refugee Law Committee (the Committee) welcomes the opportunity to submit on the *Immigration (Enhanced Risk Management) Amendment Bill* (the Bill). This submission draws on the collective experience of practitioners working across immigration, refugee, and protection law, including extensive engagement with the operational realities of the immigration system, the Immigration and Protection Tribunal (IPT), and affected individuals and families.

The Bill proposes a series of significant reforms to the Immigration Act 2009, aimed at strengthening immigration compliance and enforcement, addressing migrant exploitation, and improving system efficiency. While The Law Association supports the underlying objective of maintaining the integrity of New Zealand's immigration system, it considers that several of the proposed amendments raise substantial concerns relating to proportionality, fairness, operational impact, and consistency with New Zealand's constitutional and international obligations.

This submission provides a detailed analysis of the key provisions of the Bill and identifies areas where amendments are necessary to ensure that the legislation achieves its intended objectives without undermining fundamental legal principles.

EXECUTIVE SUMMARY

The Committee supports the objective of strengthening the integrity and effectiveness of New Zealand's immigration system. However, the Bill raises significant concerns regarding proportionality, fairness, operational impacts, and the adequacy of safeguards.

The proposed changes to deportation liability risk capturing relatively minor offending and producing disproportionate outcomes, particularly through extended timeframes and reliance on maximum penalties rather than sentences actually imposed. The amendments to section 158 also do not sufficiently address situations where applicants are disadvantaged by unlicensed or improper immigration advice. In addition, the likely operational impacts on Immigration New Zealand and the Immigration and Protection Tribunal appear to be underestimated, particularly in relation to increased complexity and appeal volumes.

While targeted information-gathering powers are supported in principle, the proposed expansion of information-gathering and information-sharing powers is considered overly broad and insufficiently constrained, raising concerns regarding privacy, overreach, and consistency of application. The Committee has significant concerns with the proposal to remove humanitarian appeal rights for temporary and visitor visa holders. This change represents a substantial departure from long-standing safeguards and risks adverse consequences for New Zealand families, particularly children, without sufficient justification. The proposed restriction on asylum seekers who withdraw their claims is also not supported, as the evidence does not demonstrate systemic misuse, and the amendment risks unintended consequences for genuine claimants and New Zealand stakeholders.

Overall, while aspects of the Bill are supported, further refinement is required to ensure that the legislation achieves its objectives without undermining fairness, proportionality, and confidence in the immigration system.

SUBMISSIONS

1 Extending Timeframes for Conviction Leading to Deportation

1.1 The Law Association partially supports the extension of timeframes for offences leading to deportation, particularly for minor offences.

1.2 There is a concern within the Committee that the proposed amendment to section 161(1)(a)(iii), which would increase the relevant period from two years to five years, is excessive and risks capturing individuals for relatively minor infractions long after the fact. Such an extension could disproportionately affect long-term residents who have otherwise demonstrated commitment to New Zealand and its values. The risk is that individuals who have made positive contributions to society may face deportation for offences that occurred years prior, undermining principles of fairness and rehabilitation. We believe that the current two-year period strikes a more appropriate balance between protecting public safety and allowing individuals to move forward after minor transgressions. Furthermore, extending the timeframe may create uncertainty and anxiety for residents, making it harder for them to plan their lives and integrate into New Zealand society.

1.3 While a humanitarian appeal mechanism does exist, the resident may not meet the very high threshold of exceptional humanitarian circumstances and therefore, the policy leads to unfair and disproportionate outcomes.

2 Proposed Changes to Section 158

Suggested amendment to ensure applicants are not penalised for the actions of unlicensed advisers where Immigration New Zealand has breached its obligations under the Immigration Advisers Licensing Act 2007

2.1 This submission proposes targeted amendments to section 158 to ensure that applicants are not unfairly penalised for false or misleading information provided as a result of unlicensed or improper immigration advice, particularly where Immigration New Zealand has failed to comply with its obligations under the Immigration Advisers Licensing Act 2007.

2.2 In recent years, Immigration New Zealand has extended the application of section 158 where false or misleading information was provided, or relevant information was withheld, regardless of the intent of the applicant. The proposed amendment adds situations where information relates to another person's immigration matters. However, members are aware of situations where clients have been misled by unlicensed immigration advisers - sometimes not evident in the application itself, but increasingly in plain sight.

2.3 By way of example, in Tonga there are no licensed immigration advisers, and unlicensed travel agents are permitted to systematically submit immigration applications for reward. Character, relationship, and other questions are frequently misanswered in these applications.

2.4 Section 9 of the Immigration Advisers Licensing Act 2007 requires Immigration New Zealand not to accept such applications or requests, or to decline them if unlicensed representation later comes to light, and to direct the applicant to use licensed or exempt advice. Incidental administrative assistance by friends and family is exempt. Successful prosecutions of unlicensed advisers have established these practices on the court record.

2.5 Immigration New Zealand has accepted, following complaints, that both applications and Ministerial representations known to be systemic should not have been accepted from known unlicensed advisers. Immigration New Zealand has also accepted that it has an obligation to reasonably check applications for unlicensed advice where it can do so (IAC 16 02).

2.6 It is disappointing that legislation with a stated intention of reducing migrant exploitation fails to address unlicensed immigration advice, and Immigration New Zealand's own obligation to inform known victims of such advice. Parallel situations arise where licensed immigration advisers are later found to have acted unprofessionally or to have deceived clients - yet the consequences continue to fall primarily on applicants rather than on those responsible.

3 Proposed Additional Amendments to Both Sections 58 And 158

3.1 **Section 58(7)**

Notwithstanding the above, "agent" for the purpose of this section does not include an unlicensed immigration adviser where, under section 9 of the Immigration Advisers Licensing Act 2007:

a) Information was provided or withheld by that unlicensed immigration adviser on the applicant's behalf, and the application should not have been accepted for processing; or

b) A licensed or exempt adviser is found by a relevant disciplinary body to have breached professional standards in connection with the information provided or withheld.

3.2 **Section 158(5)**

Notwithstanding the above, this section does not apply to the applicant or relevant party:

a) Where information was provided or withheld by an unlicensed immigration adviser on their behalf, and under section 9 of the Immigration Advisers Licensing Act 2007 the application should not have been accepted for processing; or

b) Where a licensed or exempt adviser is found by a relevant disciplinary body to have breached professional standards in relation to the information provided or withheld.

4 Proposed Amendment to Section 161 – Additional Operational and Threshold Concerns

Underestimation of system and fiscal impacts

4.1 The Law Association is concerned that the proposed expansion of deportation liability under section 161 is likely to generate significantly greater downstream impacts than currently anticipated, particularly in relation to Immigration New Zealand (INZ) operations and the Immigration and Protection Tribunal (IPT).

4.2 The Regulatory Impact Statement *Expanding criminal deportation liability* (MBIE, 26 May 2025) suggests that impacts will be modest, noting that "the IPT may see a small increase in deportation related appeals". However, this assessment appears to materially understate the likely scale and complexity of those impacts.

4.3 Importantly, the same RIS acknowledges that key operational impacts have not been fully assessed, stating that "there may be resourcing implications for MBIE and the IPT… [which have] not been modelled" (RIS, Implementation section). The RIS further confirms that there is no reliable estimate of the number of additional individuals who will become liable for deportation under the proposed settings due to data limitations (RIS, Limitations and constraints on analysis section).

4.4 The RIS does not address the combined system and fiscal impacts of the Immigration (Fiscal Sustainability and System Integrity) Amendment (FISSI) Act (Royal assent: 27 November 2025; commencement: 27 May 2026) when considered alongside the changes proposed in this Bill. A key change made by the FISSI Act is that deportation liability is triggered by criminal offending, rather than requiring a conviction. Under the status quo, a conviction is generally required to trigger deportation liability, meaning that a discharge without conviction can prevent deportation liability from arising for resident visa holders. The combined effect of the FISSI Act and this Bill is therefore likely to produce cumulative (or "stacking") impacts that have not been assessed in the RIS.

4.5 Taken together, these statements indicate that the fiscal and operational impacts of the proposal are inherently uncertain and may be significantly underestimated.

Structural drivers of increased workload

4.6 The proposal does not simply expand deportation liability prospectively. It also increases the pool of individuals captured by the framework, including those who would not have been liable under the current settings.

4.7 As outlined in *Proposed changes to deportation liability – Immigration (Enhanced Risk Management) Amendment Bill*, section 161 operates as a graduated framework balancing the seriousness of offending against the length of time a person has held a residence class visa. Extending the relevant timeframes alters that balance and increases the likelihood that individuals with longer residence - and therefore stronger ties to New Zealand - will fall within scope.

4.8 These cases are inherently more complex and are more likely to involve humanitarian considerations and appeals. As a result, even a modest increase in the number of people becoming liable is likely to translate into a disproportionate increase in:

a) investigation volumes and duration for INZ; and

b) appeal volumes and complexity before the IPT.

Delayed and cumulative impact

4.9 A further concern is that the operational impact of these changes is unlikely to be immediate. There is likely to be a significant lag between the commission of relevant offending, its detection, INZ investigation and decision making, and progression to appeal.

4.10 Accordingly, system pressures may only become apparent several years after implementation. This dynamic is not reflected in the RIS, which assesses costs as "low

medium" and assumes that implementation can be managed "within baseline resourcing and no additional FTE is needed for MBIE" (RIS, Costs section).

4.11 This creates a material risk that resourcing pressures will emerge gradually, without sufficient forward planning or appropriation.

5 Misalignment between offending threshold and policy objective

5.1 The current framework defines deportation liability by reference to offences carrying a maximum penalty, rather than by reference to the sentence actually imposed.

5.2 As set out in the RIS *Expanding criminal deportation liability* (MBIE, 26 May 2025), a person may become liable where an offence is committed within the first two years of residence and "the Court has the power to impose a maximum imprisonment term of 3 months or more" (RIS, section 161 framework description).

5.3 This approach risks capturing relatively minor offending, particularly when combined with the proposed extension of liability timeframes. In this respect, the proposal risks undermining the proportionality inherent in the section 161 framework and is inconsistent with the stated policy objective in the Cabinet paper P*roposed amendments to the Immigration Act 2009: Immigration (Enhanced Risk Management) Amendment Bill*, namely to "increase the effectiveness of the immigration compliance and enforcement system".

Recommended adjustment

5.4 To better align the proposal with its policy objectives while managing operational impacts, it is recommended that the threshold for deportation liability be reframed to apply only where a sentence of imprisonment is actually imposed, whether served in custody or by way of home detention

5.5 This adjustment would:

a) better target genuinely serious offending;

b) restore proportionality within the section 161 framework; and

c) mitigate the projected increase in investigation volumes and appeal pressures on both INZ and the IPT.

5.6 In its current form, the proposed amendment relies on assumptions that are not supported by robust modelling and does not adequately account for system wide impacts. The RIS itself highlights uncertainty in forecasting volumes, unmodelled resourcing implications, and reliance on baseline capacity

5.7 Without refinement - particularly in relation to the offending threshold - the proposal risks increased administrative burden, escalating costs to the taxpayer, and growing pressure on INZ and the IPT that may ultimately undermine the effectiveness of the immigration system.

5.8 A more targeted and proportionate approach would better balance enforcement objectives with operational sustainability.

6 Increasing Penalties for Migrant Exploitation Offending

6.1 The Law Association supports the amendment to increase the penalties for migrant exploitation offending from seven to ten years.

6.2 Caution is advised to ensure that increasing the penalty does not lead to a lower number of prosecutions for fear of not meeting a higher threshold.

7 New Infringement Offences

7.1 The Law Association supports the introduction of new infringement offences for providing false or misleading information or withholding relevant information.

8 Information Requests by Immigration Officers

8.1 The Law Association's Committee is not unanimous on the proposed amendment to expand the powers of immigration officers to request information. While there is agreement on the importance of effective compliance and enforcement to maintain the integrity of the immigration system, there is also deep concern about the breadth of the proposed power, the lowering of existing safeguards, and the absence of clear statutory limits. These concerns have led to a split position, with partial support for tightly framed powers, and strong opposition to the proposed extension to visa condition breaches.

8.2 The Law Association partially supports the amendment to expand the powers of immigration officers to request information where there is good cause to suspect a person may be unlawfully in New Zealand or liable for deportation. Members recognise the operational challenges identified in the Regulatory Impact Statement (RIS) and accept that targeted information gathering powers can play an important role in effective enforcement.

8.3 However, support is limited to circumstances where the threshold of "good cause" is applied strictly and where the exercise of the power is clearly confined to genuinely high-risk situations. There is concern that, even in these contexts, the Bill relies too heavily on operational guidance rather than embedding safeguards directly in legislation.

8.4 The Law Association emphasises that any expansion of investigative powers must be accompanied by robust statutory safeguards to ensure proportionality, transparency, and accountability. At a minimum, immigration officers should be required to clearly document the factual basis for their suspicion, record reasons for requesting information, and limit requests to what is reasonably necessary in the circumstances. Affected individuals should be notified of the basis for the request and provided a meaningful opportunity to respond. Independent oversight and review mechanisms must also be available.

8.5 The Law Association does not support the amendment to expand information gathering powers to situations where there is good cause to suspect a person may be in breach of their visa conditions. While the importance of compliance is acknowledged, the proposed extension goes well beyond what is necessary or proportionate.

8.6 As set out in pages 53–70 of the RIS, visa conditions are numerous, complex, and often technical in nature. The threshold that a person "may be in breach" is excessively broad and, in practice, could apply to almost any migrant in New Zealand. This significantly dilutes the safeguard of "good cause" and risks normalising speculative or precautionary information gathering rather than targeted, evidence-based enforcement.

8.7 The RIS itself highlights risks relating to privacy impacts, overreach, and disproportionate effects on certain migrant communities. Expanding powers in this way creates a real risk of intrusive questioning and data collection based on minimal or ambiguous indicators, increasing the likelihood of inconsistent application, unconscious bias, and the disproportionate targeting of particular groups of migrants.

8.8 Critically, the amendment relies on operational safeguards rather than firm legislative limits. There is no clear statutory definition of what constitutes "good cause" in the context of visa condition breaches, no mandatory requirement to record reasons, and no obligation to notify affected individuals. Judicial review and Ombudsman processes are not adequate substitutes for upfront statutory protections; they are retrospective, resource intensive, and largely inaccessible to many migrants. Rights that depend on post hoc challenge rather than clear limits on executive power at the point of decision making are not meaningful safeguards.

8.9 The proposed expansion risks eroding the balance between immigration enforcement and fundamental rights to privacy and due process. The RIS does not demonstrate that existing powers are insufficient to address compliance risks, nor does it provide evidence that such a sweeping expansion is necessary or justified. Administrative efficiency alone cannot justify a significant encroachment on individual rights, particularly where the individuals affected may ultimately be lawfully present in New Zealand.

8.10 For these reasons, while the Committee recognises the need for effective compliance tools, it does not support the amendment in its current form. The expansion of information gathering powers to those who may be in breach of visa conditions is disproportionate, insufficiently safeguarded, and not supported by evidence of necessity. Proceeding with the amendment risks overreach, undermines trust in the immigration system, and weakens protections that are central to fairness and the rule of law.

9 Removing Right to Humanitarian Appeal for Temporary/Visitor Visa Holders

9.1 The Committee has significant concerns with, and it is not supportive of the amendment to remove the right to appeal to the Immigration and Protection Tribunal (IPT) on humanitarian grounds for temporary class visa holders who commit a crime and for all visitor visa holders.

Overview of the Proposal

9.2 The Bill proposes to remove the right to appeal to the Immigration and Protection Tribunal on humanitarian grounds for all visitor visa holders and for any temporary visa holder who has pleaded guilty to, or been convicted of, offending. This represents a significant departure from the current framework, under which temporary visa holders, including visitor visa holders, have access to humanitarian appeals before an independent specialist tribunal.

Historical Context: Humanitarian Appeals as a Long standing "Safety Valve"

9.3 The exceptional circumstances humanitarian appeal ground is not a recent policy development. It has existed since overstaying was decriminalised through the passage of the Immigration Act 1987 (the 1987 Act). Its introduction responded directly to concerns about lack of transparency, potential bias, and the inadequacy of pure Ministerial discretion under the Immigration Act 1965, as well as the risk of breaches of New Zealand's international obligations, including obligations to children (see *Tevita v Minister of Immigration*[1]). From its inception, humanitarian appeal rights have been understood as an essential "safety valve" within the immigration system, and the jurisdiction has always been robust.

9.4 The legislative history demonstrates continuity rather than expansion. In 1987, removal warrants were subject to District Court oversight and could also be appealed to the Minister on exactly the same statutory grounds that apply today: exceptional circumstances of a humanitarian nature such that deportation would be unjust or unduly harsh, subject to the public interest (sections 63 and 64 of the 1987 Act). An independent panel advised the Minister. At the same time, the Humanitarian Category (H1) provided

[1] *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (CA)

residence for those with family in New Zealand who could demonstrate serious harm where residence was the only reasonable solution; Pacific applicants were prominent among others because they had family in New Zealand. That category was closed in 2001.

9.5 The 1991 Immigration Act Amendment allowed senior immigration officers to issue removal orders but introduced a statutory appeal body - the Removal Review Authority - applying the same test (sections 47 and 63B). Section 35A of the 1987 Act, now section 61, allowed visas to be issued to unlawful people at the discretion of immigration officers; however, the 2015 Immigration Amendment Act effectively removed disclosure of reasons, substantially reducing transparency and limiting the ability to complain to the Office of the Ombudsman.

9.6 The 1999 Immigration Amendment Act significantly changed the landscape by introducing a 42-day limit for lodging appeals after a visa expired, but it did not alter the test itself. There was both a transitional period and a later, more generous transitional policy recognising the impact of that change. The Immigration Act 2009 then consolidated appeal processes under the judicial Immigration and Protection Tribunal (sections 154 and 207). At that time, both the Department and Ministers accepted that the humanitarian test itself was an appropriate safeguard for individual rights, particularly in light of Supreme Court authority emphasising the relevance of international obligations, including obligations toward children (*Ye and Ors v Minister of Immigration* SC 53/2008).

9.7 Two points follow from this history. First, this has always been a stern test. To determine whether deportation would be unjust or unduly harsh, the Supreme Court held that an appellant must demonstrate a level of harshness beyond a generic concern and beyond what must be regarded as acceptable to preserve the integrity of New Zealand's immigration system (*Ye v Minister of Immigration* [2009] NZSC 76 at [35]). Second, the current proposal represents a radical departure from over 40 years of core human rights protections, not a minor administrative adjustment.

Policy Rationale: Efficiency as the Primary Driver

9.8 The Regulatory Impact Statement (*Limiting humanitarian appeal rights to the Immigration and Protection Tribunal for temporary visa holders*, MBIE, 21 May 2025) frames the policy problem primarily in terms of administrative efficiency. In particular, it identifies that deportation orders cannot be executed until appeal rights are exhausted, and that this limits Immigration New Zealand's ability to take what it describes as "swift compliance action". The anticipated benefits of the proposal are reducing the time taken to deport individuals and reducing IPT workload.

9.9 However, no deficiency is identified in the quality or correctness of IPT decision making. The proposal is therefore driven by speed and administrative convenience, rather than any demonstrated failure in the existing adjudicative framework.

9.10 The IPT exists to provide independent, specialist adjudication of immigration decisions, including the assessment of humanitarian circumstances in deportation cases.

9.11 The proposal does not identify any deficiency in the Tribunal's performance. Instead, it treats:

a) the existence of appeal rights; and
b) the associated caseload

as constraints on administrative efficiency.

9.12 Removing jurisdiction from the IPT in this area therefore raises a fundamental institutional question.

9.13 If humanitarian considerations in deportation cases are no longer to be assessed by an independent tribunal, but are instead to be addressed through executive discretion, this represents a shift from judicial or quasi-judicial decision-making to political decision-making.

9.14 Such a shift carries inherent risks, including:

a) reduced transparency and accountability;

b) inconsistent outcomes across comparable cases; and

c) diminished public confidence in the integrity of the immigration system.

Further, it risks undermining the rationale for maintaining a specialist tribunal if its role is curtailed in precisely those cases where independent assessment is most critical.

Scale and Impact of the Proposal

9.15 It is also important to recognise that visitor visa holders are not simply tourists, and temporary visa holders are not merely migrant workers. These cohorts include partners of New Zealand citizens, victims of family violence, parents of New Zealand citizens, and children of New Zealand citizens.

Impact on New Zealand Families and Children

9.16 Appeals by visitor and other temporary visa holders frequently engage the rights and interests of New Zealand citizen and resident children, partners, parents, and grandparents. These cases often arise from sudden changes in circumstances such as illness, bereavement, war, or natural disaster.

9.17 Deportation does not affect only the visa holder. It can result in family separation, loss of essential caregiving, disruption to children's education and wellbeing, and long-term emotional harm.

9.18 The Tribunal is uniquely equipped to assess these complex and interdependent considerations through an independent, transparent, and principled process.

9.19 In 2024, 148 non-resident humanitarian appeals were allowed, approximately 67 percent of which involved appellants whose last visa was a visitor visa. This reflects around 100 individuals, and their immediate families, being permitted to remain in New Zealand due to accepted exceptional humanitarian circumstances. Given the Tribunal's consistently high threshold, these outcomes represent highly compelling cases. Removing this appeal right will therefore expose hundreds of New Zealand families to a real risk of separation within a short period.

9.20 The distinction drawn between visitor visas and work or student visas is difficult to justify. Many humanitarian appeals involve New Zealand children and partners. Children should not be penalised on the basis of the skills level - or effectively the ethnicity - of their parents. Family visitor-based visas continue to feature prominently among Pasifika applicants.

9.21 The proposal also demonstrates poor understanding of visitor visa sub classes, including dependent children of New Zealand citizens or residents, religiously constrained partners who have not cohabited, partners of lower skilled workers, and preschool age dependent children of workers. In many cases, visitor visas are a prelude to longer term visas, with progress interrupted by unforeseen events.

9.22 Recent Tribunal decisions illustrate the point. In *FH Tonga* [2025] NZIPT 506938, a child with autism and global developmental delay remained in New Zealand after the sudden death of the mother, while the father held a long-term work visa and pathway to residence. In *DU (Samoa)* [2025] NZIPT 506758–759, extensive psychological evidence and family impact led the Tribunal to find the high threshold met and grant residence. In *CO (Samoa)* [2023] NZIPT 505992 and *DI Tonga* [2022] NZIPT 505572, residence was granted in complex post COVID contexts engaging international obligations to children and families.

9.23 These cases, and many others, demonstrate that excluding appeals solely because a person held a visitor visa is a short sighted and ill-informed approach. In many situations, relationships are maintained through visits until genuine changes in circumstances occur. Most successful cases engage New Zealand's international obligations to children and other vulnerable citizen or resident family members.

Flawed Justification in the Regulatory Impact Statement

9.24 The justification advanced in the Regulatory Impact Statement (pages 30–53) for removing humanitarian appeal rights is neither equitable nor just. The policy problem is framed almost exclusively as one of administrative delay and Tribunal workload, rather than substantive fairness or human impact. That framing is fundamentally flawed.

9.25 The RIS itself acknowledges that many affected temporary visa holders are parents of New Zealand based children and that such cases raise complex humanitarian issues engaging the Convention on the Rights of the Child. Yet these impacts are treated as peripheral rather than central to the assessment of whether appeal rights should be removed.

9.26 The assumption that temporary visa holders generally have weak connections to New Zealand is contradicted by the evidence. The success of a significant number of humanitarian appeals demonstrates that many temporary visa holders have strong family, caregiving, and community ties. Treating visa status as determinative, rather than examining actual circumstances, produces arbitrary and unjust outcomes.

Efficiency Arguments Are Misplaced

9.27 The emphasis on speed of deportation is misplaced. Humanitarian appeals take time because they require careful assessment of family unity, child welfare, medical needs, risk on return, and international obligations. Delay in this context is not a system failure; it is a necessary feature of principled decision making where the consequences of error are irreversible. Elevating efficiency over justice in such cases is incompatible with the rule of law and New Zealand's international obligations.

9.28 There is also no evidence that individuals remaining in New Zealand, while awaiting determination of a humanitarian appeal, pose any risk to the public or to the integrity of the immigration system. The RIS does not identify any instances of harm, absconding, or public risk arising from people remaining lawfully in New Zealand during the appeal period.

9.29 The RIS expresses frustration at delays in being able to swiftly deport temporary visa holders liable for deportation, stating that "this process is far too drawn out for visitors who typically have a limited connection to New Zealand". However, it provides no statistics about the circumstances of overstayers, including those visiting partners,

children, or other family members - many of whom the Tribunal has found to have deep links with New Zealand. Examples illustrating this point are provided in the attached case summaries.

9.30 The RIS echoes concerns raised by the Immigration and Protection Tribunal in its 2024/25 Annual Report about caseloads and delays. However, it fails to reflect the Tribunal's own qualification that the significant increase over the past two years largely results from earlier immigration policy decisions that changed temporary visa settings, and led to a sudden influx of visitors to New Zealand. A short-term increase in workload is not a sound basis for dismantling a safeguard that has existed for four decades.

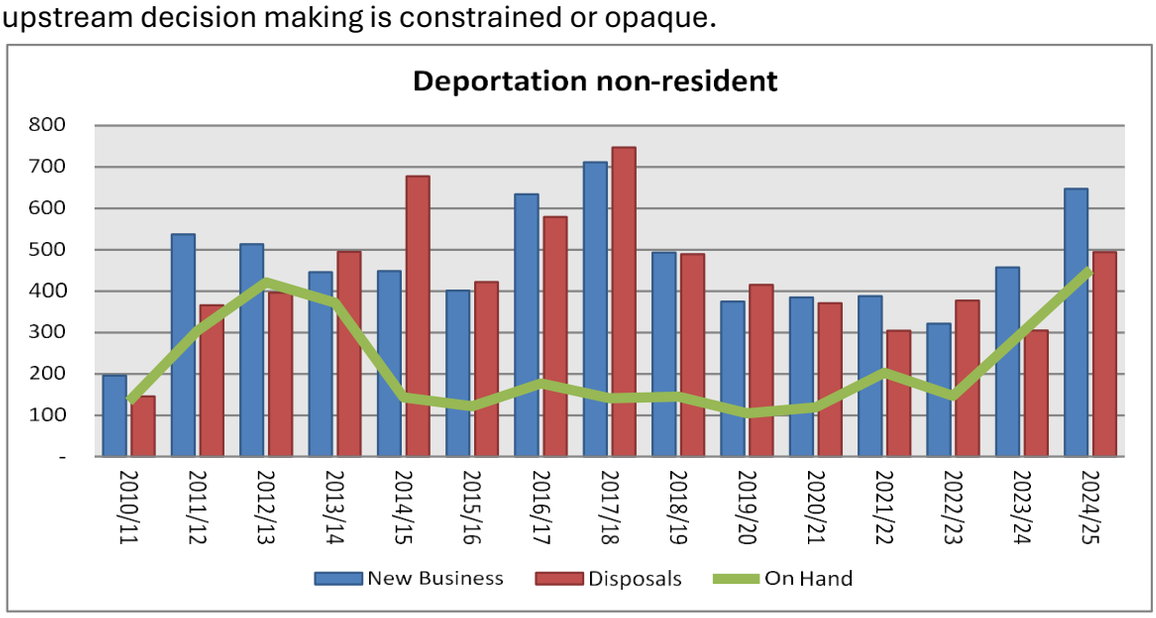
The Tribunal's long-term data, including the graph at page 27 of the Annual Report, contradicts any claim of a unique or permanent crisis.

9.31 Current figures must be balanced against very low numbers during COVID border closures and against a previous peak between 2016 and 2018.

9.32 The 2024/25 Annual Report further records that 52 percent of non-resident deportation appeals were allowed. Of those, 28 percent resulted in temporary visas being ordered (around 13 percent of the total), meaning that 39 percent of allowed appeals resulted in residence being granted.

9.33 Humanitarian appeals have also been affected by the pandemic, with individuals remaining in New Zealand much longer than usual and, as a result, developing stronger reasons to stay, including through relationships, children, and family connections.

9.34 These figures suggest not abuse of appeal rights, but imbalance elsewhere in the system. High approval rates point to deficiencies in first instance decision making, particularly under section 61, where decisions are made without transparency. High levels of Ministerial requests similarly indicate that safety valves come under pressure when upstream decision making is constrained or opaque.



Inadequacy of Proposed Alternatives

9.35 The alternative "safeguards" relied upon in the RIS are not adequate substitutes for Tribunal oversight. Good reasons submissions, Ministerial intervention, Judicial Review, and Ombudsman processes do not provide independent merits-based assessment. Judicial Review is narrow and cost prohibitive. Ombudsman processes are discretionary and not designed to determine complex humanitarian issues. Ministerial intervention is non transparent and exercised without any obligation to provide reasons.

9.36 The practical effect is to weaken access to justice, particularly for families without financial means. Any reduction in Tribunal workload is likely to be offset by increased pressure on the High Court and the Ombudsman, which are less accessible, less specialised, and more costly. Meanwhile, families face prolonged uncertainty, stress, and the risk of removal while pursuing processes that do not provide statutory protection from deportation.

Shift of Humanitarian Decision Making to the Executive

9.37 Removing access to the Tribunal will not eliminate humanitarian claims. Rather, it will redirect them into executive decision-making pathways, including Ministerial or delegated intervention. The RIS anticipates that the removal of appeal rights may result in increased pressure on decision makers exercising these discretionary powers.

9.38 This has several significant implications:

a) **Politicisation of humanitarian decisions:** Cases involving family separation, serious illness, and child welfare will increasingly be determined within the executive, rather than by an independent tribunal applying consistent principles.

b) **Exposure to public criticism:** Decisions to decline Ministerial intervention are more readily personalised than Tribunal determinations. Ministers and Associate Ministers may be directly criticised for refusing relief in sympathetic cases, creating an asymmetry in which adverse outcomes attract scrutiny, while decisions to refuse intervention rarely generate offsetting public credit.

c) **Institutional pressure on decision makers**: An increased volume of complex, high stakes humanitarian cases risks placing unsustainable pressure on those exercising Ministerial discretion. Associate Ministers in particular may be drawn into decisions that are politically sensitive and operationally difficult, in a manner that is not aligned with the intended function of their role.

d) **Risk of inconsistency and reduced transparency**: Executive discretion, exercised outside a structured adjudicative framework, is inherently less transparent and less predictable than Tribunal based decision making.

9.39 Members of the Committee will be well aware that Ombudsman and judicial review processes are not realistic substitutes for humanitarian appeals. The Ombudsman's jurisdiction to investigate complaints by unlawful persons was significantly curtailed following the 2015 removal of access to reasons under section 61. As summarised in a 2019 case note, the Chief Ombudsman will not intervene in the merits of section 61 decisions so long as the decision maker has conscientiously considered the request.

9.40 Judicial review is prohibitively expensive for most migrants with humanitarian circumstances. Legal aid is generally unavailable, and scale costs commonly range between $20,000–$30,000. More importantly, neither process is designed to assess humanitarian circumstances. Both are concerned with minimal procedural checks, not an independent merits-based evaluation of injustice or undue hardship.

9.41 The (Associate) Minister, or delegated decision makers, do not operate within a statutory framework that requires application of a defined humanitarian test. Decisions are non-transparent, and there is no published breakdown of approvals or refusals involving different ethnicities, children, domestic violence contexts, or other risk factors. This is precisely the discretionary system found inadequate in the 1987 reforms. Tribunal decision making, by contrast, is transparent and reasoned.

9.42 For these reasons, shifting humanitarian decision making from a specialist tribunal to the executive is both operationally inefficient and constitutionally undesirable.

Deterrence and Human Rights Concerns

9.43 Deterrence and signalling arguments are unsupported by evidence. The RIS acknowledges that fewer than 0.1 percent of temporary visa holders are deported annually. There is no evidence that humanitarian appeals incentivise non-compliance, nor that removing appeal rights will meaningfully improve compliance outcomes. Using family separation and harm to children as a deterrent is neither proportionate nor principled.

9.44 The RIS itself identifies serious limitations. Impacts on international human rights obligations under the ICCPR, ICESCR, CRC, and CEDAW are acknowledged but not resolved or justified. The Quality Assurance Panel rated the analysis as only partially meeting standards. Proceeding with reform of this magnitude on such a basis is inconsistent with equitable law making.

Constitutional and Systemic Implications

9.45 Sections 175 and 175A of the Immigration Act currently provide essential safeguards by preventing deportation while humanitarian appeals are determined. Their removal exposes families to deportation before humanitarian considerations are fully and

independently assessed, including in cases involving dependent children with medical, developmental, or educational needs.

9.46 The IPT performs a vital role within New Zealand's constitutional framework. Limiting its jurisdiction disproportionately harms children and families, concentrates decision making within the executive, as well as weakens transparency, accountability, and the separation of powers. Operational pressures should be addressed through resourcing and administrative reform, not by dismantling essential safeguards.

Impact on Skilled Workers and Parent Boost Visa Holders

9.47 There has been no consideration given to skilled workers on temporary visas, including health professionals, engineers, and other skilled professionals on a pathway to residence who receive convictions for offending at the lower or middle end of the spectrum. If deportation liability is activated, a "good reasons request" and judicial review are unlikely to be successful, and an Ombudsman complaint is unlikely to assist. These individuals will be left with Ministerial intervention as the sole remaining avenue, creating a real risk that skilled professionals needed in New Zealand are deported for relatively minor offending because the ability to submit an IPT humanitarian appeal has been removed.

9.48 The proposal must also be considered in the context of the Parent Boost Visitor Visa, which is designed to facilitate extended stays by parents of New Zealand citizens and residents and to strengthen family connections. MBIE's own analysis confirms that consideration of limiting appeal rights was informed in part by concerns associated with this visa category.

9.49 The Parent Boost framework makes it foreseeable that long term stays will give rise to increased dependency, medical events, declining health, and deeper integration into family and community life. These are precisely the circumstances in which humanitarian appeal rights have historically been engaged. Removing those rights risks exposing families to separation in circumstances of genuine hardship or placing pressure on New Zealand resident children to leave New Zealand in order to support affected parents, outcomes that are inconsistent with the stated objectives of the visa.

Conclusion

9.50 The Law Association therefore urges Parliament to retain humanitarian appeal rights for all visa holders. The proposed amendment risks unnecessary family separation, harm to New Zealand children, and erosion of New Zealand's compliance with its international human rights obligations. The policy justification has not been made out.

10 Restricting Visa Applications for Asylum Seekers Who Withdraw Claims

10.1 The Law Association does not support the amendment to prevent applicants for refugee or protected person status from applying for other visa types while they remain in New Zealand if they withdraw their claim. While the amendment is presented as a response to potential misuse of the asylum system, there is no evidential foundation for such a sweeping restriction, and it risks harming genuine claimants whilst also adversely affecting New Zealand citizens, residents, and employers.

10.2 The amendment is incorrectly framed as merely clarifying uncertainty in section 150 of the Immigration Act. Section 150 is clear in allowing claimants to withdraw their claims prior to determination and pursue alternative immigration pathways. The amendment would not clarify the law but would instead remove an existing and deliberate statutory mechanism, representing a substantive policy change rather than a technical correction.

10.3 The evidence relied upon does not support the policy rationale. The RIS confirms that only a small number of claimants have withdrawn and applied for other visas - approximately 68 people over an 18-month period, representing less than 2 percent of total claimants. There is no data indicating what visa categories were sought or whether those applications were successful. This is plainly insufficient to justify a conclusion that there is widespread or systemic abuse of the asylum system.

10.4 Crucially, genuine claimants may withdraw asylum claims for legitimate reasons, including prolonged processing delays, changes in personal circumstances, or evolving country conditions. During the lengthy determination period, some claimants form genuine partnerships with New Zealand citizens or residents, or secure skilled employment, including roles on the Green List where New Zealand faces recognised labour shortages. Preventing these individuals from applying for partnership or work visas forces them to remain in the asylum system unnecessarily, even where protection is no longer required.

10.5 This has direct impacts on New Zealanders. New Zealand partners are denied the ability to regularise their family life, employers lose skilled workers they are actively seeking to retain, and communities are deprived of individuals who are otherwise meeting immigration requirements in good faith. Rather than protecting system integrity, the amendment turns away people who have established legitimate, law compliant pathways to residence, penalising New Zealand families and businesses alongside genuine claimants.

10.6 The amendment is also counterproductive from a system perspective. By discouraging withdrawal, it incentivises claimants to remain in the asylum system to preserve their immigration position, increasing pressure on the Refugee Status Unit, the Tribunal, and legal aid resources. This is the opposite of the stated policy goal.

10.7 Existing mechanisms already address concerns about abuse, including credibility assessments, fraud findings, and the ability to decline or refuse visa applications containing prejudicial information. In addition, recent operational changes to the Refugee Status Unit - of which The Law Association has been consulted - enable earlier triaging and fast tracking of manifestly unfounded claims. These reforms directly address the policy concern without the need for legislative amendment.

10.8 The Law Association therefore agrees with MBIE's preferred option and supports Option 3 identified in the RIS, which preserves the ability for claimants who withdraw their asylum claims to apply for other visas. Option 3 better reflects the realities of prolonged processing times, avoids penalising claimants acting in good faith, and allows individuals to exit the asylum system where they establish legitimate alternative immigration pathways. When combined with existing mechanisms to identify fraud, and recent operational reforms enabling early triage and fast-tracking of unfounded claims, Option 3 addresses system integrity concerns without imposing a disproportionate legislative restriction.

11 Amendment 11: Electronic Service of Deportation Liability Notices

11.1 The Law Association has some reservations about the proposed amendment permitting deportation liability notices to be served electronically where a physical address is not known to the Department. While acknowledging the broader shift toward electronic communication within the immigration system, The Law Association is concerned that the amendment, as drafted, does not provide sufficient procedural safeguards given the serious consequences that flow from service of a deportation liability notice.

11.2 Electronic service relies heavily on the accuracy, reliability, and continued accessibility of electronic contact details. In practice, email addresses may change, be incorrectly recorded, filtered as spam, or otherwise go unnoticed by the intended recipient. The amendment does not require verification of electronic addresses or confirmation that the address is actively monitored, nor does it require clear notice to individuals that an electronic address may be used for service of documents that carry strict statutory timeframes.

11.3 While section 366A (6) of the Immigration Act allows an intended recipient to establish that a notice was not received through no fault of their own, this safeguard places a higher practical burden on individuals when service is affected electronically. Demonstrating non receipt of an electronic communication is significantly more difficult than in cases of physical service, particularly where delivery failure is not readily apparent.

11.4 The amendment also does not address how instances of failed electronic service, such as bounced emails, technical errors, or undeliverable messages, will be treated, or whether any obligation exists to take additional steps before service is deemed effective.

Without clear statutory protections addressing these issues, there is a risk that individuals may be deprived of the opportunity to respond to a deportation liability notice within prescribed timeframes through no fault of their own.

11.5 For these reasons, The Law Association considers that the amendment lacks adequate procedural safeguards to ensure fairness and reliability in the service of deportation liability notices. Given the gravity of the consequences associated with such notices, The Law Association considers that further safeguards would be necessary before expanding electronic service in this manner.

12 Easier Sharing of Immigration Information with Other Agencies

12.1 The Law Association only partially supports the amendment to modernise and expand information sharing provisions under the Immigration Act, as set out in pages 90–117 of the Regulatory Impact Statement. We acknowledge the RIS's stated objectives of improving administrative efficiency, aligning the Immigration Act with other regulatory frameworks (such as the Customs and Excise Act), and enhancing transparency around how immigration information is shared. We also acknowledge the RIS's emphasis on retaining Privacy Act safeguards and consultation with the Privacy Commissioner.

12.2 However, the RIS also makes clear that the proposed framework significantly broadens both the purposes for which immigration information may be shared and the range of agencies with which it may be shared. In particular, the shift away from a closed list of "specified agencies" toward broader function-based sharing materially increases the risk of function creep. The RIS anticipates information sharing with agencies including Inland Revenue, Health New Zealand, MSD, and others to support their regulatory or service delivery functions. While framed as efficiency enhancing, this expansion creates a real risk that immigration data will be used to indirectly identify, trace, or monitor people through employment, tax, health, or education systems.

12.3 The RIS acknowledges concerns raised by the Office of the Privacy Commissioner and the Ombudsman about the widening of information sharing powers and the risk of privacy impacts, particularly where information may be shared beyond its original collection purpose. Despite this, the amendment relies heavily on post hoc safeguards, such as information sharing agreements and internal agency controls, rather than clear statutory limits.

12.4 This concern is particularly acute for vulnerable populations. The RIS recognises the importance of public trust and transparency yet does not adequately address the chilling effect that expanded information sharing may have on access to essential services. If migrants without lawful status believe their engagement with health providers, IRD, or other agencies may expose them to immigration enforcement, they may disengage from critical services. This outcome would be inconsistent with the RIS's stated aim of

improving public confidence and would undermine broader public policy objectives, including public health and workplace compliance.

12.5 In this context, section 151 of the Immigration Act must be expressly considered. Section 151 reflects Parliament's intention to place limits on how immigration status interacts with access to services and information sharing. Any expansion of information sharing powers must be read consistently with that protective intent. The RIS does not sufficiently grapple with how the proposed amendments interact with section 151, nor does it explain how safeguards will operate in practice to prevent indirect or systematic tracking of people solely because of their immigration status.

12.6 The Law Association therefore recommends that, if the amendment proceeds, the Bill must contain clear and enforceable statutory constraints, not merely administrative assurances. These should include:

a) tightly defined categories of information that may be shared,

b) explicit limitations on the purposes for which shared information may be used,

c) clear protections preventing secondary use for immigration enforcement where information is obtained for service delivery or regulatory purposes, and

d) robust oversight, audit, and redress mechanisms accessible to affected individuals.

12.7 Without such safeguards, the amendment risks extending immigration enforcement into domains where Parliament has historically maintained protective boundaries, eroding trust in public institutions and disproportionately affecting already vulnerable communities. The RIS itself recognises these risks; the legislation should reflect that recognition by keeping information sharing powers genuinely narrow, proportionate, and clearly constrained.

13 Victims' Right to Submit on Deportation Liability Proceedings

13.1 The Law Association notes the amendment to section 173 to require the Minister to have regard to written submissions from victims when determining whether to cancel or suspend liability for deportation. Members recognise the importance of acknowledging victims' experiences, while also noting that deportation decision making involves the consideration of multiple interests, including public interest factors and the circumstances of the person facing deportation.

13.2 Section 207 of the Immigration Act requires an assessment of whether deportation would be unjust or unduly harsh and whether it would be contrary to the public interest. Within that framework, prior offending and its consequences are already capable of being considered, including as part of the public interest assessment. This may involve

review of sentencing remarks and other criminal court material, which can include victim impact statements and provide contextual information about the offending.

13.3 The proposed amendment would require consideration of victim submissions even where the victim is not associated with the offence giving rise to deportation liability. This would expand the material potentially relevant to deportation decisions beyond the current focus of the statutory test and may introduce information that is not directly connected to the grounds on which deportation liability arises.

13.4 The amendment may also have practical implications for victims. In some cases, participation in deportation processes may require victims to revisit past offending or traumatic events. The existing framework generally relies on criminal justice processes to address victim impact, with that information then available through sentencing material rather than requiring further engagement.

13.5 The Law Association considers that any change to section 173 would benefit from further consideration of how victim participation is intended to operate in practice, the relevance of submissions to the statutory assessment, and how procedural fairness is maintained for all parties involved in deportation liability decisions.

14 Amendments to The Immigration Act 2009: Immigration (Enhanced Risk Management) Amendment Bill – Additional Refugee and Protected Persons Focused Amendments

14.1 The Law Association is concerned that the Cabinet paper's framing under *"New Zealand continues to experience high numbers of asylum claims and backlogs"* presents a partial and potentially misleading narrative. While the paper emphasises increased claim volumes, extended processing times, and time spent in New Zealand before final determination, it does not adequately contextualise these figures. The increase in claim numbers occurs primarily post border reopening from 2022 and aligns with global displacement trends. Backlogs are more plausibly explained by allocation delays and resourcing constraints, acknowledged elsewhere in the paper, than by claimant behaviour. We have serious concerns that inefficiencies within the RSD system are the result of a systemic failure by decision-makers, particularly the RSU, to adopt the methodology set out by the High Court in *EF v Refugee and Protection Officer* [2024] NZHC 1999, and estimate that significant productivity gains could be achieved by streamlining internal processes, rather than by compromising on safeguards for claimants.

14.2 The paper places significant weight on low first instance approval rates to support assertions about possibly unmeritorious claims. However, year on year approval rates at first instance have remained broadly consistent and in fact, have actually increased in the 2025-2026 period.

Refugee and Protection Claims and Decisions by Financial Year

Overview	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26
Claims	339	434	438	510	502	494	316	780	2346	2269	1324
Decisions	314	360	413	437	342	354	424	482	704	1084	897
Declined*	203	228	281	284	218	255	329	378	560	831	662
Approved	111	132	132	153	124	99	95	104	144	253	235
Approval Rate	35.4%	36.7%	32.0%	35.0%	36.3%	28.0%	22.4%	21.6%	20.5%	23.3%	26.2%

* includes withdrawals

14.3 More significantly, the paper provides no statistics on appeal outcomes before the Immigration and Protection Tribunal. This omission is material. A substantial proportion of appeals are allowed by the IPT, often correcting factual, credibility, or legal errors at first instance. Without appeal outcome data, reliance on first instance approval rates alone risks overstating system misuse and understating decision-making error. From the data below it is clear that the IPT approves between 35% - 50% of appeals each year.

Reporting Year	Decided Appeals	Allowed	Declined	Approval Rate
2015–2016	147	52	95	**35.4%**
2016–2017	155	59	96	**38.1%**
2017–2018	189	82	104	**43.4%**
2018–2019	204	100	104	**49.0%**
2019–2020	151	48	103	**31.8%**
2020–2021	197	94	103	**47.7%**
2021–2022	85	34	51	**40.0%**
2022–2023	144	53	91	**36.8%**
2023–2024	158	68	90	**43.0%**
2024–2025	195	79	116	**40.5%**

14.4 Finally, the suggestion that prolonged lawful stay during the determination and appeal process indicates exploitation of work and healthcare access is not supported by evidence. Furthermore, claimants have no control over delays averaging well over a year before initial allocation and close to a further year on appeal. Lawful presence under these conditions is a function of systemic delay, not bad faith. Framing backlogs and prolonged lawful stay as indicators of abuse, without transparent appeal data or clear differentiation between delay and misconduct, creates an incomplete evidential basis for restrictive legislative reform.

Amendment 1: Create a consequence for failure to engage in the biometric process

14.5 Amendment 1 should not be adopted. It is based on incomplete and flawed evidence, fails to take account of established operational practice, and risks grave and irreversible consequences for vulnerable asylum claimants whose claims engage New Zealand's non-refoulement obligations.

14.6 Until very recently, biometric collection for refugee and protection claims routinely occurred on the day of the substantive interview. That process was overseen, supported and explained in the presence of the claimant's lawyer and an interpreter. In that context, failure to engage with biometrics was rare, as attendance at interview necessarily resulted in biometric capture. There is no evidence in the Parliamentary Paper of a systemic history of non-attendance for biometrics when the process was integrated into interviews and supported by legal and linguistic assistance.

14.7 The justification advanced for Amendment 1 relies almost entirely on the results of a short, expedited processing trial conducted between 1 October 2025 and 3 January 2026, during which 41 per cent of claimants booked for biometrics did not attend. Rather than demonstrating claimant disengagement, that figure points to a serious flaw in the design of the process itself.

14.8 The trial was followed by a unilateral operational change by the Refugee Status Unit on or about 1 March 2026, whereby biometric collection was separated from the interview and required claimants to attend a standalone appointment approximately two days after claim lodgement. The Parliamentary Paper recording Amendment 1 was then proactively released within days of that change. The evidence relied upon is therefore both temporally narrow and causally confused, attributing non-attendance to claimant behaviour when it is far more plausibly explained by the sudden imposition of a materially different and unsupported process

14.9 The move to independent biometric appointments is sudden (after about 15 years of practice) and not always logistically feasible, which is the most likely reason for the non-attendance figure. Due to logistical constraints, claimants may be required to attend alone, without their lawyer and without an interpreter, in a secure government facility characterised by visible security measures. Where representatives are able to attend, this represents a significant additional burden on the legal aid budget. For refugee and protection claimants - who are, by definition, vulnerable persons and who often have a well-founded fear of authority based on past persecution - this setting is intrinsically intimidating. Expecting newly arrived claimants, often within days of lodging a claim and before legal advice has fully stabilised, to navigate such an environment without support is inconsistent with trauma-informed practice and basic principles of procedural fairness. The 41 per cent non-attendance figure therefore should be seen as reflecting the unsuitability of the process and the sudden change without stakeholder engagement with lawyers, social workers and the sector - not bad faith or disengagement.

14.10 Against that background, Amendment 1 would create a statutory power to determine claims without further information where a claimant has failed to engage with biometrics "without good reason". This is a profound escalation in consequence, given that a refugee or protection determination may engage life and death outcomes.

14.11 In these circumstances, Amendment 1 cannot properly be described as evidence based. It relies on a limited snapshot generated by a newly introduced operational model, without any comparative analysis of attendance rates under the longstanding, interview based biometric process, and without meaningful engagement with claimant vulnerability. The Law Association considers that at a minimum, consideration of this amendment should be postponed until there is proper stakeholder engagement, comprehensive, longitudinal data is available, and the operational impacts of separating biometrics from interviews are fully understood.

Amendment 2: Amend the consequences of acting in "bad faith"

14.12 While the intent of Amendment 2 is understandable, The Law Association considers that it should not proceed. The amendment relies on the concept of "bad faith", yet there is no definition of bad faith in the Act, leaving it open to subjective and inconsistent interpretation. This creates a real risk of unfair outcomes for refugee and protection claimants.

14.13 In practice, claimants already face contradictory expectations. They are often questioned about why they have not been more publicly visible in expressing political opposition in New Zealand, or why they have not openly socialised or dated where their claim is based on sexual orientation or gender identity. At the same time, if they do engage in post arrival political activity or visibility, that behaviour risks being characterised as manufactured or opportunistic, and therefore treated as bad faith. Claimants are effectively placed in a situation where they are criticised whether they act or do not act.

14.14 Without a clear and narrow definition, "bad faith" risks becoming a credibility shortcut rather than a genuine integrity safeguard.

14.15 The amendment is also disproportionate. The paper acknowledges that bad faith currently arises in fewer than five cases a year. Legislative change affecting decisions that may determine a person's safety, and survival is not justified on the basis of such a small cohort, particularly where the concept being expanded is undefined.

14.16 For these reasons, Amendment 2 should not be adopted. At a minimum, any reform in this area would require a clear statutory definition of bad faith and strong safeguards to prevent vulnerable claimants being unfairly penalised for how they do - or do not - express their identity or beliefs after arrival in New Zealand.

Amendment 3: Expanding the IPT's ability to consider bad faith

14.17 Amendment 3 raises serious fairness and due process concerns and should not proceed.

14.18 There is no justification for this expansion on efficiency grounds. As acknowledged in the paper, findings of bad faith arise in only a very small number of cases each year. The marginal procedural efficiencies gained do not outweigh the risk of unfairness, inconsistency, and error in decisions that engage New Zealand's most serious international protection obligations.

14.19 For these reasons, Amendment 3 should not be adopted. At a minimum, any expansion of the IPT's jurisdiction in this area would require a clear statutory definition of bad faith, strict limits on its temporal scope, and robust procedural safeguards to ensure claimants are given proper notice and a meaningful opportunity to respond.

Amendment 4: Remove the ability to bring late appeals to the IPT

14.20 The Law Association considers that Amendment 4 should not be adopted. The amendment itself acknowledges that fewer than five appeals were filed out of time in 2025. Removing the Immigration and Protection Tribunal's discretion to accept late appeals would therefore affect a very small number of cases, while creating a real risk of serious unfairness.

14.21 Late appeals typically arise from genuine and foreseeable problems, including technical issues with electronic filing, delays in securing legal representation, difficulties understanding advice due to language or interpreting barriers, and the impacts of trauma, illness, or instability shortly after a claim has been declined. A strict 10 working day deadline fails to account for these realities, particularly for a population that is legally recognised as vulnerable.

14.22 The amendment also fails to explain what resourcing burden is said to justify this change. In practice, late appeals are usually dealt with on the papers. Submissions are made to the Tribunal, and the Chair reviews and decides whether the appeal should be accepted out of time. This is a limited, contained process. The paper provides no evidence that handling fewer than five such applications per year meaningfully diverts Tribunal resources or contributes to appeal backlogs.

14.23 The alternative protections identified are not equivalent. The suggestion that Ministerial requests or humanitarian interviews at the point of deportation provide an adequate alternative is misplaced. The Ministerial intervention process is discretionary and opaque. It is not an independent appeals mechanism, is not governed by transparent criteria, and does not involve an assessment of whether a person meets the legal definition of a refugee or protected person. Similarly, humanitarian interviews occur

much later in the process, often when a person is already facing imminent removal, and cannot remedy errors made at the refugee status determination stage. Neither the Minister nor a deportation interview officer is trained in refugee matters to make such decisions.

14.24 Given the very small number of cases affected, the lack of evidence of any genuine resourcing issue, and the serious consequences at stake, Amendment 4 is disproportionate and prioritises administrative rigidity over procedural fairness. It should not proceed.

Amendment 5: For second and subsequent appeals, enable the IPT to find that the claimant's circumstances have not changed significantly regardless of whether the RPO declined the claim on that basis

14.25 The Law Association considers that Amendment 5 should not proceed. It would allow the Immigration and Protection Tribunal to dismiss second or subsequent appeals on the basis that a claimant's circumstances have not changed significantly, even where this was not a ground relied on by Immigration New Zealand at first instance.

14.26 The amendment affects fewer than ten cases per year and cannot be justified on efficiency grounds. The suggested alternatives, such as Ministerial intervention or humanitarian processes, are discretionary, non-transparent, and do not assess whether a person meets the legal definition of a refugee or protected person. Given the serious consequences at stake, Amendment 5 is disproportionate and should not be adopted.

Amendment 6: Excluding people who commit serious non-political crimes in New Zealand from refugee status

14.27 The Law Association considers that Amendment 6 should not proceed. While framed as a measure to protect the integrity and "social licence" of the asylum system, the amendment misunderstands the legal and practical consequences of excluding individuals from refugee status while they remain non removable.

14.28 Where a person meets the threshold for non-refoulement, they cannot be deported, regardless of whether they are excluded from refugee status. In practice, Amendment 6 will therefore create a cohort of people who remain in New Zealand as protected persons but are denied refugee status and the rights and supports that accompany it. This outcome does not enhance public safety and may actively undermine it.

14.29 Excluding such individuals from refugee status risks cutting them off from critical settlement supports, including access to rehabilitative programmes, mental health services, and structured pathways to stability. Many people who have committed serious offences do so in the context of trauma, displacement, and untreated mental

health needs. Removing protective factors while requiring those individuals to remain in the community increases, rather than reduces, the risk of reoffending.

14.30 Amendment 6 also mischaracterises the policy choice as one between protection and exclusion. In reality, New Zealand already has extensive criminal justice tools to manage risk, including detention, sentencing, parole conditions, and post sentence supervision. Refugee status does not shield individuals from prosecution or punishment. Using refugee law to symbolically withdraw status from people who cannot be removed does not address risk and shifts the focus away from effective management and rehabilitation.

14.31 Finally, the number of cases involved is small. Legislative change with such serious long-term consequences should not be driven by extreme examples without proper consideration of the broader system impacts. Creating a permanently marginalised group of non-removable people with limited support is likely to make communities less safe, not more.

14.32 For these reasons, Amendment 6 is misguided and counterproductive. It does not enhance integrity, does not increase public safety, and risks creating worse outcomes for both affected individuals and New Zealand society. The Law Association recommends that it should not be adopted.

Amendment 7: Authorisation to accept claimant-initiated withdrawal

14.33 The Law Association supports this amendment.

CONCLUSION

The Law Association supports the objective of maintaining a robust and credible immigration system that promotes compliance and public confidence. However, that objective must be achieved in a manner that preserves fairness, proportionality, transparency, and access to independent safeguards.

In its current form, the Bill does not consistently strike that balance. While some amendments are constructive, others, particularly the expansion of deportation liability, the breadth of information-gathering powers, and the removal of established procedural safeguards, risk producing outcomes that are disproportionate and operationally unsustainable. Further, the proposal to remove humanitarian appeal rights is of particular concern. It represents a significant departure from long-standing protections, shifts decision-making away from independent adjudication, and risks serious consequences for New Zealand families without sufficient justification.

The Law Association's Immigration and Refugee Law Committee also considers that the practical and resourcing impacts of the Bill have been underestimated, with likely downstream pressures

on Immigration New Zealand and the wider system. The Committee recommends that targets amendments are therefore necessary to ensure that the Bill achieves its objectives without undermining fundamental legal principles. With appropriate refinement, the Bill can better support both the integrity of the immigration system and public confidence in its operation.

Thank you for the opportunity to make submissions in respect of the Immigration (Enhanced Risk Management) Amendment Bill. We are available to discuss our submissions, if required. Should clarification be required with regards to any matters raised, please contact Moira McFarland, The Law Association Committee Executive at Moira.McFarland@tlanz.nz.

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Ngā mihi

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The views represented in this submission are not necessarily representative of the views of all The Law Association members but are those of individual The Law Association members or The Law Association committees who have responded to the consultation.