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Immigration (Enhanced Risk Management) Amendment Bill

Supplementary submissions on behalf of
The Law Association of New Zealand
by the Public and Administrative 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. The Law Association maintains expert law committees that support legal review and policy advocacy on important issues.

The Public and Administrative Law Committee appreciates the opportunity to submit its comments on the Immigration (Enhanced Risk Management) Amendment Bill. This submission addresses concerns raised from a public law standpoint.

EXECUTIVE SUMMARY

The Committee is concerned that the Bill in its current form would remove humanitarian appeal rights for visitor visa holders and certain temporary visa holders. This would remove decisions from the Immigration and Protection Tribunal and place greater reliance on executive discretion.

The Committee does not consider the proposed alternatives, including "good reasons" submissions, Ministerial intervention, Ombudsman complaints, and judicial review, to be equivalent to an independent merits-based appeal.

The Committee also considers that the proposed expansion of immigration information sharing powers should not proceed in its current form. The proposed changes risk weakening statutory limits, increasing executive discretion, undermining privacy protections, and discouraging vulnerable migrants from engaging with essential public services.

The Committee considers that the Bill weakens important public law safeguards, including independent oversight, transparency, proportionality, and accountability. The Committee urges Parliament to retain humanitarian appeal rights and to ensure that any information sharing reform is narrow, clearly defined, and subject to enforceable safeguards.

SUBMISSIONS

1. Removing right to humanitarian appeal for temporary/visitor visa holders

1.1. The Committee has significant concerns with the amendment removing 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.

2. Overview

2.1. The Bill removes the humanitarian appeal right for all visitor visa holders and for any temporary visa holder who has pleaded guilty to, or been convicted of, offending. This is a marked departure from the existing structure, which provides an independent merits appeal before a specialist tribunal for temporary visa holders, including visitor visa holders.

3. Humanitarian appeals as a long-standing constitutional safeguard

3.1. The exceptional circumstances humanitarian appeal ground is long established. It has been in place since overstaying was decriminalised through the Immigration Act 1987. It arose from concerns about opacity, potential bias, and the inadequacy of pure Ministerial discretion under the Immigration Act 1965, including the risk of breach of New Zealand's international obligations toward children (see *Tevita v Minister of Immigration* [1994] 2 NZLR 257 CA)). From the outset, the appeal right has operated as a way of ensuring that decisions with serious consequences are not left solely to unstructured executive discretion.

3.2. The Supreme Court has confirmed that the threshold for success is very high, requiring hardship beyond what is ordinarily acceptable to maintain the integrity of New Zealand's immigration system (*Ye v Minister of Immigration* [2009] NZSC 76 at [35]). This proposal is therefore a radical departure from a long-standing protective architecture, not a minor administrative adjustment.

4. Separation of powers: transfer of adjudicative power from an independent tribunal to the executive

4.1. The proposal is best understood as a constitutional shift. The IPT is a quasi-judicial decision-maker designed to provide independent, reasoned, and principled adjudication of humanitarian circumstances in deportation cases. Removing its jurisdiction displaces decision-making from an institution whose function is to apply a defined statutory test, to executive discretion exercised through Ministerial or delegated processes.

4.2. This change materially weakens separation of powers. It reduces independent scrutiny of state coercive power and relocates determinations of exceptional hardship into the executive branch. That shift brings predictable public law risks: weaker transparency, weaker accountability, and greater scope for inconsistent outcomes across comparable cases. It also risks undermining the rationale for maintaining a specialist tribunal if its role is curtailed in precisely the cases where independent assessment is most constitutionally important.

5. Efficiency is not a sufficient public law justification

5.1. The Regulatory Impact Statement (RIS) frames the policy problem primarily as one of administrative efficiency and speed of removal, and the anticipated benefits are framed as reduced time to deport and reduced tribunal workload. However, no deficiency is identified in the quality or correctness of tribunal decision-making. From an administrative law perspective, convenience and speed do not justify dismantling an independent adjudicative safeguard where decisions may cause serious and irreversible consequences.

6. Disproportionate and arbitrary impacts

6.1. The proposal also risks arbitrary outcomes by treating visa category as a proxy for connection to New Zealand. Visitor and temporary visa holders can have substantial family, caregiving, and community ties, including to New Zealand citizen children and partners. The distinction between visitor visas and work or student visas is difficult to justify where the interests of New Zealand children and family unity are engaged.

6.2. Recent Tribunal decisions illustrate why this matters. Cases involving sudden bereavement, child disability, post COVID disruption, and long-standing family dependence have been found to meet the high statutory threshold and have resulted in residence or temporary relief being granted. Excluding appeals solely because a person held a visitor visa is therefore a short-sighted and ill-informed approach that removes individualised assessment in precisely the cases where it is most needed.

7. Natural justice, the rule of law, and the seriousness of deportation consequences

7.1. The Committee is also concerned that the proposal engages fundamental rights and rule of law principles. Section 27(1) of the New Zealand Bill of Rights Act 1990 affirms the right to the observance of the principles of natural justice by any tribunal or public authority that has power to make a determination affecting a person's rights, obligations, or interests protected or recognised by law. Deportation decisions plainly affect significant interests. They may result in separation from family, disruption of settled private life, loss of employment, dislocation from community, and removal from New Zealand in circumstances that may be practically irreversible

7.2. The seriousness of those consequences is central to the public law analysis. Deportation is not an ordinary administrative outcome. Once removal has occurred, the harm caused by an erroneous or inadequately scrutinised decision may not be capable of being remedied in any meaningful way. That is especially so where New Zealand citizen children, partners, caregiving arrangements, health conditions, or long-standing family dependence are involved. The more serious and irreversible the consequences of a decision, the stronger the justification required for removing an independent merits-based safeguard.

7.3. From a rule of law perspective, the concern is not merely that affected individuals will have fewer procedural steps available to them. The concern is that a defined statutory appeal right, determined by an independent specialist tribunal applying a principled humanitarian test, would be replaced by discretionary executive processes that are less transparent, less structured, and less accessible. The rule of law requires that coercive state powers be exercised according to clear legal standards, subject to independent scrutiny, and accompanied by meaningful avenues of review. The Bill weakens each of those safeguards.

7.4. The Committee accepts that Parliament may amend immigration processes where a proper evidential and policy foundation exists. However, administrative efficiency cannot, without more, justify removing an independent merits appeal in a context where the consequences of error are severe, personal, and potentially irreversible. The Bill therefore raises serious concerns under s 27 of the New Zealand Bill of Rights Act 1990 and under the broader rule of law principles of legality, accountability, transparency, and access to meaningful review.

8. Inadequacy of proposed alternatives and loss of meaningful review

8.1. The proposed alternatives do not replace what is being removed. Good reasons submissions, Ministerial intervention, judicial review, and Ombudsman processes do not provide an independent merits-based assessment of exceptional circumstances. Judicial review is narrow and cost prohibitive for most migrants. Ombudsman review is not a merits appeal. Ministerial decision-making is non transparent and not governed by a defined

humanitarian yardstick, with many decisions delegated to senior officials who do not have the statutory independence of the Tribunal. Replacing a defined statutory test applied by an independent tribunal with largely unstructured executive discretion reduces both procedural fairness and substantive accountability.

8.2. The Bill removes an independent, merits-based appeal to the Immigration and Protection Tribunal and proposes that affected individuals can instead rely on a mixture of "good reasons" submissions to Immigration New Zealand, Ministerial or delegated intervention, Ombudsman complaints, and judicial review. These alternatives are not equivalent substitutes for an independent tribunal appeal. They do not provide the same quality of contestability, independence, or reasons-based decision-making, and they materially weaken the separation of powers, by shifting determination of exceptional hardship away from a quasi-judicial body and into executive discretion.

8.3. The RIS itself makes clear that the policy intention is to remove the IPT pathway for this class of cases, while preserving only a short "good reasons" pathway and then leaving affected people to pursue external avenues, such as judicial review or Ombudsman complaints. The difficulty is that these alternative avenues are not designed to answer the core question previously determined by the IPT: whether exceptional humanitarian circumstances make removal unjust or unduly harsh, and whether allowing the person to remain would be contrary to the public interest. Replacing a specialist merits appeal with processes that are not structured around that statutory yardstick is a loss of meaningful review, not a mere change of forum.

9. "Good reasons" submissions are internal, compressed, and not a tribunal substitute

9.1. Under the proposed model, the principal safeguard becomes a short period for the affected person to provide "good reason why deportation should not proceed" to MBIE, with the RIS describing this as a key protection. Even where a different immigration officer considers the "good reasons" submission, it remains an internal executive process rather than independent adjudication. From an administrative law lens, this is a materially different quality of review: it lacks the institutional independence, open justice features, and consistent precedent-building function that a tribunal provides. It also occurs within a significantly tightened timeframe and in the shadow of imminent enforcement consequences, which affects practical ability to gather evidence and properly present a case.

9.2. The RIS recognises that once the "good reasons" decision is made, MBIE may serve a deportation order immediately, and that protections previously associated with the appeal process are removed. In public law terms, the combination of compressed time, internal decision-making, and immediate enforcement risk shifts the system away from meaningful merits adjudication and toward a model where procedural opportunity exists in theory but is weakened in practical effect.

10. Ministerial / delegated intervention is discretionary executive power, not a rights-based review

10.1. The proposal relies heavily on the availability of Ministerial or delegated intervention as a backstop. The RIS explicitly states that affected persons may seek Ministerial intervention and that a Delegated Decision Maker (DDM) within MBIE can cancel liability. However, the RIS also acknowledges a crucial point: there is no statutory right of appeal to the Minister and no statutory stay on deportation action while any Ministerial request is being considered. That admission is central. It confirms that the Ministerial route is not a substitute for an appeal right: it is discretionary executive power exercised without the procedural architecture that ordinarily accompanies adjudication of rights-impacting decisions.

10.2. From a separation of powers perspective, replacing a tribunal's statutory merits jurisdiction with unstructured executive discretion is a constitutional shift. The RIS itself anticipates that the change may increase Ministerial intervention requests and proposes to monitor that. That is a predictable consequence of removing an independent forum for humanitarian assessment: the demand for relief does not disappear, it is redirected into the executive branch. The constitutional concern is that the executive becomes both primary enforcer and effective "last resort" humanitarian decision-maker, with fewer publicly visible constraints.

11. Ombudsman complaints are discretionary, non-merits, and uncertain in scope

11.1. The RIS repeatedly frames Ombudsman complaints as an alternative avenue but also concedes that the Ombudsman determines scope at its discretion and that impacts are difficult to model. It acknowledges that removing IPT appeal rights may lead to increased complaints, and that MBIE has been unable to model likely volumes. This matters because an alternative that is discretionary, uncertain in scope, and not designed for merits assessment cannot be treated as a functional replacement for a statutory appeal right.

11.2. The RIS also recognises that complaints to the Ombudsman and judicial review relate to MBIE decision-making (for example, the decision to issue a deportation liability notice), whereas IPT appeals are based on humanitarian grounds. That concession underscores the central defect: the alternative processes do not directly answer the statutory humanitarian test. A shift from merits adjudication to oversight mechanisms that do not decide humanitarian substance is, in administrative law terms, a reduction in meaningful review.

12. Judicial review is narrow legality review, expensive, and an unsuitable primary pathway

12.1. The RIS acknowledges that removing IPT appeal rights may shift burden to the Courts through increased judicial review and notes it has been unable to model likely volumes. More importantly, it records that the Ministry of Justice questioned whether judicial review is an appropriate primary means of challenge and whether the costs will be prohibitive to some. That is a significant public law concession from within government consultation. It reflects the reality that judicial review is not designed as a substitute for a merits appeal and is not accessible on equal terms to most affected people.

12.2. The RIS further accepts that judicial review and Ombudsman complaints are directed at MBIE decisions (such as the decision to issue a deportation liability notice), whereas the

humanitarian appeal is a distinct merits assessment. In public law terms, this is the difference between legality review and merits review. If Parliament removes the principal merits forum and leaves only legality-based challenge, it narrows review to process and rationality rather than the substantive humanitarian question Parliament previously required an independent body to decide.

12.3. The proposal acknowledges natural justice trade-offs but does not resolve them.

12.4. The RIS expressly identifies "tensions and trade-offs" between efficiency objectives and natural justice implications arising from removing an appeal right. It also sets out that the ability to be heard would be limited to a short "good reasons" process plus external avenues like Ombudsman complaints and judicial review. From an administrative law lens, acknowledging the tension does not answer it. The question for Parliament is whether it is constitutionally acceptable to remove independent merits adjudication in cases where the consequences of error are severe, and to replace it with processes that are discretionary, opaque, or limited to legality review.

13. Net public law consequence: weaker contestability and a deeper separation of powers problem

13.1. The combined effect of these changes is to reduce the quality of review and to concentrate decision-making power within the executive branch. The RIS frames this as enabling "swift" compliance action and reducing tribunal workload, while recognising risks of burden shifting to Courts and the Ombudsman, and increased requests for Ministerial intervention. From a separation of powers standpoint, the more fundamental concern is that the Bill removes the independent adjudicative institution that currently supplies legal constraint, transparency, and principled, reasons-based decision-making in these cases. That is not merely an immigration policy adjustment; it is a public law shift away from independent oversight and toward executive supremacy in matters of serious individual consequence.

14. Information Sharing Provision

14.1. The Law Association considers that the proposed amendments to modernise and expand the Immigration Act's information sharing provisions, as set out in pages 90-117 of the Regulatory Impact Statement, should not proceed in their current form. While the RIS frames these changes as necessary to improve administrative efficiency, align the Act with other regulatory regimes, and modernise information management practices, those objectives cannot justify an expansion of executive power that materially weakens statutory limits, undermines public trust, and risks eroding foundational public law protections.

14.2. At its core, the proposed amendment represents a significant shift in the structure of statutory authority for information sharing under the Immigration Act. The move away from a closed and defined list of specified agencies toward a broad, function-based model substantially enlarges the scope of executive discretion. This change alters not only who may receive immigration information, but the purposes for which that information may be used. As the RIS itself acknowledges, information may be shared with

agencies such as Inland Revenue, Health New Zealand, MSD, and others to support their regulatory, enforcement, or service delivery functions. In public law terms, this represents a marked dilution of the principle that coercive state powers - particularly those affecting vulnerable individuals - must be clearly authorised, confined, and transparent.

14.3. The RIS recognises risks relating to privacy and public confidence, including concerns raised by the Office of the Privacy Commissioner and the Ombudsman. However, those risks are not mitigated by the proposed legislative framework. Instead, the amendment relies heavily on post enactment administrative mechanisms, such as information sharing agreements, internal policies, and inter agency governance arrangements. From a public law perspective, this is inadequate. Fundamental limits on state power must be imposed by Parliament through clear and enforceable statutory thresholds, not deferred to discretionary executive decision-making after the fact.

14.4. Of particular concern is the risk of function creep. Although the RIS presents the expansion of information sharing as efficiency enhancing, the practical effect is to enable immigration information to be used across employment, tax, health, education, and social services systems in ways that were not contemplated at the time of collection. Once information flows across multiple agencies for loosely defined "regulatory" or "service delivery" purposes, it becomes increasingly difficult to ensure that individuals are not indirectly identified, profiled, or monitored on the basis of their immigration status alone. This is not a hypothetical concern; the RIS explicitly anticipates broader data flows across agencies whose core functions are unrelated to immigration decision-making.

14.5. These concerns are particularly acute when viewed through the lens of access to justice and the rule of law. The Immigration Act governs a cohort that is already subject to significant power imbalances, limited political representation, and heightened vulnerability. The expansion of information sharing powers risks producing a chilling effect on engagement with essential public services. If individuals without lawful status reasonably fear that accessing healthcare, reporting exploitation, engaging with education providers, or interacting with regulatory agencies may expose them to immigration enforcement consequences, they may withdraw from those systems altogether. Such outcomes would be inconsistent with fundamental public law principles, including fairness, proportionality, and the proper purposes doctrine, and would undermine broader statutory and public policy objectives in areas such as public health, workplace compliance, and child welfare.

14.6. In this context, section 151 of the Immigration Act assumes particular constitutional significance. Section 151 reflects a deliberate legislative choice to constrain how immigration status intersects with access to services and information sharing. It signals Parliament's intention that immigration enforcement should not be advanced indirectly through other regulatory or service delivery regimes without clear authority and safeguards. The RIS does not meaningfully engage with this provision or explain how the proposed amendments can be reconciled with its protective purpose. Nor does it demonstrate how the new information sharing framework will prevent systematic or indirect tracking of individuals based solely on their immigration status.

14.7. More broadly, the proposed amendment raises serious concerns about accountability and legal certainty. The widening of information sharing powers, coupled with reliance on administrative safeguards, makes it more difficult for affected individuals to understand how their information is used, to challenge misuse, or to seek effective redress. From a public law perspective, this undermines transparency and weakens mechanisms for independent oversight. The RIS acknowledges the importance of public confidence yet offers little assurance that individuals will have meaningful access to review, audit outcomes, or remedies where information is misused or shared beyond its lawful purpose.

14.8. For these reasons, The Law Association considers the proposed amendment should not proceed in its current form. The risks posed by the expansion of information sharing powers under the Immigration Act are not offset by the asserted efficiency gains. The amendment would materially weaken statutory constraints on executive power, insufficiently protect against privacy and fairness harms, and create systemic risks for vulnerable populations. If Parliament is to revisit information sharing in the immigration context at all, any reform must begin from a public law framework that prioritises legality, proportionality, transparency, and trust. That would require clear statutory limits on the categories of information that may be shared, strict purpose limitations, robust protections against secondary use for immigration enforcement, and enforceable oversight and redress mechanisms embedded directly in the legislation itself.

14.9. 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.

CONCLUSION

For these reasons, the Committee urges Parliament to retain humanitarian appeal rights for all visa holders. The proposal shifts decision-making from independent adjudication to executive discretion, weakens separation of powers, and dismantles a long-standing safeguard without evidence that the Tribunal's decision-making is deficient. The policy justification has not been made out.

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 Gandhya Senanayake, The Law Association Committee Executive at Gandhya.Senanayake@tlanz.nz.

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Yours sincerely,

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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.